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Angola

PRIVATE EQUITY

Contributing firm

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This country-specific Q&A provides an overview of private equity laws and regulations applicable in Angola.

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ANGOLA
PRIVATE EQUITY

1. What proportion of transactions have involved a financial sponsor as a buyer or seller in the jurisdiction over the last 24 months?

There is no official data available, however, the M&A market in Angola is largely dominated by private entities and only a small proportion of transactions have involved financial sponsors in the last 24 months.

2. What are the main differences in M&A transaction terms between acquiring a business from a trade seller and financial sponsor backed company in your jurisdiction?

Usually, financial sponsors prefer a speedy transaction allowing them to reinvest the results of a prior investment quickly which generally means the absence of earn-out clauses, a shorter interim period between signing of the SPA and completion of the transaction.

Also, it is common for just standard representations and warranties to be given by financial sponsors.

It is important to note that the majority of M&A transactions in Angola are intermediated by Banks and involve private limited liability companies (*sociedades por quotas – Lda.*) as most of the operating companies in Angola are private limited liability companies and that the transactions involve the acquisition of share capital, not equity.

3. On an acquisition of shares, what is the process for effecting the transfer of the shares and are transfer taxes payable?

The share transfer requirements depend on the type of company, the way in which the shares are represented and their type:

For public limited liability companies (*sociedades anónimas – S.A.*): (i) book entry shares are transferred by registering the acquisition in the Buyer's account; (ii) bearer shares are transferred by the delivery of the relevant share certificates to the Buyer or to the custodian appointed by the Buyer; (iii) nominative shares are transferred by a transfer declaration written on the share certificate, in favour of the Buyer, followed by registration of the transfer in the share registry book.

For private limited liability companies (*sociedades por quotas – Lda.*): shares (*quotas*) are transferred by the execution of share purchase agreement (SPA) which should be concluded by means of a public deed, followed by registration of the transfer before the Angolan Companies Registry Office.

Tax Law does not provide for tax being levied the transfer of shares. However, the Seller may be required to pay capital gains taxes on difference between the acquisition price and the sale price of the shares.

4. How do financial sponsors provide comfort to sellers where the purchasing entity is a special purpose vehicle?

In case the purchasing entity is a special purpose vehicle, an option which is quite common in Angola for financial sponsors, usually a loan agreement will be entered into by the special purpose vehicle and a bank in Angola for the purpose of receiving funds to acquire the target company in the national currency (*kwanzas*). The parent company (usually a foreign entity) will then provide a guarantee to secure the repayment of this loan agreement directly with the corresponding bank outside Angola.

Also, a commitment letter by which the financial sponsor commits to the special purpose vehicle that it will invest funds in it at the closing of the transaction for the purpose of acquiring the target company may be provided to the sellers.

Additionally, the shareholders and directors of the special purpose vehicle may provide the sellers with corporate control mechanisms of the special purpose vehicle (by means of an irrevocable PoA granting ownership and directorship powers to a certain individual) assuring the sellers that the special purpose vehicle is in fact controlled by the financial sponsor.

5. How prevalent is the use of locked box pricing mechanisms in your jurisdiction and in what circumstances are these ordinarily seen?

The use of the locked box mechanism in M&A transactions is still very uncommon in transactions concluded in Angola. This mechanism is usually used when there is a short period of time for the completion of the transaction and when the seller entity has more bargaining power.

