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UNDERSTANDING THE ANGOLAN FDI REGULATORY LANDSCAPE

ÂUREA MOUZINHO

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PROGRAMME HEAD Talitha Bertelsmann-Scott
talitha.bertelsmann-scott@saiia.org.za

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ABSTRACT

This paper explores the regulatory framework for foreign direct investment (FDI) in Angola, with the objective of broadening understanding of the barriers to foreign investment in the country. The regulatory environment in Angola is unpredictable, and foreign investors experience high levels of inefficiency in the execution of the various investment policies. As a result, and coupled with the lack of transport infrastructure, corruption and bureaucracy, Angola is viewed as one of the least hospitable places to do business. This has severely hindered foreign investment outside of the oil and mineral sectors. In the wake of the global downturn in oil prices, the Angolan government desperately needs foreign investment to promote diversification of the economy and broad-based development. In order to attract investors it needs to undertake serious institutional reforms to improve investors' perceptions of the country's business environment, particularly with respect to transparency, fiscal management and the rule of law.

ABOUT THE AUTHOR

Âurea Mouzinho is a consultant for the South African Institute of International Affairs (SAIIA) doing research on FDI regulation in selected countries in SADC. She holds a BSc in Economics from Monash University, and an Economics Honours degree (first class) from the University of Cape Town.

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ABBREVIATIONS AND ACRONYMS

ANIP	National Private Investment Agency
BIT	bilateral investment treaty
BNA	National Bank of Angola
CIFA	Cooperation and Investment Facilitation Agreement
FDI	foreign direct investment
GDP	gross domestic product
IIE	Foreign Investment Institute
MPLA	Movimento Popular de Libertaçao de Angola (Popular Movement for the Liberation of Angola)
OPEC	Organization of the Petroleum Exporting Countries
PIL	private investment law
UNITA	União Nacional para a Independência Total de Angola (National Union for the Total Independence of Angola)

INTRODUCTION

The current Angolan economic crisis, triggered by plummeting oil prices, provides a unique context for analysing the role of investment regulation in promoting foreign direct investment (FDI) into Angola. As the country tries to diversify its economy by attracting FDI to different sectors, away from oil, it becomes crucial to understand whether the current regulatory framework can provide the necessary guarantees and protections foreign investors require to venture outside of the mineral sector.

A secondary objective of this paper is to understand the extent to which SADC's regional investment policy influences the Angolan regulatory approach, and whether FDI contributes towards the general process of regional integration.

HISTORICAL OVERVIEW OF FDI REGULATION IN ANGOLA

Private investment in Angola has historically been regulated by domestic legislation based largely on an inherited Portuguese commercial code law system. Since independence in 1975 the country's legal framework has been revised extensively, primarily to eliminate the remnants of Portuguese colonialism but also to reflect the country's changing social, economic and political priorities.

The passing of Law No. 19/79 of 22 May 1979 marked the first attempt to regulate private investment in the country. This law hinged largely on the Marxist–Leninist inclinations of the governing party, the MPLA (Popular Movement for the Liberation of Angola), and was characterised by the excessive centralisation of investment decisions and strict regulation of foreign firms' activities and operations. The Angolan government defined annual production goals, for instance, and also regulated the recruitment and training of the local workforce. The law prohibited foreign investment in sectors such as banking and financial services, exports, education and health, defence, water and electricity, and the media. In other areas, only projects defined in the National Plan were authorised. These were in turn subject to an authorisation period of 120 days, a minimum 51% national ownership of joint ventures, strict repatriation protocols (25% a year), and limited legal recourse in investor–state disputes.[1]

The civil war that erupted immediately after independence also discouraged private investment. Not surprisingly, investment inflows throughout the 1970s were negligible, comprising only activities by firms that had been in Angola prior to independence and that had registered their investments with the National Bank of Angola (BNA) at independence, as required by law.

Despite its strong political allegiances with the Soviet Union and Eastern Europe after independence, during the 1980s Luanda started appealing to the West for technical expertise and economic assistance, which seemed crucial to the country's economic

1 UNCTAD (UN Conference on Trade and Development), 'The Legal Framework of Private Investment in the Republic of Angola'. New York: UNCTAD, 2010.

development. In recognition of the potential of foreign investment to aid in the national reconstruction process, a new law regulating foreign investment (Law No. 13/88) was approved on 16 July 1988. Two other pieces of domestic legislation were approved in support of this law: Resolution No. 6/89 of 24 June 1989, which defined priority areas for foreign investment, and Resolution No. 2/90 of 6 January 1990, which approved the establishment of a state organ responsible for evaluating foreign investment proposals.[2]

At least four important features distinguished Law No. 13/88 from its predecessor. Firstly, the new law allowed foreign capital to be invested in the prohibited sectors, conditional on approval by the cabinet. Secondly, it eliminated national ownership requirements. Thirdly, the law provided guarantees for the fair and equitable treatment of foreign investors, which included the relaxation of restrictions on capital transfers and repatriation of funds, as well as an assurance to fair indemnity in case of expropriation. Lastly, the law made a modest attempt at establishing a system of incentives and benefits, which were to be awarded at the discretion of the Ministry of Finance.

