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ANGOLA

CRIMINAL LAW OVERHAUL IN LINE WITH INTERNATIONAL STANDARDS

Angola recently enacted a new Criminal Code and a new Code of Criminal Procedure, respectively Laws 38/20 and 39/20, dated and published in the Official Gazette on November 11 (the “New Criminal Acts”).

Both pieces of legislation will come into force on February 9, 2021. The New Criminal Acts expressly repeal the Predicate Offenses of Money Laundering Act (Law 3/14, of February 10 or “LCOM”), the Searches and Seizures Act (Law 2/14, of February 10), and the Precautionary Measures in Criminal Proceedings Act (Law 25/15, of September 18), to name a few.

The New Criminal Acts completely overhaul the Angolan criminal framework, which relied heavily on two obsolete pieces of legislation, namely the 1866 Criminal Code and the 1929 Code of Criminal Procedure, and introduce several important novelties:

CRIMINAL LIABILITY OF CORPORATE PERSONS

The criminal liability of corporate persons is now the general rule under the New Criminal Acts, which represents a huge shift in paradigm.

- The corporate person’s criminal liability is only excluded if individuals act against the express orders or instructions of the entity, which reinforces the need for robust local compliance policies and procedures;
- Successor entities may also be held criminally liable, which is a further incentive for entities to perform pre-acquisition compliance due diligence in Angola.

NEW CRIMINAL OFFENSES ALIGNED WITH INTERNATIONAL STANDARDS

The New Criminal Acts establish new offenses and redefine others, including:

- Criminal offences already resulting from the former LCOML, albeit with adjusted requirements and penalties, notably: (i) offer of an undue advantage to a public official; (ii) active corruption; (iii) corruption in the context of international trade; and (iv) influence peddling.
- Novel criminal offences, including corruption in the private sector, cybercrimes, data protection breach, and money transfers in breach of foreign exchange regulations;
- Prohibition of payments in cash in any sort of transaction above the Kwanza equivalent of US\$ 4,500 (at the current exchange rate). Breach of this provision qualifies as a misdemeanor.

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REPORTING OBLIGATIONS

- There are no reporting or disclosure requirements with respect to the anti-bribery prohibitions set out in the New Criminal Acts, to the exception of criminal authorities and public officials. The concept of public official is relatively broad, and includes directors and employees of state-owned entities.

REINFORCEMENT OF THE JUDGES' ROLE IN CRIMINAL PROCEEDINGS

- The New Criminal Acts strengthen the formalization of criminal proceedings in Angola, particularly by creating procedural safeguards and by transferring certain powers from public prosecutors to supervision judges (*"juízos de garantia"*).

ANTI-CORRUPTION IN ANGOLA

- The New Criminal Acts take a much tougher stance on corruption, expressly allowing any rights or assets (*lato sensu*, including company shares or quotas) to be seized (and ultimately forfeited to the State) within the context of criminal proceedings, provided that the assets seized: (i) were used in the commission of a criminal offense, (ii) constitute proceeds of a crime, (iii) represent goods or values acquired with the proceeds of a criminal offense, (iv) represent the price or reward received by the perpetrator for committing the relevant crime, (v) have been left by the perpetrator at the crime scene or (vi) can be used as evidence in the relevant criminal proceedings.
- The State is bound to manage any seized shares or stock in order to preserve their value, which precludes forced acquisitions by the State without first securing a final court decision and may effectively entail their forfeiture.

BREACH AND PENALTIES

- Failure to comply with the new rules may result in the following penalties for entities: (i) fine, (ii) reprimand, or (iii) dissolution. Entities are also subject to ancillary penalties, including the following:
 - Publication of the conviction;
 - Posting of bail for a period ranging between 1 and 5 years;
 - Injunction for the adoption of certain measures;
 - Debarment from entering into certain agreements or into agreements with certain entities;
 - Debarment from certain benefits, subsidies and/or grants;
 - Disgorgement;
 - Suspension of activities;
 - Closure of branch.
- In light of these changes, entities are advised to revisit and, if needed, adjust their business operations in Angola, including their anti-corruption policies and procedures.
- We attach the original versions of the Criminal Code and the Code of Criminal Procedure for your convenience.
- Feel free to contact us should you have any queries.