

Labor Newsletter

ANGOLA

OCTOBER 2020



OPINION

The National Bank of Angola (“BNA”) Order No. 17/20, of 3 August 2020, defines the rules and procedures that must be observed when carrying out foreign exchange operations for the purchase of foreign currency or the transfer of own funds in foreign currency by individuals. In particular, the Order imposes the payment of remuneration of non-resident employees in accounts domiciled in Angola.

Additionally, through informative notices to commercial banks, dated 22 and 30 September 2020, BNA clarified some aspects of the framework arising from the Order, notably that the mandatory opening of bank accounts in the country is only applicable to employees who have a contractual employment relationship with a foreign-exchange-resident company, and is not applicable to individuals who provide services under service agreements.

The Order establishes the duty of foreign non-resident employees to be paid by their employers in Angola, into bank accounts opened with national banks. Despite this innovation, the Order does not rule out the possibility of the remuneration of these employees being defined in foreign currency, which is expressly permitted by Presidential Decree No. 43/17, of 6 March 2017 (as amended by Presidential Decree No. 79/17, of 26 April 2017).

In its communications, BNA confirmed the foregoing and, above all, clarified that the payment of remuneration to foreign exchange non-resident employees by their employers may continue to be made in foreign currency, if that was the method agreed upon contractually, provided that the employee has opened a foreign exchange non-resident bank account in the agreed currency with a local bank. The points to keep in mind are that the employee may transfer unlimited remuneration amounts, as long as the amount to be transferred does not exceed the total amount stipulated in the employment contract, net of taxes and other mandatory contributions. For the transfer of their remuneration out of the country, employees must have a visa that allows them to engage in

remunerated activity, as defined in the Visa Law (Law No. 13/19, of 23 May 2019).

However, it is questionable whether the Order applies to holders of investor visas, who, under immigration law, cannot enter into employment contracts but can be remunerated in the country, which happens regularly when the holder of this visa belongs to the corporate bodies of the company to which the investment project relates. The exact legal treatment of foreign exchange non-resident holders of investor visas still needs express clarification.

Crucially, it must be noted that the national legal system does not recognize the idea of international mobility, whereby employees are seconded by their original employers located abroad to their Angolan branches or subsidiaries, while remaining contractually bound to their employer in the country of origin. The Order and BNA’s interpretation of it imply a deviation from the concept of international mobility as it is defined and implemented in practice since it forces seconded workers and Angolan companies that host them on a temporary basis to adhere to the national banking system and remit their remuneration to their home country.

The great difficulty that arises is that in the vast majority of cases, internationally mobile employees maintain active links to their countries of origin, with partial payment of remuneration and other remunerative components in that country, which is the effective center of their life. The Order therefore implies a change in the way of planning and processing employees’ international mobility to Angola, difficulties that are being felt by all employers who use this mechanism.

Due to several practical difficulties raised by the Order, a temporary moratorium on its implementation was granted only to oil-operator companies and certified oil and gas service providers, thus allowing these companies to directly pay the remuneration of their foreign non-resident employees in the agreed currency and into the employees’ bank accounts in their countries of origin.

All other economic sectors must immediately comply with the BNA's Order.

In our opinion, all companies using employees' international mobility structures should review the mechanisms being implemented, notably regarding the Order's effects on the remuneration of employees seconded to Angola and whether it will be necessary to assess the effective working time in the country, as well as the title and reason for the payment of a specific benefit to determine whether it is attributable to Angola and, therefore, subject to the rules and implications of the new BNA Order.

LABOR LEGAL NEWS

- **Presidential Decree No. 276/20, of 23 October 2020** – Updates measures to prevent and control the spread of the SARS-COV-2 and COVID-19 viruses, as well as the operating rules for public and private services and social facilities during the state of Public Calamity. Repeals all contradictory provisions.
- **Presidential Decree No. 271/20, of 20 October 2020** – Approves the Legal Framework on Local Content in the Petroleum Industry.
- **Joint Executive Decree No. 238/20, of 29 September 2020** – Defines rules on national and international travel during the state of Public Calamity.
- **Executive Decree No. 233/20, of 4 September 2020** – Extends until 31 December 2020 the validity of tourist, short-term or border visas that expired after 28 February 2020, whose holders have not been able to leave the national territory due to the closure of borders. Repeals all contradictory provisions, notably Executive Decree No. 186/20, of 25 June 2020.
- **National Bank of Angola Order No. 17/20, of 3 August 2020** – Defines rules and procedures that must be observed when carrying out foreign exchange transactions for the purchase of foreign currency or transfer by individuals of own funds in foreign currency. Repeals Order No. 12/19, of 2 December 2019, and all other contradictory provisions.
- **Law No. 28/20, of 22 July 2020** – Amends the Personal Income Tax Code. Repeals Law No. 9/19, of 24 April 2019, and Law No. 28/19, of 25 September 2019, which amended the Personal Income Tax Code.

UPCOMING LABOR OBLIGATIONS TO BEAR IN MIND

- Prepare and submit payroll forms to the INSS (companies with more than 20 employees are required to submit these electronically) and pay contributions by the 10th of the following month.
- Companies engaged in the oil industry with a Program Contract in force must prepare and submit the 2021 Human Resources Development Plan ("HRDP") to the Ministry of Petroleum by 31 October. According to the most recent information released by the Ministry of Petroleum's National Directorate for the Promotion of Angolanization, the 2021 HRDP should be submitted through the digital platform known as SIASP, previously used for the issuance of opinions regarding entry visa applications for oil sector personnel. The HRDP must follow the official model forms approved by the Ministry of Petroleum and cover the recruitment and training objectives for national and expatriate personnel, as well as the goals for the nationalization of manpower for 2021.
- Submit to the insurer with which mandatory accidents-at-work insurance has been taken out a copy of the payroll reflecting taxable salaries and additional remuneration paid each month to employees, authenticated by the General Labor Inspectorate. The relevant insurance policy may have specific rules on this matter, which must be checked.
- File with the competent court, on a six-monthly basis, four copies of a map, on the relevant form, listing any work accidents for which the employer is responsible, reported in the previous six months.

For more information, please contact:

<p>JAYR FERNANDES Jayr.Fernandes@mirandaalliance.com</p>	<p>ELIESER CORTE REAL Elieser.Real@mirandaalliance.com</p>	<p>NUNO GOUVEIA Nuno.Gouveia@mirandaalliance.com</p>
---	---	---

© Miranda Alliance, 2020. Reproduction is authorised, provided the source is acknowledged.

WARNING: The texts contained in this newsletter are provided for general information purposes only, and are not intended to be a source of advertising, solicitation, or legal advice; thus, the reader should not rely solely on information provided herein and should always seek the advice of competent counsel.

This Labor Newsletter is distributed free of charge to our clients, colleagues and friends. If you do not wish to continue receiving it, please reply to this e-mail.