The end of the Cold War and collapse of the Soviet Union in 1991 caused major shifts in the world's political order, characterised by the expansion of democracy in a number of countries, including the then People's Republic of Angola. In the mid-1990s Luanda abandoned single-party rule and central planning in favour of political pluralism, and embarked on serious social and economic reforms directed at the establishment of a market-based economy. On 23 September 1994 the Angolan government passed a new foreign investment law, Law No. 15/94, which brought about an important re-structuring of investment regulation in Angola. Among the major changes was the creation of the Foreign Investment Institute (IIE) to focus on the promotion, approval and facilitation of foreign investment.

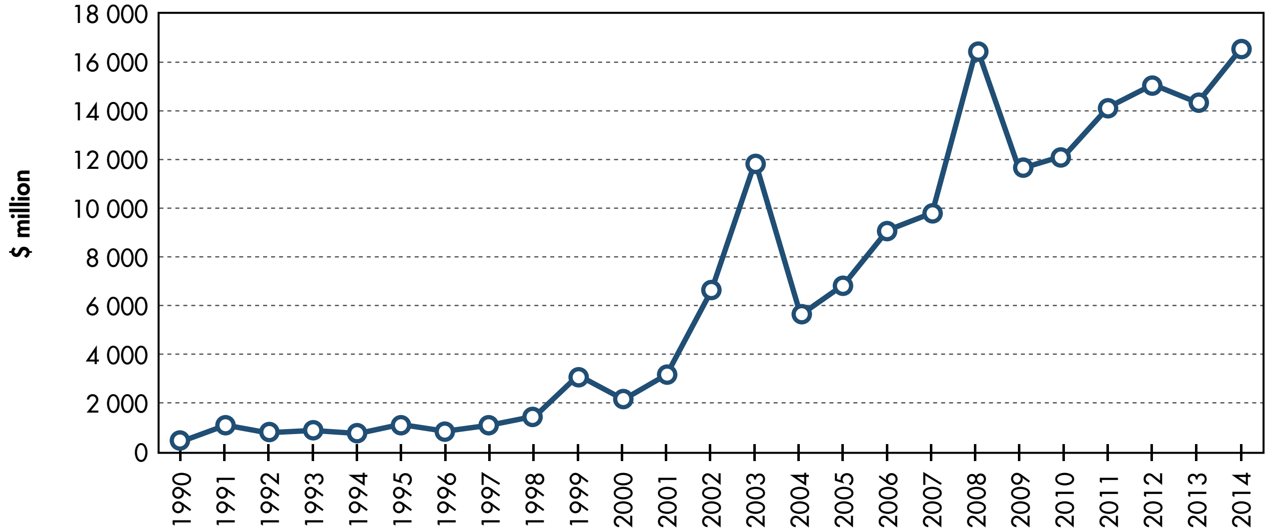
This law consolidated the guarantee of fair treatment of foreign investors and imported goods through less stringent repatriation requirements, and better assurances of fair and effective compensation in case of expropriation or nationalisation. The minimum investment value was set at $250,000, and three procedural regimes for the approval of investment values were established. Investments up to the value of $5 million were to be approved by the IIE within 45 days, those between $5 million and $50 million were to be reviewed by the prime minister or cabinet within 90 days, and those above $50 million were to be granted only by special concession.

Despite these regulatory improvements, investment inflows in the 1990s remained low (see Figure 1). This was largely due to the political and military instability fuelled by the civil war, as well as the use of excessive quantitative easing to finance the armed conflict and the recurring fiscal deficits. The resulting hyperinflation and the regular, sometimes

2 *Ibid.*

severe, depreciation of the Angolan national currency, the kwanza, further reduced the attractiveness of the Angolan economy for foreign investors.[3]

FIGURE 1 ANGOLAN FDI FLOWS, $ MILLION, JANUARY 1990–DECEMBER 2014



Source: BNA (Banco Nacional de Angola), 'Balança de Pagamento 1990–2014', 2015, http://www.bna.ao/Conteudos/Artigos/lista_artigos_medias.aspx?idc=309&idsc=621&idl=1, accessed 25 January 2016

By the late 1990s the war had de-escalated substantially. After the US and South Africa ended their support for UNITA (National Union for the Total Independence of Angola) in 1988, the power balance tipped increasingly in favour of the MPLA. The killing of UNITA's leader Jonas Savimbi by MPLA forces in 2002 led to the signing of the Luena peace accords, putting an end to 27 years of civil war that had destroyed most of the country's physical, economic and social infrastructure and left millions dead or internally displaced. In 2003 the country ranked at the bottom of the UN Development Programme's Human Development Index at 164th out of 175 countries, with more than half of the population being classified as extremely poor.[4]

3 Croese S, 'Country profile (Angola): Africa south of the Sahara 2016', in *Europa World Online*. London: Routledge, 2016, http://www.europaworld.com/pub/entry/ao, accessed 25 January 2016.

4 UNDP (UN Development Programme), 'Human Development Report'. New York: UNDP, 2004.

A new era of investment regulation

Faced with enormous development challenges at the end of the civil war, the Angolan government sought various alternatives to finance the national reconstruction process. Early efforts to secure financing from the International Monetary Fund were thwarted by an inability (or unwillingness) to improve budgetary transparency and accountability.[5] Oil revenues were a key alternative method to finance development. The combination of untapped oil reserves with high oil prices in the international market encouraged a rapid increase in domestic oil production, which became the financial backbone of the national development strategy.

