Real Estate Investment in Angola

THE LEGAL PERSPECTIVE

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Introduction

The government aims to make Angola a more attractive country for foreign private investment and has introduced regulations with the aim of creating a real estate sector. Recently, there has been a considerable amount of construction of both housing and commercial buildings in Angola. However, in Angola the radical title of all land is vested in the state which rarely grants full proprietorship of land; rather, it assigns surface rights which grant powers to construct and maintain buildings or establish plantations. The state may only grant surface rights to Angolan citizens or companies constituted in Angola, though foreign parties may hold shares in such companies. In practice, contracts relating to surface rights are concession contracts which cannot last for more than 60 years. However, there are no prohibitions on the renewal of such contracts. These rules are set out in the Land Law. There are some properties (particularly urban) which are previous to independence in which there is full ownership.

The New Urban Lease Law governs certain leases. Key provisions of this law are as follows:

- the rent must be set in Angolan currency (kwanza);
- there is flexibility on execution formalities (but also sanctions for breaches of the relevant provisions);
- payment of rent may not be payable more than three months in advance, and
- rents may be stipulated to be annually reviewed in line with an index published by the government.

The combination of new real estate tax regulations and the New Urban Lease Law now give investors a clear sign that Angola is becoming more transparent and keener to develop a dynamic real estate sector.

Contents

1. Ownership of real estate

1.1 Full ownership

The Angolan Constitution recognizes private property. However, it also sets forth that the ownership of land belongs to the state. Ownership of real estate in Angola has suffered many vicissitudes, particularly through the processes of nationalization and confiscation of property by the state with a view to its subsequent redistribution and delivery to individuals and private entities.

The acquisition and use of land are mainly regulated by the Land Law (Law no. 9/04 of November 9, 2004), the Land Law Regulations (Decree 58/07, of July 13, 2007) and the Civil Code. There are some properties (particularly urban) which are previous to independence in which there is full ownership.

The Land Law establishes the general bases of the legislation governing land forming part of the state's original property, the rights that can impend on the land and the general mechanism involved in the constitution, exercise and extinction of these land rights.

Properties forming part of the public domain are excluded from the scope of the Land Law.

1.2. Other rights over real estate

The more relevant property rights are:

- right of ownership;
- horizontal property;
- usufruct;
- lease;
- temporary occupation right;
- civil dominium utile, and
- customary dominium utile.

Smaller land rights (such as the right of customary dominium utile, right of civil dominium utile, surface right) and right to temporary occupation, are common.

1.3. Condominium

Presidential Decree No. 141/15, of June 29, 2015, approved the legal regime of condominium. This Presidential Decree applies to buildings constituted on horizontal property; it introduces the concept of vertical property as a set of contiguous buildings with proximity connection although without material connection.

It was determined that the obligation to establish, in each condominium, a reserve fund for the cost of conserving the building (or buildings), contribution shall not be less than 10% of the contribution of each condominium owner.

For horizontal and vertical condominiums, the common parts and urban infrastructures of the condominium are identified, and the conditions to be observed for the execution of works or innovations are also established.

The rights and obligations of the joint owners are established, which shall be added and articulated with the provisions of the Civil Code concerning this matter and also with the regulations approved by the Joint Owners' Assembly.

There is the obligation to take out insurance against the risk of fire in common parts, which shall be updated annually.

The Presidential Decree also provides for matters within the competence of the assembly of joint owners and other bodies, as well as the Internal Regulation of the Condominium.

1.4. Restrictions on ownership by foreigners

Foreign investors, due to restrictions to ownership, tend to apply for the granting of one of the above-mentioned smaller land rights. The surface right is the most common due to the fact that it offers more security, since it can be granted for a period of 60 years and may be renewed.

Although there are restrictions on the acquisition of real estate by foreigners, the Private Investment Law (Law no. 10/18 of June 26, 2018) allows foreigners to invest in Angola via purchasing real estate assets when such acquisition is part of a private investment project.

A foreign entity shall be deemed to have a permanent establishment in Angola if it has a fixed place therein through which it carries out its activity (wholly or partially) including, without limitation, a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

Moreover, a foreign company shall also be deemed to have a permanent establishment in Angola to the extent that:

- it has a construction or assembling site or supervision activities carried out therein, for a period exceeding 90 days in any given 12-month period;
- it provides services in Angola through its employees or any other personnel hired for said purpose, for a period exceeding 90 days in any given 12-month period; or
- a person – other than an agent of independent status – is acting, in the country, on its behalf in respect of any activities which that person undertakes for the enterprise, if that person has the authority to conclude contracts in the name of the company or, if in the absence of said authority to conclude contracts, it maintains a stock of goods or merchandize for delivery on behalf of the company.

In addition to the above, any foreigner aiming to pursue an activity in Angola must comply with terms set forth in the Private Investment Law. This means that it is paramount to incorporate a local entity and proceed with the registration of an investment project, describing the type of activity to be pursued.

Foreign investors may opt to incorporate either a limited liability company by quotas, a joint stock company or a branch. Angola has also a legal framework for investment funds which are also construed as vehicles for investment. The setting up of real estate investment funds is governed by the Capital Market Commission. The management of the fund is carried out by a real estate investment fund management company.

A local company may take two forms:

- as a limited liability joint stock company, locally called *Sociedade Anónima* (SA); or
- as a limited liability company by quotas, locally called *Sociedade por Quotas* (LDA).

Both are limited liability companies and may be 100% owned by foreign shareholders.

The main features of LDA can be described as follows:

- The share capital can be freely agreed between the shareholders.
- The share capital is represented by quotas which are different from shares of a SA, as they are not materialized in titles, but merely represent an undivided equity interest of the company's share capital.
- The minimum number of shareholders (also referred to as quota holders) is two.
- The transfer of quotas has to be made by means of a notary deed.
- The statutory corporate bodies are the General Assembly of Shareholders and the directors.

The main features of a SA are the following:

- The minimum share capital is USD20,000.
- The share capital is represented by shares (bearer or nominative).
- The minimum number of shareholders is five.
- The transfer of shares is easily made, without significant formalities, subject only to any pre-emption rights or other conditions set forth in the by-laws.
- The statutorily corporate bodies are the General Assembly of Shareholders, the Board of Directors and the Audit Committee.

2. Acquisition of ownership

2.1 Formal requirements

The state enjoys preferential rights and has first preference in the case of sale, accord and satisfaction or tenure of land granted.

As mentioned above, property transactions are governed essentially by the Civil Code provisions, along with the Land Law and the Land Law Regulation.

If the transaction does not involve the state or any other public authority, parties typically execute first a promissory agreement and only after the deed is signed.

The transfer of title must be executed by means of a public deed. A public deed must be executed, before a public notary. Full identification of the parties, the object, price and other conditions must be included. After the execution of the public deed purchaser has 90 days to proceed with the registration of the purchase in the Land Registry Office.

