THE WEALTH SHIELD

Resource-rich Angola has taken a protectionist approach as a means to sustainably develop its economy. PLMJ's Bruno Xavier de Pina and Ruben Brigolas describe the legal framework now in operation for investors and companies in the country

Foreign investment in Angola was for several decades focused on the oil and gas and mining sectors and the ancillary services associated with them. The immense wealth and potential of Angola's natural resources made the country prisoner to the 'Dutch disease' and this resulted in the usual huge disparity between the extractive industries and all other economic sectors.

This resource-driven focus played a major role in creating negative social consequences and contributed massively to a parallel economy underlying the most expensive city in the world – Luanda. Despite the Government's efforts to reduce social inequalities and Angola's booming, internationally educated, business-driven middle class, there are still few who can afford the high cost of living in Luanda.

The disparity between sectors also means that business opportunities are plentiful but require sizeable financial resources. It is fair to compare the investment environment in Angola to a high-stakes poker game: a high buy-in just to sit at the table amid skilled and deep-pocketed players ready to bluff and test all newcomers, who need to be patient, understand the table dynamics and be prepared to shove all-in when the situation is presented.

With the end of the civil war in 2002, peace brought the country the political and social stability necessary to create legal structures aimed at attracting more foreign investment to the country. Since then, the Angolan legislator has established legal and business frameworks underpinned by two main sets of rules and regulations designed to (i) attract considerable investments and know-how to the country and (ii) retain the wealth generated and the know-how that comes with it in Angola. These two items comprise the 'Angolanisation' principle, which is to create wealth and keep it in the country.

Angolanisation is widely spread throughout the legal framework and is easily seen in day-to-day business, for example, through favouring Angolan companies in public tenders, making it mandatory to firstly hire Angolan employees, requiring foreign employees to pass their know-how on to Angolan nationals with whom they work or giving special first refusal rights to Angolan companies. Angolanisation is the cornerstone of all industries and its transversal nature goes beyond mere legislation and is truly rooted in the practices and businesses of Angola's private and public entities.

In addition, the legal engineering which hitherto sufficed to circumvent less clear points in the law is now being scrutinised. An important example of this is the difficulties that payments made from Angola under intra-group agreements may have with local banks when the relevant authorisation is requested.

Often investors look at Angola as a jurisdiction in which to expand their business due to the untapped and unsaturated sectors and daily business opportunities. But those investors commonly do not take into consideration Angolanisation, which insulates the legal and economic frameworks.

Those willing to spend more time and resources in Angola will have greater leverage and will probably be in a better position to capitalise on their investment in the long term than those favouring a quick get in, get out approach.

The most recent example of how powerful Angolanisation may be observed in the new Private Investment Law (PIL), recently approved by Law No. 20/11 of 20 May 2011. The new PIL requires a minimum of $1m (£60,600) per investment and/or investor – 10 times the previous amount, although a $250,000 (£152,000) threshold was actually required by the National Agency for Private Investment (ANIP) – in order to be entitled to repatriation of dividends and investment capital. In addition to further repatriation criteria and grading, the new regime also provides that tax benefits and incentives are not automatic and will have to be negotiated on a case-by-case basis. The entire framework is based on the same simple principle: the greater the investment and wealth generated and retained in the country, the greater the leverage to negotiate with the Angolan authorities and obtain better conditions for repatriation of dividends and other benefits or incentives.

The decision to make Angolanisation part of all business decisions aimed at a sustained, long-term and profitable investment is essential from several standpoints. Investors recognising this will undoubtedly be shown the red carpet to Angola's untapped riches. Consequently, Angolanisation should never be seen as a necessary cost but, instead, as a secure long-term investment involving the maximisation of the country's potential and human resources, thus catalysing the authorities' approvals of the relevant investment and all benefits in relation to it.