6. What are the typical methods and constructs of how risk is allocated between a buyer and seller?

The typical methods of distributing risk between buyer and seller in M&A transactions in Angola are:

- Representations and warranties: meaning both parties make statements on existing facts and future facts which, if breached, will entail the other party being entitled to compensation. Representations and warranties are the most common method of risk distribution between the buyer and seller in M&A transactions in Angola;
- Covenants: the parties may opt to include covenants which limit the conduct of the parties forcing them to either take certain actions or abstain from taking certain actions during the period elapsing between signing of the SPA and closing of the transaction (*g.* for the protection of the buyer, the seller will continue to operate the business in the ordinary course and will not take any extraordinary actions without the prior written consent of the buyer) or after the closing (*v. g.* confidentially clauses in respect of the target company);
- Conditions precedent: in case of M&A transactions in which a period of time elapses between the execution of the SPA and the closing of the transaction, the parties may provide that certain conditions have to occur by the closing time in order for the transaction to be concluded (*g.* the seller must obtain necessary autorisations from third parties with whom the target company has entered into contracts);
- Price adjusting clauses: the parties may opt for the completion accounts mechanism in which the price will be determined at the time of closing taking into account the financial information of the target company at that time or may establish earn out clauses which allow for a price adjustment, after completion, based on different variables (*g.* if the target company reaches a certain number of sales, the buyer must pay an additional amount to the seller); and
- Material Adverse Change clauses ("MAC"): these type of clauses have become especially relevant due to the outbreak of the Covid – 19 pandemic as they allow the buyer not to conclude the acquisition after the SPA has been executed if certain material events occur which jeopardize the target company.

7. How prevalent is the use of W&I insurance in your transactions?

The use of W&I insurance in M&A transactions in Angola is currently very uncommon as there are few insurance companies offering this product and its cost is high.

8. How active have financial sponsors been in acquiring publicly listed companies and/or buying infrastructure assets?

Financial sponsors have not been active in acquiring publicly listed companies and/or buying infrastructure assets.

9. Outside of anti-trust and heavily regulated sectors, are there any foreign investment controls or other governmental consents which are typically required to be made by financial sponsors?

In the recent years, Angola has become more open to foreign investment as the new Private Investment Law, enacted in 2018, has reduced the formalities and legal requirements related to investment and legal entities' incorporation.

Most notably, the new legislation does not provide for a minimum investment amount.

Depending on the business area in which the targeted company operates, investors will have to establish contact with the Angolan Investment and Export Promotion Agency (AIPEX) and submit an investment proposal for the purpose of obtaining tax benefits for projects in the non-priority sectors automatically or submit an investment proposal for the purposes of registration of investment projects in the priority sectors in which case incentives will be granted automatically and will vary according to the development area of the country covered in the investment project.

10. How is the risk of merger clearance normally dealt with where a financial sponsor is the acquirer?

Under Angolan Law, merger clearance is only required in cases where certain market share and turnover thresholds are reached. The fact that the acquirer may be a financial sponsor does not alter the way in which the operation is conducted.

Usually, merger clearance is included in the SPA as a condition precedent to the completion of the transaction.

11. Have you seen an increase in the number of minority investments undertaken by financial sponsors and are they typically structured as equity investments with certain minority protections or as debt-like investments with rights to participate in the equity upside?

We have not seen an increase in the number of minority investments undertaken by financial sponsors. The investments undertaken by financial sponsors in Angola usually involve the acquisition of share capital, not equity.

12. How are management incentive schemes typically structured?

As previously mentioned, since most operating companies in Angola are private limited companies (*sociedades por quotas – Lda.*) which have a simpler structure, management incentive schemes do not typically entail free shares or stock option plans and usually include cash bonuses when predetermined commercial objectives are reached, the use of a company car, housing benefits or payment of the school fees for the children of employees and managers.

It is important to note that management incentive schemes typically only apply to expatriate managers or employees residing in Angola.

13. Are there any specific tax rules which commonly feature in the structuring of management's incentive schemes?

The taxable income of senior directors as well as employees includes all remunerations in cash or in kind, of a contractual or non-contractual nature, periodic or occasional, fixed or variable, regardless of provenance, location, currency or method provided for its calculation and payment.

This means that the management incentives mentioned in the previous answers will be considered part of the taxable income of the senior directors and employees and taxed as such.