FDI was an important part of the government's oil–for–development strategy. In the years that followed the end of the civil war, the government pursued a number of economic and legislative reforms aimed at improving the domestic investment climate. One significant action was the overhaul of the legislative framework for private sector activity in Angola thorough Law No. 11/03 of 11 May 2003, the first private investment law (PIL-1). This was a crucial turning point in the regulation of private investment, since up to that point foreign investment had been regulated separately from domestic investment. The PIL-1 effectively advanced the principle of non-discriminatory treatment of both foreign and national investors, which is at the core of contemporary Angolan private investment regulation. Specifically, it prohibited the nationalisation of private firms and maintained the previous guarantees of prompt, adequate and effective compensation.

Another encouraging initiate of the PIL-1 was the establishment of the National Private Investment Agency (ANIP). This government body was responsible for implementing, promoting and executing the national private investment policy, thus simplifying the bureaucratic processes associated with investing in Angola. The regulatory reforms were consolidated with the passing of Law No. 17/03 of 25 July 2003, which provided guidelines for awarding fiscal and customs benefits based on the value of the investment and its contribution to the social and economic development of the country. The PIL-1 defined the following priority areas for private investment: agriculture and livestock; industry (notably the production of packaging equipment, textiles, clothing and footwear; wood manufacturing; recycling; the production of foodstuffs; and information technology and communications), transport infrastructure; telecommunications; fishing and by-products; energy and water; social housing; health and education; and hospitality and tourism. Fiscal and customs incentives were awarded only to investments in these categories.

FDI inflows into Angola took off in the late 1990s and remained high throughout the 2000s (see Figure 1). The combined effects of political stability, a prudent monetary policy and the opening of new markets were among the key drivers for the rise. The new legal framework is also likely to have made an important contribution by reducing the minimum value of foreign investments to $100,000.

5 Human Rights Watch, 'Some Transparency, No Accountability: The Use of Oil Revenue in Angola and Its Impact on Human Rights'. New York: Human Rights Watch, 2004.

As a result of the improved FDI inflows and increased revenues from oil production and oil-backed loans, the Angolan economy boomed.[6] Between 2004 and 2008 the real growth rate of gross domestic product (GDP) averaged 16.2% per year.[7] This impressive economic performance saw the country move from being one of the world's poorest states to becoming sub-Saharan Africa's third-largest economy and second-largest oil producer.[8] The economic boom, however, tested the Angolan government's ability to plan, implement and manage the national development process. Despite the opportunities presented by the rapid GDP growth, a lack of oversight and efficient planning throughout the boom years resulted in a pronounced dependency on oil, which in 2014 accounted for an estimated 95% of exports, 80% of fiscal revenues and 46% of GDP.[9]

The global financial crisis of 2007 led to a decrease in global oil prices and the adoption of quota reductions by the Organization of the Petroleum Exporting Countries (OPEC). In Angola these trends were reflected in a slowdown in real GDP growth to 2.4%, as well as a rapid decline in FDI in 2009 (Figure 1). The volatility of these shocks provided further impetus for the implementation of better strategies and tools to foster economic diversification, although this became less of a priority with the recovery of the global economy and the improvement in Angolan FDI inflows observed in 2010.

In response the government approved Law No. 20/11, the second private investment law (PIL-2), in May 2011. Although the previous legislation had been successful at attracting large quantities of foreign investment into Angola, the government recognised a pressing challenge in improving the quality of these investments.[10] The PIL-2 was expected to address this problem by employing a combination of instruments, notably increasing the minimum value of foreign investments and access to the right of repatriation to $1 million. With regard to the repatriation of capital, the PIL-2 imposed a minimum waiting period of two years following the effective implementation of the investment project, which varied depending on the location and value of the investment. In a controversial move, the PIL-2 retracted the investor's right to non-nationalisation, although it continued to provide the same guarantees for compensation in case of expropriation or nationalisation. In essence, this revision of the PIL-2 tightened the private investment regulation policy with the objective of triggering a substantial change in the types of investments and investors attracted to the Angolan market.

FDI inflows did not drop following the implementation of the PIL-2, and stayed relatively unchanged. In the face of the continuous fall in global oil prices after June 2014 and a contemporaneous slowdown in domestic oil production, the Angolan government has made significant adjustments to its investment promotion strategy. In August 2015 the National Assembly approved a new private investment law, Law No. 14/15 of 11

6 *Ibid.*

7 AfDB (African Development Bank), 'Angola Economic Outlook'. Addis Ababa: AfDB, 2014.

8 *Ibid.*

9 *Ibid.*

10 Interview with Rui Gorge Abrantes, ANIP (National Private Investment Agency) Marketing Director, Luanda, 6 August 2015.

August 2015 (PIL-3), which sought to de-bureaucratise procedures for the approval of investments and adapt the fiscal and customs incentive and benefit system to the country's economy, making it more attractive to national and foreign investors.

