

**FACILITATE INCORPORATION AND REGISTRATION
OF POTENTIAL MICRO-BORROWERS:
OVERVIEW OF THE ANGOLAN LEGAL FRAMEWORK**

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1. INCORPORATING A COMPANY

- The following procedure applies:
 1. Registration of the company's name – Central File of Corporate Names (Ministry of Commerce)
 2. Open a Bank account in the name of the company (deposit of the share capital) – Commercial Bank
 3. Articles of Association executed by public deed – Notary Public
 4. Registration (legal personality) – Commercial Registration Office
 5. Publication of the Articles of Association – Official Gazette
 6. Registration – Statistics National Institute
 7. Registration (tax number) - Tax Authorities
 8. Registration – Social Security Institute
 9. Various permits/licenses to operate business – Governmental entities which are responsible for the area of business

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- This procedure is very formalistic (public deed; several registrations).
 - Various governmental entities are involved in the incorporation process.
 - It is also quite expensive: notary and registration fees vary according to the amount of the share capital but are never inferior to USD 2.000.



- In 2003 was created the *Company's Unique Office*, concentrating in a single space all the above mentioned governmental entities.
... however, it is not yet available in all the capital cities of the 17 provinces of Angola.

□ *Entrepreneur Unique Office* (EUO)

- Created in 2012, it is entrusted with the incorporation of Micro and Small Enterprises.
- Aims at simplifying the incorporation of companies
 - Partners shall opt by a standard model of the Articles of Association
 - Articles of Association shall be executed by a private contract and signatures of the partners shall be recognized by a Notary Public
 - All other registrations (Social Security Institute, Statistics Institute, publication at the Official Gazette) are made directly by the EUO

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- Aims at speeding the granting of permits/licenses to operate business
 - Provisory licenses to operate business are granted by the Municipal Authorities; after the relevant inspections are conducted, definitive licenses are granted.
 - Provisory licenses are granted within 3 days following the incorporation of the company.

 - Aims at reducing incorporation fees
 - Certified copy of the Articles of Association and a Commercial Registration Certificate are delivered to the partners for free.
 - Fees exemptions at the EUO are foreseen for some professionals that incorporate a single-member company.

What still needs to be improved

- The exact impact of the Entrepreneur Unique Office in bringing to the formal market people that operate business informally may not yet be assessed, since the law was published in March 2012.
- However:
 - The duplication of services (Company's Unique Office and Entrepreneur Unique Office) does not seem desirable.
 - Companies are still required to undergo various registrations and are granted different registrations numbers (tax number, commercial registration number, social security number) - a unified single registration procedure is desirable.
 - The incorporation of micro and small companies would be promoted if companies could be incorporated on-line.

2. LIMITED LIABILITY

- Angola is a former Portuguese colony and has, therefore, inherited the Portuguese corporate law.
- The Commercial Companies Law, published in 2004, allows the creation of the following types of companies:
 - Regular General Partnerships (*Sociedades em Nome Colectivo*) – unlimited liability
 - Limited Partnerships (*Sociedades em Comandita*) – partners that contribute with their work have unlimited liability
 - Limited Liability Companies (*Sociedades por Quotas*) – limited liability
 - Joint Stock Companies (*Sociedades Anónimas*) – limited liability
- Since 2004 only Limited Liability Companies and Joint Stock Companies have been incorporated in Angola (data from the Statistics National Institute).

□ Single-member companies

- The law on the incorporation of single-member companies was published in June 2012, but up to this moment Public Notaries are refusing to incorporate single-member companies.
- Single-member companies shall mandatorily limit the liability of the single-member: they may only be Limited Liability Companies or Joint Stock Companies.
- Single-members may be physical or corporate persons.
- Single-member companies cannot acquire shares in other companies or create another single-member company.

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- Limited liability of Micro, Small and Medium Entrepreneurs
 - The Regulation of Micro, Small and Medium Companies, published in March 2012, determines that, in order to benefit from such regulation, companies may only adopt one of the following types:
 - Regular General Partnerships – unlimited liability
 - Limited Liability Companies
 - Micro, Small and Medium Entrepreneurs that carry out business without incorporating a company may benefit from the aforementioned regulation, but their liability is unlimited.