The most important areas of public law for an investor to consider when purchasing real estate are:

- urban and planning law;
- authorizations relating to the building; and
- environmental law.

Depending on the type of project, it may be necessary to obtain an environmental impact assessment study. This document evaluates the environmental feasibility of the project and the methods for minimizing or neutralizing their effects.

The zoning and planning laws and regulations for each local region are available to the public and copies of the regulations and local decisions can be obtained. Additionally, all documents related to a parcel of real estate must be analysed during the due diligence process.

2.2. Registration

There is a Land Registry Office and all charges and transfers of title are subject to registration. However, with regard to earliest transfers the existing records are not completely reliable. There has been an effort from public authorities to update the existing records and thus to assure and reinstate confidence to acquirers, both foreign and national. Title insurance does not exist in Angola.

2.3. Asset deals

The acquisition of property rights is subject to several legal obligations, namely:

- up-to-date land registry certificate;
- title certificate (*caderneta predial*) or tax registration certificate (*certidão de teor matricial*);
- payment of transfer tax (*sisa*) on transfers of property;
- payment of stamp duty;
- public deed; and
- definitive registration of the acquisition at the Land Registry Office.

In the case of acquisition of a piece of land, the person acquiring the land must also check the urban development plans and any other regulation relating to the use of the land. In order to do this, it's necessary to request specific information from the municipal authorities and from the Provincial Government Urban Management Services.

The procedure for the granting of surface rights (the most common title) is organized by the *Instituto Geográfico e Cadastral de Angola* (Geographical Institute of Angola). The procedure for the acquisition of such rights is as follows:

- Phase 1: Filling the application for the granting of surface rights. The application must specify (a) the location of the plot of land, (b) the use that will be made of the plot of land, (c) the price and (d) information on any other surface right granted.
- Phase 2: Gathering information and reports on suitability of the plot of land, any third-party rights, term and phases of the use of land in accordance with the type and volume of construction, additional clauses for the agreement adjusted to the purpose of the concession.
- Phase 3: Interim Decision. The procedure may be dismissed or if there is no reason for dismissal, the plot of land will be marked out.
- Phase 4: Decision. The concession decision will set forth the conditions to which the right will be subject and may determine a deadline during which the concession will be provisional. This is also the time to decide whether a public auction must take place. If no public auction takes place the applicant must confirm within ten days the acceptance of the concession under the terms set forth by the concessionaire. Specific rules apply if a public auction takes place.

- Phase 5: Final marking out of the plot of land. Topographic operations that allow the full identification of the plot of land and its location by marking it out with marks made of cement or stone.
- Phase 6: Public deed of concession. Granting of the public deed. Issuance of the concession decision followed by publication in the Official Gazette.
- Phase 7: Payment of the price.

The concessionaire must register the concession deed with the Real Estate Registry being all costs bear by the applicant now owner of a surface right.

Buyers tend to carry out a due diligence process in order to ascertain the current state of the land or property, including to obtain information to confirm title.

Depending on the transaction and the legal regime of marriage, consent from a spouse may be required.

Parties may agree on warranties to be provided by the seller; however, this varies from case to case.

In the event of misrepresentation by the seller, the buyer can, depending on the circumstances, terminate the agreement or file a legal action for the annulment of the agreement, and claim reimbursement of the amounts paid with an indemnification.

The purchase of a real estate is subject to transfer tax (SISA) at a rate of 2% (levied on the acquisition amount when equal to or higher than the value registered in the Land Registry Office). Additionally, it is also subject to stamp duty at a rate of 0.3% (levied on the acquisition amount). Stamp duty is also due for the execution of a sale and purchase deed at a fixed amount of AOA2,000.

Costs are not typically shared and are normally entirely paid by buyer.

2.4. Share deals

As explained before, property may also be acquire via acquisition of the vehicle registered as its owner. Although there are other legal entities which may acquire a property, there are two types of limited liability company which can be used, namely a joint stock company or a limited liability company by quotas. Where this structure is adopted, due diligence includes, in addition to all information on the property, all legal considerations connected to the company and its quota or shares as applicable. A review of the company accounts and articles of association, as well as all information regarding compliance with and discharge of taz and social security obligations must also be undertaken. In this case, comprehensive information must be collected and/or provided by the seller as the information contained in the Companies Registry is not exhaustive and not all information needs to be registered (for example, information on board minutes and employees' records, etc.).

Formalities such as pre-emption rights waivers and/or consent for the transaction must be discharged and dealt prior to signing the sale and purchase agreement. This may be executed either by a private contract or a public deed, according to the parties' intention. Parties are also free to agree on a price mechanism for calculation of the assets' valuation.

The transfer of shares or quotas does not impact on the existing arrangement at the Land Registry and this there are no additional registration requirements. Post-completion actions such as the resignation of directors and updates with regard to the Commercial Registry are required and performed prior to signing the sale and purchase agreement.

Typically, share deals do not trigger the payment of SISA. However, in the event the purchaser ends up holding more that 50% of a company holding real estate and does not prove that the main purpose of the operation is not the acquisition of the immovable properties then SISA is due.

There is normally no sharing of costs and these are normally paid by the buyer.

2.5 Public auctions

Properties which become the subject of public auctions are usually distressed assets following a default of its registered owner in relation to its creditors, tax authorities or any other instance where the property has been provided as security. In view of the complex nature and specific requirements of the auction process, a prospective buyer would be advised to obtain legal advice on the process, including ascertaining the legal status of the property, and whether there any liens or encumbrances that may be subsisting or affecting the property.

3. Other rights to property

3.1 Mortgages and charges

Mortgages are the most common form of charge and are regulated in articles 686 to 732 of Angolan Civil Code. The mortgages can be legal, judicial or voluntary, depending on the reason for their constitution.

The common example of a voluntary mortgage is a mortgage for the guarantee of a specific debt to a bank, special for a granting loans to pay the price of the acquisition of the property.

An example of a legal mortgage is a mortgage for the guarantee of a specific debt to a public entity such as the social security or the tax authority. The judicial decision that condemns the debtor to the performance of a cash benefit or other fungible thing is an enough title for the mortgage registration on any property of the obliged, even if it has not been *res judicata*.

In order to be enforceable and to have effect before third parties, mortgages and charges must be registered and evidenced in the Land Registry Certificate.

3.2 Easements

The easements are regulated in articles 1543 to 1575 of the Angolan Civil Code. Property easement is the charge imposed on a building for the exclusive benefit of another building belonging to a different owner. Property easements can be constituted by contract, testament, usucapião (acquisitive prescription) or destination of the family father. Legal easements, in the absence of a voluntary constitution, may be constituted by a judicial decision or by administrative decision, as the case may be.

