(FUTURE) NEW PRIVATE INVESTMENT LAW (ANGOLA)

Little over four years ago, the legislative text that months later would become the new private investment law was in the process of being enacted. Not very much time has passed since the innumerable questions, doubts and reservations, as well as the clear and generalised scepticism existing at the time, in relation to some aspects of what would be the future new law. It also became clear that, among the various formal or substantive amendments announced, a single one was the focus of almost all the scepticism – the announced amount for investment would change from USD 100,000 to USD 1 million. In other words, an increase of 1000%. Many arguments sought to justify and ground the doubts at the time, but the decision was taken the current law passed.

The year 2011 came and went and, in fact, when seen in retrospect, if it were possible to predict the future, I think perhaps at least some of the arguments in favour of the scepticism would have been welcomed differently. Not taking into account the events that would happen in global financing since 2008 and 2009, the truth is that January 2011 saw the beginning of the Arab Spring (Africa). It was also the year in which at least two European governments collapsed, one through electoral defeat and the other through resignation – Ireland and Portugal, respectively. This gave rise to widespread (and vivid) talk about austerity programmes in Europe. 2011 was also the year that saw the death of Bin Laden in Pakistan and a catastrophic tsunami in Japan leading to a nuclear catastrophe in Fukushima (Asia). Also in this year, we witnessed the beginning of the protest movement against the Syrian government (Middle East), Fidel Castro gave up political leadership in Cuba and Hugo Chavez announced, curiously in Havana, that he was ill (South America). Finally, the USA announced and carried out a withdrawal of 39,000 soldiers from Iraq (North America). There were many significant events that occurred in 2011, but for economy of words, I have highlighted only a few. All this is to demonstrate that the world was different, that the world was clearly changing across the various continents and we already knew that money, or at least the capacity for investment, had moved or was moving, from a geostrategic point of view.

Turning back to Angola, it was already known that Angola is (still) an importing country, an emerging economy in need of goods and services produced, to a great extent, by foreign companies. It was to be expected that, with the crisis in Europe and with the challenges faced by the US economy, Angola could become a very attractive destination in Africa. It could be capable of attracting the interest (and the need, why not) of many investors who, for different reasons, had to change their expansion and internationalisation strategies.

Africa, in particular Angola, certainly has all the conditions to benefit from these changes. This investment could have a number of virtues: capturing financial resources, capturing human resources, capturing and retaining business knowledge and techniques. In other words, capturing value. However, as I see it, the assessment of this *value* was too limited to capital, to eminently tangible gains, in

detriment to all the other perhaps less tangible positive effects normally generated by foreign investment.

As a result, going back to the private investment legislation in Angola, it has become absolutely clear over recent years that the new minimum value for investment has acted as a deterrent. The rule was USD 1 million, regardless of the type of investment, or whether or not the projects needed intensive capital, with no exceptions, full stop. And the effect was confirmed to be more dissuasive than selective, contrary to what had been thought at the time the law was approved. This effect, operating alongside the macroeconomic and political changes referred to above, may have actually contributed to a change in the "map" of the sources of private investment in Angola. There has been less US investment, less European investment, but more Asian investment. In itself, there is nothing wrong in this change, which could be considered a political consequence, a result of a new geo-strategy.

However, from what we know of the new legislative text recently approved by the National Assembly, the inevitable conclusion is that the (still) current law was not drafted to meet the objectives for which it was intended. And, of course, this conclusion becomes even more obvious when we factor in the fall in the price of oil, which is Angola's main exportable resource and, therefore, the country's principal economic motor. This resource is inevitably and intimately tied to foreign investment, when other sectors of the economy could have benefited from this dynamic.

What does this new legislation say? The text establishes that there will no longer be a minimum amount for investment. In other words, it eliminates the rule of access to the scheme, which made it dependent on the importation of at least USD 1 million. In turn, the right to repatriate profits and dividends no longer depends on that condition, but only on the completion of the project. The tax incentives do indeed depend on a minimum investment of 100 million kwanzas (approximately USD 820,000), besides the need to comply with a series of criteria that will be set out in a table annexed to the future law: location, number of jobs, value of the investment and even the degree of Angolan shareholder participation in the investment.

Another thing that characterises the future new law will be the existence of new rules that confirm the policy of *Angolanisation*. These include an increase in tax incentives in line with size of the stake held by Angolan shareholders. The list of priority sectors has been subject to major change given that it now only provides for "*electricity and water*", "*insurance*", "*transport and logistics*" and, finally, "*telecommunications and media*", in which foreign investors are only allowed to invest if at least 35% of the capital and participation in the management is reserved to Angolan citizens. Along the same lines, the future new law includes a provision to create a supplementary rate of tax on the application of capital. This this supplementary rate will apply, among other income, to profits and dividends, and will vary between 15% and 50%. It will apply to the part of distributed profits and dividends that exceeds the stake in the share capital. This rule is also intended to increase reinvestment in Angola, and this is something which also becomes eligible for new tax incentives.

In general terms, it is still possible to draw the conclusion that there was a desire to simplify the law and the framework in the formulation of the legislative text. One example of this is the way it ties in with the commercial legislation that governs commercial companies. In contrast with what has been happening

under the current law, it is now clear that the incorporation and alteration of companies connected with investment projects are governed exclusively by the general legislation applicable to companies – the Law of Commercial Companies. In a change to the current provisions, the legislative text being approved does not contain any rules on this issue. If it did, it would create an overlap with the Law of Commercial Companies. This overlap created practical difficulties for businesses, with avoidable formal obstacles to the process of setting up or transforming companies. Along the same lines, the rule on the single procedural framework is maintained. This framework is characterised by the negotiation and signature of an investment contract with the State, without prejudice to the different levels of approval that may exist.

I believe it will be very interesting to witness the reaction of domestic and foreign investors to the new law and the complete reversal of that well-known rule introduced in 2011.

Regardless of the perfectly understandable and justified measures to encourage business, it is important to recognise that Angola is (still) an importing country and an emerging economy that needs goods and services, for the most part, produced by foreign companies. Besides this fact, historically, and particularly in its recent history, Angola has been the destination for a confluence of nationalities. It is also a territory where French is spoken on its north and north-east borders, English is spoken to the East and German is also spoken to the south. In summary, due to its natural potential, to the historic moment of reconstruction and development, to the international economic situation in which many countries are seeking new markets in which to invest and, finally, to its geostrategic location, that is both Atlantic and continental, it is clear that the strategy to capture private investment, in particular, foreign investment, must be tied in harmoniously with this very significant law. This is the expectation.

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