

## ANGOLAN FOREIGN EXCHANGE REGULATIONS

This briefing, prepared by Pieter van Welzen (Partner at Clifford Chance) and João Fonseca (Executive Director at BAI, Banco Angolano de Investimentos), describes some aspects of the Angolan exchange regulations that may be relevant for companies that invest in Angola or are conducting business with Angolan parties.

The Angolan economy is heavily dependent on income generated by its oil and gas sector and, whilst the country is rebuilding its economy after years of civil war, it has limited (albeit growing) local production. The economy is therefore primarily US dollar based and the fluctuation in oil prices has significant consequences on the country's foreign exchange reserves. The low oil prices during the last couple of years have had a huge impact on the Angolan economy and resulted in chronic shortages of foreign currency. This meant that even where importers and other parties, such as investors, were entitled to make payments abroad in accordance with applicable Angolan legislation, the foreign currency to do so was not available, with resulting payment defaults, parallel foreign currency markets and high inflation rates. There was also an increased tightening of the country's foreign exchange regulations. Compliance with the foreign exchange regulations does therefore not guarantee that the foreign currency payment can be made. This is dependent on the foreign currency actually being available.

Oil and diamond sector companies have special foreign exchange regimes. These regimes are not addressed in this briefing.

### THE EXCHANGE LAW

The main legal source for the Angolan foreign exchange regulation is *Lei Cambial* (*Lei No. 5/97*; the "Exchange Law") of 27 June 1997. The Exchange Law regulates both foreign exchange operations and foreign exchange trade. It designates the National Bank of Angola (*Banco Nacional de Angola*, "BNA") as the competent authority. The Exchange Law defines foreign exchange operations as:

- (a) the acquisition and disposal of foreign currency;
- (b) the opening and operation of bank accounts in Angola held by non-Angolan residents that are denominated in kwanza;
- (c) the opening and operation of bank accounts in Angola in foreign currency by Angolan residents and non-residents;

- (d) the settlement of goods, current invisible and capital transactions; and
- (e) the acquisition and disposal of coined gold, gold bars and non-crafted gold.

Residents of Angola for the purposes of the Exchange Law are, *inter alios*:

- (a) individuals with their habitual residency in Angola;
- (b) legal entities with their head office in Angola;
- (c) branches, agencies and other forms of representation in Angola of legal entities with their head office abroad; and
- (d) public funds, entities and bodies with administrative and financial autonomy with their head office in Angola.

Non-residents are individuals and legal entities with their habitual residency or head office outside Angola (including individuals who are abroad for more than one year). Branches, agencies and other forms of representation of Angolan legal entities that are located outside Angola are also considered non-residents. The Exchange Law (and its secondary regulations) apply to transactions involving residents and non-residents and transactions between Angola and abroad. Given the non-convertibility of the kwanza, these transactions will typically involve foreign currency.

The Exchange Law prescribes that all foreign exchange operations require the intermediation of an Angolan financial institution that is authorised to engage in foreign exchange trading. This includes authorised banking institutions as well as foreign exchange bureaux (however, the latter can only engage in a limited number of foreign exchange operations). If the settlement (in part or whole) of goods, current invisible and capital transactions is effected by way of set-off, specific authorisation is required from BNA. Foreign exchange trade is defined in the Exchange Law as the execution (on a regular basis) of foreign exchange transactions for own or a third party's account. The Exchange Law provides that such operations are subject to authorisation by BNA. Finally, the Exchange Law also makes the import, export and re-export of unprocessed gold, foreign currency and certain title documents subject to authorisation by BNA.

## **FOREIGN CURRENCY SALES BY BNA**

BNA is the most important source for banking institutions to acquire foreign currency on behalf of their clients. The sale of foreign currency is effected by way of auction and direct sales. Direct sales can be made to (i) a government institution, (ii) the extent required to secure the import and provision of goods and services that are critical for the country and (iii) to private operations provided that they have been reported to BNA in a list (*mapa de necessidades*) prepared by the bank concerned.

