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## NEW PRIVATE INVESTMENT LAW CLOSE TO ENACTMENT



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### REFLECTIONS ON A NEW STRATEGY FOR INVESTMENT

The new Private Investment Law (PIL) is in its final stages of preparation and is expected to be made law in the near future. It will be one of the most important new laws in Angola in 2011. The bill was subject to in-depth discussion in the Parliament and, from what is known, it establishes a set of rules that are broader and more detailed when compared to the provisions of the current Base Law on Private Investment (Law 11/03, of 13 May) which is still in force. In fact, although the PIL has not yet come into force, some time ago the Angolan authorities stopped applying what had caused paralysation in investments that were going through the approval process as well as in those that were being planned. As an example, ANIP (the National Agency for Private Investment) has not accepted new investment projects during this already long period while, in face of pressure and expectations of investors the Angolan Consulates are already using procedures altered in accordance with the new system. This has been creating deadlock in the operations of companies that depend on those bodies (as is the case for visa requests). When the PIL comes into force, the reality for small and medium-sized companies (SMCs), will be out of phase with the procedures that have been followed by the Angolan authorities in relation to obtaining specific types of visas. It

should also be pointed out that PIL has a provision stating that SMCs will be subject to a special regime to be created in the future. However, it is feared that until then, investors deemed to be SMCs will face practical or legal difficulties in carrying out their activities as a result, for example, of the apparent lack of definition and omissions that result from the legislation applicable to SMCs and from the announced regulation of investments by them, in respect of which no time line has yet become clear.

It is known that one of the planned changes with the greatest impact, which has already been confirmed, is the increase in the minimum value of investment. While the (still) current Base Law establishes a minimum value of USD 100 000 per investment, it being certain, however, that in practice ANIP was not approving investments of this value, with the entry into force of the PIL the minimum value of investment is USD 1 000 000. However, the changes

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proposed in this area do not stop there as, besides the increase to the minimum amount, it is established that in the case of companies (held by shareholders or quotaholders), the individual members will only have the right to benefit individually from the status of investor if they can show they have invested a minimum value of USD 1 000 000.

In addition to this, the share capital of companies set up under the PIL will have to be proportional to the value of the investment. Failure to meet this requirement may lead to the revocation of the Private Investment Registration Certificate (locally called "CRIP") and termination of the investment contract. The text does not define the proportion which means that the authorities responsible for this issue will have a high level of discretion.

Another important point lies in the trend towards elimination of companies with an open object. The PIL provides that companies set up under it should "preferentially" have a single purpose and a closed company object. Although this is not an absolute rule, the incentives and facilities do not extend to activities that are not covered by the CRIP or by the private investment contract.

The reasons behind this substantial change in the minimum value of the investment and in policy were the new plans arising from a new investment strategy such as, for example, an increase in the collection of public revenue and greater selectiveness in investments through that increase in value. By doing all this, the legislator was seeking to boost the socio-economic development of the country.

#### BRIEF NOTES

Like the current law, the PIL lays down the general bases for private investment in Angola and regulates the procedures and system of access to "incentives and other facilities" to be granted by the State to the investor, including the granting of

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tax benefits and/or the right to repatriate dividends for foreign investors.

The various definitions already established in the current law are, in general, retained. However, some of the loopholes that existed previously have been closed. For example, the PIL introduces the concept of "internal investment", which did not exist before and which led to difficulties in interpretation and application in certain circumstances. The concept of "external reinvestment" was also created. This concept consists of the *application in Angola of the whole or part of the profits generated from an external investment and which, under the terms of the current law, may be exported. This must comply with the same rules to which external investment is subject.* Difficulties are expected in terms of the interpretation and practical application of the concept of external reinvestment, specifically in respect of what should be understood by the "same rules". On the other hand, the reason for this change was the intention of the State to avoid subsequent investments (reinvestments) resulting from external investments being carried out to the exclusion of ANIP.

