

ANGOLA

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GLOBAL VISION, LOCAL EXPERIENCE.

NEW RULES ON CURRENT INVISIBLES OPERATIONS

The National Bank of Angola (Banco Nacional de Angola - "BNA") recently published Notice n.º 13/2013 (the "Notice") dated 6 August. The aim of this Notice is to ensure greater efficiency and flexibility in international payments and transfers from Angola. The Notice establishes the procedures for making payments and transfers in transactions related to travel, current transfers, payments for services and income when made between residents and non-residents and/or between Angola and abroad.

It is important to note that the Notice does not apply to operations subject to Law no. 2/12 of 13 January (the exchange law for the oil sector). Neither does it apply to transactions related to the transfer of profits and dividends of non-residents resulting from financial applications and capital, or to prizes from gaming or to transfers to social security and pension funds, all of which are governed by their own regulations.

Current invisibles operations are deemed to be "current transactions not involving goods, including those relating to travel and transfers that are current in nature, payments and receipts for services and income when

made between Angola and abroad or between residents and non-residents, with a maturity of 360 days or less."

In light of this definition, it is important to ask: what stays the same and what changes?

WHAT STAYS THE SAME?

Transfers or payments arising from contracts that exceed the limits established in Notice still require advance licensing by the BNA. These amounts currently correspond to 300 million kwanzas (around USD 3 million) and 100 million kwanzas (around USD 1 million), according to whether or not they relate to services provided in the oil sector. This compares to the single limit of 30 million kwanzas previously in force, (around USD 300.000).

Current invisibles operations continue to be carried out through financial institutions duly authorised for such purpose by the BNA. The obligation to register contracts, underlying payments and transfers in the Integrated System for Exchange Operations (Sistema Integrado de Operações Cambiais - "SINOC") also remains in place.

Indeed, it is through the SINOC that the application for licensing of contracts must be made.

WHAT HAS CHANGED?

The Notice has made a great number of significant changes. The legislation is very ambitious and has an impact that goes beyond strictly exchange issues. Among the most important alterations are the above-mentioned increase of the ceiling for licensing of contracts, the changes in instalment payment rules, the limit on advance payments and the new imperative rules on contracts.

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Important changes have also been made to licensing by the BNA. Firstly, prior licensing is only required for contracts exceeding 100 million kwanzas (around USD 1 million) or 300 million kwanzas (around USD 3 million), if the paying party is a provider of services to the oil sector that is duly registered with the Ministry of Oil and/or has a contract programme with that entity. In other words, the ceiling for mandatory licensing went from a little under 30 million kwanzas (around USD 300,000) to 100 million kwanzas or 300 million kwanzas, respectively, e.g. around USD 1 million and USD 3 million).

In turn, the change in the values for licensing appearing in the Notice caused a corresponding change to Presidential Decree 273/11 of 27 October. According to the Decree, these values are the limits above which prior licensing by the Ministry of Economy is now necessary.

Furthermore, the Notice separates the two main channels for approval of contracts in Angola, that is, through the BNA and through the Ministry of the Economy. Contracts subject to DP 273/11 and licensed in advance by the Ministry of the Economy no longer need to be licensed by the BNA too. This rule clarifies responsibilities and avoids the duplication of work as the committee that approves contracts subject to DP 273/11 always includes a representative of the BNA. It should also be noted that both systems only established prior licensing by the BNA or the Ministry of the Economy, as appropriate, when the payment was made by a resident exchange entity. If it were the opposite, (i.e. payments by a non-resident exchange entity) this would not trigger the application of the rules or require licensing, but only registration at the SINOC.

This means that the following operations and transactions are subject to prior licensing by the BNA: (i) contracts not subject to DP 273/11 that exceed 100 million kwanzas or 300 million kwanzas as mentioned above, (ii) transfers of income from financial applications and capital and (iii) reimbursements due on the annulment of contracts or for undue payments.

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There are also two relevant changes that affect the contractual framework itself. The first relates to the ceiling for advance payments. Under the Notice, as long as they are provided for in the contract, advance payments may not exceed 15% of the value of the contract. The second alteration translates into an incorporation of the rules on prohibited clauses contained in DP 273/11 (e.g. clause that establishes automatic extension). The Notice ends up being less restrictive as it does not impose the rules on mandatory clauses contained in DP 273/11 on the parties (e.g. the application of Angolan law to all the circumstances of the contract).

The Notice also draws a distinction between the various types of services that are subject to the different rules of licensing of the respective payments, more specifically: (i) government services, (ii) transport services, (iii) communications services, (iv) construction services, (v) insurance services, (vi) financial services, (vii) IT and information services, (viii) other business services, (ix) personal, cultural, sports and recreation services, (x) trademark, patent, and intellectual and industrial property rights, (xi) remuneration of employees and (xii) income from capital or financial applications.

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The BNA is, therefore, placing its trust in Angolan financial institutions, which are accorded greater autonomy and added responsibility. In an economy that is maturing from day to day with an increasing number of challenges for financial institutions and for the maturity of the exchange system, Angola is taking important steps to improve the conditions for circulation of capital.

way, the invoices must include the mandatory elements indicated in the Notice or they will not be accepted by the financial entities.

From a conceptual perspective, the great problem lies in the fact that DP 273/11 “disrespects” the majority of the provisions of the Notice. In practice, DP 273/11 broadly applies to the majority of contracts for the provisions of services. This means we must conclude that the rules of the Notice will apply residually as the majority of contracts for the provision of services are subject to control by the Ministry of the Economy and not the BNA. Even so, the rules for the liquidation of payments apply regardless of which institution approves the contract and this means that strict compliance with the Notice is necessary.

The Notice is an ambitious and well-drafted piece of legislation aimed at simplifying the payments system by

seeking not only greater autonomy for the banks in making payments but also by establishing various practical measures in respect of the necessary documentation in question. A great example of this lies in the tacit approval of payments (within 8 days) of submitting a request to the BNA, provided that the bank in question ensures compliance with the exchange rules and assumes responsibility for proper execution after 8 days even if the BNA has not made a decision.

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