FDI IN ANGOLA

“CONSTRAINTS ENCOUNTERED BY INVESTORS IN THE ANGOLAN TERRITORY”

ADVANTAGES AND IMPLICATIONS OF FDI TO ANGOLA

BY

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FDI IN ANGOLA “CONSTRAINTS ENCOUNTERED BY INVESTORS IN THE ANGOLAN TERRITORY, ADVANTAGES AND IMPLICATIONS OF FDI TO ANGOLA”

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FDI IN ANGOLA “CONSTRAINTS ENCOUNTERED BY INVESTORS IN THE ANGOLAN TERRITORY, ADVANTAGES AND IMPLICATIONS OF FDI TO ANGOLA”

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KEYWORDS

✓ FDI (Foreign Direct Investment)
✓ Investment Regulation
✓ Host Country
✓ Sovereignty
✓ Investment Constraints
✓ Safety Standards
✓ Services
✓ Private International Law
✓ Environment
✓ Investment Barriers
✓ GATS (General Agreement on Trade in Services)
ABSTRACT
CARING IN FDI

A. Da Gama minithesis, Department of Law of the University of the Western Cape.

This thesis focuses on Foreign Direct Investment (FDI) in Angola and on constraints encountered by investors. It discusses the new Investment Law, resulting from a comprehensive law reform in 2003, as well as investment incentives destined to attract FDI into the territory, furthermore: the legal definitions of FDI and of “Investor”; the Angolan private international law; the main constraints (investment barriers) encountered by investors, after and before entering the Angolan territory; the legal protection afforded to investors, and some examples of FDI and their implications in Angola.

The author also analyses investment and intra-trade within the Sub-Saharan region, Angola under modes 3 and 4 of GATS, and other aspects of foreign (as well as private) investment, including on what has been done and what should still be achieved under the SADC Trade, Finance and Investment Protocol from 2005 onwards. This analysis, it is hoped, will contribute to the better understanding of the implications and benefits of FDI in Angola, considering the recent increase of inflows of FDI, as well, as to what extent and how the Government should continue to control and direct, as well as encourage FDI.

To conclude, the impact (positive-negative) of FDI in the Angolan society, economy and for the environment will be discussed. Together with the chapters describing the legal framework for FDI, these parts are intended to provide a better insight into the legal, economic and social background for investing and for doing business in Angola, and what type of protection investors can expect from the country, whilst information and academic materials on this subject matter continue to be scarce and difficult to access.
DECLARATION

I declare that FDI in Angola “Constraints Encountered by Investors in the Angolan Territory, Advantages and Implications of FDI to Angola” is my own work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

27th May 2005

ANABELA NHANDAMO PEREIRA DA GAMA

SIGNED: ________________________
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Bibliography
CHAPTER I- Introduction to FDI in Angola

1. Introduction

Angola is one of the richest countries in the Sub-Saharan region in respect of minerals and other natural resources. It has been deprived of development for almost three decades, as a result of three decades of civil war ending in 2002, with the defeat of the insurgent Unita movement, and the death of its historic leader Dr. Jonas Savimbi.\(^1\) Since 2002, Angola has been trying to re-surface and rebuild itself for the future to come, in order to pull alongside in terms of economic growth and development. Now the task is to re-establish the national economy, the infrastructures and the normal life of its people in order to restore national and international confidence and national pride. Ever since the peace process has finally become a reality in 2002, the flow of Foreign Direct Investment has increased steadily.

According to the National Agency of Private Investment (ANIP), the projects involving Foreign Direct Investment in Angola have increased in the first semester of 2004 to a total amount of US$825 million. This investment has come from all over the world, but predominantly from Portugal, France, USA Germany and China. The People’s Republic of China most recently granted Angola a credit facility in excess of US$2 thousand million.\(^2\) Although it is not very clear which investment areas in Angola are most sought after, the author’s informed guess is that the preferred target industries are civil construction, tourism, mining and petroleum, as well as, fisheries.

When a company generates income in several countries and its business management comprises an internationally strategy, that company is commonly called a multinational or multinational enterprise (MNE).\(^3\)

In Angola, investment has arrived mostly from MNEs who have pursued large projects, and this has tended to rapidly accelerate development in certain areas. Because of the fact that international investment flows come from countries with high productivity of capital (investing country) with a direction towards countries with a low productivity of capital (e.g. Angola) business investors are invited to achieve the maximum return of the profits. This, it is submitted, underlines the importance of adequate and proper laws that permit to control

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\(^1\) Former president of UNITA, the biggest opposition party in Angola.


\(^3\) Jepma C J (1996) 103.
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possible abuses of economic power. In the absence of such control and enforcement of FDI conditions, the situation could arise where the host country loses more than it gains.\(^4\)

The aim of this study is to assess the constraints encountered by investors before and after entering the Angolan territory, as well as to analyse the advantages and implications of FDI in the national territory. The thesis shall not deal with the special investment areas as defined in Article 3(1) of Law no.11/2003, namely the exempted strategic areas of petroleum, diamond, mining and financial institutions. Special legislation regulates investments in these areas.\(^5\) As a result, the focus of this dissertation is on FDI excluding the oil, diamond and mining industries and financial institutions.

The thesis encompasses five chapters. In the first Chapter, the author shall briefly deal with the introduction and the historical background of FDI in Angola, Chapter II will centre on the applicable investment law and a brief summary of the private international law of Angola, Chapter III will look at some of the business and investment obstacles in Angola, Chapter IV will focus on the impact of FDI in Angola, as well as to the advantages it brings to the host country. To conclude the last Chapter makes recommendations and offers a conclusion.

1.1 Historical Background of Investment Law in Angola

With the end of colonialism former colonies put an end to the economic dominance that had prevailed for ages. Ex-colonies where positioned in such a way that allowed them to challenge the world order, in order to grant them greater autonomy concerning the ordering of their own economies and access to the world markets.\(^6\)

In Angola the situation was no different. After attaining independence in 1975\(^7\), the first Investment Code\(^8\) was approved in the same year. According to this law, foreign investment was confined to mixed companies with an associated foreign participation, as well as

\(^4\) Id at 107.
\(^5\) The entities authorized to approve the investments referred to in Article 3(1) are obliged to send to the National Private Investment Agency (ANIP), within a period of 30 days subsequent to the approval of each investment, information containing data on the respective investment’s overall value, location, form, scheme, and a number of new jobs created. It will send all other relevant information for the purposes of registration, monitoring and centralized statistical control of the private investment. All information whose transmission is legally prohibited will be duly safeguarded.
\(^7\) November 11\(^{th}\) 1975.
\(^8\) Law n.10/79 of 22\(^{nd}\) of June.
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private companies whose activities as defined in the investment contract would last from at least 10 to a maximum of 15 years.\(^9\) Under this law, the request for a permission to invest had to be directed to the Minister of Finance who would submit the request for approval to the council of ministers of the Republic of Angola who would approve or reject it by means of a resolution. In terms of Article 37 of Law no.10/79, a 90 days reply period was stipulated in the case of already existing companies, provided that such companies would be registered with a special register at the National Bank of Angola.\(^10\)

Law no.10/79 was replaced by Law no.13/88 on June 16\(^{\text{th}}\) 1988, which in the view of one author followed the worst traditions of a socialist command economy.\(^11\) On the 1\(^{\text{st}}\) of April 1989 the office for foreign investment was created in order to implement and execute the new foreign investment law and its rigid licensing and controlling procedures for foreign investments. Law no.13/88 was in force until 23\(^{\text{rd}}\) of September 1994, when it was replaced by Law no.15/94.\(^12\) Law no. 15/94 listed three regimes under which foreign investment could be processed\(^13\) which were: prior notification regime, prior approval regime and the contractual regime. Law no.15/94 could still be considered as an actual impediment to foreign investment, due to its bureaucratic principles and length of time needed to obtain approval for a new investment in the country.

In terms of Law no. 15/94 the minimum amount of investment for it to fall under the foreign investment legislation was set at US$250.000. The authority for the approval of FDI projects was given to the agencies entrusted with administering foreign investment, namely the Institute of Foreign Investment, and the Prime Minister and the Council of Ministers, whenever the amount of any particular FDI would be an equivalent to or in excess of an amount of US$15 million. For foreign investments inferior to the legislative threshold amount of US$250.000, an authorization to invest had to be obtained from the National Bank of Angola, even though a repatriation of profits was not permitted in respect of those “small” foreign direct investments.\(^14\)

The law presently in force dealing with foreign investment is known as the Basic Law for

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\(^{10}\) *Ibid.*
\(^{11}\) Prof. Tomashausen (2004) 1.
\(^{12}\) *Ibid*
\(^{13}\) Article 18.
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Private Investment, Law no.11/2003. This law defines the general restrictions, benefits and obligations for foreign investment in the Republic of Angola, and recognizes that investment plays a crucial role in the economic development of the country. Law no.11/03 also endeavours to encourage both domestic and foreign investments by providing equal treatment, for both types of investment, and by offering tax and custom incentives, by simplifying the investment application process and by lowering the required minimum amount of investment capital.$^{15}$ According to Armando Custodio$^{16}$ this law is less bureaucratic and administratively more simplified and impartial, so as to ensure that the agents that act according to this law will simply implement its provisions for the benefit of the public.

The author will now briefly define the term investor, in order to provide a better perception of its definition in the Angolan context as it stands today.

1.1.1 Definition of Investor

The term investor has been categorized in two components being: foreign and national investors.

Formerly foreign investor$^{17}$ had been defined as any non-resident individual or entity, regardless of their nationality. Presently the term foreign investor$^{18}$ means any non-resident person, individual or corporate, irrespective of their nationality, introducing or employing in the national territory, capital domiciled outside Angola, and being entitled to transfer profits and dividends abroad.

National investor$^{19}$ was defined as any resident individual or entity regardless of their nationality. Currently a national investor means any resident person, individual or corporate irrespective of their nationality, making investments in the country with capital domiciled in Angola, without the entitlement to transfer dividends or profits abroad. Clearly the current definitions in terms of law no.11/2003 are broader and explain better the position of both the national and foreign investors, making considerable references to the provenience and

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$^{16}$ Manager of ANIP (National Agency for Private Investment).
$^{17}$ Law no. 15/94.
$^{18}$ Law no.11/2003.
$^{19}$ Law no.15/94.
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transferability of profits as well as to the provenience of the capital.

1.1.2 Definition of FDI

The term Foreign Direct Investment has been defined in many ways. Each country has its own definition although they do not differ much from each other either in content or in purpose. With FDI, subsidiaries are set up overseas because of the specific know-how\textsuperscript{20} that they possess, in relation to the production of technology, management skills and or other distinguishing elements.\textsuperscript{21}

According to Sornarajah\textsuperscript{22} Foreign Direct Investment has been defined as being the transfer of tangible or intangible assets from one country into another for the purpose of use in that country to generate wealth under the total or partial control of the owner of the assets. FDI has also been described as being the transfer of funds or materials from one country (the capital exporting country) into another (the host country), in return for a direct or indirect participation in the earnings of such an enterprise.\textsuperscript{23} FDI has also been defined further as the domestic production in a host country, which replaces the former export from the parent country and reduces imports thereof. According to the same author, if the profit is not repatriated but re-invested in the host country, the host country will get a better benefit from foreign investment, and as such there will be no burden on the balance of payments.\textsuperscript{24}

In order to gain a better understanding of the definition of FDI in Angola, the definitions made in both the previous\textsuperscript{25} and the current\textsuperscript{26} investment laws must also be examined.

Article 4 of Law no.15/94 defined foreign investment as the introduction in the national territory of capital, equipment and other assets or technology, or the use of funds with rights to transfer them abroad, or eligibility to do so, under existing foreign exchange legislation, by non-residents individuals or entities, for the purposes of creating new companies, or groups of companies, branches or other forms of corporate representation of foreign companies, as well as for the total or partial acquiring of existing Angolan companies of

\textsuperscript{20} Know-how is in essence the expertise that has been built in the hope of deriving a financial benefit.
\textsuperscript{22} Sornarajah (1994) 4.
\textsuperscript{23} Encyclopedia of Public International Law Vol.8 246.
\textsuperscript{25} Law 15/1994 of 23\textsuperscript{rd} of September 1994.
\textsuperscript{26} Law 11/ 2003 of 13\textsuperscript{th} of May 2003.
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companies. In terms of the current law the definition has only slightly been altered.

