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CHANGES TO THE LEGAL RULES ON NOTARISATION, THE CIVIL CODE, AND THE LAND REGISTRY AND NOTARY CODES



GLA - Gabinete Legal Angola

Eduardo Filipe Ferreira

eduardo.filipeferreira@gla-advogados.com



PLMJ Angola Desk

João Bravo da Costa

joao.bravodacosta@plmj.pt

An important legislative package relating involving changes to the Legal Rules on Notarisation, the Civil Code, and the Land Registration and Notaries Codes was published in February of this year. The package includes the Laws numbered 8/11, 9/11 and 11/11, all of 16 February and, in essence, its aim is to modernise, simplify and reduce the amount of bureaucracy in specific areas of day-to-day legal business in Angola, with particular emphasis on the real estate sector.

These new laws were published as part of the structural reforms of the executive programme for the legal system. The scope of the pieces of legislation mentioned above is both subjectively and objectively broad. It includes, for example, financial institutions providing mortgage lending which are provided with an environment favourable to the creation of a market for housing credit backed up by guarantees, which would result in the State being able to put its housing policies into effect

THE REFORM OF THE NOTARISATION SYSTEM IN ANGOLA

The Legal Rules on Notarisation laid down in Law 8/11 begin the process of progressive liberalisation of the notary sector in Angola. The future model for the profession of notary provides for the coexistence in competition with notaries public (notários públicos) – to date, the only ones with power to confer full faith and credit on documents – of the (future) private notaries (notários privados). The

latter will be concurrently entitled to exercise this prerogative in the name of the State and, for this purpose, they will be given their own professional and functional status, subject to special disciplinary powers and supervision.

Given the importance of the duties carried out by the notary as a guarantor of legal certainty afforded to documents and notarised deeds in the name of the state, access to the profession will be restricted. Candidates wishing to work as private notaries will be submitted to testing in the form of a public competition and professional training and they will have the status of professionals. However, the implementation of the above rules is still dependent on the anxiously awaited adoption of specific regulations.

CHANGES TO THE CIVIL CODE

With a desire to adapt the civil law to the new economic and social reality of the country, Law 9/11 has made important changes to some concepts of the Civil Code, in particular:

a) Voluntary mortgage (*Hipoteca voluntária*)

In summary, the result of the changes to the Civil Code is a greater flexibility in voluntary mortgages over real property. The rule requiring such mortgages to be created or altered by public deed or will remains in place except, however, in situations governed by a special law.

b) Updating of the rules on loan agreements

Loan agreements must now be expressed in 'tax correction units' know by their initials, UCF (unidade de correção fiscal) rather than in the Kwana. Any loan agreement with a value exceeding UCF 3000 must be made by public deed.

c) Horizontal ownership (Propriedade horizontal)

The rules on horizontal ownership (absolute ownership of apartments similar to the condominium concept) also now applies, with the necessary alterations, to groups of adjoining buildings functionally linked by the existence of common areas allocated for the use of all or some units or fractions that make up the group.

With the broadening of the scope of application of the system of horizontal ownership, it can now be applied to recent developments being marketed and sold by real estate promoters in Angola and this system will certainly help to clear up and regulate any doubts which arise both in respect of the sale and purchase of the properties and in respect of the actual management of these developments.

CHANGES TO THE LAND REGISTRY AND NOTARY CODES

Law 11/11 is, perhaps, the most ambitious law of this legislative package because of the importance and innovation of the legal mechanisms presented. Among the various changes introduced by this legislation, the creation of the Special Procedure for Establishing Title for Registration (Processo Especial de Suprimento de Título para Registo) immediately stands out. This procedure makes it possible, in specific circumstances, to defend and justify entitlement to a right in rem (right of absolute ownership) over real estate when the person with that right does not have legally admissible title.

Registration of any legal act that establishes, modifies or extinguishes rights over real property at the land registry becomes compulsory. The obligation to register any of the said changes applies not only to the parties to the those acts, but also to any other entities involved in the process, namely public bodies, credit institutions, financial companies and also lawyers in respect of court proceedings.

This newsletter was prepared by a multidisciplinary team made up of Angolan lawyers from GLA – Gabinete Legal Angola and Portuguese lawyers from PLMJ. This team was brought together under an agreement for international cooperation and membership of PLMJ International Legal Network, in strict compliance with applicable rules of professional ethics.