Easements shall be governed, in respect of their extension and exercise, by their title; in the insufficiency of the title, the rules of the Civil Code shall be observed.

3.3 Pre-emption rights

Pre-emption rights may arise either by legal provision or via agreement between the parties.

Examples of pre-emption rights are:

- co-ownership: if one co-owner intends to sell its part, the other co-owners will have a pre-emption right;
- owners of rural plots of land may have pre-emption rights for the sale of adjoining properties; and
- the tenant of an urban building or its unit, whether it is a lease of indefinite duration or a lease with a certain term, has a pre-emption right in the purchase and sale or in payment in kind of the leased building for more than three years and in the execution of a new lease, in case of expiration of their contract.

Apart from the legal pre-emption rights contained in the Civil Code, parties are free to create other pre-emption rights by agreement, although those rights cannot act in priority to legal pre-emption rights and should be registered to be enforceable against third parties.

3.4 Promise to sell/ option agreements

Purchase options may be agreed and granted to third parties by the owner of the property. The option shall be formalized via a unilateral contract.

The acquisition of property usually begins with a promissory sale and purchase agreement. By this agreement the parties undertake to enter into a definitive acquisition contract at a later date.

This promissory sale and purchase agreement must cover all the main conditions of the transaction and a deposit is normally paid at this point in the transaction. The existence and the amount of the deposit depends on the negotiations between the parties. This deposit represents an advance on the acquisition payment, also guarantees the performance of the promissory buyer and could also represent the amount of the compensation in the event of breach. The promissory buyer may apply for the provisional registration of the acquisition prior to signing the definitive contract. After the definitive contract is signed this registration will be made definitive.

After the promissory agreement has been finalized a public deed must be made. The ownership of the property is transferred at this moment. As a rule, the price must be paid in full upon signing the public deed.

4. Zoning and planning law permits

In Angola the land originally belongs to the state and strategic planning/zoning is mainly governed by a planning policy, framed by law – Law on Land and Urban Planning, Land Law and General Regulations on Territorial, Urban and Rural Planning – which is implemented through national, sectorial, special, provincial and local development and urban plans. Yet, only a small number of the development and urban plans foreseen in the law is in force. While there are no conditions to the full implementation of the planning system, the planning or zoning may be governed by supplementary or contractual instruments.

At the end of 2015, the Master General Plan of the Metropolitan Area of Luanda (*Plano Director Geral Metropolitano de Luanda*) was approved. This provides the guiding principles for the growth of the Angolan capital and sets out the means and actions to be implemented by 2030.

Planning permission will normally be required before any new building is erected or to refurbish an existing building. Where there are no urban plans approved, supplementary or contractual instruments provide if landowner may construct a new building or refurbish an existing building.

Planning law may control the design and appearance of new buildings, in particular the Detail Plans (*Planos de Pormenor*). The method of construction is governed by the General Regulations on Buildings (*Regulamento Geral das Edificações Urbanas*).

The municipal plans must define the permitted use for the land or building and the permitted use changes.

Several pieces of legislation deal with which authorities are responsible for regulating the development and designated use of individual parcels. In general, responsibility for regulating development and designated use of individual parcels of land largely lies with provincial and local authorities. Provincial and local authorities draw up and approve the plans for land planning and these are usually the competent authorities to conduct control procedures for any urban operation. However, as a rule, an approval of the urban plans by the central government is required.

Other statutory permit regimes must be considered in relation to planning/zoning and development. However, this depends on the nature of the development and can only be determined on a case-by-case basis. For example, to implement industrial and tourist projects, other specific authorizations/licenses are required. On the other hand, public and private projects considered by the law as likely to have significant effects on the environment are subject to environmental licenses and permits.

Decree No. 80/06, of October 30, 2006, governs the process of licensing for obtaining permission for development or carrying on a new designated use in urban areas.

The licensing process comprises common procedures and special procedures. Common procedures apply to permit requests for all types of urban operations to be held in urban areas with urban plans or supplementary instruments approved. The special procedures are of a contractual nature, being applicable to permit requests for urban operations to be held in urban areas without approved urban plans or in other specific situations.

In any case, the licensing process involves the submission of an application form together with some required documents and elements, which vary depending on the operation, to be submitted to the Governor of the Province where the land or building is located. Consultations to other administrative bodies may be required. The Governor of the Province may delegate the licensing authority in the municipal entities.

Under Angolan law, building and use permits can be challenged by third parties (such as neighbors) that hold a direct or personal interest or, irrespective of having a personal interest, acting for the protection of land planning values.

Depending on the location of the land, there may be an obligation to consult one or several administrative entities who may issue binding opinions within the licensing procedures.

Courts do not directly intervene in administrative procedures.

The time it takes for an initial decision to be made after receipt of an application for permission for development or the carrying on of a designated use depends on the subject matter of the application and on the location of the land. The law provides some deadlines for a decision (for example, 30 working days to approve the design project of a building if there is no consultation to other entities) but those deadlines are indicative.

There is a right of appeal against a relevant authority's decision in respect of an application for permission for development or the carrying on of a designated use (for example, in case of refusal). Broadly speaking, all administrative acts may be challenged before the courts. In some cases, the right of appeal to the courts requires prior administrative appeal.

Some forms of development will require that the developer and the local or governmental authorities enter into an agreement under which the developer undertakes in particular to pay or to execute some public facilities that are necessary for the project.

The deadline for execution of the works is established in the license or permit itself. The deadline may be extended. If the works are not completed within the deadline or within the deadline resulting from the extension, the license may expire.

As a rule, the use permit does not have a deadline.

In Angola, the contracts for execution of public works are mainly governed by the Public Procurement Law, enacted by Law No. 9/16 of June 16, 2016 with the corrections of the Rectification no. 23/16 of October 27, 2016 and updates from Presidential Decree 282/18 and the Presidential Decree No. 202/17 of September 6, 2017. Construction works that are procured by private (non-public sector) entities are governed by the Civil Code, approved by Decree-Law No. 47344, of November 25, 1966, as amended by Decree-Law No. 9/11, of February 16, 2011. Often, contracts for private works foresee the subsidiary application of the Public Procurement Law.

In general, any construction activity can only be performed by the contractor if:

- it holds a registration title (*título de registo*) and for works with value higher than AOA3 million, a building contractor license (*alvará de construção*), issued by the Institute for Construction and Public Works Control (IRCCOP); and
- the works to be performed are in accordance with the type and value of works that the referred title/license allows

The access to and exercise of construction activity is regulated by the Regulations on Construction Activity enacted by Presidential Decree No. 63/16, of March 29, 2016. The registration title is valid for a ten-year period and the building contractor license for a three-year period, in both cases renewable for the same period.