Article 2 of Law no.11/03 defines FDI in a manner different from the previous legislation. The new definition has been divided into three subdivisions, being private investment, foreign investment and direct investment. Private investment is defined as the employment in the national territory of capital and other types of equipment or technology, or the employment of funds earmarked for the incorporation of new companies, both national and foreign, as well as the total or partial acquisition of already-existing companies incorporated under the Angolan law.27

Foreign investment on the other hand, is the introduction and employment in the national territory of capital, capital and other types of equipment or technology and know-how, or the employment of funds entitled, or potentially entitled, to be transferred abroad, under the terms of the current Foreign Exchange Law, intended for the incorporation of new companies, as well as the total or partial acquisition of already-existing companies incorporated under the Angolan law.28 Finally, direct investment means all the national or foreign investment made in any forms not complying with the definition of indirect investment referred to in the previous paragraph.29

Although these definitions seem similar they are moderately different. The 2003 definition is broader in the sense that it includes the employment in the national territory of the know-how, which is to the advantage of the host country. In practise know-how is personified in drawings, notes, calculations, reports and other documentations. Frequently know-how is incorporated in trade secrets and confidential information. The appropriate contractual information should be put in place for the intellectual property rights and such a protection could take the form of confidentiality agreements and restraints of trade.30 The law does not expressly provide that the introduction of all the equipments and capital into the national territory should only be done by non-residents individuals or entities as it was defined in Law no.15/94. Although Law no.11/03 is mute towards this issue it implies that nationals are also in a position of introducing into the national territory the same equipments and capital that only non-residents were allowed to provide as stated by the previous investment

27 Law 11/03 Article 2(a).
28 Id at Article 2 (d).
29 Id at Article 2 (I).
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The Private Investment Law no.11/2003 makes no distinction between national and foreign investors, taking into account only the origin of the capital invested and not herewith the nationality or country of residence of the investor.\textsuperscript{31}

It grants no special privilege to any of them. It gives benefits to importers of medium-and long-haul transport facilities, who are exempted from duty payments in case of new vehicles and pay 50 percent for second hand ones.\textsuperscript{32} On the one hand a national investor may make a “foreign investment” in Angola as long as his funds come from abroad by a company that is incorporated in another country. On the other hand, a foreign investor may also make a “national investment” in case he uses funds that are accumulated or deposited in Angola.\textsuperscript{33}

A good synopsis of the 2003 Private Investment Law provision has been made as follows:\textsuperscript{34}

- It governs private investment without distinction between Angolan and foreign investors;
- It hopes to provide for a faster and more flexible decision processes;
- It defines in outline the rules on fiscal, foreign exchange sand customs policy for private investment, leaving the details to secondary legislation and decisions in the individual case and
- It has reduced the minimum investment amounts required for an investment to fall under the special regime of the new Private Investment Law.

What used to be called foreign investment law is now known as private investment law, giving more room for national investors to compete fairly with foreign investors in the host country. By denominating this law as private investment law, no discrimination is made between national and foreign investors, the intention being to ensure that not only foreign investment is encouraged but national investment likewise, even though in that instance the capital is domiciled in Angola, without the entitlement to transfer it abroad.

The armed conflict secluded Angola from further investments in the offing from the rest of the world. Although it was a long lasting civil war the country was not totally isolated from development. A good example of that is the fact that during the civil war, Portugal was one

\textsuperscript{31} Draft Law on Private Investment of 31\textsuperscript{st} of February 2003.
\textsuperscript{32} Ibid.
\textsuperscript{33} Prof. Thomashausen Andre (2004) \textit{The Legal Aspects of Doing Business in Angola} 2.
\textsuperscript{34} Prof. Thomashausen Andre (2004) \textit{The Legal Aspects of Doing Business in Angola} 1.
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of the countries that has remained loyal to investment in its former colony.

The old Foreign Investment Law (15/94)\(^{35}\) expressly prohibited foreign investment in the strategic areas of defence, internal public order and state security; banking activities in respect to the function of the Central Bank and the Mint; administration of ports and airports; and other areas considered by law to be the State's exclusive economic responsibility. As the new Private Investment Law no.11/03 is silent on this, and furthermore, the law on delimitation of economic sectors, law no 13/94, was never revoked, it must be assumed that the above areas remained off-limits to foreign and generally private investors.\(^ {36}\)

Chapter II will illustrate some aspects of the former Investment Law as presented in Law no.15/1994 and will briefly focus on some of the most important provisions of the Investment Code according to Law no.11/2003.

\(^{35}\) Article 3 (2).
\(^{36}\) Available at http://strategis.ic.gc.ca/epic/internet/inimr-ri.nsf/en/gr121891e.html
CHAPTER II-Investment Code

2. Introduction
At present, when one refers to foreign investment law, the applicable law is Law no.11/2003. In the previous Chapter the author has looked at the definitions of FDI as defined by Laws no.15/1994 and 11/2003 and a certain degree of comparison has also been done. The author has seen that the 2003 Law compared to the 1994 is broader because it not only refers to foreign companies but also to private companies which includes both national and foreign ones. The introduction and employment in the national territory of the principle of know-how, is another divergence that has made the difference within the 2003 Law. For a better understanding of the new private investment regime, it is necessary to first review some salient provisions of the previous, 1994 legislation.

2.1 Law no.15/1994

The scope of this law was defined in Article 1, which set the foreign investment regime and procedures to be applied in the Republic of Angola. Article 2 promoted and provided incentives for foreign investment that should be consistent with the country’s economic and social development and to the general well being of the population.

The permissibility of foreign investment was dealt with in Article 3. Basically this article explained what was allowed, provided that it was not contrary to:

- The economic and social development strategies defined by the competent sovereign bodies
- The strategic guidelines and objectives set out in the economic policy programs and
- Current law

As has been refereed in the previous chapter, Article 3 prohibited foreign investment in the areas of:

- Defence, internal public order and state security
- Banking activities involving central bank and issuing bank function
- The administration of ports and airports
- The infrastructure of the national network and basic telecommunication services or
- Other areas considered by law to be the estate’s exclusive responsibility

Article 6 defined the different forms of investment allowed in the national territory. Those

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were foreign investment in the following ways:

- Transfer of funds from foreign countries;
- Investment of funds from foreign currency bank accounts set up in Angola by non-residents;
- Importing equipment, accessories and materials;
- Incorporation of credits and other resources into Angola by foreign investors which were eligible for transfer abroad under terms of foreign exchange regulations and
- Other incorporation of technology.

Under Chapter II of this law the rights and obligations of foreign investors were cautiously described. Article 7 described the status of foreign investment. Companies constituted under the protection of this law had the rightful status of the Angolan companies, and should be subject to the application of common Angolan law, except as determined otherwise by this law or by other specific legislation.

2.2 Law no.11/2003

The law was drafted with the intent to thoroughly reform and de-bureaucratise all the administrative procedures related to investment. Thus a system of prior notification was established with a final decision on investments of amounts of US-$50 000 up to US-$5 million to be provided within 15 days. The law also covers investments to be made in special economic development areas and sectors of activity that the state wishes to stimulate. Noticeably, once in Angola, all investors are subject to the standards and regulations set by the Angolan legislation.

The object of law no.11/2003 rests in Article 1. According this provision, the law establishes the general basis for private investment to be made in the Republic of Angola and defines the principles regarding the schemes and procedures providing access to incentives and benefits to be granted by the state for such investment.

As per Article 4 the general investment policy principles are described as follows:

- Free enterprise, except for those areas defined by law as being the reserve of the state;
- Assurances of security and protection for investment;

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- Equitable treatment for both nationals and foreigners and protection of economic citizenship rights;
- Respect for and complete compliance with international agreements and treaties.

This Article can also be called a non-discrimination clause, because of its prohibition to violate the international principle of national treatment, whereby each WTO Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.\(^{40}\)

Article 5 deals with the promotion of private investment. It is the responsibility of the government to foster private investment, especially when it decisively contributes to the country’s economic and social development and the population’s general welfare. The entity charged with executing national policy \textit{vis-à-vis} private investments, as well as promoting, coordinating, steering and monitoring private investments, is the National Investment Agency, “ANIP”.\(^{41}\)

According to Article 6, all types of private investment are allowed and permissible provided that they do not go against the current legislation and legal procedures. The provision also specifies that private investment can take the forms of national or foreign investment.

Article 8 defines the various forms of national investment. As such, private investment can be conducted, individually or cumulatively in the following forms:

- Allocation of funds;
- Application in Angola of current assets existing in bank accounts set up in Angola belonging to residents or non-residents;
- Allocation of machinery, equipment, accessory and other materials;
- Incorporation of credit and other current assets of private investors which may be employed in enterprises; or
- Incorporation of technologies and know-how.

Article 9(3) provides that the introduction of foreign capital in value to an amount equivalent or inferior to US$100.000 00 is not subject to any authorization by ANIP whatsoever, nor

\(^{41}\) See later page 20.
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does it benefit from entitlement to repatriate dividends, profits and other advantages provided for under this law.

According to Article 10, foreign investment can be made, individually or cumulatively, in the following forms (identical to forms of permitted investment, already listed in Article 8):

- Transfer of funds from abroad;
- Application of current assets in bank accounts in foreign currency, set up in Angola by non-residents;
- Importation of machinery, equipment, accessories and other materials
- And the incorporation of technology and know-how.

The types of investment described in points 3 and 4, must always be accompanied by transfers of funds from abroad, namely to cover incorporation and start-up expenses. In other words, as long as national investors bring capital from abroad into the region, they have the same status as foreign investors.

Under the heading of private investment status, section I of Chapter II of law no.11/03 sets out the rights of investors. For all legal purposes, partnerships and companies set up in Angola may obtain benefits and incentives for private investment, even when the capital employed comes from abroad, allowing them to enjoy the status of partnerships and companies incorporated under Angolan law, with common Angolan law being applicable to them, insofar as no provisions to the contrary are contained in this law or any other specific legislation.

A special non-discrimination clause was inserted in Article 12, which provides that within the framework of the constitutional law and of the principles that shape the country’s judicial, political and economic order, the Angolan state ensures, irrespective of the capital’s origin, a fair, non-discriminatory and impartial treatment of incorporated partnerships and companies and of corporate assets, guaranteeing to foreign investors protection and security and not hindering in any way their management, maintenance and operation. It also strictly forbids any discrimination between national investors and foreign investors who are guaranteed equally the rights arising out of ownership of any resources invested, namely entitlement to freely dispose of them, under the same terms of those of a national investor.
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While regulating the transfer of profits and dividends, Article 13 articulates that subsequent to the implementation of a private foreign investment and proof of its execution in accordance with the rules defined under this law, entitlement to make transfers abroad, under the conditions defined under this law and any applicable foreign exchange legislation the transfer of profits and dividends is guaranteed for:

- Allocated dividends or profits, net of legal amortizations and taxes due, taking into account respective stakes in the shareholder equity of partnership or company;
- Proceeds from the liquidation of investments, including capital gains, subsequent to taxes due having been settled;
- Any amount due to the investor, net of respective taxes, provided for in procedures or agreements that, under the terms of this law, constitute private investment;
- Royalties or other earnings from indirect investments, linked to granting transfer of technology.

Article 14 of law no.11/2003, provides that the State of Angola guarantees to private investors the right to appear in an Angolan court, and gives an undertaking of a procedurally fair trial. In the case of expropriations the state assures investors of a fair, ready and effective compensation, to an amount that shall be determined according to the applicable rules and rights. As a general rule, the assets of the private investors cannot be nationalized. However in the event exceptional alterations should occur in the political and economic regime regarding nationalization, investors shall in any event be indemnified by a fair amount of compensation.

Section II of chapter II of Law no.11/03 describes the duties that are expected from the private investor. Article 17 provides that private investors have to obey and respect the laws and internal regulations, as well as any the contractual undertakings and that they are subject to penalties that may be applicable.

Article 18 establishes the specific duties that are expected from private investors. Private investors must respect and avoid the violation of the environment, providing workers with an adequate hygiene, security and protective measures against professional accidents, diseases and other eventualities foreseen in the current legislation about social security. It is also expects private investors to maintain up to date accident and professional diseases’ insurances for the workers, as well as the insurance for damages to third parties, the environment and civil liability insurance and any other applicable.
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Under the terms of the prior notification procedure\(^{42}\), proposals for investment qualify for the prior notification procedure when their value is equal to or more than the equivalent of US$50,000 for national investors or, US$100,000 for foreign investors, up to a maximum limit to US$5,000,000.

Other proposals falling within the certain conditions are subject to the contractual procedure. The conditions are:

- Investments with a value of US$5,000,000 or more;
- Irrespective of their value, investments in areas where operations, within the framework of the law can only be conducted through the concession of temporary operation rights and
- Investments where operation within the framework of the law can only be done with the mandatory participation of the public business sector irrespective of their current value.

Because the new law does not expressly allow foreign investments in the areas of defence, banking activities, finances and others, it is assumed that in principle, these areas are not available for foreign investment, although the government may make exceptional rulings in individual cases, which has happened in the most recent past, in respect of the banking industry.