The auction is organised by BNA in accordance with BNA's *Instrutivo No. 01/2018* of 19 January 2018. The sale (and purchase) of foreign currency is effected by BNA through an electronic system, Sistema de Gestão de Mercado Cambial ("SGMC"). The Instrutivo describes how commercial banks, through SGMC, can participate in the auction and bid to purchase foreign currency, as well as sets out how the offers are being selected ("price auctions"). It also provides that BNA can organize special auctions in connection with the foreign currency requirements connected to letters of

credit ("quantity auctions"). Only letters of credit with a deferred payment term of at least 60 days following presentation of the shipment documents are permitted for this purpose. *Instrutivo No. 01/2018* also describes how the foreign exchange transactions are settled between BNA and the participating banks. The foreign currency acquired by a bank through a price auction must be applied within five days of settlement. Otherwise, the bank is obliged to resell the foreign currency to BNA.

## **FOREIGN EXCHANGE RATE DETERMINATION**

*Instrutivo No. 01/2018* establishes that bids at a price auction can fluctuate within a plus/minus 2% band around the average exchange rate of winning bids of the previous auction, therefore capping the maximum depreciation of the exchange rate at 2% per price auction. The weighted average rate of winning bids corresponds to the selling reference rate published by the BNA.

Pursuant to BNA's *Instrutivo No. 03/2018* of 19 January 2018, a bank must, when trading foreign currency in the interbank market or with clients, apply an exchange rate which is not more than 2% higher or lower than the reference (selling) exchange rate daily published by BNA. The exchange rate for the purchase of foreign currency is calculated by deducting 0.25% of the reference (selling) exchange rate.

## **FOREIGN CURRENCY HELD BY BANKS**

*Aviso No. 01/2018* of 17 January 2018 provides that the aggregate position (long or short) of Angolan banks in foreign currency may not exceed 10% of their regulatory capital.

## **AUTHORISATION FRAMEWORK**

The Exchange Law provides the basis for a number of secondary regulations (issued by the government and BNA) that describe the authorisation process in connection with transactions involving foreign currency and the information to be provided in connection with such authorisation. Such secondary regulations distinguish between goods, current invisible and capital transactions. All transactions involving foreign currency require the intermediation of a financial institution that is authorised to engage in foreign exchange trade.

The authorisation framework per transaction type is described in a decree that sets out, in more general terms, the procedure to be followed in order to obtain authorisation and the conditions attached to such authorisation. A regulation issued by BNA describes the type of documentation (per transaction type) that needs to be submitted to the authorised banking institution in order to obtain the approval.

Generally speaking, the documentation must provide evidence that there is a legitimate transaction for which the foreign currency is required and also show, to the extent that the transaction for which the foreign currency is required is subject to conditions, that these conditions have been or will be met. In certain cases, the banking institution can authorise the foreign currency payment itself while in other cases the request needs to be forwarded to BNA for determination.

The authorisation is only valid for a certain period of time and during this period the foreign exchange transaction should be effected. The foreign currency can be obtained from the banking institution or transferring it from a

foreign currency account held with the relevant institution. Any foreign currency purchased through BNA and not used for the purpose requested, must be resold to an authorised financial institution within a specified time limit.

## **Goods transactions**

### **General**

The import, export and re-export of goods ("Goods Transactions") is subject to *Decreto Presidencial No. 75/17* of 7 April 2017 ("GT Decree") that makes these transactions subject to licensing requirements. The specific foreign exchange rules in relation to the settlement of Goods Transactions are included in BNA's *Aviso No. 5/2018* of 2 July 2018 ("GT Aviso")<sup>i</sup>. The GT Aviso describes the procedures to be observed in connection with Goods Transactions. The relevant monetary limits that determines is what form payment can or should be made are set out in *Instrutivo No. 09/18* of 2 July 2018 ("GT Instrutivo").

## **Import transactions**

### **General**

As a general rule, the settlement of Goods Transactions has to be effected through local banking institutions and only one banking institution can be involved in the same Goods Transaction. The GT Aviso provides that Goods Transaction with settlement terms that is in excess of 360 days after the date of the import/shipping documents require authorisation from BNA. The GT Aviso sets out the information that certain documents, such as invoices for import transactions, need to contain. One important condition for the settlement of Goods Transactions is that the transaction is licensed by the Ministry of Commerce. There are a limited number of exceptions to this requirement pursuant to the GT Decree and the GT Aviso, for example for transactions with a value of less than USD 5,000<sup>ii</sup>.