Furthermore, the erection of a building itself requires a building permit, which is usually applied for by the owner or developer. The procedure for the request and issuance of the building permit within the urban perimeters is governed by the Regulations on Works Licensing approved by Decree No. 80/06 of October 30, 2006.

The building permits are issued by the Provincial Governments or by the Municipal Administrations.

Other administrative authorizations may be required depending on the use of the building to be erected. For example, the erection of a building for tourism or for industry usually require additional authorization from the Central Government.

In Angola the main rules relating to health and safety are in the following decrees:

- Decree No. 13/07 of February 26, 2007, which approved the General Regulation of Urban Buildings;
- Executive Decree No. 40/86, of October 13, 1986, which approved the General Regulations on Health and Safety at Workplace;
- Decree No. 31/94, of August 5, 1994, which approved the Workplace Health and Safety System; and
- Executive Decree No. 6/96, of February 2, 1996, which approved the General Regulations on Health and Safety Services at Companies Workplace.

Nevertheless, specific regulations on health and safety on construction sites are expected soon as, under Joint Dispatch No. 183/15, of June 1, 2015, a technical working group has been created for drafting regulations and a guidebook on health and safety on construction sites.

The health and safety requirements may vary depending on the use of the building (retail, industry or services). There are also some specific health and safety regulations regarding oil industry

buildings. There are also specific rules depending on the location and type of construction.

Under Angolan law, land urbanization is a public function whose costs shall be borne by the state, although the execution of urbanization works foreseen in urban plans or other instruments may be of public or private initiative.

The execution of urbanization works of private initiative is regulated by concession or consultation and is subject to licensing. The license may be granted separately or may be contained in the concession or concertation contract. In addition, the license may cover the related allotment and construction operations.

Construction works procured by the public sector are governed by the Public Procurement Law. In general, the provisions of the said law cannot be amended or excluded by the parties. In contracts for the design and construction of works procured by a private-sector developer, the parties have greater freedom to agree their own terms and conditions, but there are some mandatory provisions in the civil code regarding, for example, variations, defects, warranty period against construction defects and work withdrawal.

In addition, in the case of subcontracting, the contract must clearly set out:

- the parties' identification;
- the contractor's license number;
- the scope of the works;
- the contract price and the works price;
- the time frame within which the works are to be completed; and
- the payment terms.

If the contract fails to include this information, its terms will be deemed null and void.

In relation to public works, there are standard form contracts enacted by the Public Procurement Office (*Gabinete da Contratação Pública*), but the use of such forms is not mandatory.

In addition, some private associations of the construction and engineering sector provide auxiliary standard form contracts to their members.

Usually, FIDIC forms are only used by major contractors and in international contracts.

The Presidential Decree No. 201/16 of September 27, 2016 approved the Standard Terms of Reference to Public Works Contracts.

Generally, the contractor assumes risks concerning the execution of the works in accordance with the owner specifications, with the applicable regulations and without defects, as well as risks related to the imposition of variations. Also, the contractor usually assumes the risk of damage or destruction of the works until the delivery of the completed building to the owner. The contractor may also take on responsibility for design, being, in this case, responsible for errors or omissions in the construction project.

In private works contracts the allocation of risk is subject to negotiation.

In relation to force majeure, the law provides that a party that is unable to perform its obligations because of an unforeseeable event outside its control can avoid liability for delay or non-performance of the contract. Factors of force majeure can include earthquakes, floods, fires, epidemics, sabotage, strikes, embargoes or international blockades, acts of war or terrorism and government impositions. The Public Procurement Law foresees an extension of the deadline to perform the works in case of force majeure and the right to terminate the contract if the execution is suspended due to force majeure for more than one-fifth of the deadline to perform the works. The party invoking force majeure has eight days, from the date when it became aware of the triggering event, to notify its counterpart. All obligations arising from the contract are temporarily suspended so as to ascertain to what extent the event triggering force majeure hindered the execution of the contract.

Construction contracts usually contain a force majeure clause setting out what sorts of events may qualify as force majeure and the contractual consequences of those events occurring.

In Angola, public-private partnerships (PPPs) are governed by Law No. 2/11 of January 14, 2011.

PPPs have been encouraged by the government, which aims that by 2017 10% of public investment is made through PPPs. However, the use of PPPs is still in its early stages.

5. Environmental liability

The Framework Environment Law – Law No. 5/98, of June 19, 2015 – provides the basic principles of preserving and protecting the environment, of promoting quality of life and the rational use of natural resources, in accordance with Constitutional Law.

The main legislation dealing with environmental issues affecting building works and with promoting sustainable developments is the following:

- Environmental Impact Assessment Law – Decree No. 51/04, of July 23, 2004, as amended by Executive Decree 241/16, of May 25, 2016, which lays down the rules and procedures related to the environmental impact assessment of public and private projects;
- Environmental Licensing Law – Decree No. 59/07, of July 13, 2007 – which governs environmental licensing of activities which, by their nature, location or size are likely to cause significant environmental and social impact; and
- Regulation on Liability for Environmental Damage – Presidential Decree No. 194/11 of July 7, 2011.

There are also some relevant statutes on waste management, water pollution control, liability for environmental damage and environmental protection in the course of oil activities.

6. Leases

6.1 Duration

The law differentiates between urban leases, which are governed by both the Angolan Civil Code and Law no. 26/15, of October 23, 2015 (Lease Law), and rural leases, governed by specific provisions of the Civil Code.

Urban leases may be for residential and non-residential purposes, included in the latter are the lease of industrial real estate, commercial facilities, offices, warehouses, retail, hotels or any other legally admitted use (commercial leases).

The duration of an urban lease is decided by agreement between the parties, with a maximum limit of 30 years. In the event that the parties do not set forth a term, the contract shall be deemed to be in force for a two-year term, automatically renewable. Any lease of more than six years is subject to registration under the Land Registry Office.

The agreements for the use of shopping center units have been used as an alternative to commercial leases. They cover the use of a grouping of stores, the provision of services and common parts. However, the legal framework for such use has not yet been approved. These agreements are drawn up in accordance with the autonomy of the parties, being understood that they are not subject to the specific rules of the commercial lease.

6.2 Rent

The rent should be fixed in kwanzas (local currency). The clause by which the payment of the rent is made in foreign currency is null and void.

In the absence of an agreement to the contrary, if the rents are in accordance with the Gregorian calendar months, the first shall expire at the time of the conclusion of the contract and each of the remainder on the first working day of the month immediately preceding that to which he says respect.

Payment of rent must be made at the tenant's domicile on the date of maturity, if the parties or uses do not establish another scheme.

If the tenant is in default, the landlord has the right to demand, in addition to the rent arrears, compensation equal to the legal interest in force. The right to compensation or to termination of the contract shall cease if the tenant terminates the delay within eight days from the beginning.

