

ANGOLA

NEW LAW ON SECURITY OVER MOVABLES

VdA EXPERTISE

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Law 11/2021, of 7 April 2021, establishing the legal framework for the use of movable assets as security for the discharge of obligations (“Law”), was published on 22 April 2021 and will take effect 180 days after publication.

The new act seeks to promote access to loans and credit facilities by clarifying and broadening the scope of the security over movables, while also affording debtors greater legal certainty and ensuring that the information on these particular security interests is publicly available. It constitutes a huge step forward in improving financing conditions for foreign investors, as the legal solutions it introduces are closer to those typically available in jurisdictions perceived as more investor-friendly jurisdictions.

The act requires the enactment of implementing regulations setting up an electronic and centralised registry. The Presidential Decree 114/21, of 29 April 2021 (“Decree”) regulates the Law, one week after its publication, by creating a centralised electronic registry for the registration of security over movables – the Central Registry for Security over Movables (“CRGM”). The CRGM platform is accessible through the following hyperlink [CRGM - Central de Registo de Garantias Mobiliárias \(gov.ao\)](https://www.gov.ao/CRGM), which intends to publicise the registration of the creation, modification and cancellation of security over movables.

Types of security and movable assets

The security over movables set out in the Law includes pledges, mortgages over movables, assignments by way of security, fiduciary transfers in security (*alienações fiduciárias em garantia*), sale with retention of title (*venda com reserva de propriedade*) and any other security or *quasi security* that can be created over a movable asset.

The Law also foresees an acquisition guarantee (*garantia de aquisição*) specifically designed to streamline the grant of loans to purchase the assets which in turn will be given in security to secure those same loans. This guarantee extends to any subsequent assets (*frutos*) deriving from the initial acquired asset. The Law sets out specific rules for

this acquisition guarantee – when it refers to certain assets and if registered timely and properly, the creditors benefiting from an acquisition guarantee have priority over any other secured or unsecured creditors, including within the context of insolvency proceedings.

Security may be created over one or more movable assets, specific or to be determined, present or future (in the latter case, the security only becomes effective once the guarantor acquires the corresponding rights over the relevant asset), tangible or intangible, provided that such assets are tradeable at the time the security is created, including: (i) any kind of personal property; (ii) an ideal/representative part or fraction of a personal asset; (iv) limited groups of assets and; (v) all personal property belonging to the guarantor.

The Law further clarifies that security can specifically be created over cash, agricultural products, debt securities, mineral and oil resources, intellectual property rights, a commercial establishment’s stock and any other documents or titles representing goods, as well as other rights and things not prohibited by law. Mineral and oil resources still to be extracted may be encumbered by the holder of the relevant licenses and rights, but only for the purpose of financing their exploration or extraction.

Creation of security

Security can be created as a result of a judicial decision, by law or by means of a written agreement signed by the parties and will be effective between the parties from the signing date. Security can also be created by means of an oral agreement, if possession of the asset given in security is simultaneously transferred to the secured creditor.



Enforceability against third parties

Only properly published security is enforceable against third parties. The relevant parties have three ways of going about this publication: (i) by making it available for consultation on the website of the entity responsible for the CRGM; (ii) by surrendering possession of the tangible asset or delivering a deed granting full possession over the asset to the creditor or to a third party; (iii) by means of a control agreement, in case of security over bank accounts, securities or any other type of financial asset.

The Decree clarifies that the CRGM is the service responsible for the registration of security over movables, which are not subject to registration and for the maintenance and availability of information on security over movables registered with the competent registry offices. The Decree further sets out the fees payable for the registration with the CRGM.

The registration with the CRGM is valid for five years and can/shall, to the extent required, be renewed for successive five-year periods, whilst the relevant security agreement remains in force.

The CRGM will interface with the commercial registry offices and the remaining registry offices, in order to ensure that the information on the creation, modification and cancellation of security remains

correct, complete and updated at all times.

Applicants, *i.e.*, the secured creditors, need to fill out and submit an electronic form, subject to the guarantor's prior consent. The security agreement is deemed valid proof of such consent.

The Decree also provides, among other provisions on the operation of the CRGM, that any person may access the information on the security over movables registered with the CRGM and submit a consultation request by filling out a consultation form available on the website.

Ranking and enforcement of security

The Law also includes rules concerning the order of priority and enforcement of security.

In relation to enforcement, it is worth highlighting that the secured creditor may appropriate the asset given in security without any prior judicial or administrative proceedings, provided that: (i) the relevant security agreement includes a clause specifically allowing for private appropriation and (ii) the secured creditor obtains a valuation/assessment of the asset or the parties agree on the fair market value of the asset given as collateral. This also applies to the disposal/transfer of the encumbered asset by the secured creditor to a third party.

Contacts



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