As pointed out by Feijo\(^{43}\), investment contracts have to be signed in the name of the state as well as by the executive officer responsible for the secretarial or judicial issues of the enterprise responsible for the investment. According to the following grounds of breach of contract, the state has the right to dissolve the investment contract:\(^{44}\)

- Whenever the private investor does not comply with its contractual obligations undertaken in terms of the contract
- If the investor does not comply with its legal and fiscal obligation under the law, and
- Whenever the private investor provides false statements or information, either in the initial phase of application, negotiation or at the phase of execution of the contract.

Foreign companies may not discriminate between nationals and foreigners, in respect of

\(^{42}\) Article 26 of Law 11/2003.
\(^{43}\) Professor of Law of the Universities Agostinho Neto and Catholic University of Angola.
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performance, promotion and equality of opportunities. Instead they must provide nationals with the adequate technical training in order to develop and invest in the capacity building of the national workers. At least 30% to 40% of the profits obtained by foreign companies should be employed for the development of the national human resources of the host country. What should be taken into account in this regard is not the number of Angolans employed but instead the percentages in the total salaries bills.  

Provincial Governments have the responsibility to take a decision for a proposal of investment in a period of eight days of an amount not exceeding US-$100.000 up to US-$250.000. The same responsibility falls under the Ministry of Finances, also in a period of eight days, to take a decision in respect of any amounts involved in the concretisation of the investments projects, not exceeding US-$50.000.000. For investment projects that are in excess of US-$50.000.000, due authorization is required from the Council of Ministers to be granted or refused within an extended period of 30 days, after receipt of the investment proposal.

In the recent book by Feijo, the difference between incentives and guarantees as provided by the Law no.11/03 is illustrated. In the case of a guarantee to an investment as provided for in Articles 10 and 11 of the same law, the following should be taken into account:

- The prohibition of the confiscation or nationalisation of the enterprises and societies created in terms of the investment legislation, except where the reason for the expropriation is for public utility. When the expropriation is found to have been lawful the investor has the right either to be indemnified or to be placed in the same position as before the expropriation. On the other hand if the expropriation found to be unlawful the investor will have the right to appeal to the competent administrative court.
- The governmental and administrative setting of fixed prices is disallowed
- Exportation of products by third parties or others must comply with the relevant Angolan export legislation
- The investor is also guaranteed bilateral and multilateral protection of its investments through international conventions, bilateral agreements and international arbitral

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45 Id at 36.
46 Id at 38.
47 Id at 43.
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awards and others. International Arbitral awards cannot be guaranteed in Angola since Angola is not a member of the Convention.\textsuperscript{48} In order for this to happen Angola would have to sign and ratify the New York Convention of 1958, as well as, incorporate the provision of the Convention into domestic laws.

According to Feijo\textsuperscript{49}, as far as incentives are concerned, the benefits from the private investment can be divided in to three different categories:

- Fiscal incentives
- Financial incentives, and
- Customs incentives

The author will briefly discuss the customs and fiscal incentives.\textsuperscript{50} Financial incentives are reserved for whenever a strong national interest is at stake.

2.2.1 Fiscal incentives\textsuperscript{51}

Fiscal incentives can bring advantages to a country as well as disadvantages.

2.2.1.1 Advantages

- The increase or reduction of the fiscal incentives provide for an increase in production and productivity of enterprises, leading them to eventually increase salaries
- Fiscal incentives encourage successful domestic enterprises to diversify production
- New-born enterprises are not affected by the costs of the fiscal incentives, and if they are not successful the state incurs no loss
- Fiscal incentives require less costs and less administration work from the public sector dealing with administrative issues
- Fiscal incentives better respect the fiscal principle that the actual capacity to pay any amount required should be given due consideration
- By using fiscal incentives, businessmen rapidly recover their capital and are protected from risks that they are subject to.

2.2.1.2 Disadvantages

- Fiscal incentives end up benefiting those enterprises that least need them

\textsuperscript{48} Available at http://members.tripod.com/delhiadvocate/arbitration_foreign_award/Signatories_New_York_Convention.html
\textsuperscript{50} Id at 24.
\textsuperscript{51} Feijo Carlos (2004) 45.
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- They burden the general account of the state, which most of the times is not capacitated to satisfy collective needs and public programs.
- Finally when fiscal incentives are misused, their value as an incentive and the cost incurred to make them, is lost nullifying the benefits that they could produce.

2.2.2 Customs incentives

After the use of the fiscal incentives, a customs incentive is the second most used measure to stimulate industrial development. This type of incentive presents both advantages and disadvantages.

2.2.2.1 Advantages

- Customs incentives help to protect emerging industries from costs that only surface at a later stage.
- This type of incentive helps local industries so that they can compete hand in hand with imported goods.

2.2.2.2 Disadvantages for using customs incentives

- The theory of comparative advantages is misused and misinterpreted. Critics of the custom incentives regime argue that whatever can be internally produced should no longer be imported. This type of incentives leaves no space for fair competition and it violates the principle of national treatment. The local market is overprotected and customers are left with no diversity of products.
- This type of over-protectionism stimulates, defends and perpetuates the inefficiency of some domestic industries. That happens because domestic industries no longer see the need to modernize technology, nor to become efficient in order to survive the competition.
- Excess of protection injures the expansion of the local market. When local businessmen start using tariffs to protect their product, the result is that prices become higher than the imported items and as a result they start selling less and the market is injured.
- Finally because it protects industries that do not need this type of incentives, custom incentives discriminate against those that actually need protection.

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In the following paragraph some of the incentives offered to foreign investors will be examined.

2.3 Tax Regulation

According to the general tax principles applicable in Angola, any income that is generated in the country is subject to Angolan tax legislation, regardless of the nature of the contract, place of celebration and date of when income was generated. It is also of no importance if the income earner is not a resident of Angola. 53

This law provides for some investments incentives that allow for specific tax reductions, in the case of business activities regarded as of national interest or located in a special development zone. In certain instances the Minister of Finance will authorise fiscal benefits up to a total tax exemption for periods from 3 to 5 years, and tax reductions of up to 50% for time periods of up to 10 years. 54

A recent KPMG report 55 suggests that foreign companies exercising economic activities within Angola are subject to the same taxes as Angolan companies, including the withholding of payroll taxes. Investors can obtain exemption for equipment and other items to be incorporated in the investment, subject to the prior approval by the Minister of Finance of the list of items to be imported. 56

Law no.15/1994 made little reference to tax regulation as opposed to the new Law no.11/2003. Article 10 of the 1994 Law 57 stipulated that companies falling under the provisions of this law were subject to compliance with current tax legislation, and had the same tax benefits as those set out for national companies. In terms of this old law, investments made under a contractual regime, were eligible for special tax benefits as set out in their respective contracts.

According to the general principles of taxation provided in law no.11/2003, corporate or individual persons covered by this law are subject to compliance with tax legislation, being

55 Ibid.
56 Ibid.
57 Law no.15/1994.
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entitled to the same established tax benefits and being subject to the same penalties.\textsuperscript{58}

Article 42 of the same law provides that transfers abroad of profit of sales and other transactions, made by private investors, within the framework of the rights established under this law, will be taxed at source, through the capital gains tax, within the framework of fiscal and tax legislation and legislation specifically regulating the private investment tax scheme.

Paragraph 2 of the same article states that subsequent to the capital invested having been recovered, within the framework of legislation governing the matter, the remittance of profits and dividends abroad is taxed, during the first 5 years, at a rate of 50\% of the tax value before recovery of the capital. After the first 5 years, it will be taxed at a rate of 100\% of that value. Private investment profits and dividends that are reinvested are exempt from the payment of capital gains taxes.

Article 43 deals with double taxation. In terms of this provision, the government will promote the establishment of international agreements with the largest possible number of countries with a view to avoiding double taxation. The supply of proof of payment of taxes by foreign investors in Angola is mandatory as a means to prove that taxes levied in the country of origin of the respective investors have been duly settled. To this point Angola has not signed any double taxation treaty with any country.\textsuperscript{59}

As previously mentioned, although the country has provided investors with highly attractive incentives to invest in the region, the government of Angola has not completely relinquished its controlling authority and does not permit an entirely free and unregulated flow of investment in the country, as would be the case of, for instance, South Africa. A number of absolute restrictions have been retained in certain strategic areas (e.g. defence, ports and airports), as well as the important state monopolies for the petroleum and mining industries. Angola would argue that as a sovereign country, it feels that this is done in the best interests of its people and also as a responsibility towards national and foreign investors.

\textsuperscript{58} Article 41.
\textsuperscript{59} Taxation in Angola, KPMG presentation, Johannesburg. German-South African Chamber of Commerce & Industry, 6\textsuperscript{th} February 2003.
2.4 Private International Law of Angola

The term conflict of laws or private international law is defined as that branch of a country’s national law which is applied when an issue involves legally material facts that are also so intimately connected with a foreign country as to necessitate cognisance being taken of that country’s legal system.60

The purpose of the rules on conflict of laws in deciding a case that contains a foreign element consists, chiefly of three aspects:61

- To determining the forum’s jurisdiction and its competence to hear and determine the case
- To provide for an appropriate and rational selection of the rules or system of law best suited to solve a particular dispute including which forum should have jurisdiction, as well as, the extent to which the chosen law should be applied and
- To determine if the recognition and enforcement of a judgment delivered by a foreign court or award of a foreign arbitration may be granted or not.

Angola’s conflict of laws originates like most of the Angola’s private law from Portugal. As a former colony, after Angola attained its independence62 it continued to apply Portuguese law to the extent that it would not be found to be in contradiction with its new Constitution, or repealed by new legislation. The Republic of Angola became an independent state on 11 November 1975. In terms of Article 58 of the independence “Constitutional Act” of the same date, “the laws and regulations in force should continue to be applicable in so far as they would not be repealed and it also provided that these laws were are not contrary to the spirit of the present Act, nor contrary to the revolutionary process in Angola”.

Consequently, the pre-independence legislation remained in force, and Article 136(4) of the Portuguese Constitution of 11 April 1933 and Base XIV (4) and (5) and LXXVI (3) of the Lei Orgânica of 23 June 1972 continued to be relevant in so far as they provided that the laws applicable in Portugal were also applicable in what was originally the colony, and since 1962 the “Portuguese Overseas Province of Angola”.63 Although the 1975 Constitution Act was amended several times, and also replaced by an entirely new Constitution in 1992, the

61 Id at 290.
62 11th November 1975.
material provisions concerning the continued application of pre-independence laws remained unaltered. Article 165 of the current (1992) Constitution provides that “the laws and regulations in force in the Republic of Angola shall be applicable unless amended or repealed, provided they do not conflict with the letter and spirit of the present law”.  

The genesis of the Angolan legal systems explains why the body of Angolan private and commercial law is made up of the Portuguese Civil Code of 1966 and the Portuguese Commercial Code of 1888 (both as applicable in Angola on the date of independence, on 11 November 1975). Both these codifications are well known as forming part of the great traditions of European Private Law, originating \textit{inter alia} in Roman-Dutch law. With hardly any minor changes, the private international law of Angola is the same as the one from Portugal. Some aspects of the private international law of Angola shall be alluded to.

Chapter III\textsuperscript{65} of the Portuguese Civil Code\textsuperscript{66} deals with the conflict of laws as well as with the rights of foreigners. Articles 14-24 stipulate general principles, such as the conditional acceptance of \textit{renvoi} (Article 18), the usual “Ordre Public” exemption (Article 22) and, for instance, the prohibition of a fraudulent forum choice (Article 21).  

Whenever the nationality of a person is at stake and different legislatives systems coexist within one and the same country, the internal law of that country shall determine which one is to be applicable. If there are no inter-local laws applicable, recourse should be taken to the private international law of that country and if this option should not resolve the matter, the national law where the interested party resides should prevail.  

Regarding all status questions that include the legal capacity, marriage and other family relations, as well as succession, Article 25 establishes a general reference to the personal law of the investor. Article 31 defines the personal law as the law of the nationality of the individual investor.

Regarding legal persons, Article 33 establishes the effective domicile principle as follows: The law applicable to this type of person (or enterprises) is the law of the state where the legal person is registered and exercises most of its activities, as well as, the place where he

\textsuperscript{65} Book I, Part I, Section I of the Portuguese Civil Code.  
\textsuperscript{66} Universidade Agostinho Neto (1995) \textit{Codigo Civil} 15.  
\textsuperscript{67} Universidade Agostinho Neto (1995) \textit{Codigo Civil} 15.  
\textsuperscript{68} The Portuguese Civil Code.  
\textsuperscript{69} Article 20.
performs most of his administrative work. In terms of this provision, this law regulates all the functioning of investors’ internal organs, its constitution and its legal capacity.

