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Angola

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1 Overview

1.1 What are the most common types of private equity transactions in your jurisdiction? What is the current state of the market for these transactions? Have you seen any changes in the types of private equity transactions being implemented in the last two to three years?

The Private Equity (PE) market in Angola was non-existent until 2009, when Angola Capital Partners launched FIPA – the first country-dedicated investment fund focused on small and medium-sized enterprises. Having raised US$ 39 million from the country's largest private banks and international Development Finance Institutions, FIPA is now fully invested across a wide range of industry sectors (e.g. agriculture, fishing, building materials, media and waste management treatment), becoming the pioneer of a nascent market with enormous growth potential.

New investment funds emerged. In 2011, the Angolan sovereign wealth fund, or Fundo Soberano de Angola, became the largest investment fund, with US$ 5 billion dedicated to large-scale regional projects and infrastructures. In 2012, the Fundo Activo de Capital de Risco Angolano was created via presidential decree with US$ 250 million to support venture capital projects. In 2016, Angola Capital Partners raised US$ 45 million from existing investors to launch its follow-on PE fund, FIPA II, devoted to small and medium-sized enterprises. International PE houses have also been present in Angola, particularly as co-investors of Angolan-focused PE funds.

Growth capital has represented the most common type of PE deal over the last two to three years and it is expected to remain a major deal type in the future. After a devastating civil war, which ended only in 2002, this resource-rich former Portuguese colony has been one of the world's fastest-growing economies over the past decade. The significant rise of its middle class, when compared to its regional peers, in sync with a decline in the number of people living on or below the poverty line, in addition to a relatively young and technology-savvy population, have acted as catalysts to a boom in the demand for products and services provided by partnerships set up between foreign investors with know-how and Angolan partners with local expertise.

In contrast to the reputation of PE funds in developed markets, FIPA and FIPA II are welcomed by Angolan market stakeholders. In frontier markets, PE funds are seen as an important alternative to local finance institutions for their longer maturity financing and for their contribution to the local business development strategy and share of their far-reaching networks which facilitate growth, access to external pools of capital and potential co-exits.

1.2 What are the most significant factors or developments encouraging or inhibiting private equity transactions in your jurisdiction?

2015 was a year of change for private equity in Angola. The country's legal framework had lacked specific legislation on private equity; however, following the submission of a draft to public consultation in 2014 by the Angolan Securities Market Commission (*Comissão do Mercado de Capitais*) and the disclosure of the relevant feedback report to the public, Presidential Legislative Decree no. 4/15, dated 16 September, approved the Legal Framework for Private Equity Collective Investment Schemes.

2 Structuring Matters

2.1 What are the most common acquisition structures adopted for private equity transactions in your jurisdiction? Have new structures increasingly developed (e.g. minority investments)?

A typical acquisition structure consists of the PE investment fund becoming the beneficial owner of intermediate Special Purpose Vehicles (SPVs), domiciled in Angola or abroad, which in turn acquire equity stakes directly in specific target companies, or otherwise subscribe to new shares issued by such target companies.

The PE investment fund may co-invest together with other individuals, namely top managers, under a single *newco* ring-fenced structure solely dedicated to each target company, ensuring incentive alignment and commitment.

PE investment fund structures are subscribed by limited partners and are usually domiciled in investor-friendly jurisdictions (e.g. Europe or the U.S.), and hence subject to the competent regulatory authorities. PE investment fund manager variable compensation is structured to depend on the returns it delivers to limited partners (i.e. carried interest). The right to be paid such variable compensation will only be vested after limited partners receive their drawdown capital accrued from a preferred return.

2.2 What are the main drivers for these acquisition structures?

The adoption of the above-described acquisition structures aims at (i) incentive alignment, (ii) compliance, and (iii) tax treatment. Incentive alignment between investors and managers drives carried

interest remuneration type, as do *newco* ring-fenced structures, which provide risk-sharing and human talent retention mechanisms during the lifetime of the fund's vehicle or investment, which is particularly vital in Angola. Compliance is a key reason why PE funds are domiciled in conventional investment jurisdictions (e.g. Europe or the U.S.), fulfilling institutional investors' legal, governance and transparency requirements. Tax treatment of international PE structures is another important consideration when selecting a mature market as the domicile for such alternative asset class investments.