The government's intention in formulating the new policy was to ensure that private investment would be promoted in line with the following social and economic objectives: stimulating economic growth, favouring the creation of new jobs for Angolans, increasing the skill level of the Angolan workforce, decreasing regional and sectorial inequalities, promoting an efficient supply of goods and services for the domestic market, increasing exports and reducing imports, among others. What follows is a summary of the key changes introduced by the PIL-3, and a discussion on how these may affect the attractiveness of the Angolan economy to foreign investors in light of the country's current economic, social and political dynamics.

THE NEW PRIVATE INVESTMENT LAW

Unlike the repealed PIL-2, the PIL-3 applies to foreign investments of any value, effectively eliminating the minimum requirement for external private investment.[11] This means that authorisation to invest is required for all foreign persons or companies, irrespective of the value of their investment. However, an investment of $1 million continues to be the minimum requirement for the right to repatriate profits and dividends, as well as for eligibility for fiscal benefits and incentives.

Similar to the previous versions of the PIL, the PIL-3 does not apply to investments in the petroleum, mining and banking industries, which are regulated by separate sector-specific statutes. In addition to these sectors, a special legal regime may be enacted for investments in agriculture, livestock, forestry and fisheries. This, the PIL-3 argues, can be used as an instrument to protect the interests of Angolan entrepreneurs in those sectors.

With regard to the repatriation of dividends and profits, the investor will be liable to a supplemental investment tax on the share of the repatriation amount exceeding the company's participating interest in shareholder equity. However, this surtax is not applicable if the dividends and profits are reinvested in the country.

The granting of fiscal benefits and incentives under the PIL-3 is no longer automatic and is instead based on specific criteria, including that the tax reduction applicable to each investment depends on the value, location and sector of investment; its contribution to the creation of national jobs, local value added and exports; and the extent of Angolan shareholding (see Table 1).

Among other relevant reforms, the PIL-3 introduces the concept of a national or foreign company. A company is considered 'Angolan' if it has registered offices in Angolan territory and if 51% or more of its share capital is held by Angolan citizens. A 'foreign company'

11 The PIL-3 still imposes a minimum value of AKZ 50 million (approximately $50,000) for private Angolan investors.

is any company that does not meet these requirements. Additionally, the PIL-3 institutes compulsory partnership requirements with Angolan citizens, public enterprises or private companies for investment in the following sectors: power and water, hospitality and tourism, transport and logistics, civil construction, telecommunications and information technologies, and mass media. Notably, the Angolan partner/s must hold at least a 35% share of capital and take effective part in the management of the company as provided for in the shareholders' agreement.

TABLE 1 ANGOLAN FISCAL BENEFIT SCHEME AS PER THE PIL-3

Creation of national jobs	Up to 50 jobs 5.00%	>50 jobs <100 jobs 7.50%	>100 jobs <500 jobs 10.00%	>500 jobs 12.50%
Investment amount in kwanza equivalent	>$500,000 <$5 million 5.00%	>$5 million <$20 million 7.50%	>$30 million <$50 million 10.00%	>$50 million 12.50%
Investment location	Zone A 7.50%		Zone B 15.00%	
Agricultural, livestock, forestry and fisheries production, and respective agro-industries and related activities	Zone A 7.50%		Zone B 15.00%	
Production for exportation	Up to 25% 7.50%	>25% and <50% 10.00%	>50% and <75% 12.50%	75% 15.00%
Equity held by Angolans	>10% and <20% 7.50%	>20% and <35% 10.00%	>35% and <45% 12.50%	>45% and <50% 15.00%
National added value	Up to 25% 7.50%	>25% and <50% 10.00%	>50% and <75% 12.50%	75% 15.00%

Source: Adapted from Angolan Private Investment Law, Law No. 14/15 of 11 August 2015

Under the PIL-3, the decisions regarding the negotiation, approval and management of investors are taken by the government ministers responsible for the main sector in which the investment is made or by the Angolan executive (ie, the president of the republic). As such, ANIP ceases to exist and responsibility for the promotion of private investment has been reallocated to the newly founded Angolan Investment and Export Promotion Agency.[12]

12 *Macau Hub*, 'Angola has new agency to promote investment', 5 October 2015, http://www.macauhub.com.mo/en/2015/10/05/angola-has-new-agency-to-promote-investment-and-exports/, accessed 26 January 2016.

Following the approval of the new law, the government made provisions for the creation of special ministerial departments and provincial government units to support and monitor the investment process. In the short term, investors are likely to experience some delays in the investment authorisation process as these units build the required capacity and infrastructure needed to support the various stages of the investment process. Whether or not the special ministerial departments will effectively help to reduce bureaucracy and red tape in the investment process will, in the long term, depend on the government's ability to co-ordinate the activities and monitor the performances of the various bodies.

While the reforms introduced by the PIL-3 make valuable contributions towards simplifying and clarifying the Angolan investment regulation regime, their impact on investor confidence is likely to be limited given the country's challenging business environment and weak institutional capacity.

Outside of the PIL's framework, Luanda has standing bilateral investment treaties (BITs) with Portugal, South Africa, the UK, Italy, Russia, Spain, Germany and Cape Verde, although only half of these are in force (Cape Verde, Germany, Italy and Russia). These bilateral agreements and deals provide guarantees for treatment that are enforceable through investor–to–state dispute settlement, thus affording investors some insulation from the political and legal risks associated with investing in Angola. There is compelling evidence that in unpredictable political environments, like the ones in many developing country environments, BITs are more effective in attracting FDI inflows than the domestic investment framework alone.[13]

Luanda has hardly been known for succumbing to international or regional pressure. At a time when two of its regional partners (South Africa and Namibia) are calling off their BITs, Angola is unlikely to follow suit. Such a move would drive away investors while the country critically needs FDI to diversify the economy and smooth the effects of the ongoing economic crisis. That said, the government does not appear to be actively pursuing additional BITs either.