The provision in Article 33 also regulates the responsibilities that the legal person should have towards third parties, especially in those instances when the legal person dissolves or transform itself in another type of business enterprise. The transformation of a legal person into another type of a legal person does not extinguish its existence.

According to Article 41 of the Portuguese Civil Code, the parties to a contract stipulate the law that shall govern their relationship, as well as, the substance of their business. In the absence of such a choice of law, the law that the parties may have had in mind shall apply. Whenever a relevant law that would regulate a relationship is absent, the applicable law will be that of the place of residence of a person, in case of a unilateral act, alternatively the law of the place where a contract was signed.\(^69\)

As argued by Joubert\(^70\) the choice of law is normally regulated by the parties, such choice is universally valid and enforceable. However, the above principles were derogated by the provision in article 33(5) of Law no 11/2003, the new private investment law. It derogates from most of the older principles of private international law by stipulating that the applicable law to an investment agreement must always be the Angolan law, and that any arbitration must also take place in Angola “…\(^71\)

Thus, and for virtually all-practical instances, the predominant law in an investment contract in Angola is the Angolan law. Hence the principle of contractual depecage\(^72\) would not be acceptable, since art 18 of the Portuguese Civil Code must also be considered to have been derogated by article 33(5) of Law no.11/03.\(^73\)

Article 46 of the Portuguese Civil Code governs title and ownership. According to this Article, the land is the principle thing and whatever is an accessory to the land, belongs to

\(^69\) Article 42 of Portuguese Civil Code.

\(^70\) Joubert (2003) 354.

\(^71\) See Paragraph 3.8 below for how this relates to ICSID.

\(^72\) A rejection of the suggestion that two different proper laws can govern a single contract.

\(^73\) Article 33(5) of Law no.11/2003.
the owner of the land. A real right is defined and controlled by the state, where it is situated. This provision is in effect in harmony with the provisions Article 11 of Law no.11/2003.

Article 48 of the Portuguese Civil Code regulates the Intellectual Property Rights. The law of the place where the first publication was done regulates the copyright of that intellectual property. In case the intellectual property has not been published yet the personal law of the author will apply. When it comes to Industrial Property the law of the place where the property was first created will apply.

Article 23 of the Civil Code provides that foreign law shall be interpreted within its system and according to its own rules of interpretation. When it is impossible to confirm the content of the applicable foreign law, recourse shall be made to a similar, relevant national law adapting a similar procedure.

The ascertainment of the relevant conflict of laws is of great importance to investors. Before an investor invests in a territory, he or she needs first ascertain the private international law of the host country.

Presently Article 11 (4) the Angolan constitution provides that the State of Angola shall protect foreign investment and foreign property, in accordance with the law. However it is the author’s opinion that the promotion of investment will be better protected if the new Constitution is approved. According to Article 134 (which deals with the promotion of investment) of the future Constitution:

- The State of Angola will promote and protect any type of national and foreign investment that will contribute for the social, and economic development of the country
- The state will protect and respect the private property of both foreign and national investors, as provided by the current Constitution (Article 11(4)), and
- In the ambit of the harmonious and planning development and integrated of the national economy, the State especially will especially incentive the productive investment.

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75 Constitutional Commission of the National Assembly of the Republic of Angola, Part III, Title II that was approved by the Constitutional Commission on the 27th April 2000, available at http://www.comissao-constitucional.gov.ao/paginas/part_3_b.htm
A conflict of law is a branch of the national law of country, and it is not international law per se. In Angola, as a result of law no.11/03, most provisions of the civil code dealing with private international law, have been derogated and replaced by a strict bias in favour of Angolan law jurisdiction as has been shown above.
CHAPTER III-Business and Investment Obstacles in Angola

3. Introduction

This Chapter deals with the most important aspects of this thesis. Investment obstacles are a serious setback to FDI. The author will look at some of the investment barriers faced by investors before and after entering the Angolan territory, will discuss the problem of intra-African trade, especially within the SADC region, will also look at some advantages and costs that FDI can bring to the host country. Some examples of the main focus of investment to Angola will be examined, as well as the correlation of GATS and investments, the role of MIGA in conflicts between the host and the investing country, and the role of ANIP in the Angolan investment environment.

3.1 ANIP and its Incentives

The National Agency for Private Investment (ANIP) is a government agency created to reduce red tape, assist and encourage private investment in Angola. The agency is also charged with implementing the national tax incentive policy and providing a direct channel of communication with investors.\(^76\)

ANIP was created in order to promote good conditions for private investment and the projects intended to develop a particular region, and to establish good relations of cooperation with other persons who had as a main objective the expansion of investment.\(^77\) It is the responsibility of ANIP to provide technical and legal assistance as well as market studies for national and foreign investors. It also has the duty to follow up on investments done including those that are subject to “prior notification procedure”. For investments up to US-$5 million, proposals must be submitted by filling a “prior notification” on a form that is available from ANIP.\(^78\)

As will be shown in practice, the technical and legal assistance provided by ANIP is not sufficient, and this is why investors are forced to take recourse to mode 4 of GATS so that they can bring into the country skilled and efficient labour in order to do qualified work and to train the locals.

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\(^76\) ANIP: Do You Want a Good Reason to Invest in Angola? 2003 2.

\(^77\) Revista Espaco Africa no..34 November/December 2004 79.

\(^78\) Ibid.
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ANIP also has the role to promote the integration of investment policies through participation in international organisations and conferences related to foreign direct investment. As a result of all the involvement of ANIP, it is hoped that foreign companies should benefit from the groundwork done for them by the agency.

ANIP must make available certain incentives to foreign investors as allowed for in the law. Some of these incentives are:

- Exemption for up to six years from payment of customs tariffs and other taxes on goods and equipment, including heavy and technological vehicles, from the date of arrival until the beginning of operations for investments. Investors are only required to pay the stamp duties and service charges;
- Five-year exemptions from customs tariffs for merchandise incorporated into or directly consumed in the act of producing other products, including during test stages. For these goods investors are only required to pay the tax stamp and service charges (this does not include equipment, accessories, surplus parts and raw material produced in Angola);
- Up to fifteen years exemption from industrial tax for profits on investment, as well as, the industrial tax on the price of the venture and subcontractors employed to carry out the investor’s business activities;
- Expenses incurred to build roads, railroads, install telecommunications facilities, water supply systems and social infrastructures facilities for workers, their families and communities, expenses for professional training and investment in the arts and culture, and the purchase of works of art from Angolan artists, will be considered tax-deductible expenses.

The other important incentive offered in the Private Investment Law no.11/2003 is the exemption from industrial tax, at a rate that currently stands at 35%. This important benefit is available to three types of investment:

- The exemption is granted up to fifteen years for activities in sectors of strategic priority localized in zone C (Huambo, Bie, Kuando-Kubango, Cunene, Namibe, Malange and Zaire);

79 Id at 80.
81 Article 5 of Law no.17/2003.
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- Twelve years exemption for projects in zone B (Kwanza-Norte, Kwanza-Sul, Bengo, Uige, Luanda and the town municipality of Benguela, Cabinda and Huila);
- Eight years for projects in zone A (Luanda, Benguela, Huila, Cabinda and the Lobito municipality).

The Law also provides for the reduction of the bureaucracy to approve investments and guarantees the repatriation of foreign capital, even in the case of national companies, whenever constituted with foreign capital.\(^{82}\)

As previously mentioned, under Law no.11/03 investors can transfer distributed dividends and profits abroad after paying up their respective shares in the equity of the corporation or business entity. They can also transfer the results of the liquidation of their investments (after paying any taxes owed), the results of compensations, royalties or other revenue obtained from indirect investments associated with technology transfer. Investors may also transfer any amount owed by them as stipulated in private investment agreements, following the deductions of any taxes due by them. Investments in diamonds, petroleum and financial institutions are covered by special legislation.\(^{83}\)

The decision of making a valuable FDI involves a number of important steps, beginning with the investigation of the territory, working through the selection of the location of the investment to be done, and taking into account factors like the time and size of the investment etc.\(^{84}\)

### 3.2 Investment Barriers

Investors often complain that it is difficult to do business in Angola. Such difficulties are present before and after entering the Angolan territory. In order to best assess this aspect of FDI in Angola, the author relied on interviews done during a brief research visit to Angola. Most of the interviewed investors asked that their identities should not be revealed.

At the outset, all investors interviewed stated a common view. Before the end of the war, Angola was seen as one of the most high-risk countries in Africa to bring in FDI, because of

\(^{82}\) Ibid.

\(^{83}\) Ibid.

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political instability and the uncertain security situation. The questions asked by the author were the following:

- In their personal opinion, how was it to invest in Angola?
- What difficulties have they encountered before and after investing in Angola?
- What was the worst constraint faced by them?
- What benefits have they encountered in investing in Angola, and who benefited the most? Angola or the investors?
- What should be done to improve and encourage FDI in Angola?
- According to them what comparative advantages do they think Angola has in the SADC region?

All interviewees mentioned that indirectly the country imposed certain investments barriers that at times hinder investment into the region, discouraging investors from investing in the country. Amongst the barriers mentioned are: The amount of documents that have to be translated, certified, filled in and signed; investors have utilized third party resources in order to have their documentation done on time and in the official language, which is Portuguese. This administrative burden is sometimes so big that a resulting third obstacle identified is corruption, meaning that at times they have to pay extra money unofficially to obtain service. Once in the country they face other constraints.

Bureaucracy, corruption, non-tariff barriers, transport costs and distance, import licenses, high taxes, tariffs, lack of enforcement rules, interests charged against their investments, slow economic growth and some security problems which they face in certain areas of the country, especially in the south (including landmines) are great impediments. Even though the new investment legislation was intended to alleviate the situation, things are still difficult for them.

There have been cases of investors that have lost large sums of money because of corruption and also because of the fact that the legal and administrative infrastructures, to promote, protect and enforce the prescribed direct investment regimes have always been inadequate to the detriment of investors and of FDI into Angola.

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Currently Angola is doing everything to fight corruption in the country. In April 2001 the Auditor General Tribunal finally came into operation, after it had been created by parliament under Law no.5/1996. The main objective of this law is to control the finances held by members of the state, the public and the private sector for the benefit of the people. In the same year, BP, a multi-national petroleum concern made a campaign for transparency in Angola that was a success. Angola also signed a co-operation agreement with Norway to help the government fight corruption and implement good governance in public administration. In July 2004 the President of Angola committed himself to co-operate with the G8 in fighting corruption and ensuring transparency.

In May 2004 Angola agreed to disclose payments from big oil companies. Angola has also shown its willingness to accept the warning presented by the World Bank that corruption must be curbed in order for the country to receive loans from this international financial institution. Angola has recognised that corruption has increased famine in the country.

Language tends to be another barrier to investment. Angola’s official language is Portuguese, which is not widely spoken in the countries that are its most important trading, and FDI partners. Angola is also one of the African countries with the highest level of illiteracy in the Sub-Saharan region, therefore it is sometimes difficult to find qualified labour in provinces other than Luanda, and even more difficult to find skilled labour that speaks both Portuguese and English fluently. Further important factor mentioned by investors is the lack of transparency generally, which is often felt from the government’s side when it comes to the interest charged against their investment (which tends to be too high), as well as high taxes.

African states were always much more vulnerable to a susceptible deprivation of their assets, because of the fact that poverty and weakness made it easy to exploit them. During the early years of investment, economic and political instability were considered to be the two major reasons investors used to find the continent unattractive for investment.
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Although Angola is one of the African continent’s richest countries in terms of natural resources, its people are among the poorest, whilst allegations of corruption and mismanagement are continuously levelled at the leadership.\(^{94}\)

Epidemic diseases like Ebola in DRC and SARS in the Republic of China, and recently the Marburg virus in Angola are seen as serious impediments to FDI, because investors are becoming discouraged from investing in certain regions (e.g. Uige province which is in zone B).

In a nutshell the interviews conducted have revealed that FDI continues to be hampered by a myriad of obstacles and barriers. Amongst those is also power supply as in the case of Shoprite Checkers and Steers that deal with perishable goods. Although investors still complain about the situation, they also agree that the position is changing. Slowly but surely the country is making progress in fighting these evils.

3.3 Angola under GATS

By joining the WTO (World Trade Organization)\(^ {95}\) Angola also became bound by the agreements of the Uruguay Round, because of the single undertaking agreement that bound Angola entirely, except for Plurilateral Trade Agreements. This has been seen as one of the differences between the WTO and the old GATT where members could pick and choose some of the agreements that they wanted to be part of (pick a la carte).\(^ {96}\)

The accord on GATS\(^ {97}\) relates to one of the agreements that established the WTO. For the purposes of this agreement, “trade in services” is defined as the supply of a service:\(^ {98}\)

- From the territory of one Member into the territory of any other Member (mode 1);
- In the territory of one Member to the service consumer of any other Member (mode 2);
- By a service supplier of one Member, through commercial presence in the territory of any other Member (mode 3) and
- By a service supplier of one Member through the presence of natural persons of a member in the territory of any other Member (mode 4).


