



November 2011
2011年11月

China
中国

企业融资新方法——融资租赁和保理

虽然六年前安哥拉引入的金融机构法，即2005年9月30日第13/05号法律，已为租赁公司和保理公司等非银行金融机构的法律制度做了准备，但直至今日，企业才获准在安哥拉境内通过新的方式——即今年生效的租赁和保理合同规则——进行投资融资，这些规则为2011年4月18日第64/11号总统法令批准的融资租赁合同规则，2011年4月18日第65/11号总统法令批准的融资租赁公司营业活动规则，及2011年4月28日第95/11号总统法令批准的保理公司营业活动和保理合同规则。

在自然资源极为丰富的安哥拉，投资者运作资源开发类项目通常需要巨额资本（融资），其中大部分情况下，还会涉及到外国资金的涌入。目前，以银行贷款为主的国内融资因其融资方式的固有困难，已变得短缺，不能满足市场需求。

随着上述融资租赁和保理方面的规则的生效和融资渠道的扩宽，安哥拉将出现大量专业提供融资租赁和保理服务的金融公司，而现有银行的融资产品也将大大丰富。

融资租赁作为企业融资手段，同时还能让企业获取运营项目所需的资产和设备。而在通常情况下，这些设备和资产的购买和安装都需要企业将自己的大量资金带入安哥拉市场。

通过保理，公司可以提前收回客户尚未支付的应付款项，更好地筹集运营资本，以便按计划组织日常经营活动，更好地管理现金流，这对公司的持续发展非常必要。

安哥拉银行还需进一步明确融资租赁和保理业务的若干程序规则，以及与新法配套的技术规则和其他配套规则。

融资租赁合同立法概况

根据融资租赁法的规定，在安哥拉，仅有银行机构和融资租赁公司可将融资租赁服务作为营业活动，无论是针对不动产还是动产。融资租赁合同可是私人文件（private document）（是否需要签字进行见证，取决于是否与动产或不动产有关）。合同形式需经过安哥拉银行的批准许可，同时，融资租赁合同的期限不得超过30年，超过30年的，按30年期限计。在合同结束时，若承租人选择不取得承租物所有权的，合同双方可订立新的融资租赁合同。租赁期的起算可附条件，以合同当事人协议为准，从租赁物的实际取得或建设开始。

在租赁合同中，承租人支付的分期付款（即租金）要包括租赁物的折旧价值，租赁公司的成本以及利润。当合同结束时，租赁物的转让价格应与其剩余价值相当。

由于承租人承担租赁物的所有风险，所以必须为租赁物投保。早期的作为担保租赁物的租金付款不得超过6个月。

融资租赁公司

融资租赁公司要采用sociedade anónima公司的形式（安哥拉法律制度中的一种有限责任公司），最低股本要求为价值2万亿美元的宽扎。为了保证金融体系的透明度，融资租赁公司不得自购本公司股份，除非得到安哥拉中央银行的批准。此外，融资租赁公司除拥有必要的用于经营场所的房产外，不得购置其他地产，同时不得从事补充性的经营租赁业务（operational leasing services）。对于融资租赁公司的融资方式，法律规定只能采用以下方式：（1）运用自己的资金；（2）通过发行债券或票据；（3）银行融资；（4）租赁物供货商的贷款；（5）股东注资和贷款；（6）法律允许的现金业务（cash operations）。

保理合同立法概况

保理商与卖方之间的具体权利义务通过保理合同进行约定。保理合同须采用书面形式，对业务模式和种类，可受理的风险，提前收取的应收账款额，报酬，以及成本和其他问题进行约定。

另外值得注意的一点是，法律也规定了例外情况，即保理公司不得与持有该保理公司10%以上股份的股东公司订立保理合同，除非安哥拉中央银行对该合同进行特批。

保理中应收账款的转让

保理中应收账款的转让业务的法律制度与融资租赁的法律制度非常相似，应收账款的转让可以有追索权基础，也可以没有追索权基础。合同约定保理商有追索权的，如债务人在规定期限内未付款的，保理商可要求供货商付款。换言之，转让至保理商的应收账款（风险）再次转回供货商。合同约定应收账款的转让无追索权的，保理商承担无法收回应收账款的所有风险。换言之，应收账款的风险转让至保理商。