What still needs to be improved

- The legal diplomas recently approved do not promote, in an efficient manner, the limitation of liability of micro and small entrepreneurs:
 - The single-member companies' law establishes a serious limitation to the business of such companies by not authorizing them to acquire shares in other companies. Consequently, attorneys tend to advise their clients to continue to incorporate Limited Liability Companies with a fiduciary shareholder.
 - The Regulation on Micro, Small and Medium Companies should exclusively promote the incorporation of companies that allow the limitation of liability of their partners, ie, Limited Liability Companies and Joint Stock Companies.
 - The requirement established in the Commercial Companies' Law that a Joint Stock Company shall have a minimum of 5 shareholders is no longer justified.
 - The creation of a new hybrid type of company, such as Simplified Stock Company, with less formalistic requirements, is of significant importance.

3. CAPITAL STRUCTURE

- Under Angolan law:
 - Companies that provide for unlimited liability of shareholders: do not request a minimum amount of share capital and allow shareholders to contribute with their work.
 - Companies that allow limitation of liability of shareholders: require a minimum amount of share capital and do not allow shareholders to contribute with their work.
 - Limited Liability Companies: USD 1.000
 - Joint Stock Companies: USD 20.000



Share capital requirements apply equally to single-member companies.

What still needs to be improved

- It seems important to allow the incorporation of companies that provide for the limitation of liability of shareholders without a minimum amount of share capital being required. This is of great importance for micro and small entrepreneurs.
- Shareholders should be allowed to contribute with their work to companies that allow them to limit their liability. This is even more significant for micro and small companies.
- It should be foreseen, in a future legal reform, that Simplified Stock Companies can be incorporated with the share capital shareholders find adequate – providing for a more flexible capital structure, which promotes the creation of micro and small companies.



4. FREEDOM OF CONTRACT AND SHAREHOLDERS AGREEMENTS

- Angolan company law is quite attached to the idea that a company is a legal person which promotes its own corporate interest, rather than a vehicle for its shareholders to ensure their common interests in carrying out business.

- Consequently, Angolan law tries to ensure that:
 - The Articles of Association comply with extensive legal requirements regarding the appointment/removal of directors, call and conduction of shareholders' meetings and dissolution /winding up.
 - Shareholders Agreements are private contracts executed by shareholders and their provisions are not enforceable towards the company.

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- Freedom of contract is significantly restricted when drafting the Articles of Association of a company that allows the limitation of liability of shareholders, eg:
 - Joint Stock Companies may only have the minimum of 1 (single-member) or 5 shareholders;
 - The members of the Board of Directors of a Joint Stock Company need to be always even.
 - Corporate persons cannot be appointed as Directors of a Limited Liability Company.
 - The general rule set out in the Commercial Companies' Law is that the call for a shareholders' meeting shall be published in a national newspaper, 30 days in advance to the date of the meeting.
 - Shareholders may not be represented by an attorney at their choice (but only by an attorney registered at the Bar Association) in a shareholders meeting of a Limited Liability Company.

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- Shareholders Agreements are still seen as unfriendly agreements towards the company:
 - The provisions inserted in a shareholders agreement cannot be invoked to challenge corporate acts or acts of the shareholders towards the company.
 - The fact that such agreements are subscribed by all shareholders (*omnilateral shareholders agreements*) or only by some of them does not confer them a different degree of effectiveness towards the company.
 - Shareholders agreement cannot deal with the exercise of management or supervisory/audit functions.



What still needs to be improved

- It is important to diminish the set of legal requirements to which partners shall comply with when drafting the articles of association:
 - Shareholders shall have the widest freedom of contract possible, in order to be able to organize the company as they wish.

- Shareholders agreements play an important role in the organization of Angolan companies and shareholders believe they are equally (or even more) important than the articles of association :
 - Shareholders shall be able to use and trust in this tool.
 - Registration of shareholders agreements with the company shall be foreseen.
 - Restrictions to its contents shall be excluded.
 - The establishment of a maximum duration for a shareholders agreement may be properly assessed.