The controversial investor–state arbitration model of BITs has been criticised for imposing vast restrictions on state regulatory power, as foreign investors can – and often do – reach for the international dispute settlement mechanism to challenge any public policy regulation that may affect them.[14] This 'sovereignty–for–credibility' model is one that Angola, like other developing countries, will eventually seek to phase out, particularly as it seeks to even out the power balance in its strategic relationships. In April 2015 Luanda signed the Cooperation and Investment Facilitation Agreement (CIFA) with Brazil, a new model of bilateral agreement that seeks to incentivise reciprocal investment relationships through intergovernmental dialogue.[15] Unlike BITs, the CIFA does not provide for state–investor arbitration. Instead, it refers investment disputes to each country's domestic law,

13 Neumayer E, 'Do double taxation treaties increase foreign direct investment to developing countries?', *Journal of Development Studies*, 43, 8, 2007, pp. 1501–1519.

14 *Ibid*.

15 Based on field interviews conducted at the Brazilian Embassy, Luanda, August 2015.

thus establishing a more balanced basis for co-operation. Luanda is likely to seek more CIFA-like agreements in future, although their impact on FDI flows is uncertain since they do not offer any of the investment protections guaranteed under BITs. If Angola is to reap any rewards from its investment regulatory framework and its strategic investment agreements (be they CIFAs or BITs) it will have to work on improving the credibility of its institutions and the rule of law.

BARRIERS TO AND CHALLENGES FOR FDI INTO ANGOLA

According to the World Bank, Angola remains one of the most difficult places to do business in the world, ranking 181 out of 189 countries in the 2016 Doing Business Report.[16] Among others, the country's poor institutional quality is an important barrier to private activity. In the World Economic Forum's 2014–2015 Global Competitiveness Report, Angola scored 143 out of 144, performing substantially below the regional average for sub-Saharan Africa.[17]

TABLE 2 WORLD BANK 2016 DOING BUSINESS REPORT: ANGOLA

Area	Rank/189 countries	Sub-Saharan average/189 countries
Starting a business	141	128
Dealing with construction permits	108	130
Getting electricity	166	149
Registering property	169	132
Getting credit	181	118
Protecting minority investors	66	125
Paying taxes	141	131
Trading across borders	181	136
Enforcing contracts	185	132
Resolving insolvency	189	128
Overall	181	143

Source: World Bank, 'Doing Business 2016: Measuring Regulatory Quality and Efficiency'. Washington DC: World Bank, 2016

Investors going into Angola face a number of risks associated with the possible nationalisation of assets, a largely underdeveloped (and hence frequently changing)

16 World Bank, 'Doing Business 2016: Measuring Regulatory Quality and Efficiency'. Washington DC: World Bank, 2016.

17 WEF (World Economic Forum), 'The Global Competitiveness Report 2014–2015'. Geneva: WEF, 2014.

regulatory framework, and a lack of judicial independence. In addition, rampant corruption at various levels of the status apparatus makes it costly to establish operations, as investors are often tempted to pay bribes in order to expedite various business processes. Nevertheless, the Angolan government has made notable efforts to enhance transparency and curb corruption,[18] although improvements have been minimal due to the lack of accountability and poor enforcement of the rule of law.

Decrees and regulations issued by government ministries can, and often do, take precedence over legislation, creating a constant threat that present or future laws might erode or negate investment protections offered by the PIL. In January 2015, for example, the Angolan Ministry of Commerce announced a decree revoking import licences for goods where domestic supply provides more than 60% of national requirements, effective immediately.[19] The decree imposed quotas in eight product categories, including beverages, poultry and non-food items such as cement and bricks. Although the decree was in line with the government's attempts to promote local industry and speed up economic diversification, its unexpected and pervasive nature (it applied to goods that had already left the port of origin at the time the decree was issued) threatened to significantly harm foreign investors. There was a widespread backlash, eventually leading to an indefinite suspension of its implementation just over three weeks after it was first passed.[20] Such legal uncertainty is, unfortunately, commonplace in the Angolan judicial system. This compromises investors' ability to effect strategic planning and leads to higher transaction costs.

Private sector activity is also discouraged by high transaction costs. Launching a business typically requires 36 business days,[21] although in some instances obtaining all the necessary permits and business licences can take as long as two years.[22] Other key constraints include the poor transport network, inadequate infrastructure and unreliable electricity supply.

A shortage of qualified local staff is also an important challenge for investors. Coupled with strict immigration laws, this requires massive investments in on-the-job training and capacity building of local employees, thus driving up employment costs. This is particularly true for Angola's non-oil sectors, which have received disproportionally lower funds to invest in training and capacity building.

