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Angola: New Private Investment Law, a new opportunity for investors?

It is well known that Angola is currently facing challenging economic and political times. The drop of the oil prices has exposed the weaknesses of a country still dependent on natural resources and led to a foreign and exchange crisis with significant depreciation of the Angolan Kwanza (**KZ**) and shortage of foreign currency which, ultimately, led to the intervention of the International Monetary Fund.

The above scenario has brought the attention of the Angolan authorities to the need to diversify investment and attract new sources of revenue. But could this be regarded by foreigners as an opportunity to invest in the country?

Darren Harris and **Ben Sims**, both of Addleshaw Goddard's Dubai office, outline the growth of investment across Africa and highlight some of the characteristics and challenges facing the investment landscape across Africa and the Middle East.

Antonio Vicente Marque and **Francisco Goes Pinheiro**, both of AVM Advogados, focus on Angola and outline some of the key features of Angola's new Private Investment Law (Law no 14 of 2015, 11 August 2015) (**PIL**).

Private Equity Landscape in Africa

Between 2010 and 2015 there were a total of 823 private equity deals in Africa with a total value of USD 21.6 billion. Key sectors for investment include technology, utilities and energy. The rate of exits has risen across the period with 39 exits in 2013 and 2014 respectively growing to 44 exits in 2015 – statistics that reveal a growing and active private equity market, particularly in certain East and West African countries.

Some of this private equity investment comes from Middle East-based private equity funds who are generally seen as more adaptable to the local environment on the African continent. As Reuters have recently put it: "Due to the constraints in their home markets, Middle East investors are more familiar with Africa's challenges." (Infrastructure, the scarcity of a highly trained workforce and the lack of liquidity in capital markets are cited as just some of those common challenges). Stephan Breban of Dean Wetton Advisory comments on the role of private equity in the region that: "Plenty of companies (including those in the Western world) are looking to invest and expand in Africa. Private equity has an arbitrage role of cleaning up companies, adding operational experience and helping to deliver growth and expansion".

Angola: New Private Investment Law

PIL introduces some changes to the legal framework that seeks to attract more investment by abolishing the minimum threshold amounts required for foreign investment and simplifying the procedures for the acceptance of eligible investments. The most significant changes brought by PIL are as follows:

- **Changes on the Competent Authorities** – The former National Agency for Private Investment has been abolished and the decisions regarding private investments have been transferred to the Ministries responsible for the main sector in which investment takes place or by the Angolan executive, depending on the amounts involved (for example, the Ministry of Petroleum). Investment to a specified amount is to be handled by the so-called technical units for private investments of the Ministry in charge. Larger investment or investments in certain sectors is to be handled by the Technical Unit of the Executive, which can delegate powers to the relevant Ministries.
- **"Private investment" is now regarded as a less strict concept** – PIL no longer requires minimum thresholds for foreign investments unless the investors intend to apply for tax incentives or benefits (previously foreign investors were required to invest at least USD 1 million to be eligible for repatriation of profits). This means that, in principle, any foreign investment will be eligible for repatriation of dividends regardless of the amounts involved, provided that the investment has been duly implemented and the foreign exchange requirements have been met. PIL will not apply to domestic investments of less than KZ 50 million, investments undertaken by companies where 50% or more of the share capital is held by the State or public entities or to certain specified sectors.
- **Local Shareholder Requirements** – PIL designates a number of sectors where it is necessary to establish a partnership with a local Angolan partner who holds a minimum of 35% of the share capital of the companies in which such investment takes place. In some sectors, a higher proportion of the share capital is required to be held by Angolans. It is also necessary to ensure that this local partner has an effective participation on the company's management.
- **Forms of Investment** – PIL introduces some restrictions to indirect investment – e.g. investments by way of loans, shareholder loans, supplementary contributions, patented technology, registered trademarks or industrial secrets and patterns as well as shareholder loans may not exceed specified proportions of the overall amount of investment and must be retained by the company for a set period. Direct investment is considered all investment which is not indirect investment, such as equity or import of equipment or machinery.
- **New surtax applicable to the repatriation of dividends** – The amount of dividends that are distributed to foreign investors that exceeds the proportion amount of the company's own funds contributed by such investors will be subject to a surtax on capital gains tax (unless it is reinvested in Angola).
- **Tax investments and benefits** – Foreign investments above USD 1 million can benefit from certain tax benefits and incentives. These are not automatically granted and depend on the prior assessment of the project impact, based on certain criteria including: location of the investment; the value of the investment; job creation; Angolan shareholder percentage; project referring to specific sectors of activity; impact on exports; local Angolan added value. Investments above 50 million are subject to a special tax benefits and incentives provided that they are able to generate a certain minimum number of jobs.
- **Previous investment projects** – Provisions of PIL shall not apply to private investment projects that were approved prior to its publication and that are still in the course of being implemented. These projects will still be regulated by the investment law under which the relevant investment was authorized, unless the investor specifically requests that the provisions of PIL apply to the investment.

Implementation success

The Middle East and Africa private equity markets are proving popular areas to generate returns but the private equity industry can also help develop infrastructure, generate employment (particularly youth employment) and help to increase international standards across Africa. Developments such as PIL can only serve to encourage and support such growth and hopefully achieve the Angolan government's aim of providing a mechanism for promoting the economic diversification and competitiveness of Angola through the simplification of the relevant investment procedures.

Not all procedures of PIL have been fully implemented yet and there is still some uncertainty as to whether this new framework will in fact ease and speed up the investment process in Angola. Only time will tell if PIL is successful in doing so in Angola and the extent to which governments of other African countries will continue to look at ways of increasing investor appetite.

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