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- Since the Regulation of Micro, Small and Medium Companies provides that partners shall opt for a previously drafted model of articles of association made available by the Ministry of Justice, it is foreseen that concrete rules regarding the organization of a given company will be inserted in shareholders agreements :
 - Shareholders agreements are easier to modify: they do not require recognition of signatures by a Notary Public, registration of its clauses at the Commercial Registration Office or publication in the Official Gazette.
 - For freedom of contract will be considerable diminished with regard to drafting the provisions of the articles of association, it is important it to be promoted within the shareholders agreements.



5. CONFLICT RESOLUTION AND THIRD PARTY PROTECTION

- ❑ In Angola, conflicts related to corporate matters are referred to judicial ordinary courts - there are no specialized commercial courts.
- ❑ Judges are not very experienced in dealing with corporate matters and show weak sensibility to questions related to shareholders agreements, liability of directors (in particular, shadow directors), abuse of rights and piercing of the corporate veil.
- ❑ Procedural rules governing judicial proceedings are somehow outdated and very formalistic.
- ❑ Judicial proceedings take a considerable amount of time until a final decision is taken by the court.

□ Arbitration as an alternative jurisdiction:

- Angolan Arbitration Law was published in 2003, but only a small number of arbitrations has been conducted since then.
- In 2012 the Ministry of Justice authorized the creation of 4 arbitration centers, that haven't yet started working:
 - Harmonia – Centro Integrado de Estudos e Resolução de Conflictos
 - Arbitral Juris
 - Centro Angolano de Arbitragem de Litígios
 - Centro de Mediação e Arbitragem de Angola
- Several conferences and courses on arbitration have been held, calling the attention of the public for the advantage of using arbitration as an alternative dispute resolution mechanism. Publications on this matter are being prepared.

□ Dispute resolution related to Micro, Small and Medium Enterprises:

- The laws and regulations recently enacted do not address in particular the question of dispute resolution mechanisms and, therefore, common courts will be called to decide.
- It may be foreseen the use of ad hoc arbitration courts to solve disputes, but the costs of arbitration will be enormous for micro, small and medium companies.

What still needs to be improved

- Regarding judicial courts:
 - Micro and small companies would benefit from the establishment of simpler and clear procedural rules that will allow the resolution of disputes arising within them with more brevity. A particular type of legal process could be foreseen.
 - Judges would need additional training in order to be able to properly address more recent corporate law matters, in particular the ones related to micro and small companies' law and regulations.
- Regarding arbitration:
 - It should be assessed the creation of a public mediation and arbitration centre focusing on conflict resolution of micro and small companies' matters. This center would provide a public service at reduced costs.
 - In alternative, the Ministry of Justice could establish protocols with the recently created arbitration centers, in order to allow them to provide services to micro and small companies at reduced costs.

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- Regarding third parties' protection:
 - Protection of third parties (creditors, employees, tort victims, etc.) needs to be ensured, in particular, with respect to the actions carried out by micro and small companies, which often may be single-member companies.
 - The concept of “piercing the corporate veil” is well-known by the doctrine but relatively unknown by the judges. In order to grant guidelines regarding its effective application by the courts, it seems important the law to clearly set out :
 - Corporate veil may be pierced in case of fraud.
 - Persons involved in such fraudulent action (shareholders, directors, officers) have unlimited liability towards third parties.

6. MAIN CONCLUSIONS

- ❑ Angolan law recognizes the importance of promoting the creation of micro, small and medium companies as a way to bring to the formal market entrepreneurs that operate in informal market.
- ❑ However, the rules currently in force still need to be improved in order to facilitate the incorporation of micro, small and medium companies and ensure the limitation of liability of shareholders.
- ❑ The Commission for the Justice Reform has been entrusted, among others, with the reform of the commercial law: the next 2 years will be decisive to debate and submit to the Government a final proposal that shall contemplate legal improvements that will benefit micro, small and medium entrepreneurs.

Thank you very much!

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