It is forbidden for the parties to stipulate an advance of income higher than the one corresponding to three months, relative to the beginning of the period to which it relates, being reduced to these limits whenever it exceeds them. In the renewal or extension of the lease, the landlord cannot require the advance of income over 30 days.

6.3 Rent review

The amount of the rent can be updated in the following cases:

- annually with the application of legal coefficients annually approved by the executive for the various types of lease;
- by agreement of the parties, in rental housing agreements concluded on the free-rent scheme, as well as in leases for commercial, industrial or professional activities where a term of more than five years has been stipulated or when no time limit has been agreed;
- when the Landlord has been obliged by the administrative authority to carry out works of extraordinary conservation or improvement. In this case the Landlord can make a one-month rent increase; or
- when the Tenant is the owner of housing in the municipality in which he resides.

For the legal annual update, the first update may be required one year after the date of commencement of the contract and the successive years thereafter, one year after the previous update. Failure to update rents cannot result in a subsequent recovery of unrealized income increases, but the respective ratios can be applied in subsequent years, provided that no more than two years have elapsed since the application.

The landlord interested in the annual update of the rent must notify the tenant in writing at least 60 days in advance of the new amount and the relevant factors used in its calculation, namely the coefficient applied. The new rent is considered acceptable when the tenant does not disagree. The tenant can refuse the new rent indicated based on error in the relevant facts or in the application of the law.

The refusal, together with the respective reasons and the determination of the amount that the tenant considers correct, must be communicated to the landlord in writing, within 15 days of receiving

the communication of increase. The landlord, within 15 days of receiving the notice of refusal, may reject the amount indicated by the tenant through written notice to this address. If the landlord does not decide or if they do so by disregarding the legal formalities, the amount indicated by the tenant will be accepted. A tenant who does not agree with the new rent may also terminate the contract as long as they do so up to 15 days before the end of the first month of validity of the new rent, by which only the old rent must be paid.

When the landlord rejects the amount indicated, the tenant may, within 15 days of receipt of the rejection notice, request the definitive fixation of the increase due to a special commission.

A landlord who has been obliged by the competent administrative authority to carry out ordinary or extraordinary conservation works of the building may demand from the tenant a corresponding rent increase per month. This update is required in the month following the completion of the works and is included in the rent for all purposes, namely for the calculation of annual updates. When the works are carried out by agreement of the parties can be freely stipulated among them a compensatory increase of rent. The new agreed rent and a reference to the works carried out, with an indication of their cost, must be included in a written amendment to the lease agreement.

6.4 Operating expenses

The Lease Law includes charges, among others, taxes, namely urban property tax, insurance premiums, sanitation rate and administrative requirements relating to the cleanliness or beauty of the leased building. Expenses relating to the administration, conservation and enjoyment of common parts of the building and to services of common interest include, but are not limited to, the cleaning of the stairs of the building, the elevator maintenance service and the concierge in the case of split vertical buildings.

The contracting parties shall stipulate in writing the regime of charges and expenses. If nothing is stipulated:

- the charges for the leased building are borne by the landlord;
- current expenses relating to the supply of goods and services relating to the leased building are borne by the tenant; and
- in the lease of a building unit, expenses related to the administration, conservation and enjoyment of common parts of the property and of the services of common interest are borne by the landlord.

Charges and expenses must be contracted on behalf of whoever is responsible for their payment. As the tenant is responsible for a charge or expense contracted in the name of the landlord, they must present within one month proof of payment made.

If the contractors agree on a fixed monthly amount to be paid on account of charges and expenses, the adjustments are made every six months.

Except if otherwise agreed, the tenant is responsible for the payment of charges and expenses regarding the supply of goods or services (e.g. water, electricity, gas, telephone or internet).

The tenant is only responsible for other expenses if it is expressly agreed between the parties.

The landlord is responsible for the payment of the sanitation rate, insurance fees, and the stamp duty of the contract.

The obligation to pay the the Property Tax (*Imposto Predial Urbano*), of 15% of the rent is on the tenant, who retains it (in relation to the total amount of the agreed rent) and has to deliver it to the tax authority.

Except if otherwise agreed, the landlord is responsible for the repair and maintenance of the common parts of the building in which the property is located.

When there are utilities and telecommunications which serve a property occupied by several tenants, if not otherwise specified, each tenant will bear those charges and expenses related to their respective use. If it is not possible to separate out usage – due to a global provision of services – mill rate allocation rules may be applied, by usage, by area or in accordance with any other allocation criteria defined by the parties.

Usually the landlord insures the property. Landlords may also opt to contract multiple-risk insurance, which also cover the risk of floods, storms, electrical damage, theft and robbery. Some multiple-risk insurance policies may also cover household effects, but it is not the landlords' responsibility to insure these items.

6.5 Maintenance, repair and renovation at end of lease

The purpose of the leased property has to be defined in the lease, in accordance with the type of legally permitted use for the property (which is certified by the relevant administrative authority who issues the use license).

The permitted use cannot be changed by the tenant without the landlord's or the relevant administrative authority's consent.

The use of the property for any purpose other than the one which it is licensed for is considered to be a contractual default by the tenant, constituting justification for termination of the contract by the landlord, who may apply to court to obtain the termination of the contract.

Otherwise, the lease of property for any purpose other than the one mentioned in the relevant use license may trigger the payment of fines.

The tenant may only carry out the works when the lease agreement includes authorization for this purpose or subject to the landlord's prior written consent. In the event that improvement works are carried out, the tenant is entitled to compensation. Typically, the lease agreement sets forth a waiver to such compensation.

If the landlord is compelled to execute works by the relevant administrative authority and does not carry out such works or in case the works are urgent, the tenant may carry out said works provided that (i) a budget for the works is provided by the relevant administrative authority, and (ii) the landlord is duly informed of the cost of such works.

In this scenario, the tenant is entitled to the payment of the expenses and in the event of delay, interest applies.

Except if otherwise agreed, the landlord is responsible for the repair of the property. However, the parties may agree that the tenant is responsible for these expenses.

It is usual for the landlord to bear the additional expenses of an extraordinary nature (including for the fixed asset structures) and for the tenant to bear the ordinary repair costs (with the maintenance) of the property.

If the landlord is in arrears, the tenant may carry out works of an urgent nature, and be reimbursed by the landlord later on.

6.6 Assignments/ transfers

The tenant of an urban building or its autonomous unit, whether it is a lease of indefinite duration or a lease with a certain term, has a pre-emption right:

- purchase or lieu of payment with the lease rented more than three years ago;
- in the conclusion of a new lease, in case of expiration of his contract.

URBAN RENTAL FOR HOUSING:

In cases where only one of the spouses has signed the lease, whatever the matrimonial regime, the tenant's position is communicated to the surviving spouse or surviving non-marital partnership partner.

