

## LEGAL ALERT

### ANGOLA

## NEW FOREIGN EXCHANGE RULES APPLICABLE TO THE MINING SECTOR

The Angolan National Bank (*Banco Nacional de Angola* – BNA) published, on 9 February, Notice No. 2/2023, which establishes the foreign exchange framework applicable to the mining sector (Notice). Repealing Notice No. 13/2020, of 29 May, which focused on the diamond sector, the new Notice came into force on 10 February.

From among the reasons presented in the preamble of the Notice for its publication, BNA highlights “the significant update occurred in the regulations that govern the functioning of the national market”. In fact, the liberalisation of the forex system has been felt over the last few years with BNA's strong intervention from a regulation standpoint. The Notice is another step in this process.

We recall that: (i) back in December 2021, the BNA authorised foreign exchange trading relating to foreign investment operations without the need for previous licensing; and (ii) in July 2022 waived the need for foreign exchange licensing in the majority of capital operations in Angola.

We will briefly analyse the entities and operations subject to this Notice, as well as the rules that apply thereto.

The Notice applies, among others, to the following entities (i) banking financial institutions; (ii) holders of mining rights generally; and (iii) exporters of mineral resources or lapidated or refined minerals.

We will now look into some of the most relevant rules approved by the Notice, in what refers to the following operations:

**Rules applicable to the following foreign exchange operations involving minerals and mining products**

Export	Purchase & Sale in the National Market	Hiring of External Financing
<ul style="list-style-type: none"> <li>• Settled in whole or in part in freely convertible foreign currency.</li> <li>• Revenue to be deposited and used as established in the Notice, both for National Investors and for Foreign Investors.*</li> </ul>	<ul style="list-style-type: none"> <li>• To be paid in national currency or own funds in foreign currency, as is agreed by the parties.</li> <li>• If there is no agreement, to be paid in the currency determined by the seller.</li> </ul>	<ul style="list-style-type: none"> <li>• Hiring external financing to exclusively fund mining activities in Angola.</li> <li>• Instructing the purchasers of the exports to transfer part or the totality of the amounts to pay for said exports directly to the lending banks abroad for debt service, ancillary charges or security reinforcement.</li> <li>• Maintaining escrow accounts with lending banks abroad.</li> </ul> <p>The above cases are not subject to previous authorisation from the BNA.</p>

\* As defined in article 3 of the Notice, mainly by reference to the Mining Code and to the Private Investment Law.

The Notice also includes a set of rules applicable to the bank accounts held by the entities listed above, namely regarding the use of the same in foreign currency.

The Notice makes it clear that operations of import and export of capitals – particularly transfers of profits and dividends to foreign exchange non-resident shareholders – are regulated by the legislation in force (Notice No. 11/2021, of 23 December 2021). Among other issues, carrying out such transfers is usually subject to confirmation of compliance with a number of regulatory obligations (tax; private investment, etc.).

In our view, the publication of this Notice is relevant because, as indicated above, it represents an additional step in the liberalisation process of the Angolan foreign exchange system. In addition, and as a consequence, it will be an appealing set of regulations for sponsors of mining projects and lending entities of such projects, given namely the positive impact on their “bankability”.

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