

INFORMATIVE NOTE

IN ASSOCIATION WITH
MG ADVOGADOS

PLMJ

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THE CAPITAL MARKET IN ANGOLA ADVANCED STAGE OF REGULATION

PLMJ, through its partnership with the Angolan law firm **MG Advogados**, has been following the developments of the Angolan capital markets' legal and regulatory framework, in particular after the approval of the Securities Act (Law 12/05, of 23 September) and the Financial Institutions Act (Law 13/05, of 30 September).

More recently, the drive towards the creation of a capital market in Angola resulted in the preparation and public discussion of an extensive legislative and regulatory package, in which the new Capital Market Commission (**Comissão do Mercado de Capitais** or **CMC**) has performed a predominant role. The legislative and regulatory proposals in question are currently undergoing a fast-track consolidation process and it is estimated that they will be passed and published before the end of this year.

The expectations created on the effective start-up of the Angolan Securities and Derivatives Exchange (**Bolsa de Valores e Derivativos de Angola** or **BVDA**), also in 2008 (which is currently operating on an experimental basis), the pace of consolidation of the above-mentioned legislative and regulatory proposals as well as the several educational initiatives currently in progress on capital markets evidence Angola's vitality and determination to build what may yet become one of the core competitive pillars of its financial system.

The **legislative and regulatory proposals** cover a broad range of areas as the institutionalisation and operating of stock exchanges in Angola, the setting-up of investment funds, the financial intermediation, the admission of securities to trading, public offers of securities as well as the public companies' (*sociedades abertas*) particularities.

We will briefly highlight some of the main features that will be covered in the above-mentioned laws and regulations:

. Investment Funds Management Companies (*SGFI*)

The "SGFI Regulation" governs, inter alia, the setting up and operating of this type of companies, their capital requirements and functions, the fit and proper tests applicable to their managers, their relationship with the funds' depositories, as well as their operational rules and the main provisions applicable to their financial statements.

The *SGFI* are recognised in the "background report" to the above-mentioned Regulation as a driver behind securities and real estate investment funds and will certainly have a pivotal role to play in the creation of an Angolan investment funds industry and in the protection of investors in these products.

. Real Estate Investment Funds (*FII*)

The "FII Legal Regime" gathers a significant number of core provisions governing the characteristics of the real estate funds, the rules for their incorporation, authorisation and registration, the contents of their management rules, the duties and liability of their management companies, periodic information, operations which are forbidden to the their managing companies, the liquidation regime, the powers of the participants' general meetings of close-ended funds, the units' issue, placement and negotiation, the permitted charges and expenses as well as their accounting principles.

It is expected that the CMC – the FII supervisory entity – will in due course develop, by means of regulations, the technical and operational issues implementing such rules. Recent experience has revealed the great expectations of the market agents and investors regarding these real estate collective investment schemes and their potential for attracting capital from the market.

"Portuguese Law Firm of the Year -" IFLR Awards 2006 & Who's Who Legal Awards 2006, 2008

"Best Portuguese Tax Firm" - International Tax Review - Tax Awards 2006, 2008

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. Securities Investment Funds (FIM)

Similarly to the real estate funds, the “FIM Legal Regime” lays down the core provisions for these financial instruments, whose performance will certainly be linked to the BVDA start-up.

The Angolan legislator has foreseen the possibility of having in the investment funds market both savings instruments to be subscribed by the public and other instruments solely for institutional investors, important tools for the development of a wide-ranging industry, given the various market opportunities in this field.

. Securities, Commodities and Futures Exchanges

CMC’s regulation on this matter is indeed an important landmark in the history of the Angolan financial system. As stated in the “background report”, this is the opening of “a new gateway to capitalisation and financing of companies, particularly national companies, operating as an alternative to bank financing and allowing the dispersion of the share capital of public companies”.

The “Securities, Commodities and Futures Exchanges Regulation” sets forth the key provisions governing the creation, admission, organisation and operating of the stock exchanges, but has chosen to leave room for self-regulation by their management entities, an appropriate solution for a growing market seeking soundness and transparency but one which is also efficient and able to accommodate the particularities of the Angolan financial community but also to international standards so as to create a truly competitive platform.

The CMC’s regulations under public consultation does not detail the rules on centralised securities depositories, clearance and settlement systems nor pivotal main structures in this area, although these have been envisaged since the approval of the 2005 Securities Act.