In the case of transfer by divorce, it is for the court to decide who is in possession of the tenant's position, taking into account the living conditions of the spouses, the interest of the couple's children and the causes of the divorce.

The lease for housing does not expire on the death of the original tenant or the one to whom their contractual position has been assigned, if they are survived by:

- a spouse who is not separated;
- a person who had lived with them consecutively for more than three years, in a situation of non-marital partnership;
- a descendant of less than one year of age or who lived with them for more than a year;
- an ascendant who lived with them for more than a year; or
- a person related in direct line.

This right to the transfer does not occur if the right-holder is resident in the respective locality, at the time of the death of the primitive tenant.

The right to the transfer is waived by written communication made to the landlord within 30 days of the death of the tenant. The non-renunciating transferee must notify the landlord by registered letter of the death of the original tenant or surviving spouse sent within 180 days after the occurrence.

LEASE TO COMMERCE OR INDUSTRY:

The contract by which someone transfers temporarily and costly to another, together with the enjoyment of the building, the operation of a commercial or industrial establishment installed therein, is not consider as a lease of an urban or rustic building.

The lease does not expire on the death of the tenant, but the successors may waive the transmission, communicating the resignation to the landlord within 30 days.

The non-resigning successor must notify the landlord, in writing, of the tenant's death.

The communication must be sent within 180 days after the occurrence and must include the authentic or certified documents that prove their rights.

Transmission by act of living from the tenant's position is allowed, without reliance on the authorization of the landlord in case of transfer of the commercial or industrial establishment.

There is no transfer:

- when the transmission is not accompanied by the joint transfer of the premises, utensils, goods or other elements that are part of the establishment; or
- when, transferring the enjoyment of the building, it is exercised in another branch of trade or industry or when, in general, it is given another destination.

The transfer of commercial establishment must be done by public deed.

In the case of transfer of commercial establishment by sale or lieu of payment of the commercial establishment, the landlord of the leased building has the right of preference.

LEASE FOR THE LIBERAL PROFESSIONS:

In leases for the occupation of liberal professions the tenant position is transferable by inter vivos act, without authorization of the landlord, to persons who, in the leased building, continue to exercise the same profession. The assignment must be celebrated by public deed.

6.7 Subleases

The authorization to sub-lease the building must be given in writing or in a public deed, according to the form required for the contract. Subleasing is only effective if notified to the landlord. Unauthorized subleasing shall nevertheless be ratified by the landlord if they recognize the sub-tenant as such.

The tenant may not charge the sub-tenant a rent greater than the one due under the lease, plus 20% in the total sublease and 10% in the partial.

Obtained the authorization to sublease the building must the tenant communicate to the landlord, in writing, within 15 days the celebration of the authorized sublease.

The sublease expires with the extinction of any cause of the lease without prejudice to the responsibility of the sublandlord to the sub-tenant, when the reason for the extinction is attributable to them.

If the sublease is total, the landlord can substitute themself to the tenant considering that the primitive lease is resolved and passing the sub-tenant to a direct tenant. This subrogation shall be carried out by means of a special judicial notification and shall be addressed to the tenant and the sub-tenant.

6.8 Termination

The urban lease may terminate by agreement of the parties, resolution, expiration, denunciation or other causes provided by law.

In cases in which the law does not require a judicial process to terminate the lease, termination of lease can be done by communication addressed to the counterparty, in the manner prescribed by law.

The communication made by the landlord, when carried out in the manner provided by law, makes it compulsory, from the legally established moment, to vacate the leased building and to hand it over with the repairs that are incumbent upon the tenant.

The eviction proceeding is intended to effectively vacate the leased whenever the law requires recourse to the court and cannot be brought in the case where the landlord intends to invoke the invalidity or annullability of the lease, in this case applying the general provisions of law.

The tenant can terminate the contract under the general terms of law based on non-compliance by the landlord. Termination of the contract based on a non-compliance by the tenant must be ordered by the court.

The causes of resolution by the landlord are duly listed in the law.

The resolution proceeding must be proposed within a year of the knowledge of the fact on which it is based, under penalty of forfeiture.

The tenant may prevent the automatic renewal of the contract by denouncing it.

The landlord can terminate the contract for the terms of the term or its renewal in the following cases:

- when they need the building for housing or first-degree or ascendant descendants, including those of the spouse or non-marital partner;
- when they need the building to build a residence or descendants, in first-degree or ascendant;
- when proposing to extend the building or to construct new buildings in order to increase the number of rentable sites and to have the respective mass plan approved by the competent administrative authority;
- when the building is degraded and its improvement or repair is not advisable under the technical or economic aspect, and when the respective mass plan is approved by the competent administrative authority.

The termination by the landlord must be made in judicial action, at least six months before the end of the term of the contract or its renewal, but does not require the eviction until three months have elapsed on the final decision. The minimum advance of six months is counted from the date of the filing of the eviction proceedings.

The right to terminate the contract for the landlord's residence depends, in relation to the cumulative verification of the following requirements:

- that the landlord is the owner, co-owner or usufruct of the building rented more than five years, or regardless of this term, if acquired by succession;
- the landlord has not in your locality for more than a year, your own or rented house that satisfies the needs of your own home or of your first-degree relatives or descendants.

It is due to the tenant, by the vacancy of the building for housing of the landlord, an indemnity corresponding to six months of rent at the date of the eviction.

The termination of the contract to increase the number of rentable spaces is subject to special legislation.

In rentals for commerce or industry if the lease terminates due to the landlord's denunciation, the tenant is entitled to a cash compensation, whenever the building has increased in rental value. The amount of compensation is set by the court according to fairness judgments but may not exceed twice the annual rent.

6.9 Sale of leased property: pre-emption right

The tenant of an urban building or its unit, whether it is a lease of indefinite duration or a lease with a certain term, has a pre-emption right:

- in the purchase and sale or in payment in kind of the leased building for more than three years;
- in the execution of a new lease, in case of expiration of his contract. In this case the right exists until the restitution of the building under the terms of article 1053 of the Civil Code is not required.

The tenant's pre-emption right is graduated immediately above the right of pre-emption right granted to the landowner by article 1535 of the Civil Code.

The tenant is covered by a special provision of the law and the lease will not end following the elapse of its contractual term and the tenant will be entitled to automatic renewals. An exception to this rule pursuant to the Lease Law occurs when parties expressly address in the lease the:

- break option of the landlord; and
- a contract term of more than five years.

Provided the two mentioned conditions are met, the landlord can terminate the lease and, in such case, the tenant has to leave the premises upon elapse of the contract. Additionally, if the tenant is a natural person, in the event the tenant dies, the commercial lease does not expire. The tenant's heirs have the right to the transfer of the lease, within 180 days after the tenant's death. If the heirs do not wish the transfer of the leased, they must waive it by written notice to the landlord, within 30 days of the tenant's death.