#### THE END OF THE PRIOR DECLARATION SYSTEM: THE SINGLE CONTRACTUAL SYSTEM

One of the most significant changes lies in the elimination of the Prior Declaration system. Taking its place is just one system called the *Regime Processual Único* or Single Procedural System, which is based on the earlier contractual system. With the entry into force of the PIL, the investor will always have to negotiate and agree the terms of its investment.

From an organic point of view, the changes will be profound. Approvals are in the power of the ANIP board and of the holder of executive powers according to whether the project is valued at below or above USD 10 000 000 dollars. In the former case, the incentives depend

expressly on the binding opinion of the Ministry of Finance, while in the case of projects above this value, the decision falls exclusively to the holder of executive powers, although that is subject to consideration by the Council of Ministers. In the case of investments greater than USD 50 000 000, the holder of executive power may authorise the creation of an ad hoc committee to establish any additional benefits.

#### REPATRIATION OF DIVIDENDS

The repatriation of dividends will also be subject to changes which will translate into stricter rules that are more burdensome for the investor. The starting point is, as we have mentioned above, an investment of USD 1 000 000 per investor. The right of repatriation will be proportional and graduated on the basis of the amount invested, the period of the concession and the dimension of the incentives and tax and customs benefits, the period of the investment, the profits actually made, the socio-economic impact of the investment and its influence on the reduction of regional inequalities and the impact of the repatriation of the profits and dividends on the balance of payments of the country.

In summary, faced with the various objective criteria set out by the PIL, we must conclude that the conditions for repatriation of dividends will be dependent on case by case negotiation. Indeed, the executive may, if it sees fit, favour specific types of investment according to the sectors in which they are made or the regions in which they are carried out.

#### INCENTIVES AND OTHER FACILITIES

The incentives will be regulated by the PIL itself. This means they will no longer be governed by a separate piece

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of legislation and will no longer be granted automatically. The PIL provides that: *The incentives and the tax benefits are not the rules, nor are they granted automatically or indiscriminately, nor are they of unlimited duration.*" The law lays down a series of objective criteria that are considered at the time the incentives are granted, such as, for example, growth in the economy and any increase in national production capacity.

The PIL introduces new rules and restrictions as to the application, granting, extension, duration and maximum limits for these benefits. With the PIL, even if the investment meets the eligibility requirements – location, sector, number of jobs to be created, etc. – the period for which the benefit is granted is no longer fixed and the benefit becomes attributable within a specific time period, to be granted on a case by case basis. The PIL also establishes the period of the exemption or of any other incentive may not be greater than the useful life of the equipment that is imported to be allocated to the investment project. In the abstract, this rule could have a significant impact on the terms for the granting of benefits, although it will only be possible to confirm this definitively when the law

comes to be applied.

The sectors of activity which allow access to incentives and facilities remain unchanged with the exception of (i) the manufacturing sector, for which the PIL now provides examples in *production of packaging, production of machinery, equipment, tools and accessories, recycling of ferrous and non-ferrous materials, production of textiles, clothing and footwear, manufacturing with wood and its derivatives, production of food products, construction material and information technology*; the elimination (ii) of civil construction, (iii) large scale cargo and passenger equipment and (iv) the introduction of social housing.

#### WHAT TO EXPECT FROM THE APPLICATION OF THE PIL...

The PIL brings a number of changes to the previous system through a number of nuances and rather more obvious changes to the earlier legislation. However, the preparation and entry into force of this new law is "only" a first and important legislative milestone in the country and its impacts, specifically those arising out of its application, remain to be seen.

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This newsletter was prepared by a multidisciplinary team made up of Angolan lawyers from GLA – Gabinete Legal Angola and Portuguese lawyers from PLMJ. This team was brought together under an agreement for international cooperation and membership of PLMJ International Legal Network, in strict compliance with applicable rules of professional ethics.

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