2.3 How is the equity commonly structured in private equity transactions in your jurisdiction (including institutional, management and carried interests)?

In the typical PE transactions described above, equity is structured through limited partnership models, which incorporate waterfall remuneration and carried interest mechanisms. Investors hold limited partnership interests in the fund's vehicle, while the fund manager's team holds an interest in the General Partner. The common profit allocation scheme is usually distributed in the amount of 80% to limited partners, *pro rata* to their capital contributions, and 20% to the General Partner, i.e. carried interest, the latter conditional upon the limited partners having first received their preferred return, i.e. hurdle rate. Limited partners sometimes request to directly invest in target companies along with the PE fund to increment their exposure to a specific industry sector or to adjust their risk profile target.

2.4 What are the main drivers for these equity structures?

Equity structures are primarily designed to align incentives and to induce risk-sharing mechanisms between investors and managers. In Angola, retaining and aligning human capital is particularly important due to the scarcity of PE/managerial expertise.

2.5 In relation to management equity, what are the typical vesting and compulsory acquisition provisions?

Stock option schemes are increasingly used in Angola. The vesting trigger is typically driven by performance, while vesting periods are usually linked to the specific PE fund's time schedule. Customary leaver provisions triggering call options for investors (good *vs.* bad leaver provisions) may sometimes be required.

2.6 If a private equity investor is taking a minority position, are there different structuring considerations?

Customary minority rights protections are negotiated by the PE fund in its investment agreements, including but not limited to non-executive directorship, and contractual and organisational safeguards, closely monitored by the risk manager controller to ensure that these rights protections and safeguards are enforced.

3 Governance Matters

3.1 What are the typical governance arrangements for private equity portfolio companies? Are such arrangements required to be made publicly available in your jurisdiction?

Although experience is quite limited, one should not exclude the possibility of private equity investors being willing to influence the composition of the board of directors, indicating one or more persons to form part of a list to be elected to the board, although directors will not actually represent the relevant shareholders. Committees dealing with investment policy, remuneration or conflicts of interest may also be put in place. There is no requirement for such arrangements to be made public in a private equity structure.

3.2 Do private equity investors and/or their director nominees typically enjoy significant veto rights over major corporate actions (such as acquisitions and disposals, litigation, indebtedness, changing the nature of the business, business plans and strategy, etc.)? If a private equity investor takes a minority position, what veto rights would they typically enjoy?

Veto rights may be created to the benefit of private equity investors, notably under shareholder agreements. Such arrangements may refer to the exercise of voting rights, but not to the actual exercise of management or auditing functions. Matters in respect of which such veto rights may be created include, among others, significant acquisitions and disposals, material litigation, incurrence of material indebtedness, changes in the nature of the business, business plans, budgets and strategic plans. There are no standard veto rights awarded to private equity investors that take a minority position.

3.3 Are there any limitations on the effectiveness of veto arrangements: (i) at the shareholder level; and (ii) at the director nominee level? If so, how are these typically addressed?

Veto arrangements are not permitted to result in a scenario whereby a given shareholder is always required to exercise his/her voting rights in line with the instructions of the relevant company, or any of its corporate bodies, or to always approve the proposals presented by the relevant company or any of its corporate bodies. Veto arrangements are also not permitted to be set-up as compensation for obtaining special benefits.

3.4 Are there any duties owed by a private equity investor to minority shareholders such as management shareholders (or vice versa)? If so, how are these typically addressed?

No. However, particularly in respect of limited liability companies by shares (*sociedades anónimas*), the relevant bylaws may stipulate specific rules aimed at ensuring that minority shareholders are entitled to appoint a representative to the board of directors. In relation to public limited liability companies by shares (*sociedades por quotas*), the inclusion of such mechanisms in the bylaws is mandatory.

3.5 Are there any limitations or restrictions on the contents or enforceability of shareholder agreements (including (i) governing law and jurisdiction, and (ii) non-compete and non-solicit provisions)?