7. Tax

7.1 Transfer taxes

The purchase of a real estate in Angola is subject to transfer tax (Sisa) as well as stamp duty.

The purchase of real estate is subject to Sisa at a rate of 2% (levied on the acquisition amount when equal to or higher than the value registered in the land register). Additionally, it is also subject to stamp duty at a rate of 0.3% (levied on the acquisition amount).

Stamp duty is also due for the execution of a sale and purchase deed at a fixed amount of AOA2,000.

The first transfer of a property (as long as the price is below a certain threshold) may be exempt from Sisa as long as the property is exclusively for personal and permanent residence purposes.

Long-term leases (exceeding 20 years) also trigger the payment of Sisa, as well as the execution of a promissory sale and purchase agreement, which includes the transfer of use.

The purchaser is responsible for the payment of the Sisa and stamp duty.

Typically, share deals do not trigger the payment of Sisa. However, in the event that the purchaser ends up holding more than 50% of a company holding real estate and does not prove that the main purpose of the operation is not the acquisition of the immovable properties, then Sisa is due.

7.2 Value added tax

Currently, there is no VAT in Angola (VAT is expected to be introduced in Angola in July 2019). No consumption taxes apply to purchases of real estate.

7.3 Other real estate taxes

IPU (PROPERTY TAX)

When the property is not leased, real estate owners are subject to property tax (IPU) according to the following rates:

PROPERTY VALUE	RATE
Up to AOA5 million	0%
Above AOA5 million (levied on the excess of AOA5 million)	0.5%

7.4 Taxation of rental income from real estate

IPU (PROPERTY TAX)

The income arising from a property lease (rents) is not subject to corporate or personal income tax. Rents are subject to property tax (IPU). Property tax is levied on the income from properties (i.e. rental income) situated in Angola at a rate of 25% (tax payable may not be lower than 1% of the value of the property that generates the rent).

The taxable amount of the property tax, regarding leased properties, is the annual rent minus 40% of expenses related to the property. The property tax code foresees the following expenses: technical assistance with lifts, janitor and cleaning staff salaries, stair lighting, central air conditioning, building administration (when the number of unit owners is not less than ten) and building insurance.

When the tenant is an entity or a person with organized accounting, the property tax is subject to withholding tax at the rate of 15%. The tenant has the obligation to deliver the amount of this retention to the tax authority.

The property tax is not deductible for corporate income tax purposes.

Rents received by collective investment undertakings are taxable under the corporate income tax at a rate of 7.5% or 15%, depending on the nature of the CIU.

7.5 Taxation of dividends from a company owning real estate

The distribution of dividends to shareholders is subject to the investment income tax where one or more of the following conditions are met:

- when the income is paid by a person or entity with residence in Angola;
- when the income is paid through a permanent establishment in Angola;
- when the beneficiary of the income is an Angolan resident; or
- when the income is distributed to a permanent establishment in Angola.

Payment of dividends is subject to withholding tax at a rate of 10%. If the company which pays dividends is a foreign resident without permanent establishment in Angola, the beneficiary will be responsible for the tax payment.

If dividends are paid regarding shares admitted to negotiation in a regulated market, a reduced tax rate of 5% is applied (this reduced rate is only applicable until November 2019).

Dividends distributed by a resident company to another resident company in respect of a minimum participation of 25% held for more than one year are exempt from withholding tax.

The investment income tax is not deductible for corporate income tax purposes.

Dividends received by collective investment undertakings are taxable under the corporate income tax at a rate of 7.5% or 15%, depending on the nature of the CIU.

7.6 Taxation of capital gains on real estate

Real estate held by companies: capital gains obtained by resident companies or by permanent establishments in Angola are included in their taxable income and subject to corporate income tax at a standard flat rate of 30%.

Real estate held by collective investment undertakings: capital gains obtained by collective investment undertakings in Angola are included in their taxable income and subject to corporate income tax at a rate of 7.5% or 15%, depending on the nature of the CIU.

7.7 Taxation of capital gains from the disposal of shares in a company owning real estate

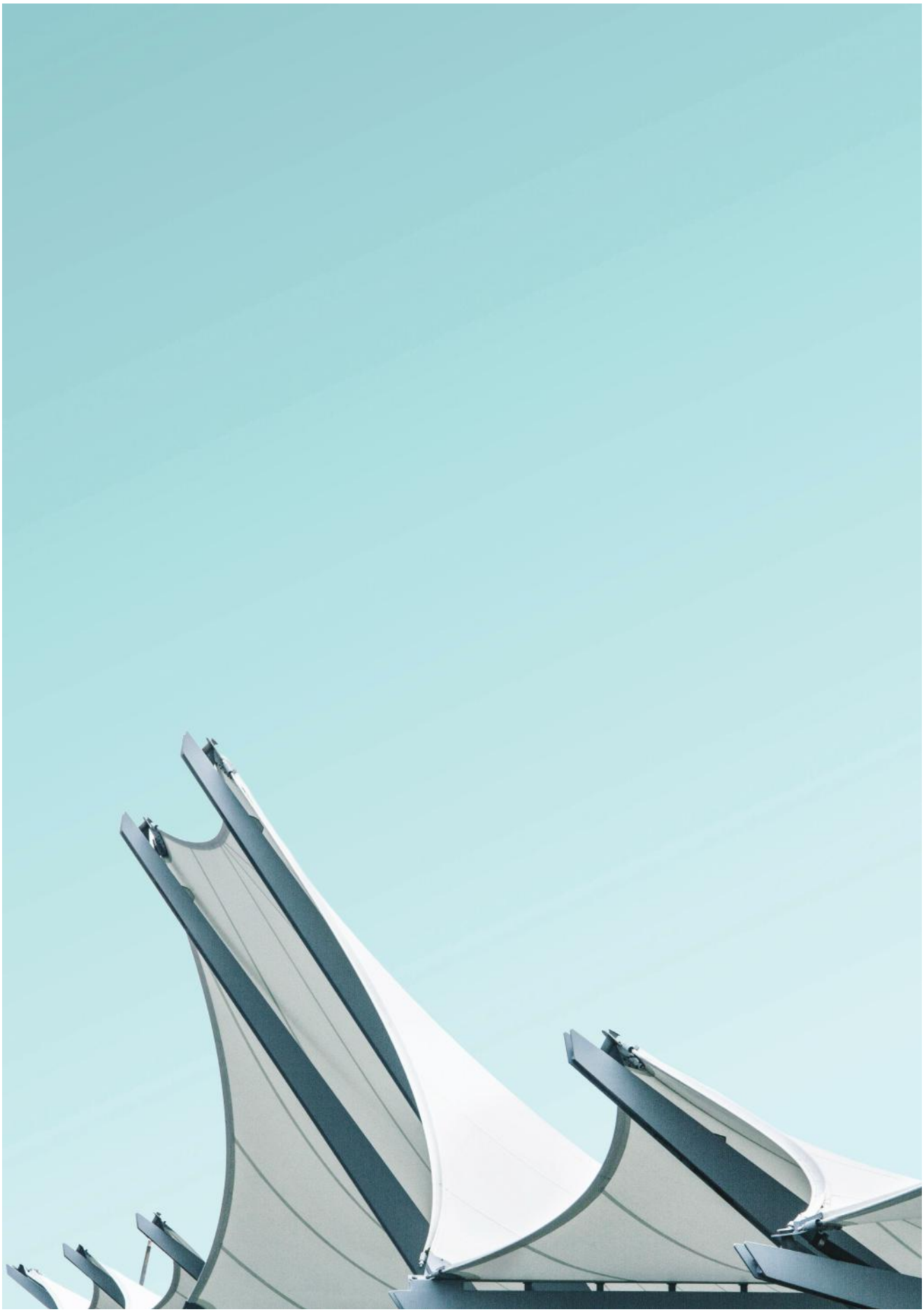
Real estate held by companies: capital gains obtained by resident companies or by permanent establishments in Angola are included in their taxable income and subject to corporate income tax at a standard flat rate of 30%.

