



« LIBERALIZATION -THE NEW ENVIRONMENT OF ANGOLAN FOREX RULES »



By Mafalda Oliveira Monteiro
Partner at Miranda & Associados

Mafalda Oliveira Monteiro is Partner at Miranda & Associados, has over 25 years of experience and her practice is focused on Banking & Finance, Aviation, Insurance, Corporate, Mergers & Acquisition and Private International Law.

By Catarina Neto Fernandes
Senior Associate at Miranda & Associados

Catarina Neto Fernandes is Senior Associate at Miranda & Associados, has over 13 years of experience and her practice is focused on Banking, Corporate, Merger & Acquisitions and Insurance.



contacts:

Mafalda.Monteiro@mirandalawfirm.com

Catarina.Fernandes@mirandalawfirm.com

At the end of 2019 and in early 2020, a new wave of foreign exchange (“FX”) legislation emerged and completely changed the FX licensing rules that had

been in force in Angola until then. In general, efforts were made to liberalize FX transactions, with commercial banks being obliged to analyze, verify and register them with the Angolan Central Bank (“BNA”) through its software system (“SINOC”). Prior authorization from the BNA is no longer required in a number of operations.

By means of Order 15/19, of 30 December 2019, the BNA defined procedures for FX transactions carried out by non-residents in connection with foreign direct investments, foreign investments in securities, any divestments of such assets, and income resulting from investments. FX operations relating to foreign investment projects registered with the BNA prior to 30 December 2019 are

subject to the new rules, though the Order does not apply to investments made by non-residents in the oil sector. The Order sets out which FX operations carried out by non-residents require prior licensing by the BNA and which are exempt from such licensing. The Order also determines which documents should be submitted to the BNA by financial institutions in cases subject to licensing, and which documents should be reviewed in order to assess the legitimacy of transfers abroad of shareholder loans and income from unlisted foreign direct investments. Finally, the Order determines the forms that foreign direct investment in unlisted entities and foreign investment in securities may take.

A new rule requires foreign investors to hold FX non-resident accounts, opened with an Angolan commercial bank. The funds for investing must be transferred to a specific sub-account created for the purpose, and must be used only for that purpose. In respect of repatriation of dividends, no prior authorization from the BNA is required. The operation must be registered in SINOC by an Angolan commercial bank, which should also verify the relevant documentation listed in the Order. In addition, no prior authorization from the BNA is required for shareholders' loans. However, the

shareholders' loan agreement needs to be submitted to the commercial bank as well as all the documents listed in the Order so that the commercial bank can make the statutorily required checks.

Notwithstanding the above, the purchase of debt securities and the repatriation of funds are still subject to prior licensing whenever: i) they involve a direct foreign investment in connection with the assignment of investment made in unlisted companies in favor of an FX resident; and/or ii) they result from the dissolution of a subsidiary company; and/or iii) they refer to any other corporate action involving the reduction of the share capital of an unlisted company.

Operations to import goods with a settlement period of more than 360 days, counting from the date of customs clearance at landing, are exempted from prior licensing with the BNA, pursuant to BNA Order 1/2020, of 9 January 2020.

Further, under BNA Order 2/20, of 9 January 2020, current invisible exchange operations carried out by legal entities are no longer subject to FX licensing requirements. This Order determined that payments for services provided by non-resident entities no longer require prior authorization from the BNA. Current invisible operations involving the provision of a service in an amount of more than USD 25,000 must be supported by a contract, except for transfers for the

provision of transport services associated with the importation of goods and certain transfers for educational, scientific and cultural purposes. The contract must be submitted to an Angolan commercial bank, which must in turn register the operation in SINOC, prepare a technical file summarizing the terms of the agreement, and verify the nature, justification and legitimacy of the operation. Since Presidential Decree 273/11, of 27 October 2011, was revoked, eliminating the need for technical and management assistance contracts to be previously approved by the Evaluation Committee set up by the Ministry of the Economy, the BNA has reinforced the need for banking financial institutions to make a strict assessment of current invisibles exchange operations covering technical and specialized services agreements. For this purpose, the BNA issued Circular Letter 002/DCC/2020, of 18 August 2020, containing guidelines with which banks must comply when validating payments under service agreements or invoices to non-resident entities.

These changes are aimed at expediting FX transactions so that the relevant players, whether investors or service providers, gain more confidence in the Angolan market and banking system.