\(^{95}\) 23\(^{rd}\) November 1996.

\(^{96}\) Available at http://www.un.int/unitar/trade_campus/basic_principles_of_WTO.pdf.

\(^{97}\) General Agreement on Trade in Services.

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Focus will briefly be put on modes 3 and 4 of GATS. Commercial presence (mode 3) refers to the opportunities for Foreign Service suppliers to establish, operate or expand a commercial presence in the Member's territory, such as a branch, agency, or wholly owned subsidiary. On the other hand, the presence of natural persons (mode 4) refers to the possibilities offered for the entry and temporary stay in the Member's territory of foreign individuals in order to supply a service.  

According to a World Bank survey by liberalizing services, a host country gains more than it would gain from liberalising trade in goods because of the higher protection this area requires. With the liberalisation of services Angola would be in a position to develop its domestic services, especially, in relation to infrastructure-related services, would allow for a better access to high-quality services which would benefit the whole economy by increasing productivity in all sectors. Mode 3 of GATS would better suit this purpose because it involves the transfer of knowledge and know-how.

The European Community has asked the Republic of Angola to revise its commitments made at the time it joined the WTO, in order to better suit the worldwide interests that the EC and other members of the WTO have in Angola. It also asked the Angolan government to improve the commitments, and reduce the scheduled limitations. The EC has suggested an improvement on the telecommunications services, professional and business services, construction and related engineering services, financial services, transport services and energy services.

The author finds these provisions very much in point and valuable, however, concern about significant job losses whenever investors bring along their own skilled labour to fill higher positions, and employ locals in lower positions only, must not be taken lightly. In Angola for instance, the deregulation of duties can be felt in the privatisation of fuel distribution. A good example would be the Decree Law no.127/03 on the local content in oil industry, which establishes special requirements for the contracting of Angolan companies in order to supply goods and services to the petroleum industry. In terms of this Decree, for a company

99 Available at http://www.wto.org/english/tratop_e/serv_e/guide1_e.htm
100 World Bank 2002.
102 Ibid.
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to take part in the tendering process for goods and services that require investment, at least 51% of the shares must be owned by Angolan nationals.\textsuperscript{103}

One could correlate modes 3 and 4 as a form of investment most used in the Angolan context. As in any sovereign country, some restrictions have been imposed to avoid injury to the domestic market, but they can work as a barrier to investment when exaggerated. Liberalization is the main goal as long as foreign investors abide by the laws of the host country. The EC asked for a horizontal commitment in most of the professional areas, which would help in the development of the country.\textsuperscript{104, 105}

The presences of natural persons as well as commercial presence as desirable forms of FDI are of crucial importance to LDCs (Least Developed Countries) because through it advances in the transfer of technology, know-how, technical assistance, job creation, the eradication of poverty and the improvement of sustainable development are encouraged. It is important to bear in mind that the presence of natural persons in the host country is only temporary to the extent that the aims of such sojourns are indeed accomplished.

MNEs invest in all spheres of what are traditionally government areas, especially in education, health and infrastructure. By establishing a hospital or a school in the host country mode 3 is complied with, however because of the lack of human capacity and of local qualified technical assistance, mode 4 has to come into the scene. The position would be the same in the sectors of education, tourism, construction, banking etc.

Services liberalisation is important for globalisation because it helps the host country to become acquainted with universal standards of services in the sense that it improves service quality and an open space is left for greater transfer of technology and knowledge. Law no.11/2003 helps to achieve this aim through the provisions in Articles 22 and 45 of the mentioned law. Market access in these modes (3, 4) is predominantly limited by local and foreign equity participation because by doing so host countries strengthen their weaknesses rather than having a highly competitive business that would hamper domestic enterprises.

\textsuperscript{103} Prof. Thomashausen Andre (2004) 9.  
\textsuperscript{104} Available at http://www.gatswatch.org/docs/offreq/EUrequests/Angola.pdf  
\textsuperscript{105} Available at http://www.wto.org/english/tratop_e/serv_e/finance_e/sc115.wpf
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As suggested by Schulze\textsuperscript{106} by liberalizing trade in the services sector, developing countries gain more than they lose. That is so because developing countries are expected to produce a welfare gain of an estimated total amount of US$332 billion just for 2005 because of the reductions that are being made in their respective services sectors as a result of liberalised services industries. According to the comparative advantage theory, because developing countries have a deficiency in the services sector, and in order to have access to the international market in the agricultural sector, developing nations should also liberalize their services sectors and contribute to the globalisation of the free trade area.

As provided by the special law on delimitation of sectors of economic activities, Law 13/94\textsuperscript{107}, which has not been revoked by law no. 11/2003, or any other legislation, the government exercise unconditional and in some cases relative exclusivity in certain areas or sectors of economic activity. This position has also not been reversed by the recent “Privatisation Law, Law no.8/03, which merely set up certain review procedures for state owned assets.”\textsuperscript{108} As already discussed above in Chapter 1 (1.2.1), in those sectors that are either unconditionally or conditionally reserved for the State, access for private investments will only be permitted exceptionally. Telecommunications, as far as the basic national network and fundamental services infrastructures are concerned is one of the sectors of economic activity reserved for the state, in terms of law no 13/94. However in 2001, Government accepted the principle that fair competition between public and private service providers would improve the quality of telecommunication services in the country. Possibly, the South African experience served as an inspiration. In South Africa, the public service provider Telkom SA\textsuperscript{109} benefited from opening up intercontinental communication cooperation between South Africa and the United Kingdom (Vodafone)\textsuperscript{110}, resulting in the establishment a joint venture company Vodacom.

This developed a shared service model for providing telecommunication services to poor communities in South Africa, beginning with a government mandate, and a required

\textsuperscript{108} Although law 13/94 has been altered by law no.8/03, the question of absolute State reserve remains the same, as provided by Article 10. Available at http://www.iie-angola-us.org/privatization.htm
\textsuperscript{109} Telkom SA Limited is one of the largest companies registered in the Republic of South Africa and is the largest services provider on the African continent based on operating revenue and assets.
\textsuperscript{110} Vodafone is one of the UK market leaders in mobile communications, with over three million subscribers.
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precondition for serving more lucrative market segments that turned into an important source of learning and an opportunity for future profitable growth.\footnote{Available at http://www.insead.edu/CMER/events/documents/WBCSDvodafonecase.doc} By liberalizing the telecommunication sector, the government of Angola promoted further development of the industry. Angola’s similar approach was achieved with the establishment of the Unitel consortium, joining Portugal Telecom (25%), Mercury, a subsidiary of Sonangol (25%) and two local companies, Vidatel and Gemini. The consortium launched a GSM network in Angola in April 2001.\footnote{See for instances at http://www.iie-angola-us.org/telecommunications.htm}

Although liberalisation contributes to the globalisation process, the author believes that the host country does need to protect its local market from excessive imports by imposing quotas whenever the local market is at risk as permitted by the WTO (by way of safeguarding actions, quantitative restrictions can be introduced under strictly defined criteria).\footnote{Article XVI (2) GATS/WTO available at http://www.wto.org/english/docs_e/legal_e/26-gats.doc}

So far, the author is of the opinion that the liberalization on services that has been felt in Angola is slowly progressing. Foreign companies like BP, Chevron Texaco and others are employing more young nationals. In the process, locals are gaining better skills and some of them are being sent overseas in order to upgrade their knowledge an expertise for certain key areas.\footnote{see for instance at http://www.akerkvaerner.com/Internet/MediaCentre/Featurestories/OilandGas/HelpingDaliaBloom2.htm}

3.4 Main Focus of Investment in Angola

Every since Angola overcame its civil war in 2002, it has been the focus of investment from all over the world. Recently the Angolan government has turned its attention to investment coming from China.

Angola was successful in securing a credit of US$2 billion from China, generally in its endeavour of developing the country. To repay the debt, the government has agreed to pay Eximbank\footnote{The Eximbank is a Chinese State owned policy bank, established to support the country's overseas-oriented economy.} of China by providing them petroleum.\footnote{Revista Espaco Africa no.33 September/October 2004 28.} The main focus areas of this
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investment finance are agriculture, water and electricity, transports, civil construction, industry, education, health and fishery. For the area of civil construction an amount of US$715 million will be used, giving preference to public buildings, industries of civil construction materials, and roads. The amount of US$40 million will be used in the construction of a new parliamentary building, US$29 million to complete the palace of justice that is already in construction, US$350 million for the rehabilitation of the roads and US$25 million for the construction of the new installation of the Angolan Public Television (TPA).117

In the food production field, Chinese companies will build three thousand boats, new supermarkets, and fish oil factories for tuna and sardines, utilizing a total of US$300 million. The amount of US$120 million will be used in the reconstruction of a system of water supply and the development of the Caxito valley, in order to generate water to irrigate 2000 hectares of land for agriculture. The amount of US$240 million will be used to increase the level of secondary schools and tertiary institutions, and an amount of US$100 million shall be used for the development of the industry.118 In all Chinese financial projects, an Angolan local content of at least 30% will be ensured. The Chinese line of credit carries near-soft terms: 1.5% interest rate; 5-year grace period; 17-year repayment period.

Other than China, investment coming from European countries in particular Germany, Italy, Holland, Sweden and Portugal can be felt in the country. Portugal has always maintained its presence in the territory, even when Angola was still at war. Its main area of interest is the realm of civil construction. South Africa showed its interest in the diamond, construction and cattle industries, Germany turned also to civil construction, high technology equipments, food production, and, most recently, motor industries.119 The comparatively bold scale of the many new envisaged FDI projects would most certainly put the legal framework for FDI to the test.

3.5 Correlation between Investment and Intra-African Trade

The integration of Africa in trade relations within its region could promote, and encourage more trade and investment in the region and develop a closer relationship amongst African

117 Id at 30.
118 Id at 31.
119 Id at 75.
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nations. In the SADC region, as well as in SACU, the biggest export comes from South Africa, even though there is a tendency for trading primarily in commodities.\(^{120}\)

According to a presentation done by Feris\(^ {121}\) early in 2005\(^ {122}\), African countries do not trade with each other, that is why South Africa dominates intra-trade within Africa. There is a need to source African imports on the continent, and to promote African exports within the region. Intra-trade brings many benefits, which African countries especially the ones in the Sub-Saharan region, should embrace. Such benefits are job creation, economic development, incentives for private cross-border investment and foreign investment as well as a faster growth in income.

There are a few impediments to intra-trade in Africa that could be seen as constraints to foreign direct investment. Factors like lack of diversity in terms of what to export, high tariff barriers in the region which make it costly to export to neighbour countries, overvalued currencies, high rates of inflation, lack of internal macro-economic balance, the inability to meet international quality, to apply health standards, lack of industrial services such as warehousing, lack of public services, deficient telephones, ineffective ports, complicated custom facilities, unreliable power supply, high transport and shipping costs and the insecure legal frameworks can play a very important role in the delay and discouragement of intra-trade and investment in Africa.\(^ {123}\)

Other barriers to trade facilitation emphasised by Feris, which the author would consider as investment barriers for the regional integration on facilitation of trade within Africa are: Factors like the lack of proper infrastructures, lack of human capacity and the difficulties in getting information on trade. It is trite knowledge that trade facilitation simplifies and harmonises all international trade procedures and prioritises full development integration. Despite all the adverse factors, one cannot underestimate the benefits Africa would derive from trade liberalisation in Africa. Clearly, trade liberalisation would result in more cooperation, and obvious improvements of infrastructures, a combined market, reductions of tariffs and so fourth.

\(^{120}\) Prof. Feris\(^ {121}\) (2005) Seminar “Facilitating Intra-Africa Trade: Is Integration the Answer?”
\(^{121}\) Lecturer of International Trade and Environmental Law of the University of Pretoria.
\(^{122}\) Holiday Inn at the Johannesburg International Airport, February 2005.
\(^{123}\) Prof Feris’ Seminar 2005.
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Africans indeed trade very little with each other. A good example is the fact that the Government of Angola contracted Odebrecht, a Brazilian construction\textsuperscript{124} company to build roads, when it could have procured the same services from the most developed neighbour countries (e.g. South Africa). Since they are in the same region, the costs should be less, but because of the investment constraints encountered (e.g. high tariff and high cost of transportation) investors in the region are discouraged from challenging the status quo.