Banks may require further documents to certify the legitimacy of the payments and must, prior to the settlement, analyse the documents in order to ensure their correctness, their conformity and their consistency with the nature of the transaction.

The GT Aviso sets out the rules that apply to the import of consignment goods, goods that are to be stored in bonded warehouses as well as those that are imported on a temporary basis.

### **Payments**

Payments in respect of Goods Transactions can, subject to conditions as described below, be made in the form of advance payment (*pagamentos antecipados*) and payment in arrear through documentary collections (*cobranças documentarias*), documentary remittances (*remessas documentárias*) or documentary credits (*créditos documentários*)<sup>iii</sup>. The aggregate amount of Goods Transactions paid through documentary collections or documentary remittances may not exceed EUR 1,000,000 per year. The same limit applies if these payment methods are combined with advance payments.

- Advance payments are subject to a limit of EUR 25,000 per Goods Transactions and a maximum of EUR 300,000 per year (excluding advance payments made in connection with Goods Transactions settled

through documentary credit). The goods must enter the county within 180 days after the foreign exchange purchase. The importer must provide the following documents to the bank from which it purchases the foreign currency:

- (a) the commercial invoice owned by the exporter;
- (b) if applicable, a bank guarantee, issued on behalf of the exporter;
- (c) if applicable, the supply contract; and
- (d) if applicable, the import licence.

If advance payments are used, then the importer must within 30 days after the goods left customer, provide evidence to the bank that the goods have entered the county, which may not be in excess of 180 days after the related foreign exchange transaction was concluded. The bank is further obliged to report to BNA the persons who failed to comply with this obligation. The banks should also refuse to enter into similar transactions with such persons, unless the reason for the delay was justifiable and the issue has in the meantime been resolved.

- Documentary collections are permitted for Goods Transactions of up to EUR 100,000. The bank of the importer must ensure that it receives from the covering bank:
  - (a) the commercial invoice
  - (b) the transport documents; and
  - (c) other import documents which are required according to applicable laws and regulations.

From the importer:

- (a) if applicable, the supply contract and;
  - (b) the import licence.
- Documentary remittances are permitted for Goods Transactions of up to EUR 50,000. The following documents must be submitted by the importer for settlement in the form of documentary collections:
    - (a) the commercial invoice;
    - (b) the transport documents;
    - (c) the final *Documento Único* ("DU")<sup>iv</sup>;
    - (d) if applicable, the supply contract; and
    - (e) if applicable, the import licence.
  - Documentary credit may be used for Goods Transactions with a value of up to EUR 100,000 and must be used for Goods Transactions in excess of EUR 100,000. It is possible to pay not more than 10% of the value of the goods by way of advance payment. A goods Transaction may not be split in various parts to avoid the obligation to settle by way of documentary credit. The bank of the importer must ensure that the bank of the negotiating/confirming bank provides:
    - (a) the commercial invoice;
    - (b) the transport documents;

- (c) other documents required under the terms of the documentary credit; and
- (d) SWIFT messages relating to the documentary credit.

#### **Export transactions**

The GT Aviso also applied to foreign currency received in connection with export transactions. It states that the following methods can be used for settling such transactions:

- (a) advance payment;
- (b) irrevocable and non-transferable documentary credit with a validity of up to 180 days;
- (c) other methods to be defined by BNA, considering the relevant market involved and international payment standards.

For receiving advance payments to its bank account, the exporter must provide to the bank:

- (a) the commercial invoice;
- (b) if applicable, the supply contract;
- (c) the export licence.

In case the payment is to be effected by way of documentary credit, the exporter must inform the exporter of the Angolan bank where it holds an account and through whose intermediation the documentary credit must be notified and the payments credited. This Angolan bank must conduct due diligence in respect of the creditworthiness of the issuing or confirming bank, compliance of the transaction with applicable foreign exchange laws, the ability of the exporter to comply with the conditions of the documentary credit and the correctness of the account details.

The exporter must provide to the bank that notifies the documentary credit immediately after each shipment:

- (a) the original documentary credit;
- (b) the documents that are required under the documentary credit;
- (c) the export licence; and
- (d) the final DU.