Real estate held by collective investment undertakings: capital gains obtained by collective investment undertakings in Angola are included in their taxable income and subject to corporate income tax at a rate of 7.5% or 15%, depending on the nature of the CIU.

Real estate held by persons: capital gains obtained by persons and originated from the disposal of shares are subject to investment income tax at a rate of 10%.

7.8 Real estate investment trusts

The concept of trust is not recognized under the laws of Angola.



8. Real estate finance

8.1 Assets held as security

The landlord may demand in the contract that the tenant provides guarantees, the most common being the following:

- personal responsibility by a third party;
- a security deposit for an agreed amount usually equal to six to twelve monthly rents (that the landlord is only required to return after the termination of the lease); and
- independent first demand bank guarantee.

Real estate includes the land, buildings erected on it and fixtures which form part of those buildings.

It is also possible to take security over fittings, furniture and moveable objects.

The most common form of security over real estate is the mortgage. Due to the existing restrictions to foreign ownership of real estate, foreign investors are granted surface rights over real estate. Security over these rights can be created but it requires the prior authorization of the grantor. The creation of security over immovable assets, related rights or movable assets subject to registration is created through mortgage. The mortgage must be executed by public deed and is subject to registration in the Land Register Office.

It is not common for secured debt to be traded between lenders in the Angolan market.

There are no restrictions on granting security to foreign lenders. However, as mentioned above, there are restrictions to foreign ownership of real estate, being the granting of surface rights the most common way for foreign to own title over property. According to the relevant Angolan law, it is possible to execute a mortgage deed having as security a surface right.

Mandatory formal requirements under Angolan law, including registry with the relevant Land Registry Office, must be satisfied in relation to a security document for it to be valid and enforceable. A creditor holding a non-registered security, such as a mortgage, against an insolvent debtor will be treated as an ordinary unsecured creditor.

The Foreign Exchange Law governs commercial and financial transactions having an actual or potential impact on the balance of payments of Angola, and applies to capital transactions and foreign exchange trading. The following are deemed the most important foreign exchange (FX) operations:

- purchase or sale of foreign currency;
- opening and operation of foreign currency accounts in Angola by FX or non-FX residents;
- opening and operation of local currency accounts in Angola by non-FX residents; or
- settlement of any transaction relating to goods, invisible items of trade (e.g. services) or capital.

Payments between FX residents and non-FX residents are subject to BNA's control.

Lenders and borrowers do not have the right to postpone an existing secured debt due to a newly created debt.

Under Angolan environmental law, a lender holding or enforcing security over real estate in its country has no liability if the lender did not cause any pollution or environmental damage to the property, does not hold possession of the real estate and does not manage the asset. Consequently, the holder of security cannot and could not control or prevent the material cause of any damage or environmental breach.

A holder of security over land is not liable for environmental damage provided it does not take possession of the land and does not itself cause, or knowingly permit, damage to the environment.

The enforcement of mortgages consists of the sale of the asset through court proceedings and the state has the right of preference. The sale of pledges may be conducted judicially or extrajudicially.

The enforcement of securities may involve additional red tape and enforcement proceedings usually take many years and out-of-court remedies are not common practice.

Under the Civil Procedure Code (CPC), the board of directors may file for bankruptcy before the company ceases all payments to creditors or in the ten days following this event. If the filing is performed in a timely manner, the CPC allows the insolvent company to propose an agreement to the creditors in order to achieve the restructuring of its

debts and to avoid the declaration of bankruptcy. This agreement must be approved by creditors representing 75% of the credits. However, it is not common to do this in Angola.

Regarding the order in which creditors are paid on a debtor's insolvency, and if more than one creditor holds the same security interest over the same real estate asset that situation will be solved by follows:

- The Angolan Civil Code sets forth that some credits are paid with preference over others. There are two types of preferential credits: movable; and real estate.
- Preferential movable credits may be general, if they cover the value of all movables (e.g. credits emerging from an employment contract) or special, if they only cover the value of certain assets (e.g. state credits from taxes levied over donations). Preferential real estate credits are always special (e.g. state or local authority credits from taxes levied over real estate property). General preferential movable credits do not prevail over a third-party guarantee. Between a special preferential movable credit and a third party's right, the oldest credit prevails. Preferential real estate credits always prevail over a third party's rights to real estate property. When assets secured by a real guarantee are liquidated, creditors are paid immediately. However, if there is a conflict between said credit and a preferential real estate credit or an older special preferential movable credit, the latter prevails.

8.2 Further collateral agreements

The most common form of security over receivables is a pledge of credits, which is created by a written agreement. The pledge of receivables is subject to the notification of the respective debtor. Thus, it is also possible for security to be granted over the rental income from a property. This usually takes the form of an assignment whereby the tenants are directed to pay the rental income to the lender so that the rental income does not pass through the hands of the borrower.

In Angola, a company is not allowed to finance another company or to provide its assets, such as real estate, as a guarantee, unless it has a direct interest in the transaction or in cases where the debtor is part of the same group of companies.

The law also provides for the prohibition of financial assistance, which means that a company cannot grant loans or create any type of security over its assets to or in favor of third-parties to finance or pay for the subscription or acquisition of shares in its share capital.

8.3 Taxation on the creation of security

There may be notary fees and land registry fees, plus stamp duty, save if the creation of security is deemed ancillary to a financing transaction, as same is already subject to stamp duty.

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This guide was written predominantly by Catarina Neto Fernandes.
This guide was prepared in March 2019. Subsequent changes in law are therefore not taken into account.

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