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18 Efforts to improve fiscal and budgetary efficiency include, for example: (i) introducing an online budget-tracking system, (ii) publishing annual audits of the BNA and Sonangol (the state's oil company), (iii) disseminating quarterly reports on budget execution, and (iv) enacting a new law limiting payments for public service contracts to 15% of the contract value, or 30% with prior approval of the Ministry of Finance. With respect to corruption, two important laws were passed in 2010. The first defines and establishes penalties for money laundering and the second establishes criminal penalties for using public goods for private gains, and accepting bribes. It also defines conflicts of interest and disclosure regulations.

19 Ministério do Comércio, Decreto Executivo no. 22/15 de 23 de Janeiro de 2015.

20 *Público*, 'Restrições às importações em Angola suspensas "provisoriamente"', 25 March 2015, https://www.publico.pt/economia/noticia/restricoes-as-importacoes-em-angola-suspensas-provisoriamente-1690218, accessed 26 January 2016.

21 World Bank, *op. cit*.

22 *Ibid*.

Foreign investors willing to venture into Angola need to take all of the above factors into account, as they substantially increase the cost of producing products locally. At the same time, importing into Angola is a costly, time-consuming and cumbersome process. In terms of actual costs and time taken to clear goods through customs, the country falls significantly behind the average for sub-Saharan Africa.[23]

Despite these challenges, Angola's large domestic market with a population of 24 million presents significant opportunities for investors who are prepared to go several years without making much, if any, profit. Not surprisingly, most of the FDI into Angola comes from big companies and major brands, particularly in sectors where it is possible to establish a long-term competitive advantage through either market share or public–private partnerships.

Table 3 shows that between 2003 and 2015 most of the FDI into Angola was observed in the extractive sector (87.27%), and that the financial services sector received the largest share of FDI projects (54.4%). This concentration in the extractive industries poses particularly difficult challenges for the achievement of broad-based development, since the extractive industries are capital intensive and translate into few employment opportunities. The challenge for the Angolan government is therefore to create conditions to attract FDI into other sectors.

TABLE 3 TOP 10 ANGOLAN SECTORS RECEIVING FDI, BY CAPEX FLOW, JANUARY 2003–MAY 2015

Industry sector	Capex* ($ million)	Share of capex (%)	Number of projects	Share of projects (%)
Coal, oil & natural gas	65575.80	87.27	32	13.5
Real estate	4137.72	5.51	2	0.8
Financial services	1241.90	1.65	129	54.4
Building & construction materials	1197.00	1.59	11	4.6
Beverages	841.20	1.12	20	8.4
Communications	559.01	0.74	13	5.5
Business services	220.40	0.29	4	1.7
Metals	487.77	0.65	8	3.4
Hotels & tourism	477.20	0.64	6	2.5
Food & tobacco	401.30	0.53	12	5.1

Notes * Capital expenditure
Capex and job figures include estimated values

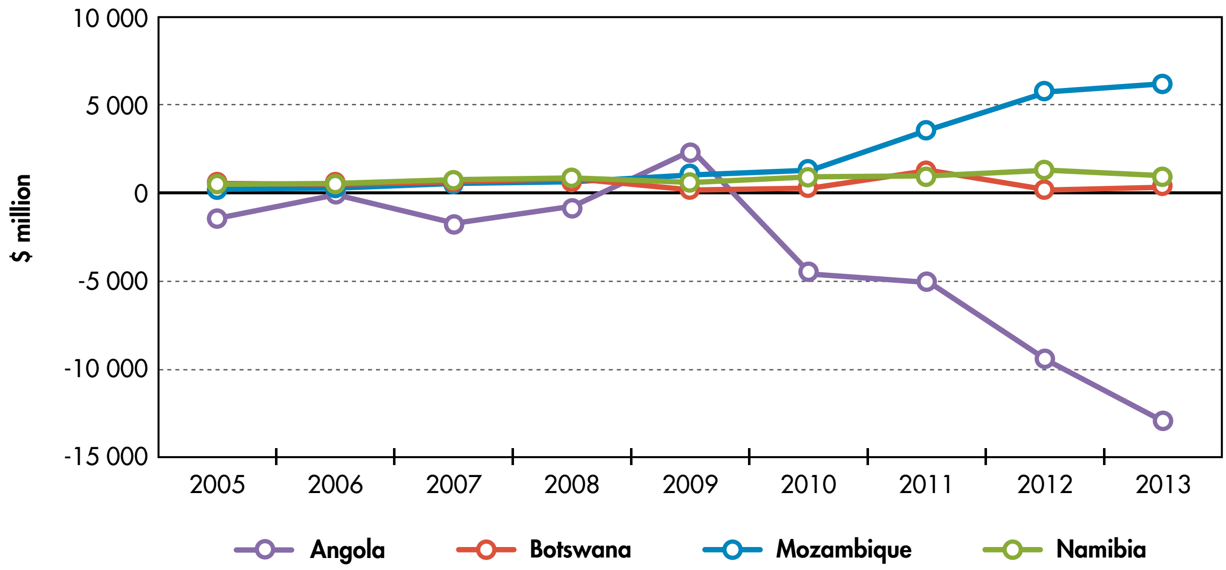
Source: Bezuidenhout H, own calculations derived from fDi Intelligence, Financial Times Ltd., 2015

23 *Ibid.*

A peculiar aspect of the Angolan FDI trends is that, since the end of the war, net FDI flows have remained almost solidly negative, with the level of capital divestment growing at a much faster rate than the level of foreign capital expenditure in the country. For an economy seeking to attract more FDI, this trend is concerning, especially taking into consideration that other benchmark economies in the region show a reverse trajectory (see Figure 2).

