



## AGENCY, FRANCHISE AND DISTRIBUTION AGREEMENTS IN ANGOLA

Angola seems back on track after a few years of spectacular GDP growth (ranging from 11.7% to 19.9% between 2004 and 2008) and a few not-so-good years. The IMF's forecast for 2013 is 6.8% with inflation stalling just below 10% for the first time ever. No wonder then that many companies, especially Portuguese, are turning to Angola to sell machinery and electrical equipment, vehicles, medicines, foodstuffs, chemicals and textile products among others.

For some these sales may represent a one-off operation, but others are in it for the long haul, and would like to reach agreements with local agents, franchisors and distributors. These agreements benefit from a stable legal framework since 2003, thanks to Law 18/2003, of August 12.

Portuguese influence continues to be felt in Angolan legislation and this is

the case with the Law's Chapter I which regulates agency agreements. Companies already in a relationship with a Portuguese agent subject to Portuguese law will surely recognize many of the main features in the Angolan Law: representation, exclusivity, subagents, confidentiality and non-compete clauses, agent's rights and obligations...

This is also the case for the all important indemnity upon termination. According to article 33 the agent will only be entitled to an indemnity if three conditions are met: a) the agent has brought the principal new customers or has significantly increased the volume of business with existing customers; b) the principal continues to derive substantial benefits from the business with such customers; c) the payment of indemnity is equitable considering applicable restraint of trade clauses or loss of commission.

# AGENCY, FRANCHISE AND DISTRIBUTION AGREEMENTS IN ANGOLA



And just like in Portuguese law the principal is able to know beforehand the maximum cost of the indemnity as per the following formula: the indemnity may not exceed the agent's average annual commission over the preceding five years, or during the agreement's period if it goes back less than five years.

There are, however, two main differences that need to be pointed out. In the first place, Angolan law, unlike Portuguese law, demands that the agreement be put in writing. Secondly, and this also applies to distribution and franchising agreements, the parties can choose the applicable law, as per one of the following criteria: a) the domicile of the parties; b) the place where the agreement is made; c) the place where performance is to occur.

There is no regulation in Portugal for franchise agreements, so Chapter II of Law 18/03 is a rare novelty, which could, nevertheless boost a budding market. Indeed, the past few years have seen several Portuguese and Brazilian franchises take off in Angola (Lanidor, Parfois, Mundo Verde or Werner's), as well as its first home grown concept, Magnata Coffee Bar.

Once again the rights and obligations of the parties must be put in writing and special mention should be made to the provision that establishes that the franchisor can impose on the franchisee obligations with regard to supplies, prices and accountancy organization.

Finally, franchisors should be aware that, pursuant to article 48, termination rules applicable to agency agreements are extensible, with the necessary adaptations, to franchise agreements, including the franchisee's right to indemnity.

And so we come to our last stage, distribution agreements, which also signals

Angola's attempt at providing a legal framework for which there is no equivalent in Portugal. The agreement, always in writing, must contain at least the following points: a) product description; b) minimum quantities of product that must be bought by the distributor; c) duration of the agreement; d) rules to establish dates of delivery and payment; e) moment where the risk of deterioration or damage of products is transferred; f) product warranty.

Different elements of protection for the principal and the distributor have been written into the law. On the one hand, deduction or retention of due monies are usually a point of contention so the Law provides specific rules for this. Thus, the distributor can only deduct payments due to the principal as authorized within the terms of the agreement; otherwise, undue retention of monies can be construed as a breach of trust.

On the other, the distributor has the right to be immediately informed if the principal's capacity is reduced to an extent that the number of agreements concluded by the former falls considerably below what both parties had initially agreed upon. And just like in the other agreements, the same rules regarding termination apply.

In conclusion, there are three aspects in the Law that should be highlighted: a) the Portuguese agency law wasn't simply adapted but taken a few steps further instead to provide a fuller legal framework; b) all agreements must be in writing; c) the same rules for termination and choice of law apply to the three types of agreement. And all three aspects point in the same direction: a much needed stability that will allow the Angolan economy to keep its forward momentum.

## page 2

*The following presentation is for information purposes only and does not constitute legal advice. Please contact one of our offices should you wish to discuss any issue.*