Under Angolan Law, income derived from the performance of functions of members of corporate bodies of companies that have their registered office, effective management or permanent establishment in Angola will be considered and taxed as incomed obtained in Angola regardless of whether the member of the corporate body resides in Angola.

14. Are senior managers subject to non-competes and if so what is the general duration?

Senior managers (*i.e.* members of the Board of Directors) are, by Law, subject to non-competition for the duration of their appointment.

The Law does not provide for any time limit for non-competes applicable to management following the termination of their appointment.

However, the legally set limit applicable to non-competes for employees whose functions entail a special relationship of trust with the Employer or who were privy to sensitive information is 3 (three) years. Thus, this limit provides a useful guideline for non-competes applicable to management after their appointment has expired.

In addition, in order for non-competes to be lawful, they may only prohibit the practice of competing activities and a compensation must be provided.

15. How does a financial sponsor typically ensure it has control over material business decisions made by the portfolio

company and what are the typical documents used to regulate the governance of the portfolio company?

A financial sponsor will typically ensure control over material business decisions made by the portfolio by having the right to appoint members of the Board of Directors or by subjecting resolutions on certain strategic matters (*v. g.* such as acquisitions and disposals, changes the nature of the business, litigation) to the favorable vote of the financial sponsor.

The typical documents used to regulate the governance of the portfolio company are shareholders' agreements and the company articles of association.

16. Is it common to use management pooling vehicles where there are a large number of employee shareholders?

This is not a common practice in Angola as of yet.

17. What are the most commonly used debt finance capital structures across small, medium and large financings?

The most commonly used debt finance capital structures across small, medium and large capital financings are loan agreements or credit facility agreements entered into with financial institutions.

18. Is financial assistance legislation applicable to debt financing arrangements? If so, how is that normally dealt with?

There is no financial assistance legislation applicable to debt financing arrangements.

However, pursuant to the Angolan Companies Law, the legal limits which should be complied with for either distribution of dividends or assets to shareholders are:

- The minimum legal reserve cannot be distributed to the shareholders. A minimum of 5% of the net profits of each year of the company is destined for the legal reserve until it represents 30% of the share capital, for private limited liability companies, or 20% of the share capital, for public limited liability companies;
- Company assets cannot be distributed to the shareholders when the equity capital, including the year net income, as shown in the approved accounts, is inferior to the sum of the share capital and the reserves or becomes inferior to the sum as a result of the distribution;
- Dividends cannot be distributed to shareholders if they are necessary to cover accumulated losses or to form or reconstitute reserves required by law or by the articles of association;
- Dividends cannot be distributed to shareholders if the incorporation costs or research and development costs are not completely paid (amortized), unless the amount of free reserves and retained earnings is at least equal to those costs not paid; and
- Off-balance sheet reserves (or those not duly classified as such) cannot be used for distribution to shareholders.

19. For a typical financing, is there a standard form of credit agreement used which is then negotiated and typically how material is the level of negotiation?

Financial institutions will usually have their ready made standard credit contracts.

For small and medium companies, the level of negotiation is very low as they may only adhere to the contract.

However, for larger companies or larger transactions, the level of negotiation of the credit agreement's content will largely vary according to, for example, the borrower's history with the financial institutions, the guarantees provided, the amount at stake and the borrower's financial strength but it is common to be able to negotiate the terms of the agreement relating to interest rates and deadlines, for example.

20. What have been the key areas of negotiation between borrowers and lenders in the last two years?

The key areas of negotiation between borrowers and lenders have been the guarantees given by the borrower to cover the repayment of the principal and interests and the terms and conditions of such repayment, in particular, the penalties applicable in case of early repayments, penalties applicable in case of default and repayment deadlines.

21. Have you seen an increase or use of private equity credit funds as sources of debt capital?

The use of private equity credit funds is not common in Angola.

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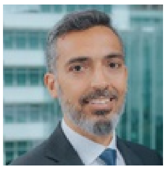

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