实施新金融机制的困难

我们可以预见在安哥拉市场中这些新金融机制将面临的一些困难。首先，全面收集相关信息的困难，例如融资租赁的出租人和保理商通常都需要（客户）公司经营活动中的各种财经信息。其次，是相关不动产和动产强制登记的问题，这也是交易的必备部分，还有众所周知的安哥拉登记机关的“低效”问题。这些问题反过来会影响新金融体制的推广，最糟糕的情况是，会使新法规引入的新融资工具的实际效果大打折扣。

更多的自治

除了上述分析中提及的困难，我们应该看到，新金融体制的发展是在不断巩固的，我们正在见证安哥拉市场特别是金融板块的变化：国家正逐渐提高对国内金融市场发展的关注，逐步降低对外国资本的依赖。安哥拉正不断调整立法以适应当前形势的变化，为公司和个人提供金融工具，以满足日益增长的对国家发展和投资融资的需求。

本通讯旨在向客户及同事介绍一些普遍和抽象的概述。它不应该被用来作为作出决策和专业法律意见的基础。本通讯的内容未经作者明确统一不得复制部分或全部内容。如果需要有关此主题的详细信息，请联系：Luis Sáragga Leal (luis.saraggaleal@plmj.pt) 或 Manuel Santos Vítor (manuel.santosvitor@plmj.pt)。

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NEW MEANS OF FINANCING FOR ENTREPRENEURS

Six years have passed since the introduction of the Financial Institutions Law – Law 13/05 of 30 September – which made provision for both leasing and factoring companies as non-banking institutions, but it is only now that entrepreneurs have access to new opportunities to finance their investments in Angola. These new opportunities come with the entry into force this year of the regulations on leasing and factoring contracts. These are Presidential Decree 64/11 of 18 April 2011 which approves the regulations on financial leasing contracts; Presidential Decree 65/11 of 18 April 2011 which approves the regulations on the activity of financial leasing companies and Presidential Decree 95/11 of 28 April 2011 which approves the regulations on the activity of factoring companies and factoring contracts.

In a country known for extensive natural resources with great potential, financing for the development and implementation of projects associated with transforming these natural resources normally involve huge amounts of financial capital and are, in most cases, associated with funds coming from abroad. Funds coming from inside the country have, to date, been necessarily scarcer because the bank loan contract has played the leading role bringing with it all the difficulties associated with this type of financing mechanism.

The entry into force of these Regulations and the consequent broadening of the range of financing mechanisms available in the Angolan economy will lead to a great increase in new institutions specialising in offering these new types of financing and it will certainly also lead to a much greater range of financing products being offered by existing banks.

Leasing will allow entrepreneurs to obtain financing and, at the same time, give them access to the assets and equipment they need for their operations which would normally have required them to bring large amounts of their own capital into the Angolan market for acquisition and installation.

As to factoring, this will permit better financing of working capital as, by using this facility, it will be possible to have faster access to revenue due from clients but yet to be paid. This will enable companies to better manage their cash by getting the working capital necessary to finance their operations on time, which is fundamental to sustained growth.

However, the Central Bank (“BNA”) still has to define a number of procedures relating to leasing and factoring operations, and also all the instructions of a technical or other nature necessary for the proper application of the new legislation that has been introduced.

BRIEF NOTES ON THE LEASING CONTRACT LEGISLATION

Under the provisions of these regulations, only banking institutions and financial leasing companies can provide anything under financial leasing, whether real or personal property, as a regular activity. The leasing contract may be made in a private document (with or without witnessing of the signatures, depending on whether or not it deals with real or personal property). The respective form of this document will have to be approved by the BNA, and the contract may not have a duration of greater than 30 years and is deemed to be reduced to this limit if provision is made for a greater duration. However, and at the end of the contract, if the lessee does not take up the option of acquiring the leased property, the parties can enter into a new financial leasing contract. The start of the leasing can be made conditional, by agreement between the parties, upon the actual acquisition or construction of the leased asset.