This largely defies the economic logic that developing countries should be net capital importers, which is observed in a number of other countries in SADC, as shown in Figure 2.

FIGURE 2 NET FDI FLOWS BY COUNTRY IN $ MILLION, JANUARY 2005–DECEMBER 2013



Source: World Bank, *World Development Indicators*, 2015

The Angolan government will need to address the excessive level of FDI divestment observed in the country. With the sharp decline in global crude oil prices since June 2014 (nearly 60%), and an unscheduled slowdown in production caused by poor maintenance and dwindling reserves, the economy has been severely hit. Luanda cut its 2015 budget by some 25%, leading to significant cutbacks in public investment, the rapid depreciation of the national currency and higher inflation.[24] With GDP expected to grow by as little

24 *Global Risk Insights*, 'Angola enjoys post-war FDI boom', 23 July 2015, http://globalrisk insights.com/2015/07/angola-enjoys-post-war-fdi-boom/, accessed 26 January 2016.

as 3.8% in 2015,[25] the lowest rate in the last decade, the country could see its fortunes change drastically. Social tensions have escalated under these austerity conditions, as it becomes increasingly clear to many Angolans that the problems facing the country are structural and have been furthered by the severe mismanagement of oil funds, lack of political transparency and widespread corruption.

Although these factors did not initially startle foreign investors – most of whom are well acquainted with the complex yet lucrative nature of the Angolan business environment – the situation took a turn for the worse when the tight foreign exchange controls made it virtually impossible to export US dollars, limiting investors' ability to fulfil overseas financial commitments and remit dividends home. Since the beginning of the year the BNA has significantly delayed the approval of outbound dollar-based transfers, in some instances taking as long as six months without giving investors any guarantee of success.[26] With the rations likely to continue until oil sales are back on track, some investors have attempted to hedge their bets by purchasing assets with their abundant kwanzas, while others have halted activities in Angola altogether pending the improved stability of the kwanza.[27]

In the current economic context, there are strong reasons to believe that the PIL, in and of itself, is unlikely to result in improved FDI flows. As a mere regulatory tool, the PIL is unable to solve the structural, political and institutional inefficiencies that put Angola among the least friendly destinations to do business.

ANGOLAN FDI REGULATION AND REGIONAL INTEGRATION

Angola has for long held the reputation as being the 'spoiler country' in matters of regional integration within SADC. Although the Angolan government has demonstrated clear and continuous interest in the political and military agenda of the region, it has largely shied away from a number of commitments to the regional economic agenda, as evidenced by its failure to enter the SADC Free Trade Area despite having ratified the SADC Protocol on Trade in 2003.[28] It is therefore not surprising that Luanda has developed its investment regulation framework in isolation from SADC's Financial and Trade Protocol (FTP). The government has made it clear on several occasions that it believes Angola's gains from further integration in the region are questionable in the light of South Africa's competitive advantages in sectors that are still in their infancy in Angola.[29] Regional integration is therefore not a priority on Luanda's development agenda. This raises a number of

25 AfDB, *op. cit*.

26 Based on field interviews conducted with an anonymous investor in the Angolan logistics sector, Cape Town, 19 November 2015.

27 *Ibid*.

28 Redvers L, 'Angola, the Reluctant SADC Trader', SAIIA (South African Institute of International Affairs) Occasional Paper 152. Johannesburg: SAIIA, August 2013.

29 *Macau Hub*, 'Angola delays entry into SADC trade zone', 6 January 2014, http://www.macauhub.com.mo/en/2014/01/06/angola-delays-entry-into-sadc-free-trade-zone/, accessed 26 January 2016.

questions about the viability of its economic diversification. Although the country's population is large, the majority are under 18 years old and poor (36% of the country's population live on less than $2 a day).[30]

Angola ratified the SADC Investment Protocol in 2006. Although officially it entered into force in 2010, Luanda seems to have pursued an investment policy that is independent from regional goals. It also adopted the model BITs in 2012.

A successful industrialisation and diversification plan will require Angolan firms to satisfy more than the domestic market. Although some non-trade barriers are less stringent for investors looking beyond the continent (it takes 23 times longer to travel from Luanda to Lusaka than to Johannesburg or Brasilia, counting flying and visa-processing time),[31] Angola will find it harder to gain a competitive edge in the established economies of its major trading partners. Luanda's current isolationist attitude towards intra-regional trade may in the long run prove more harmful than beneficiary – while Angola experiments with somewhat artificial plans to industrialise and diversify its economy, South Africa's economic influence in the region becomes more prevalent and hence harder to challenge in the longer term.

Foreign investors venturing into Africa are also attracted by the lucrative potential of large regional markets. However, different countries offer different possibilities of access into the continent, and in the Angolan case the potential for cross-border activities with neighbouring countries is limited. Besides Angola's high trade barriers, there are other limitations such as the lack of reliable road or rail linkages, language barriers and extensive delays in getting visa permissions to move goods and people across the Angolan border. Combined with the Angolan government's attitude towards regional matters, these factors make investors think of Angola as a 'last stop' in their plan to reach regional markets.