The notifying bank must ensure the shipping of the documents relating to each shipment to the insuring or confirming bank (as the case may be) within the prescribed time limits. It must also ensure the receipt of the export proceeds in Angola within the deadlines indicated in the documentary credit and registration in the relevant data base and provide a certificate relating to the receipt of the export payments.

The exporter must within 5 days of receipt of the export proceeds sell 50%<sup>v</sup> of the foreign currency to the bank at an exchange rate agreed with the bank. The remaining 50% can be applied for:

- (a) payments abroad in connection with its activities;
- (b) repayment of foreign currency loans and related interest and costs and expenses;

- (c) financial investments loans actions with the bank with which the funds are held; or
- (d) purchase of local currency to pay expenses or other liabilities to Angola residents.

Banks can only sell foreign currency to an exporter if it has extinguished their foreign currency resources. No further approval of BNA is required for the receipt of export proceeds if they are effected in accordance with the GT Aviso. Specific procedures apply in relation to reimbursements that may need to be made in connection with defective goods.

## Current invisible transactions

### General

*Decreto No. 21/98* of 24 July 1998 regulates current invisible transactions which are effected between Angola and a foreign country and between residents and non-residents of Angola. Current invisible transactions are classified as commercial, private and unilateral transfers (such as gifts, membership payments and subscriptions). The commercial transactions to which the decree applies include, inter alia, payment for technical assistance, payment for transport and insurance, interest, dividends, commissions, salaries and royalty's payments.

*Aviso No. 13/2013* of 31 July 2013 of BNA and *Decreto Presidencial No. 273/11* of 27 October 2011 (as amended by *Decreto Presidencial Nº. 123/13*) provides more detailed rules about the licensing procedure and the documentation that needs to be provided by the customer in order to make the payment.

### Commercial transactions

According to the *Instrutivo*, the following transactions are subject to BNA's prior authorisations:

- (a) services provided to companies operating in the oil and gas section with a consideration of more than 300,000,000 kwanza;
- (b) services provided to companies operating in the oil and gas section with a consideration of more than 100,000,000 kwanza;
- (c) transfer of proceeds from financial investments and capital; and
- (d) reimbursement for the cancellation of contracts or undue payments.

The *Instrutivo* also lists the transactions that are not subject to BNA's authorization.

Pursuant to *Decreto Presidencial No. 273/11* (as amended), contracts for technical assistance or management agreements with foreign counterparties and a consideration (in aggregate) in case of companies that are active in the oil and gas sector of more than 300,000,000 kwanza or otherwise of more than 100,000,000 kwanza are subject to special regulation. They may basically only be entered into if the relevant services are not available locally, and the services are beneficial to the Angolan party requiring the services and the Angolan economy in general.

The Decree describes the provisions which these contracts are required to include and also contains a list of prohibited clauses. The term of the contract may not exceed 36 months and the value of the contract may not exceed ten

times the amount of the shareholder's equity of the Angolan party. The Angolan party must, before entering into the agreement, obtain the consent of a commission especially established for this purpose by the Ministry of Economy. It is not necessary for these transactions to obtain a separate licence from BNA.

### **Private transactions**

Private transactions (to support expenses incurred abroad by individuals for example, for travelling, medical treatment and family support) are subject to BNA's *Aviso No. 13/2013* of 31 July 2013 and BNA's *Instrutivo No. 06/2018* of 19 June 2018. It provides that for family support purposes, a person can buy EUR 1.000 per month in foreign currency per beneficiary, with a monthly aggregate limit of EUR 2.500. There is, however, a general limit for family support, contributions to associations and other transfers with a private character of 12,000,000 kwanza per year. Health or education expenses do not have a limit if they are paid directly to the relevant entity.

Money transfers are regulated by *Aviso No. 06/2013* of 22 April 2013. Only adult residents (as defined by the Exchange Law) are entitled to transfer money abroad subject to a maximum monthly limit of 500,000 kwanza and a yearly limit of 2,000,000 kwanza per person.

Pursuant to *Aviso No.01/2016* of 8 April 2016 adult residents can freely carry up to USD 10,000 when leaving and entering the country. For non-residents, this amount is USD 5,000

### **Capital transactions**

*Decreto No. 23/98* of 24 July 1998 ("the Decree") regulates certain capital transactions involving contracts and other legal arrangements between residents and non-residents as well as transfers between Angola and abroad. The transactions to which the decree applies are, *inter alia*, those involving (public or private) debt instruments, loans, granting of guarantees and other forms of collateral, investments in companies, acquisition of establishments and real estate, donations, life insurance payments and inheritance payments. In general, all transactions involving operations that last for more than one year fall under this Decree. It also includes foreign exchange transactions relating to the payment for goods that entered Angola more than one year before the payment (which is not uncommon).

