



GLA

Global Experience, Local Expertise

July 2011

NEW PRIVATE INVESTMENT LAW HAS COME INTO FORCE

Abolition of one of the general historic rights expressly established under the previous law – the non-nationalisation of the assets of private investors.

The legislature took care to redefine the rule on the moment at which the exemption period started to run, which corresponded to “start of work at the establishment”.

The long-awaited new Private Investment Law was finally published on 20 May although it has only become accessible during the month of June. Law 20/11, or Lei do Investimento Privado (“LIP”) as it is called in Portuguese, repeals the earlier Bases Law of Private Investment (Law 11/03 of 13 May) as well as the Tax and Customs Incentives to Private Investment Law (Law 17/03 of 25 June), in the latter case only insofar as it contradicts the LIP.

As anticipated, the new law has confirmed the changes expected to a number of issues which had been made known and widely discussed in a number of forums for debate and study throughout the approval process that was finalised in recent months. One such forum was our NewsLextter issued in May and, keeping you fully up to date, our aim now is to supplement the same by adding some further relevant issues.

LIP CONFIRMS SWEEPING CHANGES

There has been an important change in relation to the protection of investors’ rights. This was the abolition of one of the general historic rights expressly established under the previous law – the non-nationalisation of the assets of private investors.

Another change in relation to the previous law, that followed the elimination of the prior declaration system and the creation of what is now called the “Single Procedural System”, was the end of the tacit approval that occurred when proposals for investment were not

expressly rejected by ANIP (the National Agency for Private Investment). As there was no longer a prior declaration, the rule also ceased to exist. Consideration was also given to establishing the reverse rule of tacit refusal, but as the single procedural system is one involving negotiation, such a rule could not be justified.

On the issue of tax benefits and, more specifically, the Industrial Tax, the legislature took care to redefine the rule on the moment at which the exemption period started to run, which corresponded to “start of work at the establishment”. This rule appears in the Tax and Customs Incentives Law (still partially in force) and tells us about the practice that had been causing difficulties of interpretation and application. The LIP has substituted this rule and now the exemption or reduction period starts to run from the moment at which “at least 90% of the workforce provided for in the context of the implementation of the investment project starts to work”.

REDEFINITION OF THE SCOPE OF APPLICATION OF THE LIP

The first and principal change that had been anticipated and widely commented on has been confirmed. Under the LIP, only investments of a value equal to or greater than 1 million dollars are subject to the private investment rules. This means that only partners or shareholders who have invested at least 1 million dollars in the proportion of the respective corporate holding may individually enjoy private investor status. The LIP will continue not to be applicable to specific areas of investment such as oil and gas,

The LIP has substituted this rule and now the exemption or reduction period starts to run from the moment at which “at least 90% of the workforce provided for in the context of the implementation of the investment project starts to work”.

diamond exploration, financial institutions and also to operations in which the State has a stake of 50% or more.

As regards the various definitions that have been introduced or reformulated vis-à-vis the previous law such as, for example, the concepts of external and internal investor and investment (the ‘internal’ concept only appearing in this new law), we would highlight the confirmation of the creation of the External Reinvestment concept which consists of the “application in Angolan territory of the whole or part of the profits earned through an external investment and which (...), may be exported under the LIP (...)”. The concern underlying the creation of this concept was the prolongation of the application of LIP rules to subsequent investments.

REPATRIATION OF CAPITAL

The repatriation of dividends is now subject to the following objective criteria: a minimum investment limit of 1 million dollars for each investor; the objective proportionality and graduation of the same on the basis of the value of the investment, the period of the concession and the size of the tax and customs incentives and the period of the investment, among others, some of which are of a macro-economic character such as, for example, the socio-economic impact of the investment and its influence on reducing regional imbalances or the impact of repatriating the profits and dividends on the countries balance of payments. It should also be added that the right to repatriation of profits and dividends only arises (i) 3 years from the actual implementation of the investment project for investment projects below 10 million dollars in Zone A and (ii) 2 years for the remaining investment project in Zone A as well as for Zone B projects with a value below 5 million dollars. The law has not placed any time limit on projects implemented in Zone C.