Shareholder agreements may be executed among two or more shareholders, and may have as their subject any action which is not prevented by operation of law. Shareholder agreements are binding upon the parties thereto, and no acts or facts performed by the company or by any of its shareholders *vis-à-vis* the company may be challenged on the basis of such agreements. Shareholder agreements may refer to the exercise of voting rights, but not to the exercise of management or auditing functions, and therefore may not imply that a given shareholder is always required to exercise

his/her voting rights in line with the instructions of the relevant company or any of its corporate bodies, or to approve the proposals presented by any of its corporate bodies, or as compensation for obtaining special benefits. Non-compete and non-solicit provisions may be inserted, within certain limits.

3.6 Are there any legal restrictions or other requirements that a private equity investor should be aware of in appointing its nominees to boards of portfolio companies? What are the key potential risks and liabilities for (i) directors nominated by private equity investors to portfolio company boards, and (ii) private equity investors that nominate directors to boards of portfolio companies under corporate law and also more generally under other applicable laws (see section 10 below)?

Members of the board of directors are not directly appointed by shareholders acting individually, but rather by means of a resolution passed by the shareholders' meeting. Accordingly, directors do not represent a given shareholder (even if proposed by such shareholder) and are required to act in the company's best interests, employing the same level of diligence a prudent manager would use, without prejudice to the interests of the shareholders and the workers (diligence duty – *dever de diligência*).

Members of the board of directors may be held liable towards the creditors of the company whenever they wilfully disregard legal or contractual obligations aimed at protecting such creditors, or if the company's estate becomes insufficient to discharge the company's obligations. On the other hand, any shareholder, acting alone or together with another shareholder under a shareholder agreement, may appoint managers or members of the auditing body (without the remaining shareholders being entitled to participate in such election) and may also be jointly and severally liable with the appointed person in cases where there is wilful default in the selection of such person and the same has a duty to indemnify.

3.7 How do directors nominated by private equity investors deal with actual and potential conflicts of interest arising from (i) their relationship with the party nominating them, and (ii) positions as directors of other portfolio companies?

Conflict of interest rules exist both at the level of the shareholders' meeting and of the board of directors. For instance, a shareholder may not take part in: any decision pertaining to the discharge of self-obligation, either as a shareholder or as a member of a corporate body; any dispute between such shareholder and the company; its dismissal with cause as a member of the board of directors; or any relationship, current or future, between such shareholder and the company, which falls outside the scope of the corporate subject. On the other hand, any transactions between the company and its board members are null and void except if previously authorised by the board of directors pursuant to a decision in which the relevant board member may not participate, and provided that the auditing body has voted favourably.

4 Transaction Terms: General

4.1 What are the major issues impacting the timetable for transactions in your jurisdiction, including competition and other regulatory approval requirements, disclosure obligations and financing issues?

In May 2015, the Angolan Government approved a revised Private Investment Law aimed at reducing bureaucracy, streamlining the decision-making process and facilitating capital repatriation; in short, aiming at a more investor-friendly legal framework. Highlights of the new Private Investment Law include:

- The minimum private investment amount required from Angolan sponsors was reduced from US$ 1 million to US$ 500,000 per project. The minimum private investment required from foreign sponsors remains at US$ 1 million per project. It will be possible to make investments under these thresholds under the new law, provided that investors will not apply for tax incentives. In any case, investors will be entitled to repatriate their profits or dividends.
- Ministry(ies) in charge of the relevant investment sector will be responsible for evaluating and approving private investment projects of up to US$ 10 million, above which amount approval falls under the authority of the President of the Republic.
- The Angolan National Private Investment Agency (ANIP) will no longer be involved in the evaluation, negotiation or approval of investment projects. ANIP will now mainly be engaged in promoting Angola as an attractive destination for private investment, and in monitoring the implementation of the Government's private investment policies.
- Tourism, hospitality, telecommunications and information technologies, transport and logistics, energy and water, and construction were elected as priority investment areas. Foreign investors in these sectors are required to partner with local investors with a minimum equity interest of 35%.
- Investors remain eligible to apply for tax incentives, including corporate income tax, property conveyance tax and investment income tax, ranging from 5% to 100%, depending on specific criteria which include the number of jobs created for Angolan nationals.

The foreign private investments timeline tends to last, on average, six to nine months from the preparation and submission to the processing of investments. The new law aims to streamline this timeline.