Angola is also the country with the most visa requirements in SADC. Potential investors from across the continent, with the exception of Namibia, need to factor in a lengthy and expensive visa application process.

LOBITO TRANSPORT CORRIDOR

Starting in the port of Lobito in Benguela province, the Lobito Corridor is a multi-modal transport development that runs through the central Angolan highlands to Katanga Province in the Democratic Republic of the Congo (DRC) and the copper belt in north-western Zambia. The development of the corridor hinges on the rehabilitation of the Benguela Railway (CFB), a line almost 1 350km long and with 70 stations. It was built between 1902 and 1929 following a concession granted by the Portuguese colonial government to the British capitalist Robert Williams.

30 AfDB, *op. cit*.

31 SAIIA, 'SADC univisa: Why the lack of progress?', Case Study 5, in *SADC Business Barriers*. Johannesburg: SAIIA, 2015, http://www.saiia.org.za/special-publications-series/609-sadc-business-barriers-case-5-sadc-univisa-why-the-lack-of-progress/file, accessed 26 January 2016.

Until 1973 the CFB was Angola's economic artery, representing the shortest and cheapest route to a port for mineral exports from Zambia and the then Zaire (DRC) as well as for goods from the Angolan interior, which were the railway's major source of income. After several attacks and disruptions during the independence struggle and the ensuing civil war, the CFB was completely closed in August 1975, resulting in a great loss not only for Angola but also for the DRC and Zambia. As part of a reconstruction project of the three main Angolan railway lines, the rehabilitation of the CFB started in 2006 and was undertaken by the China Railway Engineering Corporation, in line with the oil–for–infrastructure deals made between Beijing and Luanda at the end of the Angolan civil war. After nearly 40 years of inactivity the CFB was re-opened in 2013, and today it is fully operational on the Angolan side, although financial constraints in Kinshasa and Lusaka have stalled progress on the Zambian and Congolese sides.

Complementing the rehabilitation of the railway, the Port of Lobito has been modernised and expanded to accommodate one container terminal, one mineral terminal and one oil terminal, which will have the capacity to move between 3.7 and 4.1 million tonnes once the Zambian side of the CFB is fully operational. The corridor also boasts a significant road network that runs parallel to the CFB and links Lobito to the DRC and Zambia through the Luau-Dilolo border post. This is the same road that links with the road system at Kolwezi (DRC) and Solwezi (Zambia), which are important components of the projected Trans-African Highway that will run from Lobito to Beira in Mozambique.

The Lobito Corridor is of great strategic importance to the Angolan economy. An estimated 40% of the population live within the catchment area of the Lobito Corridor, which runs through a vast swathe of the peri-urban and rural Angolan hinterland. The corridor therefore has the potential to reduce the regional asymmetries that developed during the war and were perpetuated by the inadequate distribution of growth revenues in the post-war period. The rehabilitation of the railway alone has seen the emergence of intermediate trade centres that attract small-scale traders and informal transport operators. There are also extensive opportunities to use local labour. The Lobito Corridor crosses an estimated 12 to 20 million hectares of arable land with potential for grazing and accessible water sources, but less than 10% of the arable land in the corridor's environs is worked, and agro-industry is still rare.

The regional importance of the Lobito Corridor is also of interest. It is estimated that in Katanga alone deposits of copper and cobalt account for 40% and 50% respectively of the world's total reserves.[32] The Lobito Corridor represents the shortest and quickest route to the European and American markets for these goods. However, the difficulty in accessing finance to complete the railway and road developments beyond the Angolan border has meant that most of these minerals continue being carried through South African ports, which are almost 13 000km away.

32 Tralac, 'Angola and China open Atlantic to African neighbours', 16 January 2015, http://www.tralac.org/news/article/6874-angola-and-china-open-atlantic-to-african-neighbours.html, accessed 26 January 2016.

FIGURE 3 BENGUELA RAILWAY

Map created by angelathomas68@gmail.com / Map adapted from http://d-maps.com

CONCLUSION

The reforms introduced by the PIL-3 have substantially simplified the investment procedures associated with capital repatriation and the fiscal benefits scheme. These improvements are of great importance as they increase the impartiality of the private investment regime. However, it remains to be seen how the new implementation regulations will operate in practice, and in particular whether these steps will lead to a meaningful reduction in the bureaucracy and red tape in the investment authorisation process.

It is also important to note that despite the significant steps taken to streamline private investment regulation over the years, the most important barrier to private investment in Angola continues to be the poor quality of institutions. In order to improve the attractiveness of the non-oil sector for foreign investors, the Angolan government will need to enact far-reaching institutional reforms, particularly in terms of transparency, fiscal management and the rule of law.

The government also needs to work on improving the Angolan economy's attractiveness as a point of access to regional markets. The Lobito Transport Corridor provides a particularly important avenue to achieve that, given that the infrastructure is already in place. Angola also has to work on its reputation as a regional player.

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Jan Smuts House, East Campus, University of the Witwatersrand
PO Box 31596, Braamfontein 2017, Johannesburg, South Africa
Tel +27 (0)11 339–2021 • Fax +27 (0)11 339–2154
www.saiia.org.za • info@saiia.org.za