During the period the contract is in force, the instalments paid must cover the depreciation of the leased asset and also the costs and profit margin of the financial leasing company. The acquisition price must correspond to the presumptive residual value of the leased asset at the date the contract comes to an end.

It should be noted that the lessee must insure the leased asset as the risk falls on the lessee. It should also be noted that the early payment of instalments as a means of guaranteeing the leased asset cannot exceed the period of six months.

FINANCIAL LEASING COMPANIES

Financial leasing companies must be set up in the form of a sociedade anónima (“SA”) (one of the forms of limited liability company in Angola) and the terms and conditions of the realisation of capital will be determined by the BNA. Bearing in mind the transparency of the system, financial leasing companies may not acquire their own shares (unless they have authorisation from the BNA). Furthermore, such companies may not acquire or possess real estate other than that which is necessary for their own premises and may not provide complementary operational leasing services. The law also places restrictions on the means of financing for financial leasing companies meaning that they may only obtain financing through: (i) use of their own funds, (ii) the issues of bonds or commercial paper, (iii) bank financing, (iv) credit from the suppliers of leased assets, (v) cash injections and loans from shareholders and (vi) cash operations, when allowed by the law.



BRIEF NOTES ON THE FACTORING CONTRACT LEGISLATION

The actual relationship between the factor and seller takes on special relevance in the factoring contract. This legal relationship, in the form of a written contract, governs, among other issues, the form and type of operations and the risks accepted, the amount of the advance on the accounts receivable sold, as well as the remuneration and the costs involved.

It is also important to point out that the law lays down a system of incompatibilities under which factoring companies may not enter into factoring contracts with companies that have a stake greater than 10% in their capital unless they have specific authorisation from the BNA for this purpose. Furthermore, the law also makes provision for the acceptable forms of financing of the activities of factoring companies which are similar to the form of financing allowed for financial leasing companies.

THE ASSIGNMENT OF ACCOUNTS RECEIVABLE IN FACTORING

Under a system very similar to the one established for financial leasing companies, the assignment of accounts receivable to the factor can be made on a recourse or non recourse basis. Contracts that provide for the right of recourse allow the factor to require the seller to pay the account receivable if it is not settled by the debtor by the due date. In other words, the account receivable transferred to the factor is transferred back to the seller. If the contract provides that the accounts receivable are transferred on a non recourse basis, the factor assumes the whole of the risk of non-payment of the same. In other words, the risk of the account receivable is transferred definitively to the factor.

DIFFICULTIES IN THE IMPLEMENTATION OF FINANCIAL MECHANISMS

We can expect some difficulties in the implementation of these new financial mechanisms in the Angolan market. First of all, there is the difficulty in gathering all the information associated with these types of mechanisms, such as economic and financial information on the activity of the companies which is normally required by the lessor and the factor. There is also the question of mandatory registration - which is an essential part of the transaction - of the real estate and personal property associated with these financial mechanisms and the well-known problems of the delay in dealing with registration at the relevant Angolan Registries. These situations could adversely affect the speed of implementation of these new financial products and, at worst, this could compromise the effectiveness of the new financing solutions introduced by these Regulations.

GREATER AUTONOMY

However, and despite some obstacles we can foresee in consolidating these new financial mechanisms, we are witnessing in the Angolan market and in the area of capital, a country that is increasingly turning towards solutions of concentration of capital in the internal market and is increasingly trying to reduce its dependence on foreign capital and funds. We have also seen that Angola is trying to develop financial instruments to make available to companies and individuals with a view to adapting its legislation to the current situation, a situation in which there is a growing need to find means of financing for investment and growth in the country.

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