4.2 Have there been any discernible trends in transaction terms over recent years?

In addition to the significant regulatory changes in Angolan private investment law throughout the past decade, a trend towards more liquid equity and debt instruments is expected to emerge now that the Angolan Stock Exchange has been launched (in 2017). The Angolan Debt Exchange has already opened, although it is still mostly dedicated to Government bond trading among banks. As for the applicable legislation, the Angolan Securities Market Commission (*Comissão do Mercado de Capitais*) has approved a number of consolidating regulations regarding the trading of private equity on the stock exchange.

5 Transaction Terms: Public Acquisitions

5.1 What particular features and/or challenges apply to private equity investors involved in public-to-private transactions (and their financing) and how are these commonly dealt with?

The Angolan market has no significant experience in this respect due to the fact that capital markets and private equity are still at a very early stage in the country. However, Angola has approved a new Securities Code, published in August 2015, which is aimed at dealing in more detail, in a European-inspired manner, with public-to-private transactions.

5.2 Are break-up fees available in your jurisdiction in relation to public acquisitions? If not, what other arrangements are available, e.g. to cover aborted deal costs? If so, are such arrangements frequently agreed and what is the general range of such break-up fees?

Please see the preceding answer.

6 Transaction Terms: Private Acquisitions

6.1 What consideration structures are typically preferred by private equity investors (i) on the sell-side, and (ii) on the buy-side, in your jurisdiction?

Consideration structures will normally exclude short- and long-term interest-bearing debt, net of any excess cash or cash equivalents, and will possibly accrue net working capital.

6.2 What is the typical package of warranties/indemnities offered by a private equity seller and its management team to a buyer?

Standard representations and warranties apply – mostly the target company's underlying assets.

6.3 What is the typical scope of other covenants, undertakings and indemnities provided by a private equity seller and its management team to a buyer?

Other covenants and undertakings will usually include non-compete provisions.

6.4 Is warranty and indemnity insurance used to "bridge the gap" where only limited warranties are given by the private equity seller and is it common for this to be offered by private equity sellers as part of the sales process? If so, what are the typical (i) excesses / policy limits, and (ii) carve-outs / exclusions from such warranty and indemnity insurance policies?

Typically, warranty and indemnity insurance is not used in Angola.

6.5 What limitations will typically apply to the liability of a private equity seller and management team under warranties, covenants, indemnities and undertakings?

Caps and baskets are the standard limitations.

6.6 Do (i) private equity sellers provide security (e.g. escrow accounts) for any warranties / liabilities, and (ii) private equity buyers insist on any security for warranties / liabilities (including any obtained from the management team)?

Standard security and safeguards are usually required from both buyers and sellers and mostly rely on hard assets.

6.7 How do private equity buyers typically provide comfort as to the availability of (i) debt finance, and (ii) equity finance? What rights of enforcement do sellers typically obtain if commitments to, or obtained by, an SPV are not complied with (e.g. equity underwrite of debt funding, right to specific performance of obligations under an equity commitment letter, damages, etc.)?

Guarantees (from banks or investors) or equity commitment letters are typically used.

6.8 Are reverse break fees prevalent in private equity transactions to limit private equity buyers' exposure? If so, what terms are typical?

Reverse break fees are not common.

7 Transaction Terms: IPOs

7.1 What particular features and/or challenges should a private equity seller be aware of in considering an IPO exit?

Currently, there are no equity capital markets in Angola and thus there is no IPO experience to speak of.

7.2 What customary lock-ups would be imposed on private equity sellers on an IPO exit?

Please see question 7.1.

7.3 Do private equity sellers generally pursue a dual-track exit process? If so, (i) how late in the process are private equity sellers continuing to run the dual-track, and (ii) were more dual-track deals ultimately realised through a sale or IPO?

Please see question 7.1.

8 Financing

8.1 Please outline the most common sources of debt finance used to fund private equity transactions in your jurisdiction and provide an overview of the current state of the finance market in your jurisdiction for such debt (particularly the market for high yield bonds).

The Angolan Banking System is comprised of 20+ banks, although there is room for consolidation movements. In October 2015, *Banco Privado Atlantico* and *Banco Millennium Angola*, respectively the fifth- and sixth-largest banks in Angola by net loans market share, announced their merger. The merged entity became the second-largest privately held lender in Angola after *Banco Angolano de Investimentos*. Angolan banks have quickly expanded their nationwide branch networks. Their offering of products and services has developed significantly for both retail and institutional clients. However, there is significant potential for the development of more friendly debt structures for mergers and acquisitions, e.g. PE transactions. Debt availability is largely limited to short-term facilities, and market interest rates are in the region of 12% to 14%, dependent upon each bank's internal credit rating analysis.