. Brokers and distributors (intermediation agents)

Once the legislative and regulatory background for the institutionalisation of the Angolan capital market has been created and the material, technical and human resources for the implementation of this national project have been made operational, it will be necessary to make provision for the access to and for the carrying on financial intermediation business as well as for the professional operators intervening in the market and investing investors’ funds.

The principles and objectives are clearly laid down in the two regulations governing the activity of stock brokers and distributors,

thus providing for investor protection, market transparency and security of the transactions.

Besides the rules relating to form and denomination, corporate purpose and registration allowing these operators to do business in Angola, the two CMC’s Regulations include provisions on their share capital and net assets, management, various operational issues, transaction registration and mechanisms to prevent conflicts of interests.

The role of these institutions, for which the rules have now been developed, will be fundamental for the future of the BVDA.

. Public Offerings of Securities

The CMC’s regulations have not neglected the need to separate the provisions on public offerings, dealing with this matter in the “Public Offerings Regulation”. The key concern is attracting savings from the public and the need to construe adequate instruments that will allow investors to step-in the new capital market and to be familiarised with its inherent investment risks.

The respect for the principle of legality of public offerings, assured by the registration and approval of the prospectus by the CMC and the access of investors to information about the issuers and the securities offered, are the pillars of this Regulation.

Portuguese language will be the one used throughout the entire CMC registration, information and clarification processes (considering the public offerings’ addresses). We emphasise that these regulations do not deal with takeover bids considering their particular characteristics and that, at this stage, there is no imperative need to regulate yet this matter.

Nevertheless, as we shall see below, the provisions on the public companies (*sociedades abertas*), the attribution/aggregation of voting rights and the defence mechanisms of minority shareholders vis-à-vis significant control holdings will give rise to a future evaluation of such complex matter.

. Public Companies (*Sociedades Abertas*)

In the context of the opening of the share capital of companies to investment by the public through the above-mentioned public offerings, these companies become fundamental capital market agents, being essential to subject them to identical rules, to the supervision of the CMC, as well as to a culture of public disclosure of relevant information on their activity and financial condition, their shareholders with significant holdings and on the participation of shareholders at general meetings.

The “Public Companies’ Regulation” also lays down principles for good corporate governance and the institution of the “independent non-executive directors”.

The public companies’ dynamics and culture will certainly be a new field for the Angolan business community – currently based on its private companies – and for this very reason constitute a major challenge launched by the Angolan regulators as one of the pillars for the development of a modern, efficient, transparent and competitive capital market.

. Agro-business financing

One last highlight to the draft proposal on financing the so-called agro-business, inspired by the Brazilian model, which sets down provisions for various “agro-business securities” seeking, through the capital markets, to create financing mechanisms for agricultural-cattle production, an essential need for Angola’s economic development.

A close reading to these legislative and regulatory proposals allows us to conclude that with the influence of Brazilian, as well as Portuguese, legislation and regulations, the Angolan legislators have managed to accommodate solutions already known and tested in more developed markets to the particularities of the local capital market, also taking into account the mechanisms necessary for the defence of its fundamentals: the protection of investors, the defence of the market, the transparency of information and the effective supervision of the intermediation agents’ conduct of business.

It must be pointed out, however, that the above referred legislative and regulatory initiatives do not cover all the activities that can be carried on by “non-banking financial institutions linked to the capital market and to investment” in Angola and which have already been foreseen in Law 13/05, of 30 September, such as venture capital and securitisation.

The construction of the Angolan capital market is thus moving along swiftly and, although it is acknowledged that there is still a long way to allow local companies and investors to become familiarised with this new “market culture”, Angola has all conditions to successfully carry on this national project and become a significant and sustainable African financial market.

Once this has been achieved, it is easy to foresee the impact of the Angolan capital market on the consolidation of the national financial system, on the creation of a new economic dynamics, on a diversified channelling of savings, on attracting foreign investment and on strengthening the Angolan private sector.

Besides the challenges and deep interest that the new laws and regulations will bring to investors and operators in the Angolan capital markets, we cannot forget that these must also be weighed against and combined with existing Angolan legislation governing related matters of major importance such as the Companies Law, the Exchange Law, the Payments Systems Law and the Tax Law, the latter of which is also being revised due to the particularities created by the Angolan capital market.

Such effort is complex and lies outside the scope of this particular Information Bulletin. Nevertheless, we shall return to it as we continue on top of this theme.

As a final note, we believe that the interest and expectations that PLMJ, in association with MG Advogados has regarding recent and future developments in regulating the Angolan capital market will be shared by the readers of this Information Bulletin, for which reason we believe it comes in due time.

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