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Manuel Protásio | mp@vda.pt
Ângela Viana | axv@vda.pt
Catarina Coimbra | ccm@vda.pt

ANGOLA

REGULATION OF THE PPP LAW

On 28 October 2019, Presidential Decree no. 316/19 was published, approving the Regulation of Law no. 11/2019, of 14 May, on Public-Private Partnerships (“Regulation”). The Regulation, which came into force on the day of its publication, aims at regulating the PPP Law in order to ensure that Public-Private Partnerships carried out thereunder are developed with maximum efficiency and with clear and objective procedures.

Scope

The Regulation is applicable to the contracts or grouping of contracts whereby private entities appointed as private partners undertake before a public partner, on a long term basis, to ensure the development of an activity aimed at satisfying a collective need, and that are compatible with the legal regime of Public-Private Partnerships established in the PPP Law.

Main measures introduced by Regulation

Establishment of specific entities for the launch and monitoring of PPPs

- The Regulation established the PPP Governance Body (PGB) assisted by a PPP Technical Commission (PPPTC), the purpose of which is to participate in the preparation, development, implementation and overall monitoring of partnership processes;
- It is incumbent upon PPPTC, in the context of economic and financial matters, to account for the estimated financial charges assumed by the public sector under the PPP, as well as to permanently monitor, on the one hand, the status and evolution of the respective contracts, and on the another hand, any disputes arising from the PPPs.

PPP Contracting Process

- The Regulation establishes the need for carrying out a pre-feasibility study in order to launch a partnership;

- Where a ministry or public partner's service wishes to initiate the study and preparation for the launch of a partnership, it shall submit a duly grounded proposal to the Head of the Ministerial Department responsible for the relevant sector, stating in particular the purpose of the partnership, the objectives to be achieved, their economic rationale and the financial viability of the project;
- Should the Head of the Ministerial Department responsible for the respective sector decide to initiate the study, the proposal shall be submitted to the PGB, which in turn shall request an opinion on the proposal to PPPTC;
- The PPPTC shall issue its opinion within 45 days and, whenever favorable, shall recommend its approval and propose the appointment of a project team ("Project Team").

Launching the Partnership

- It is incumbent upon PGB to decide whether to approve the launch of the partnership and its conditions within 30 days of the report being submitted by the Project Team;
- Should the launch be approved, a ministerial order shall be issued, which shall include (i) the program of the procedure, (ii) the tender documents, (iii) the composition of the jury of the procedure, (iv) the analysis that led to the configuration of the procedure, (v) the project description and type of financing, (vi) the demonstration of its public interest, (vii) the justification for selecting the partnership model, (viii) the demonstration of budgetary affordability and (ix) the environmental impact statement when required by law.

Risk Matrix

- Pursuant to the Regulation, the potential impact of the risks, directly or indirectly, affecting the public sector should be analyzed and included in a report to be prepared by the Project Team and to be submitted to the PPPTC;
- For this purpose, the Regulation approves a model of the risk matrix, which contains a clear and summary identification of the type of risks inherent to the PPP contract and the respective allocation between the public and the private partners, their consequences and forms of mitigation.

PPP Supervision, Transparency and Publicity

- The Regulation establishes specific obligations on supervision, transparency and publicity. Among the various measures, we highlight the creation of an intranet in which all documents relating to Public-Private Partnership processes should be published.