In November 2015, the Angolan Government tapped international investors, raising US$ 1.5 billion in its debut Eurobond issue with a yield of 9.5% and a 10-year maturity. The appetite of international investors showed resilience despite significant adverse market conditions, enabling Angolan authorities to consider follow-on issues in the future, to further (i) diversify the country's external sources of financing, (ii) establish sources of long-term financing, (iii) improve evaluation by rating agencies, (iv) build its yield curve, and (v) possibly increase its international reserves.

8.2 Are there any relevant legal requirements or restrictions impacting the nature or structure of the debt financing (or any particular type of debt financing) of private equity transactions?

The existing legal framework hinders Angola's bank lending activities for secured lending; namely impediments to the enforcement of property ownership and the foreclosing of collateral – properties in particular. The relatively small number of Angolan firms with annual financial statements verified by external auditors (approx. 20% in Angola *vs.* approx. 40% in other African countries) also contributes to the lender's limited ability to accurately gauge the creditworthiness of its prospective borrowers. PE funds have contributed to a culture of financial discipline and greater transparency by enforcing external annual auditing of their portfolio companies.

9 Tax Matters

9.1 What are the key tax considerations for private equity investors and transactions in your jurisdiction? Are off-shore structures common?

Typically, income derived from private equity investments may qualify as capital gains, interest or dividends. As such, this income should be subject to Investment Income Tax (*Imposto sobre a Aplicação de Capitais*) under a withholding mechanism. Rates may vary from 5% up to 15% and taxation shall always be due provided that the income is deemed to be from an Angolan source (i.e. income is paid from Angola, shareholders are resident in Angola or the paying entity is resident therein).

Capital gains obtained by resident shareholders may be subject to Corporate Income Tax (*Imposto Industrial*) or Personal Income Tax (*Imposto sobre o Rendimento do Trabalho*).

Dividends paid between resident companies in Angola may be exempt from Investment Income Tax provided that a 25% stake is held for a minimum holding period of one year.

There are no anti-abuse provisions regarding transactions involving off-shore structures.

9.2 What are the key tax considerations for management teams that are selling and/or rolling-over part of their investment into a new acquisition structure?

Angola's tax legislation is at an early stage in dealing with finance structured investments, thus no specific exemptions are available. Gains obtained from the sale and/or rollover of investments are subject to taxation pursuant to the Investment Tax Code. Any capital gains arising from such operations will be subject to a 10% fixed tax rate. The enforcement of tax provisions is inconsistent. Tax benefits may be available under an investment project.

9.3 What are the key tax-efficient arrangements that are typically considered by management teams in private equity portfolio companies (such as growth shares, deferred / vesting arrangements, "entrepreneurs' relief" or "employee shareholder status" in the UK)?

No tax exemptions are available. There is some incertitude and lack of clarity as to whether capital gains arising from the sale of shares in an Angolan-based company between non-resident shareholders are also subject to Investment Income Tax. Besides transfer pricing legislation, Angola has no anti-abuse provisions.

There is a special tax regime for Collective Investment Vehicles.

9.4 Have there been any significant changes in tax legislation or the practices of tax authorities (including in relation to tax rulings or clearances) impacting private equity investors, management teams or private equity transactions and are any anticipated?

Significant changes in tax legislation were enacted in November 2014, with most of the tax codes having been amended. The scrutiny of the Angolan Tax Authorities has increased over the last few years and a significant number of tax inspectors have been appointed to deal specifically with tax leakage issues. Due to this fact, in the past months tax inspections and enforced collection procedures were improved.

10 Legal and Regulatory Matters

10.1 What are the key laws and regulations affecting private equity investors and transactions in your jurisdiction, including those that impact private equity transactions differently to other types of transaction?