These capital transactions require a licence (*Licença de Importação de Capitais* or "LIC" for imports and *Licença de Exportação de Capitais* or "LEC" for exports). The licence will be valid for a period of 180 days and can be extended for identical periods. Notaries and other public authorities involved in the conclusion of the contracts or transactions, as well as companies whose shares or debt instruments are the object of a transaction must register the relevant licence details and on the fifteenth day of each month inform BNA of the registrations that were made during the previous month.

*Instrutivo No. 01/03* of 7 February 2003 of BNA sets out the conditions that apply to licence requests. If a capital transaction corresponds to a commercial transaction or a current invisible transaction, the licence will only be granted after presentation of the documentation required for the corresponding transaction.



### **Dividends relating to foreign investments**

The Angolan private investment regime ensures to foreign investors, subject to certain limitations, the free transfer of moneys received as dividends in connection with approved foreign investments.

BNA's *Aviso No. 13/14* of 18 December 2014 provides that the transfer abroad of dividends and profits only require BNA's prior authorisation if the amounts transferred by the entity making these distributions exceed 500,000,000 kwanza per year.

The *Aviso* provides that BNA has to authorise the transfer and further describes what information must be provided in order to request a transfer of profits and dividends. The request must be submitted in the first quarter following the financial year to which the profits relate. BNA must decide within 30 days after receipt of the request. The transfer must be effected within 90 days of the authorisation.

### **OPENING AND OPERATING LOCAL AND FOREIGN CURRENCY ACCOUNTS**

Banking institutions in Angola can pursuant to the Exchange Law and *Aviso No. 3/09* of 5 June 2009 open accounts in foreign currency and local currency on behalf of residents and non-residents ("normal regime"). The general principle is that any transaction between resident and non-resident accounts, and transfers to and from abroad, are subject to the compliance with the Exchange Law and derived regulations. Resident individuals (but not companies) can open accounts with foreign financial institutions.

Pursuant to *Aviso No. 02/2017* of 16 January 2017, non-resident individuals and companies can also open special accounts with Angolan banks that are subject to less stringent capital control requirements than accounts under the normal regime.

### **SUPERVISION AND ENFORCEMENT**

The foreign exchange regulations impose a heavy monitoring obligation on the Angolan banking institutions involved in settlement transactions. They must refuse to comply with settlement instructions if the regulations are not properly observed or if their customers fail to comply with other legal requirements, such as their obligation to pay taxes that are due in connection with the transaction, or if there are doubts about the legitimacy or purpose of the transaction. In addition, the Law against Money Laundering and Financing of Terrorism (*Lei No. 34/11*) of 12 December 2011 obliges the Angolan banking institutions to take measures if they believe that the transaction to which the payment is related lacks economic substance or could be related to a criminal activity (including tax crimes). BNA considers the importers that deal with offshore entities and trading entities as "high risk" customers. They are, therefore, subject to enhanced due diligence procedures

During the foreign currency crisis BNA has issued various regulations to reinforce the obligations and to require banks to create, impose and enforce more stringent internal rules and processes to secure compliance with the applicable foreign exchange regulations. In this context, BNA has, pursuant to *Instrutivo No. 07/2018* of 21 June 2018, obliged each bank to establish an independent body to monitor and ensure compliance by the bank with the applicable foreign exchange rules.

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<sup>i</sup> The Aviso will enter into force on 17 September 2018 (60 days following their publication in the Official Journal).

<sup>ii</sup> The Angolan regulations somewhat confusingly use USD, Euros and Kwanzas as currencies for different limits and thresholds.

<sup>iii</sup> In this case, the importer receives the import documents directly from the overseas supplier without the intervention of a bank.

<sup>iv</sup> This is the Angolan customs document that confirms that the good have arrived in or left Angola and that the applicable taxes and duties have been paid.

<sup>v</sup> BNA can approve another percentage if the circumstances justify this.