

## LEGAL ALERT

# NEW CRIMINAL CODE AND NEW CODE OF CRIMINAL PROCEDURE

## LAW NO. 38/20 AND LAW NO. 39/20, OF 11 NOVEMBER

On 11 November 2020 were published at the *Angolan Official Gazette (Diário da República)* the Law no. 38/20, of 11 November, and the Law no. 39/20, of 11 November, approving the new Criminal Code (*Novo Código Penal*) and the new Code of Criminal Procedure (*Novo Código de Processo Penal*), respectively.

The approval of these statutory instruments triggered an important reform of the criminal system and is more likely to adjust the criminal justice to the present socio-economic situation of Angola.

The main innovation foreseen in the new Criminal Code is the criminal liability of legal persons, provided for in article 9.1 which states that “legal persons, except for the State and international organizations governed by public law, may be held criminally liable”. Thereby, all legal entities and alike, even if irregularly constituted, and in particular companies (except for the State and international organizations governed by public law), may now be held criminally liable and, at least in theory, for the entire catalogue of crimes provided for in the new Criminal Code.

This option raises interesting questions, such as understanding whether such legal entities may be held liable for crimes traditionally linked to the scope of criminal liability of natural persons (crimes against human life).

The criminal liability of legal persons may occur whenever the offences are committed in their name, on their behalf, in their interest or in their benefit:

- By their corporate bodies, representatives and persons in positions of leadership; and
- By natural persons acting under the authority of the said corporate bodies, representatives or persons in positions of leadership when the crime occurs due to a wrongful breach of the duties of supervision and control binding the said superiors.

It is worth noting that, under paragraph 5 of article 9, the criminal liability of legal persons does not exclude or depend on the individual criminal liability of their legal representatives.

In addition, under paragraph 6 of article 9, the criminal liability of legal persons shall be excluded if the agent has acted against express orders or instructions from his/her superior, which may be seen as a reference to the importance of creating clear procedures and implementing compliance programmes for companies.

The penalties applicable to legal persons that are foreseen in the new Criminal Code are warning/admonition, fine, winding-up and a set of ancillary penalties provided for in article 43 of the new Criminal Code, namely the closure of an existing establishment, prohibition on entering into certain contracts or entering into contracts with certain entities, prohibition on being granted with certain subsidies, allowances or benefits and loss of illicit revenues or assets obtained from criminal activity.

Among other innovative options of the new Criminal Code, we also stress the following:

- The inclusion of cybercrimes, namely crimes against data, communications and computer systems;
- The addition of new crimes against the market and the economy, in particular foreign exchange crimes, as fraud on the transport and transfer of currency overseas.

The new Code of Criminal Procedure, in its turn, provides for a set of rules aiming to strengthen the guarantees of the defendant and to speed-up criminal proceedings:

- It clarifies the forms and phases of the criminal procedure to speed-up the procedure and make it more efficient;
- Creates the judge of guarantees to ensure that defendant's fundamental rights are respected at the pre-trial phase;

- Provides for a clear separation between the roles of the Public Prosecutor and the judge; and
- Establishes an extension of the means of proof, by including of telephone tapping.

The new Criminal Code and the new Code of Criminal Procedure enter into force today, on 9<sup>th</sup> February 2021.

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