Angola has recently approved a specific legal framework applicable to private equity: Presidential Legislative Decree no. 4/15, dated 16 September. Angola also recently approved a new Securities Code. Any acquisition or disposal of an equity stake, or the rights and obligations inherent thereto, are governed by the Angolan Corporate Code (*Lei das Sociedades Comerciais* – Law no. 1/2004, dated 13 February) and, if traded in the Angolan Stock Exchange market, by the Regulations issued by the Angolan Securities Market Commission (*Comissão do Mercado de Capitais*) that are already in force – despite certain matters still pending further regulation.

10.2 Have there been any significant legal and/or regulatory developments over recent years impacting private equity investors or transactions and are any anticipated?

Publication of Presidential Legislative Decree no. 4/15, dated 16 September, which approved a specific legal framework applicable to private equity, is the most relevant recent legal development. Despite the recent developments, certain matters are still pending further regulation to be issued by the Angolan Securities Market Commission (*Comissão do Mercado de Capitais*).

10.3 How detailed is the legal due diligence (including compliance) conducted by private equity investors prior to any acquisitions (e.g. typical timeframes, materiality, scope etc.)? Do private equity investors engage outside counsel / professionals to conduct all legal / compliance due diligence or is any conducted in-house?

Due diligence is a particularly detailed, and vital, pre-investment phase in Angola. PE funds engage with external professionals to perform the customary due diligence analysis, particularly in the legal, financial and tax areas. In addition, some PE funds may be required to actively consider Environmental, Social and Governance due diligence. This is the case of FIPA due to its international investor base – Development Finance Institutions – which promote such values and the core of their mission. PE funds will also conduct in-house due diligence analysis to complement that provided by external advisors and aim to complete their discussions at the investment committee level. Depending on the investment complexity, the due diligence phase may take one to three months.

10.4 Has anti-bribery or anti-corruption legislation impacted private equity investment and/or investors' approach to private equity transactions (e.g. diligence, contractual protection, etc.)?

Angola has legislation aimed at avoiding anti-money laundering or the financing of terrorism. This legislation triggers a wider range of duties, which include the duty to identify, perform due diligence, refuse or abstain from certain actions, cooperate, maintain secrecy, control, train and communicate.

10.5 Are there any circumstances in which: (i) a private equity investor may be held liable for the liabilities of the underlying portfolio companies (including due to breach of applicable laws by the portfolio companies); and (ii) one portfolio company may be held liable for the liabilities of another portfolio company?

Angolan corporate law sets forth that any company that controls another company is liable for the obligations undertaken by the latter, before or after the control relationship was established and until the same ceases. In addition, the controlled company has the right to require that the controlling company compensate it for any annual losses that the former may experience during the control relationship, provided that such losses are not compensated by the reserves accumulated during such period.

11 Other Useful Facts

11.1 What other factors commonly give rise to concerns for private equity investors in your jurisdiction or should such investors otherwise be aware of in considering an investment in your jurisdiction?

Angola's economic, social and cultural environment presents PE players with significant challenges, particularly those focused on liquid and mature markets without a permanent presence on the ground. Building a strong local team is very important, not only to pursue proprietary deal flow, but also to be able to enforce close and frequent portfolio monitoring mechanisms.

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VIEIRA DE ALMEIDA

ANGOLA CAPITAL PARTNERS

VdA Vieira de Almeida

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Angola Capital Partners

Angola Capital Partners was founded as a joint venture between *Banco Angolano de Investimentos* (BAI) and the Norwegian Investment Fund for Developing Countries (Norfund) to create a leading independent Private Equity firm in Angola. BAI is Angola's largest private bank with an extensive local network, while Norfund, owned by the Norwegian state, is a leading investment company with a long track record in developing countries.

In 2009, Angola Capital Partners launched the first Angolan dedicated investment fund, *Fundo de Investimento Privado – Angola* (FIPA), domiciled in Luxembourg and supervised by the *Commission de Surveillance du Secteur Financier* (CSSF) with US$ 39 million of capital commitments to invest in equity, and other long-term instruments, in private small and medium-sized enterprises in Angola across a wide range of industries. In 2016, Angola Capital Partners launched its second Private Equity fund (FIPA II) with US$ 45 million from existing investors aiming at pursuing a similar investment strategy across Angolan small and medium-sized enterprises, uncovering value by facilitating new business initiatives and upgrading existing technologies in partnership with strong management teams that enhance performance and deliver superior returns to investors, as well as to Angola's economic and social development.

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