In conclusion for a better trade integration and promotion of investment in Africa, there is a need to harmonise trade facilitation initiatives, there should be more exchange on information amongst Africans. The lack of implementation of key policies should be addressed, a need for a feasible dispute mechanism accepted, as well as an enforcement mechanism should be implemented and at last a legal framework for trade and industries is needed in order to make this dream a reality.\textsuperscript{125}

3.6 Advantages and Implications of FDI to the Host Country

The contribution of capital is a relatively more important productive factor where it is scarce than where it is abundant. As a general rule the host country benefits from foreign investment, since not only its real product rises because of the contribution of new capital, but also for the reasons of the transfer of know-how, innovations and access to well developed capital markets.\textsuperscript{126}

According to some scholars\textsuperscript{127}, FDI raises the income of the host country and its entire economy is consequently placed on a new and higher path. In this opinion, FDI not only provides benefits but also some constraints that shall be briefly elucidated here.

Mordechai claims that foreign enterprises exploit labour in the host country and depletes most of its natural resources at less than market value. Even though exploitation occurs when a monopoly power prevails, many firms seek exploitations rights for a country’s natural resources. In most cases exploitation is deemed to be unlike, due to competition. Rather, the host country benefits in terms of taxes, royalties, wages and salaries that are

\textsuperscript{124} Available at http://www.maianga.com.br/midia/noticia.asp?oid=64
\textsuperscript{125} Prof Feris' Seminar 2005.
\textsuperscript{127} Mordechai (2002) 195-196.
paid locally and also from imported technology.\textsuperscript{128}

A great disadvantage is the fact that the major policy decisions of international companies, as well as, their research and development activities are centralized in the investing country leaving only routine work and less technical activities for the employees of foreign subsidiaries.\textsuperscript{129} Another well-documented negative is that foreign companies often bring with them immigrants (sometimes illegally), to work in their companies in positions that could be filled by locals. The host country has to face many costs, and depending on the size of a particular FDI, sometimes industries in the host country can be troubled.\textsuperscript{130}

Another disadvantage is that multinational companies may at times compete unfairly with domestic firms, because they possess great non-tangible productive assets, such as technological know-how, marketing and management skills, export contacts, coordinated relationships with suppliers and consumers and also an international reputation, compared to the local firms.\textsuperscript{131}

Some authors\textsuperscript{132} are of the opinion that FDI takes more in the form of profit and other payments than what their business contribute to the national income. According to them, investors take excessive profits because of paying extremely low wages to the domestic labour force employed, and also because they deplete the natural resources of the region such as oil and minerals, against the payment of small royalties.

Another disadvantage cited is seen in many host countries in term of the so-called nationalist conflicts that can be the result of growing social xenophobia. This was also manifest as an international dependence, by which stronger members of the international system attempt to dominate and exploit those that are smaller, less developed and weaker. Issues like the dearth of jobs, poor housings, inadequate health care and lacking educational services, a bad food distribution system, a rapidly expanding population, high prices dues to uncontrolled inflation, a stagnant economy that often offers little prospect for the future, would often accelerate this national adverse sentiments towards foreign

\textsuperscript{128} Mordechai (2002) 196.
\textsuperscript{129} Ibid.
\textsuperscript{130} Eric Gichira “Don’t Over Rely on FDI” available at www.globalpolicy.org/socecon/ffd/2003/0331dontrely.htm
\textsuperscript{131} Steve Chan (1995) 4.
\textsuperscript{132} Bos, Sanders and Secchi (1974) 20.
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investors.\textsuperscript{133} The author agrees with what has been previously, but would distinguish a few aspects in respect of Angola.

Angola is an LDC (Least Developed Country) and a host country to FDI in the Sub-Saharan region causing FDI to bring with it greater positive impacts than negative ones. In the next Chapter we shall look at the various ways in which FDI has positively and negatively influenced the country. Focus shall be placed on the social, economic, political and environmental aspects. Attention will also be given to some examples of FDI into Angola.

3.7 SADC Trade, Industry, Finance and Investment Protocol (TIFI)

In March 2003, Angola agreed to adhere to the SADC Free Trade protocol that seeks to facilitate trade by harmonizing and reducing tariffs and by establishing regional policies on trade, customs, and methodology. The Directorate of Trade, Industry, Finance and Investment (TIFI) was launched in August 2001, as a cluster composed of trade and industry, mining, and finance and investment intervention areas. The transfer of responsibilities of these sectors from Member States was completed in March 2002.\textsuperscript{134}

During the period of 2002/2003, the TIFI focused on the achievement of certain goals that were considered as priorities for that specific time period. Amongst all the goals there was a need for the coordination of the development of a SADC protocol on finance and investment, and investment promotion and development finance.\textsuperscript{135}

For the period of 2004/2005 the work program of the TIFI is to be focused on four main issues, which also prioritises the finalization and the initiation of the implementation of the SADC protocol on finance and investment for the achievement of macro-economic convergence, deepening of financial and capital market and increased investment to support economic growth.\textsuperscript{136}

The TIFI Directorate started to implement its goals in the year 2004 and by the year 2007 they are supposed to have finished implementing all or almost all the protocol. Investment seems to be one of the priorities to be achieved during this medium term through the formulation of the finance and investment protocol, where the instruments that will develop

\textsuperscript{133} John M. Rothgeb, Jr (1996) 97.
\textsuperscript{134} Available at http://www.sadcreview.com/directorate_reports/report_tifi.htm
\textsuperscript{135} \textit{Ibid.}
\textsuperscript{136} \textit{Ibid.}
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and strengthen the financial and capital markets in SADC will be put in place, as well as, the creation of favourable conditions for attracting FDI into the region.\textsuperscript{137}

Clearly the promotion of investment at all level of SADC is one of the main priorities, which have been at stage SINCE 2004. The ministers of SADC met in order to develop a single Finance and Investment Protocol (FIP), with the objective of creating a Free Trade Area (FTA) for the whole region. The FIP will facilitate regional integration, co-operation and co-ordination within finance and investment areas in the SADC region. The documents developed by various Finance and Investment technical committees have been converted into annexes, which form an integral part of the Protocol. The annexes will therefore be binding upon the 14 Member States.\textsuperscript{138}

The Southern African region has a great comparative advantage in Africa relating to the promotion of investments. It possesses mineral, human resources, agricultural and hydroelectric resources, which give this region a relative advantage in attracting FDI. Once implemented, signed and ratified, the protocol will hopefully improve the promotion of investment in the region and better liberalize trade.\textsuperscript{139}

The SADC protocol is aimed at continually improving the client services, working in partnership with others, building capacity, and sharing and learning from each of its members’ experiences.

3.8 The role of MIGA in FDI.

The International Bank for Reconstruction and Development, better known as the World Bank came into existence in 27\textsuperscript{th} December 1945, following international ratification of the agreements reached at the Bretton Woods Conference of July 1-22 1944.\textsuperscript{140} The World Bank is not a “bank” \textit{per se}, but one of the specialized agencies of the United Nations, which is made up of 164 member countries. It was created in order to fight Poverty by means of turning rich country resources into poor country growth.

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{137}] \textit{Ibid.}
\item[\textsuperscript{138}] Finance and Investment Protocol available at http://www.sardc.net/Editorial/sadctoday/view.asp?vol=38\&pubno=v7n6
\item[\textsuperscript{139}] Available at http://www.sarpn.org.za/documents/d0000448/P400_SADC_Investment.pdf
\item[\textsuperscript{140}] Available at http://www.worldbank.org/icsid/
\end{itemize}
\end{footnotesize}
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The World Bank Group is composed of five affiliated agencies that are the International Finance Corporation (IFC) that was established in 1956, the International Development Association (IDA), the Multilateral Investment Guarantee Agency (MIGA) established in 1988, the International Bank for Reconstruction and Development (IBRD-1945), and the International Centre for Settlement of Investment Disputes (ICSID), established in 1966.

Angola is still not a contracting party of ICSID, nor is its main trading partner in Southern Africa, South Africa. Foreign investors generally do not welcome this fact. The concerns were highlighted by a recent arbitration proceedings involving De Beers, where the government had obtained a finding from an Angolan judge that advised them to withdraw from the proceedings because the fact that those proceedings were conducted outside Angola, and not in accordance with Angolan law, was as such contrary to Angolan laws. However, and as pointed out by Bradlow, where the host country has not ratified the ICSID-Convention (e.g. Angola and / or South Africa), the special so-called Additional Facilitation Rules, provided by the ICSID, can still be invoked and applied, if one of the parties is a signatory. The incentive to do so can be seen in the advantages to be gained from invoking and relying on the international authority and the reputation of the ICSID.

The author will now concentrate on the third agency that is known as MIGA, which is an agency that provides political risk insurance for private companies making investments in developing countries.

Angola is a member of the Multilateral Investment Guarantee Agency (MIGA), which provides insurance to foreign investors against certain risks, such as expropriation, non-convertibility, and war or civil disturbance. MIGA is also available for investment dispute resolution on a case-by-case basis. MIGA’s missions is to promote foreign direct investment into developing countries, as well as in Least Developed Countries in order to support economic growth, reduce poverty and improve people’s lives in what are often perceived to be poor and doomed African countries.

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141 Established in 1960.
142 Available at http://www.worldbank.org/icsid/
143 Available at http://strategis.ic.gc.ca/epic/internet/inimr-ri.nsf/fr/gr105305f.html
145 See for instance at http://www.miga.org/screens/about/about.htm
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MIGA acts like a global insurer in order to assist private investors and advise countries on foreign investment. It is committed to promoting projects with the greatest development impact, which are economically, environmentally and socially sustainable.\footnote{Available at http://www.miga.org/screens/about/about.htm} Even though Angola has agreed to host the Multilateral Investment Guarantee Agency (MIGA), it has never brought forward any investment complaints for MIGA to resolve.\footnote{Available at http://strategis.ic.gc.ca/epic/internet/inimr-ri.nsf/fr/gr105558f.html} Instead the Angolan government prefers to solve the disputes using its national forums, which, to the detriment of foreign investors, are not very efficient. The potential conflict between rules that would establish jurisdiction on MIGA level and the stipulation in article 33(5) of Law no 11/2003 whereby any arbitration must take place in Angola, subject to Angolan law, have never yet been resolved.

MIGA has many added values. It aims to bring value to developing member countries by giving private investors the confidence and comfort they need to make sustainable investments in developing countries, particularly in frontier markets; by focusing on countries and sectors where MIGA support can play a uniquely powerful role in attracting investment; in paying particular attention to post-conflict environments and very poor countries (Angola) and by extending the reach of public and private insurers and complementing their insurance capacity.\footnote{See for instance at http://www.miga.org/screens/about/about.htm}

The investor will have access to a multilateral risk insurance against non-commercial risk in the host country. However before MIGA issues a guarantee contract, both the investing and host country must be members of MIGA, and the host country will have to give its approval for the issuing of such a contract.\footnote{Bradlow Daniel D, Escher Alfred (1999) 48.}

In case of loss the principle of subrogation applies. The investor will be compensated by MIGA and afterwards MIGA will step in the place of the investor, claiming directly to the host nation, for the money compensated for them. A great advantage of this principle is the fact that a political dispute between the host nation and the investing country is avoided.\footnote{Bradlow Daniel D, Escher Alfred (1999) 49.}

By helping to resolve investment disputes between host governments and investors, MIGA provides expert advice to countries in order to help them attract and retain quality foreign
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investment; being a leader in developing new products and services that will encourage FDI into developing countries, and finding innovative solutions to meet client needs.\textsuperscript{151} As a member of the World Bank, Angola is also a member the Agency. As such Angola will also benefit from the strategies the agency provides to promote FDI in the country. Angola could also benefit from MIGA's dispute mediation program, which helps governments and investors to resolve their differences, and ultimately improves the host country's investment climate.

FDI in Angola is also protected by the Convention establishing the Multilateral Investment Guarantee Agency. Article12 (d) provides that in guaranteeing an investment, the Agency shall satisfy itself as to the economic soundness of the investment and its contribution to the development of the host country, to the compliance of the investment with the host country's laws and regulations, the consistency of the investment with the declared development objectives and priorities of the host country and the investment conditions in the host country including the availability of fair and equitable treatment and legal protection for the investment.\textsuperscript{152}

In order to have the protection of MIGA, both the host country and the investor must be considered eligible to do so.\textsuperscript{153} In the case of Angola, MIGA will only conclude a contract of guarantee with the investor, once the national agency, ANIP, so authorizes.\textsuperscript{154} Article 23 of the Convention provides for specific investment promotion by MIGA. This will only be done in case both countries (host, investing) or one of them, expressly asked for such a promotion and also as long as the countries are members of the World Bank and MIGA.