These criteria may not be strictly applicable in certain circumstances, specifically when the holder of executive power declares the project to be highly relevant to the strategic development of the Angolan economy in light of the value of the investment and the reduction

in regional imbalances, together with other factors such as investment with a value exceeding 50 million dollars.

TAX AND CUSTOMS BENEFITS

Although the LIP includes a number of rules on tax benefits, the Tax and Customs Benefits Law continues to be applicable to the extent that it does not contradict the LIP.

As a relevant innovation on the level of principles we would highlight the exceptional nature in the attribution of benefits. The concession of benefits is not the rule and it is not automatic or indiscriminate but rather exclusively proportional and graduated according to the criteria defined in the LIP.

The period of exemption from or reduction in Industrial Tax now corresponds to a period of between 1 and 5 years for Zone A; between 1 and 8 years for Zone B; and between 1 and 10 years for Zone C. Under the previous law these exemptions/reductions remained in force for fixed periods of 8, 12 and 15 years respectively. The exemption periods for Tax on Application of Capital were reduced from 5 to a maximum of 3 years for Zone A investment projects; and for a period of between 6 and 9 years for Zones B and C investment projects. Previously these were respectively of 10 and 15 years.

DOCUMENTATION FOR PRESENTATION OF PRIVATE INVESTMENT PROPOSAL

In the meantime, ANIP has already made available a list of the documentation necessary for the presentation of an investment proposal. It is also possible to access the forms to be completed for the presentation of the investment proposal and for applications for incentives, as well as the structure of the proposal for future private investment contracts.

ARTICLE 91: PRIVATE INVESTMENT OF A VALUE LOWER THAN THE MINIMUM LIMIT ESTABLISHED

The legislation for investments below the minimum value was also an issue of

The legislature reaffirmed that it not mandatorily subject to the rules on private investment set out in the LIP, with the immediate consequence for the investor of the inability to benefit from the repatriation of profits and dividends and the other rights enjoyed by those with private investor status.

interest and general expectation and is now covered by article 91 of the LIP. The legislature reaffirmed that it not mandatorily subject to the rules on private investment set out in the LIP, with the immediate consequence for the investor of the inability to benefit from the repatriation of profits and dividends and the other rights enjoyed by those with private investor status. Such investments will fall under exchange rules as they are also legally classified as exchange operations subject to control and authorisation by National Bank of Angola – BNA. However, this article 91 is already suggesting some future difficulties in its strict interpretation because it contains an express reference to investments that involve the importation of capital of a minimum value of 500 thousand dollars.

by the provisions of the law and/or the specific contracts on the basis of which they were approved, up to the end of their implementation. However, investors can apply to ANIP for its projects that have already been approved to be made subject to the new LIP rules, although the incentives, tax and customs benefits and other facilities already granted under the earlier laws must remain in effect for the periods established without the possibility of their being extended.

IT IS CONFIRMED...

In light of the recent general legislative framework in force in the country that is being renewed in stages, the publication of the LIP represents the conviction and strategy of the Angolan State to bring about a sea change in the approach of investors to the market. The objective of the LIP is to make investors structure and implement their futures investment projects in Angola in accordance with criteria that are more demanding both from a quantitative and qualitative point of view.

INVESTMENT PROJECTS APPROVED PRIOR TO THE ENTRY INTO FORCE OF THE NEW LIP

The new LIP does not apply to projects approved prior to its entry into force, such projects continue to be governed



PLMJ Angola Desk
Bruno Xavier de Pina
bruno.xavierpina@plmj.pt



PLMJ Angola Desk
Sofia Vivas
sofia.vivas@plmj.pt

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.



GLA Gabinete Legal Angola
Silvia Espírito Santo
silvia.espiritosanto@gla-advogados.com



GLA Gabinete Legal Angola
Nuno Chaves Frota
nuno.chavesfrota@gla-advogados.com