Understanding: Angola's new investment law

BY FURTHERAFRICA
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Understanding

On June 26, 2018, Law no. 10/18, modifying the legal framework for Private Investment, was published, aiming to increase new investments in the Country, while also reducing bureaucratic obstacles.

MC&A ADVOGADOS

In comparison with the previous regime, this new Investment Law ("LIP") brought several changes to the applicable legal framework. Contrary to the previous regime, LIP introduced a new type of mixed investment operation, combining national investment operations with foreign investment operations.

Local Partners

The mandatory requirement of having an Angolan partner (both in share capital and in management) was eliminated for investment projects in strategic sectors, such as Hotel Business and Tourism, Transports and Logistics, Telecommunications and Information Technology. Sectors that are regulated by special legislation (such as oil and gas) constitute exceptions to this regime.

Tax and Financial Benefits

Similarly with previous regimes, tax and customs benefits are not automatic, being limited in time.
Benefits are, however, of automatic concession, despite varying according to the development zone, in the Special Regime. In the previous regime, granting of benefits was conditioned by the amount of investment made, which is modified by LIP, as the new regime attributes incentives according to the priority sectors and development zones, being superior for the Special Regime in comparison with the Prior Notice Regime.

Nonetheless, both regimes are yet to be regulated, for which reason the possibility of minimum thresholds being introduced in the future.

Investment Projects

The benefits to be granted are now varying according to the regime applicable to the investment project. In contrast to the previous regime, there are two regimes according to LIP: the Prior Notice Regime and the Special Regime.
Investors may freely opt for either regime.

The new Prior Notice Regime is a simplified regime for the approval of investment projects, featuring the simple submission of an investment proposal with the competent body, for concession of benefits and registration.

In this regime, companies shall be already incorporated, with the filling of the Private Investment Certification being exempt in the incorporation act.

Prior Notice Regime allows for the following tax benefits:

- Real Estate Transfer Tax – reduction of the applicable tax rate in 50%, for the acquisition of real estate that will be the office and establishment of the investment;
- Corporate Income Tax – reduction of the provisory tax rate and final tax rate in 20%, for a 2-year period;
- Capital Gains Tax – reduction of the tax rate on distribution of dividends in 25%, for a 2-year period;
- Stamp Duty – reduction of the tax rate in 50%, for a 2-year period.

Special Regime is applicable to private investments made in the priority activity sectors and development zones, being characterized for requiring a negotiation between the investor and the competent body, regarding the specific terms for the investment and benefits to be granted. Regarding the granting of benefits, private investments are subject to registration within the legally competent authority.

The Special Regime entitles greater benefits than the Prior Notice Regime for the same taxes, with the possibility of graduation of tax rates and concession periods, varying according with the activity sector and with the location of the investment.

The maximum periods for the reduction of the tax rates and respective percentages are expressly indicated.

Priority Sectors

For the purpose of attributing benefits, the following sectors are deemed as being priority sectors:

- Education, Professional Training, College Education, Scientific Investigation and Innovation;
- Agriculture, Food and Agribusiness;
- Health;
- Reforestation, Industrial Transformation of Forest Resources and Forestry;
- Textile Industry, Clothing Industry and Shoes Industry;
- Hotels, Tourism and Leisure;
- Construction, Public Construction, Telecommunication and Information Technologies, Airport Infrastructures and Railway Infrastructures;
- Production and Distribution of Energy;
- Basic Sanitation, Waste Collection and Treatment.

Development Zones

According to LIP, the following areas are deemed as development zones, with benefits being granted increasingly:

- **Zone A**
  Provinces of Luanda, some municipalities of Benguela and Huíla and municipality of Lobito;
- **Zone B**
  Provinces of Bié, Bengo, Cuanza-Norte, Cuanza-Sul, Huambo, Namibe and other municipalities in the Provices of Benguela and Huíla;
- **Zone C**
  Provinces of Cuando Cubango, Cunene, Lunda-Norte, Lunda-Sul, Malanje, Moxico, Uíge and Zaire;
- **Zone D**
  Province of Cabinda.

Other Benefits

According to the Special Regime, the company is exempt from paying fees and duties, namely customs fees and duties, provided that such fees and duties were requested by any government entity that is not a government company, for a period not higher than 5 years.

Transference of Dividends and Profits Overseas

LIP did not modify the previous regime. The investors are entitled to repatriate the following sums: i) dividends; ii) liquidation sum; iii) indemnities; and iv) royalties and other income related to technology loans.

Repatriating of the above-mentioned sums is only subject to: i) implementation of the project; and ii) evidence of the execution of the project, regardless of the amount invested.

Corporate Changes

Conversely to the previous regime, according to which any extension to the object of the investment agreement was dependent of prior approval by the competent authority, LIP establishes that capital raises, extension of the corporate object and transmission of shares are subject to mere communication duty.

In case these changes require importing capital, modifying or extending the object, the prior approval of the Agency of Investment and Promotion of Exports ("AIPEX") is required.

Competent Authority

The Technical Unit for Support of Private Investment ("UTAIP") was replaced by the AIPEX, according to the Presidential Decree no. 81/18, of March 19. AIPEX will function as the sole authority for the negotiation, approval and supervising of investment projects.

Temporal Scope

LIP shall not be applicable to investment projects approved prior to the date LIP entered into force (even if such projects were yet to be implemented), unless the investor expressly informs otherwise.

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