The Agency shall carry out research, undertake activities to promote investment flows and disseminate information on investment opportunities in developing member countries, with a view to improve the environment for foreign investment flows to such countries. The Agency may, upon the request of a member, provide technical advice and assistance to improve the investment conditions in the territories of that member.\textsuperscript{155}

In performing these activities, the Agency shall be guided by relevant investment

\textsuperscript{151} Available at http://www.miga.org/screens/about/about.htm
\textsuperscript{152} Available at http://www.miga.org/screens/about/convent/convent.htm
\textsuperscript{153} Article 13-14 of Convention on MIGA.
\textsuperscript{154} Article 15.
\textsuperscript{155} Article 23 (a).
agreements among member countries; seek to remove impediments, in both developed and developing member countries, to the flow of investment to developing member countries and coordinate with other agencies concerned with the promotion of foreign investment, and in particular the International Finance Corporation.

It is also the function of the Agency to encourage the amicable settlement of disputes between investors and the host countries; to endeavour the conclusion of agreements with developing member countries, and in particular with prospective host countries, which will assure that the Agency respects the investment guaranteed by it, and that it will provide treatment at least as favourable as that agreed by the member concerned for the most favoured investment guarantee agency or State in an agreement relating to investment.

Such agreements will have to be approved by special majority of the Board; and promote and facilitate the conclusion of agreements, among its members, on the promotion and protection of investments.\footnote{According to the principle of subrogation the agency itself could assume the rights that the investors acquired against the host country, as a result of the events giving rise to a claim against the agency, giving the agency the right to sue the host country in the existence of breach.} This would only be possible in case the host and the investing countries agreed beforehand for such implementation, and in case the impact of FDI was a negative one to the host country or if the investing country would be unfairly treated.

### 3.9 Bilateral Investment Agreements

Throughout the years Angola has entered into bilateral investment agreements with Portugal, the United Kingdom, Italy and Germany and most recently with South Africa. Even though Angola has signed all these investment agreements it has not ratified them nor even implemented them, with the exception of the Bilateral Investment Agreement with Cape Verde in 2004.\footnote{See for instance at http://www.state.gov/e/eb/ifd/2005/43019.htm}

In order to better understand the provisions of Bilateral Investment Agreements entered into by Angola, the author will elucidate some aspects of the Bilateral Investment Agreement signed with South Africa (although it has not come into force yet).
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Article 3 of the Bilateral Investment Agreement signed by Angola and South Africa\(^{159}\) deals with the promotion of investment in the sense that both parties commit themselves to encourage investment in their territories. As far as law 11/03 is concerned (Article 5) the promotion of investment is incumbent on the government of Angola through ANIP.

According to Article 4 of the Bilateral Agreement, reference is made to the principle of National Treatment, which is also referred to in Article 12 of law 11/03. This provision prohibits discrimination between foreign and local investors, and provides that the parties must give foreigners the same treatment that they give to their nationals.

Article 5 of the Bilateral Agreement makes provision for compensation for losses. It provides that for losses owing to factors like natural disasters, armed conflict, war, revolution and others, the injured party has a claim for “indemnification, compensation, restitution and other settlement” not less favourable than that which the latter party accords to its own investors or to investors of any third party. This particular equal and/or “most favourable” treatment clause is lacking in law no.11/03, so that the Agreement between Angola and South Africa for the Reciprocal Promotion and Protection of Investments, in this instance, provides for an important additional safeguard.

Article 14(2)\(^{160}\) provides that in case of expropriation the State ensures the payment of fair, prompt and effective indemnification. This provision is the same as Article 6 of the Bilateral Agreement.

Article 8 of the Bilateral Investment agreement makes provision for the settlement of disputes between an investor and State party. This Article provides that in case of a dispute, the parties may refer the case to the ICSID. The provision also seems to acknowledge the fact that neither party, thus far, has become a signatory of the ICSID Convention,\(^{161}\) by stipulating that, in case one of the parties is not a party to this Convention, the parties may settle the case under the rules governing the Additional Facility for Administration of Proceedings by the Secretariat of the ICSID. The result of this provision is, however, unsatisfactory, at least for as long as both Angola and South Africa

\(^{159}\) Signed in Cape Town on the 17th February 2005.
\(^{160}\) Law no.11/03.
\(^{161}\) Available at http://www.worldbank.org/icsid/about/about.htm
have not become signatories of the ICSID Convention.\textsuperscript{162} According to this Convention, it only provides facilities for the conciliation and arbitration of disputes between member countries and investors who qualify as nationals of other member countries. As a result even if the countries agree to use the Additional Facility for the Administration Facility of Proceedings by the Secretariat of the ICSID, it will not be possible for as long as not even one of them is a contracting State. What the convention requests is that at least one of the parties must be a signatory of the Convention.\textsuperscript{163} But even if one of them should become a member/signatory the difficulty will still exist that law no.11/03 currently does not provide for procedures that are not governed by the Angolan law, within the Angolan forum.

This difficulty arises from the fact that the provision in the Bilateral Agreement directly clashes with law no.11/2003 as far as Articles 33(5)\textsuperscript{164} and 14(1)\textsuperscript{165} are concerned, which provides that both the forum and law must be Angolan. This provision will only have effect once Angola incorporates the provisions of this Bilateral Agreement in the national law.

The Bilateral Agreement between Angola and South Africa is aimed at establishing a proper legal and environmental framework in accordance with the principle of national treatment, in order to promote investments between the two countries. Perhaps it would be a wise further step for both governments to create a bi-national investment commission that would look at the administrative procedures (e.g. the drafting and implementation), and assist in resolving disagreements and problems in the implementation of these agreements.

According to Article 12(1)\textsuperscript{166} this agreement will only enter into force once parties have notified each other in writing through the diplomatic channel of their compliance. To this date this procedure has not yet happened.

\textsuperscript{163} http://www.worldbank.org/icsid/facility/intro.htm.
\textsuperscript{164} “…. Arbitration must take place in Angola and the law applicable to an agreement must be that of Angolan law.”
\textsuperscript{165} The Angolan State guarantees all private investors access to Angolan courts to defend their rights, with their being guaranteed due legal process.
\textsuperscript{166} Bilateral Investment Agreement between Angola and South Africa.
CHAPTER IV-The impact of FDI in the host country

4. Introduction

Foreign Direct Investment as a development instrument for the host country has its benefits and risks, and will only lead to economic growth under certain conditions that should be carefully considered before further developments are actively pursued. Even though the coming of FDI into the host country brings both positive and negative results, as a general rule governments (host government) are responsible of making sure that all the efforts or at least the minimum requirements should be in place in order to prevent investors from not complying with the laws of the host country, and for FDI to contribute to the development goals (of the host country) rather than just generating profits for the foreign investor, as it has been observed in some host countries. In order to attract quality FDI, a developing country should ensure that a sound investment climate is in place and this would normally require a sound macroeconomic environment, appropriate institutions and basic infrastructures, including legal. If these conditions are not met, the cost of transacting business usually increases and thus profitability reduces.

4.1 Impact in Society

In this part of the dissertation the author shall briefly look at the impact of FDI in some areas of importance to the host society, as well as, at some examples of the positive and negative effects of FDI flowing specifically into Angola, from various parts of the world.

The coming of FDI into the host country’s society can have a negative and also a positive impact. Many social benefits and costs contribute to the country. Factors like the consumption and the income benefit, the contribution to a better income distribution, employment and employment benefits, merit want benefits, the contribution to the aim of a higher degree of self-sufficiency, contribute to social and physical infrastructure and may assist in the modernization process. All these factors contribute positively to society.

FDI also brings some negative impacts in society, a good example being HIV/AIDS. During the war in Angola, many districts in the country were completely isolated from the outside.

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169 Available at http://www.oecd.org/dataoecd/55/41/2764591.pdf
170 Bos, Sanders and Secchi (1994) 353.
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world and also from the rest of the country. As a result Angola had the relatively lowest rate of HIV/AIDS in the Southern-Africa compared to the rest (13) of the member countries of SADC. With the arrival of increasing FDI in the region, the contamination levels increased, especially in those areas where FDI arrived via truck drivers. This can damage the broader economic and social development because of the fact that the youth (the most affected) constitute an economic productive potential of Angola, and are the most vulnerable to HIV/AIDS.\textsuperscript{171} \textsuperscript{172}

FDI also has impacts on the creation of employment in society. Here the impact can be negative as well as positive. The positive impact is that it helps to create jobs in order to employ local people, and can raise employment standards by paying better wages than local firms, and their environmental and health and safety protocols can set standards for local practices. The negative influence would be the fact that, foreign firms take advantages of the local and inexpensive labour found in the host country, sometimes forces them to even abandon their jobs because of extremely low salaries and bad work conditions. The host country often feels that the least desirable jobs are transplanted from the investing country, and as a result it faces the loss of employment as jobs move.

Another set back of FDI in certain societies of the host country (especially the ones coming from a civil war background and political unrest) is the fact that in some instances foreign companies disregard human rights and commit great environmental abuses. This is usually encountered where investors are permitted to employ security forces linked to paramilitary groups, to protect their property and installations.

The result is that foreign companies engage with governments in bribery, intimidation of officials and judges. The source of these abuses is often in countries where child labour is prevalent, where health and safety standards are low, where free, effective trade unions are illegal or suppressed, and where women and other marginalized groups are routinely discriminated against in recruitment and promotion decisions. In addition their activities have had lasting damaging effects on the environment as will be pointed below.\textsuperscript{173}

In conclusion, the author feels that if all the efforts or at least the minimum requirements (which establishes how a foreign investor should behave in the host country) were in place,

\textsuperscript{171} Revista Espaco Africa November/December no.34 2004, 26.
\textsuperscript{172} See at 3.2.
\textsuperscript{173} Available at http://www.cafod.org.uk/var/storage/original/application/phpfamS4.pdf
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investors would refrain from not abiding by the local law, and these violations would not take place.

4.2 Impact on the Economy

In the economy, new opportunities for domestic firms to invest are offered, because usually they are suppliers to the investing foreign firm, or because of the fact that the products of the foreign firm provide possibilities for developing new activities.\textsuperscript{174} FDI can drive economic growth, which is necessary for a country to reduce poverty. It can boost economic development by transferring technology and knowledge to local economies and it can bring benefits to consumers in developing countries, enabling them to buy better quality and better-value products. FDI can also influence the economy by impacting on the balance of payments of the host country, because trade deficits can be a real constraint for developing countries. If investors import more that they export, FDI can end up worsening the trade situation of the country.

When FDI occurs through MNE, the impact of the development is uncertain. In many situations the activities of MNEs strengthen a dualistic economic structure and accelerate the inequalities that exist in the income distribution (an example would be that in Angola the economy is dependent on the so-called “Kinguilas”\textsuperscript{175}, who are responsible for the informal sector- “Mercado paralelo”- and most of the country’s local economy).

The impact on the economy is that MNEs tend to promote the interests of a small number of local factory managers and relatively well paid modern-sector workers against the interests of the rest of the population, by increasing the wage differences between them. The tendency is to worsen the imbalances between rural and urban economic opportunities by locating primarily in urban export enclaves and contributing to the flow of rural-urban migration. MNEs use their economic power to influence government policies in directions that usually do not favour development.\textsuperscript{176, 177}

\textsuperscript{174} Bos, Sanders and Secchi (1994) 90.
\textsuperscript{175} Women that exchange money in an unofficial manner, in the informal street markets, and often they are the ones that are responsible for actual money flows and currency circulation, in the day-to-day financial market.
\textsuperscript{176} Available at http://www.fern.org/pubs/archive/law_in.htm
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MNEs are able to extract sizable economic and political concessions from competing governments in the form of excessive protection, tax rebates, investment allowances and the cheap provisions of factory sites and services. The result would often be that the profits made by MNEs might exceed social benefits.\(^\text{178}\) This could also be a reflection of the policies imposed by the Super Powers to which many developing and Least Developed Countries have been indirectly subjected to during the Cold War.

The impact of FDI on the Economy is determined by different factors like the capital formation that FDI will have in the host country, the impact on the employment rate and others.

### 4.3 Impact on the Environment

Foreign Direct Investment (FDI) by foreign companies in most developing countries has a traditional reliance on the natural resources, in order to use and extract predominantly agricultural, mineral and fuel production. Even though this has recently changed, the poorest countries still receive a disproportionate amount of investment flows into their natural resource sectors.\(^\text{179}\) What can be expected is that, in the future a considerable change will occur in the sense that host developing countries can increase and update their environmental standards, so that in case MNE’s should violate them, as legal persons, they should be held fully responsible.

