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New Private Investment Law in Angola

As one of the most attractive emerging economies worldwide over the last decade and given its continuing high growth rates, Angola has been on the investment radar of all major multinational companies. However, the limitations imposed by the local government in terms of foreign investment have always raised several concerns and hesitations amongst foreign investors wishing to grow their operations to Angola.

Given the need to attract private investment to the local economy, particularly to certain sectors of activity which are deemed as priority sectors by the Angolan government, and being aware of such concerns and hesitations, the Angolan Government enacted the New Angolan Private Investment Law ("NPIL") with the approval of Law 14/15, of 11 August 2015, and more recently the Procedural Regulation for Implementation of Private Investments ("Investment Regulation") with the publication of Presidential Decree 182/15, of 30 September 2015.

Main features

The NPIL is applicable to both domestic and foreign private investments and differs from the former law which required a minimum threshold amount of USD 1 million for any new investment operations. The NPIL does not mention any threshold for foreign investments and the former mandatory waiting-period of 3 years before investors could start to repatriate dividends is now absent.

The NPIL also distinguishes between direct and indirect forms of making investments and creates a threshold of 50% maximum value for indirect investments against the value of direct investments. As an example, for foreign investors, supplementary capital contributions, know-how and transfer technology are deemed as indirect forms of making investments.

The NPIL creates a further special threshold for shareholder loans, with a cap of 30% of the value of the investment for this form of funding and imposes mandatory waiting-period of 3 years before investors can start to get repayments.

From a tax perspective, this new law introduces a new supplementary tax on capital investment ranging from 15% to 50% over the part of distributed dividends or profits exceeding the foreign investor's stake in the company's equity.

Sectorial Limitations

The NPIL creates an express limitation for foreign investors, imposing a local ownership requirement regarding investments made in certain sectors. In this regard new investments in the following sectors require the establishment of local partnerships, in which the local partner must hold at least 35% of the share capital and have an active participation in the management of the company: (i) power and water; (ii) hotels and tourism; (iii) transport and logistics; (iv) civil construction; (v) telecoms and IT; and (vi) media.

Tax Benefits

Under the NPIL and the Investment Regulation, investments below USD 1 million will not be entitled to any tax benefits. Tax benefits continue not to be automatically granted to the investor and will be granted on a case-to-case basis (i) depending on the quality of the investment, i.e., on the amount, location and duration of the investment, the creation of partnerships between Angolan and foreign entities and the social and economic impact of the investment; and (ii) taking into consideration the tax incentives table contained in the NPIL.

Investment Process

Putting an end to an age old tradition, the Angolan National Private Investment Agency (ANIP) is no longer stated in the NPIL as an entity with which the contract will have to be entered into. In fact, the ANIP has recently been extinguished by the Angolan Government and was replaced by APIEX (Angolan Agency for the Promotion of Investments and Exports), which is responsible for the promotion of potential investments, the legal framework and existing business opportunities in Angola.

As such, the Investment Regulation clarifies the entities which under the NPIL have authority to conduct the investment process with the investors, which are as follows:

(i) for investments of up to USD 10 million, the process should be handled by Government Ministries. The choice of Ministry will depend on the sector in which the investment will be made. Each ministry will create a specialist investment unit to handle the investments;

(ii) for investments in excess of USD 10 million, the office of the President of the Republic will set up a specialist investment unit to deal with these investments.

The investment process itself has remained quite similar to what it was previously and involves the submission of an investment proposal to the applicable Ministry, including an application form, corporate documents of the investor and a business plan of the investment.

In terms of timing, the Investment Regulation provides that upon receipt of all the required documentation in an acceptable form(which the Ministry must confirm within 5 days of receipt), clearance of the investment should be given within 20 days, during which time the investment contract should be agreed. The investment contract should be executed within 10 days of the deadline for clearance.

As was the case under the old law, the investor is then issued a Private Investor Certificate (CRIP), which must be sent to the Angolan Central Bank (BNA) and the Ministry of Finance.

For investments in excess of USD 50 million and that create between 200 and 500 jobs for Angolan citizens, these will be handled by a special committee to be set up by the President of the Republic and the investment contract should be executed within a maximum period of 45 days from the date of submission of the application.

Conclusions

The NPIL seems to put a greater emphasis on negotiation of the terms and conditions of investment contracts, as a number of mandatory legal requirements that appeared in the previous law have been deleted and replaced by the thresholds and ability to negotiate terms.

There is uncertainty as to how this NPIL will be implemented in practice but it is clear that this new law at least represents a new step by the Angolan Government to make the rules of private investment more attractive to foreign investors by adapting to the country's new reality and investment needs.