

ANGOLA

PRIVATE INVESTMENT ACT RECAST

VdA EXPERTISE



April 2021

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The amendments seek mainly to (i) establish new rules and conditions applicable to the negotiation and grant of bespoke incentives, facilities and other rights to the sponsors of investments liable to have a structural impact on the development of the local economy and social-wellbeing of the population, (ii) improve the country's competitiveness, by generating and attracting more direct investment, and (iii) create the conditions to develop a more investor-friendly business environment.

The following amendments are particularly noteworthy:

- Private investments governed by special laws, which include investments in the O&G (upstream), mining and insurance sectors must be registered with the AIPEX for statistical control purposes and for sponsors to secure a "private investor status". Separate implementing regulation will later establish such registration's terms and conditions;
- (Domestic or foreign) private investment projects are no longer eligible to be funded and/or capitalized through the transfer of technology and/or know-how;
- Private investment projects no longer need to be fully implemented for foreign investors to repatriate profits or dividends, the proceeds from the liquidation of their undertakings, indemnities and royalties, but investors are required to prove that the relevant taxes have been paid and that the local entity created statutory reserves (where applicable);
- Private investment projects also do not need to be implemented for the foreign investors or their local entities to take out in-country loans;
- Any benefits, facilities and other incentives (tax included) to be granted or extended to the project/sponsor must take account of the investment amount and the number of jobs to be created by the project, in addition to the economic sector and the development zone covered by the investment, which were already factored in under the old PIL;
- Benefits granted to the project/sponsor are not longer subject to a 10 years term;
- The novel act reinstates the contractual regime, alongside the prior declaration regime and the special regime, which extends to investments made in any economic sector, irrespective of whether it is a priority sector or not. This reinstatement of the contractual regime is very important for sponsors, in that it allows them to negotiate the terms, conditions and incentives, facilities and benefits to be granted to the project and execute an investment agreement with the Angolan Government, represented by the AIPEX, on a more or less level playing field. Under the prior declaration and special regimes, the AIPEX just clears the terms of the relevant investment and no written agreement is signed;

- The former tax benefits granted under the original PIL (for both the prior declaration and special regimes) are expressly repealed. Investors will now refer to the provisions of the yet to be approved Tax Benefits Code;
- Investors are released from securing provisional licenses or other authorisations from Public Administration bodies for the implementation of their investment projects. The Private Investment Registration Certificate (CRIP) is enough. Should there remain any instances where an authorisation, approval, opinion or any other act or procedure is required, the Public Administration must issue a decision within the statutory deadlines, otherwise applications are deemed tacitly approved;
- Companies carrying out business in Angola without having cleared their investments under the former PIL, are entitled to register their projects with the AIPEX but, although other facilities and incentives may still apply, cannot enjoy the tax incentives foreseen in the novel act.

The effectiveness of the recast PIL is still predicated, however, on the revision of Presidential Decree 250/18, of 30 October 2018, which enacted the Private Investment Act Regulations (“RLIP”), and on the publication of the Tax Benefits Code. The reinstated contractual regime will remain inoperative pending revision of the RLIP, because it is up to this latter piece of legislation to approve its terms and conditions, and one is at a loss as to how the AIPEX will treat applications from a tax perspective, seeing as now all former tax benefits have been repealed and the Tax Benefits Code has not been enacted yet, in effect creating a legal void.

Since the repatriation of profits is no longer subject to AIPEX’s clearance/approval of the investments, there is considerable advantage in continuing to channel private investments through the AIPEX to get access to tax and customs benefits and incentives. If this is no longer possible – at least pending the publication of the Tax Benefits Code – one could be looking at a considerable drop in applications in the coming months, meaning that Law 10/21 creates more problems than it solves and might just keep foreign investors at bay instead of attracting them.

Law 10/21 came into effect on the date of its publication, i.e., 22 April 2021.

Comments

Despite some (minor) inconsistencies in its provisions, Law 10/21 ends up achieving its goals more often than not and accommodating the long-standing request to bring back the contractual regime, which dates back to 1979 (Law 10/1979, of 22 June 1979) and has been a regular feature of all private investment acts approved since.

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