This is obviously easier said than done, as Angolanisation has a substantial and obvious impact on the investor's sometimes inflexible business model. From an investor's standpoint, the main problem in first-tier decisions is how to balance the internal expectations and sometimes necessarily uncompromising business structures with Angolanisation and the inherent 'context costs' (specific costs of having an economic activity in Angola).

The task of breaking down Angolanisation and context costs so as to accommodate them in project planning and payback is indeed herculean. Preparation prevents disaster but the odds are that even the most sophisticated financial and business development departments are not able to take Angolanisation or context costs into full account, as they are usually difficult to assess without specific country experience and local industry expertise. This may be mitigated by recourse to local advisers to be closely involved in the structuring of the investment and decision-making process from the earliest possible stage.

> Angolanisation is the price to pay for social and political stability, untapped resources and a government engaged in bringing the country forward in the international arena

Having access to advisers operating in Angola provides further added value through their particular insight into life in Angola and how to tailor the investment to the reality of the country and specific industry. To put it differently, local advisers should be in a position to flag situations not considered at first, even by diligent investors. For example, the impact of low-level corruption in day-to-day activities, the lack of small and medium-sized companies and adequate supply chains and how they affect the specific activity or the setting up or adjustment of the project *vis-a-vis* current and new practices imposed by public and private entities.

If Angolanisation and context costs are inserted into the overall project at the outset, it is possible

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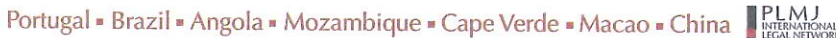

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to prepare the project so as to withstand political changes and legal U-turns. This last point, although also a recurrent issue in other jurisdictions, assumes greater relevance due to recent trends in Angola's legislation policy.

Angola has been evolving at a quick pace since 2002 and is currently undergoing a profound legal reform. The Government's effort to bring the country into a new era is visible through an intense process of legislative updating strongly influenced by Angolanisation. The last couple of years have been particularly significant. The reform is well underway and covers all economic sectors including the sacrosanct oil and gas industry (although a far less protectionist approach has been taken towards downstream activities, which still awaits presidential approval). New laws in relation to public procurement, public-private partnerships, leasing, factoring and data protection, to name a few, have recently been published and several other documents are awaiting the President's approval to be enacted. Some of these subjects are completely new to Angola and have never before been addressed by the legislator.

It is fair to compare Angola's investment environment to a high-stakes poker game: a high buy-in just to sit at the table amid skilled and deep-pocketed players ready to bluff and test all newcomers, who need to be patient, understand the table dynamics and be prepared to shove all-in when the situation is presented

This endeavour has surely put the country in the best position of all in Sub-Saharan Africa to receive foreign investment. The extreme legal makeover comes, nonetheless, with a considerable trade-off: an unpredictable learning curve. The country has provided public and private entities with the legal mechanisms to deal with the legal voids and updated laws to overcome practical hurdles which had thus far slowed the country down. It remains to be seen whether the Angolan authorities will be able to cope with the new framework and whether the legal sophistication is put to good use.

For example, in relation to the PIL which recently came into force, government authorities have already publicly acknowledged that they require some time to fully enforce the new law and that some questions left open cannot yet be answered. Considering that ANIP has already started to accept investment proposals, an additional and ongoing parallel learning curve has definitely been established. Now private investors not only have to adapt to the new law but also to a flexible interpretation of it by the Angolan authorities, namely as regards grey areas.

Thus, it is essential to define the concepts and questions introduced by the new PIL quickly, for example the pro-rata share capital in relation to the total investment or regime applicable to investments between $500,000 (£303,300) and $1m (£60,600).

All in all, Angolanisation remains the cornerstone of the legal and economic systems and will not be abandoned by the Angolan legislator for years to come. Despite some liberal approaches in some industries, the truth is that this is the price to pay for social and political stability, for abundant and untapped resources and for a government actively engaged in rebuilding and bringing the country forward in the international arena to generate further business opportunities. Therefore, investment in Angolanisation, even if costly at the outset, is a small price to pay for what Angola is now in a position to give in return.

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