During the twentieth century all major trends of environmental degradation accelerated, such as greenhouse gas emissions, deforestation and the loss of biodiversity. Such patterns of environmental damage have been driven by increased economic activity, of which FDI is a significant contributor. Flows of natural resource-based commodities and investments are predicted to continue to rise faster than economic output. It is therefore critical to understand the environmental effects of FDI and identify appropriate responses thereof because the economic growth produced by FDI is often fuelled at the expense of the natural and social environment, and the impact of FDI on the host communities is often mixed in environmentally sensitive sectors.\(^\text{180}\)

\(^{179}\) Available at http://csdngo.igc.org/finance/fin_WTO_FDI_mabey.htm
\(^{180}\) Ibid.
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In some Least Developed Countries (including, Angola) the most important sector of FDI is the sector of national resources. In this case the economic benefit to the host country would be attached to environmental and social costs, which is often the case. FDI can bring a positive as well as a negative impact in the environment.

The Republic of Angola has experienced serious degradation of the environment, even though the environment legislation is available to protect the country from this type of harm. To prove its environmental commitment in 2002 Angola fined Chevron Texaco Company for an amount of US$2 million for environmental damages resulting from offshore drilling spills. Oil spills are the most common type of environmental damage that occurs in Angola as a result of the action of MNEs. The war has also played a very important factor. The estimate for the country is that there are 12 million inhabitants in Angola, of which 4 million people have been displaced into the capital city of Luanda while fleeing from the war. As a result one can notice that Luanda alone contributes 30% to total pollution in Angola.\(^ {181}\)

In the northern province of Angola (Cabinda), the author could notice the number of oil drills that exist inshore and how the sand of the whole Futila Beach has turned black. Many MNEs get away with environmental offences, because national legal institutions are unable to establish a legal causation between the MNEs’ actions and the resulting damages.

Recently oil spills have been noticed at a distance of 45 km from Soyo city in Zaire Province. According to an environmentalist from the French company Total, which was blamed for the spills, not only Total is to blame but also the government itself, for not removing toxic substances that have existed in that area since 1992.\(^ {182}\) According to the same environmentalist the war played a very important role in the pollution of that particular area, and for that, Total should not take responsibilities alone.

Host countries are often to blame for using lower environmental standards, in order to attract new FDI in certain industries like chemicals, oil, steel, mining or cement, in order to gain competitive advantages, by lowering standards, or failing to raise them. Instead of agreeing with such policies, MNEs should adopt a totally new and different approach by


\(^{182}\) Available at http://www.angonoticias.com/full_headlines.php?id=5036. Currently Total was branded until recently as TotalFinaElf.
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demonstrating that FDI can facilitate access to environmentally sound technologies, which might improve the host country’s environment. It may also lead to some standardization of technologies used across countries that have been successful in applying the same standards and also promote the flow of environmentally friendly technologies in the course of expanding environmental goods and services.¹⁸³

According to the environmental law of Angola¹⁸⁴, Article 3 paragraph 1 provides that the citizens of Angola have the right to live in a healthy environment, and also the right to benefit from the rational use of the country’s natural resources. Article 6 and 7 of law No. 15/98 expressly define the responsibilities that the state has towards the environment and its protection.

The afore-mentioned legislation has proven to be too weak to address all the imbalances caused by pollution and the degradation of the environment. When examining the entire statute one notices that there is a great inconsistency with what is stipulated in the statute, and reality. This proves that the local laws and local resources alone are inefficient in protecting the people both from the local as well as from the pollution that most MNEs provoke in the host country.

Angola is a member of SADC. In August 1996 SADC countries approved the SADC Protocol on a Policy and Strategy for Environment and Sustainable Development. The main goals of this protocol on a regional environment policy and strategy are to:¹⁸⁵

- Protect and improve the health, environment and livelihoods of the people in southern Africa with priority to the poor majority;
- Preserve the natural heritage, biodiversity and life-supporting ecosystems in southern Africa; and
- Support regional economic development on an equitable and sustainable basis for the benefit of present and future generations.

With these regional goals at stake, hopefully, Angola will benefit from the implementation and enforcement of the SADC Policy and Strategy for Environment and Sustainable Development.

¹⁸³ Available at http://www.ourplanet.com/txtversn/134/chud.html
¹⁸⁴ Lei de Bases do Ambiente no.15 of 1998.
¹⁸⁵ Available at http://www.sardc.net/imercsa/Zambezi/zambezi2000/summary/enviromngmnt.html
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Development. The protocol will help SADC countries to up-dated to the regional and international environmental standards, in order to better protect and prevent the degradation of the environment caused by human activity.

FDI may generate both risks and benefits to the environment, depending on the circumstances in which they occur. It can create new growth and new structural efficiencies, making larger investments in environmental protection possible, encourage the utilisation of natural resources, but will increase environmental pollution. Foreign investors can bring with them modern technologies that represent environmental improvements over what is currently available in the country in which they are investing on. FDI can be used to upgrade technologies so that environmental damages are reduced, and the link between good environmental practices and the profitability of this action can indeed be demonstrated.\(^{186}\)

MNEs should be obliged to follow the same environmental standards applied in their home countries, whenever they operate in a host country and the host country itself should impose such standards on them. Currently the debate on FDI and the Environment centres on the “pollution havens”, which is a hypothesis stating that companies will move operations to developing countries to take advantage of less stringent environmental regulations, resulting in excessive (non-optimal) levels of pollution and environmental degradation.\(^{187}\)

To conclude the impact of FDI in the environment can be both positive and negative depending in the sector and region where it is applicable, as well as on the environmental legislations and standards of the host country (environmental regulations and enforcement, the availability of pollution prevention technologies and their own global environmental policies). The author believes that the host country should make sure that MNEs comply with all the efforts or at least the minimum requirements (made by the host government) before coming into the host country, for the adoption of higher environmental standards, so that modern environmental systems are implemented in their countries, in order to expose domestic firms to a positive competition for improved protection of the environment.

\(^{186}\) Available at http://www.epe.be/fdi/fdidocuments/presentations/brusselsconferencepaper.html

\(^{187}\) Available at http://www.cb3rob.net/~merijn89/nieuws/99-11-09-4.html
CHAPTER V - Conclusion

5.1 Appraisal

Law no.11 of 2003 managed to fulfil most of its aims as well as objectives, however it still has gaps. The author will now briefly focus on those areas of the law that have and have not been meet by what one could generally expect from a comprehensive FDI reform.

As provided by Article 1 the law that governs FDI in Angola provides access to incentives and benefits, which are granted by the Government of Angola in order to attract investment. Although more could always be done to increase investments in Angola, the objective to encourage investment has been met in principle.

As for Article 4, it is the view of the author that the general investment policy as promoted by the state still does not provide an equitable treatment for both nationals and foreigners. Locals are still discriminated against in a manner referred to by economists as reverse discrimination, meaning foreigners are generally afforded substantially better treatment, and in certain areas foreigners are preferred over nationals, because of their know-how, capacity and development.

As for Article 5, the author agrees that government has fostered private investment, which has contributed to overall development, especially in the past 2-3 years, but the author feels that ANIP could become more proactive and effective, alternatively, the government should simply entrust the tasks of investment promotion and investment facilitation to the private sector.

By reminding national and foreign private investors that generally they are held to be compliant with all Angolans laws and procedures in force, Article 6 elucidates that private investment privileges and incentives are only granted within the overall national framework. By and large, national and foreign private investors accept this premise, but, at the same time they will be concerned and even discouraged by the often negative impact of exactly the general legal and judicial environment within which they have to operate, despite the special status granted to “private investments”.

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As provided by Article 8(b) of law 11/03 private investments can be conducted, individually or cumulatively by the application in Angola of current assets existing in bank accounts set up in Angola and belonging to residents or non-residents. Despite this, investors (local and foreign) do not trust the Angolan banking system. For many years already the factual practice exists, whereby the state, through the National or Reserve Bank seizes foreign currency credits held on behalf of clients in private banks, for its own strategic purposes and ends, in effect confiscating private assets. This irregular practice continues to discourage investors from relying on the banking system, because they cannot be assured to have access to their funds whenever they want or need to.  

The equal treatment protection provided in Article 12 could gain in credibility, if drafted with greater precision. Article 14 provides that investors have the right to be heard in the Angolan courts. This provision is not accorded much weight by investors, because the Angolan judicial system is still deficient in the sense that cases are dealt with very slowly, if at all, by judges that do not have a long standing tradition of rule of law and of judicial independence. Moreover, Angola failed to become a member of the ICSID Convention. The author also feels that the provision of fair compensation should be further defined, well explained and clarified.

Article 17 has not been well implemented in the sense that investors are not effectively discouraged from violating environmental laws and are only very rarely held accountable for such violations. This goes in conjunction with Article 18, which expressly provides that private investors must respect and avoid the violation of the environment.

Article 36 is also not fully complied with, and possibly lacking in realism, because of the deficiency that Angola has in skilled human resources, forcing investors to discriminate between foreigners and nationals, to the benefit of foreigners, even though the law expressly forbids that.

In a nutshell the private investment law 11/03 has attained many objectives in the pursuit of helping FDI flows into the country. Although it is a law that purports to have mended the

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188 Interviews done with investors in Angola in January 2005.
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shortcomings of former law 15/94, it still has not addressed many important issues (e.g. credibility and independence of the judiciary; allowing MIGA to settle disputes between the state and investors; international enforcement of investment-related claims; and procedures that can easily be misused for corruption).

5.2 Recommendations\textsuperscript{189 190}

On the basis of the study of FDI in Angola, some recommendations can be provided that could improve the framework and the environment offered to private and especial foreign investors by the government:

- Since everything is centralised in Luanda, the government should consider the benefits of decentralising administrative economic functions from Luanda province and promote an active involvement and participation by the remaining 17 provinces in Angola.

- The Angolan Government should endeavour to further reduce bureaucracy and simplify investment-licensing procedures, thereby removing investment obstacles, distortions and facilitate integrated regional investment procedures.

- Angola should ratify the ICSID convention in order to show its commitment in providing a fair and reliable FDI environment.

- Government should ratify the Convention on the Recognition and Enforcement of Arbitral Awards also known as the New York Convention of 1958.\textsuperscript{191}

- Government should generally sign any relevant multilateral agreements more readily, and seek to implement and sign more bilateral investment treaties, for the creation of a secure environment for investors.

- Government should improve its environmental standards, and also increase investors’ environmental responsibilities, and build a national level of environmental capacity so as to adopt a leadership role within SADC. This provision has also been emphasized by the International Law Association Report\textsuperscript{192} which has supplemented an obligation upon territorial States to protect not only the environment of areas

\textsuperscript{189} See for instance at http://www.africaaction.org/docs03/ang0304.htm and at http://www.africa.upenn.edu/Urgent_Action/apic042103.html

\textsuperscript{190} See for instance at www.cid.harvard.edu/caer2/htm/content/papers/bns/dp12bn.htm and also at www.cid.harvard.edu/caer2/htm/content/papers/bns/dp12bn.htm

\textsuperscript{191} This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

\textsuperscript{192} Report of the Seventieth Conference, New Delhi, 2-6 April 2002, 391.
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- beyond national jurisdiction, but also their own environment.
- Government institutions should enforce local laws more efficiently, and a system of monitoring of such enforcement should be implemented.
- Government should focus on creating and developing appropriate infrastructures (e.g. water, power, transport, communication, land etc.).
- In the author’s opinion, the process of Implementation of the SADC trade protocol in the Angolan law is slowly taking place and as a result its goals are still far from being reached. A specific task team or office should be entrusted with the oversight of the implementation of the SADC protocol.
- Angola should make a better use of its competitive advantages in the region. Other than the natural and mineral resources, the government should also promote investment in the tourism industry and in its comparatively young labour workforce, by improving skills and education levels, so as to help them compete favourably with the foreign markets and expatriate services.
- The government should promote public policy debates, so that the local people get involved with FDI policies because they are the ones who are mostly affected by these policies, whilst community participation generally should be built into the licensing process of ANIP.
- By promoting sustainable development through FDI the eradication of poverty would be assured because even though Angola is currently the Southern African country that receives most of the FDI coming into the Sub-Saharan region, almost 70% of the population lack basic conditions for life, education, health, potable water, political involvement, legal aid, and personal security. 193
- Government should make every effort to protect human rights, especially basic working conditions and labour rights, from violations by foreign companies in the host country, for instance by entrusting a special oversight authority with the implementation of a national reporting system.
- Angola should also invest in basic infrastructures that will help move people and goods around the country so that MNEs become encouraged to use local infrastructures and resources. Priority should be given to the construction of roads, because by developing a road infrastructure FDI could finally benefit the interior and

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those provinces, which thus far have continued to be “cut off” from the rest of the country, and its neighbours. The development of an adequate road network would also cut back air transportation of goods to a normal and economically sustainable level.

- One of the purposes of ANIP is to provide investors with legal and capacity assistance. In the authors opinion, the Government should encourage the private sector to provide investors with all their service requirements, including legal, for instance by a system of accreditation of legal firms as being proficient and competent in dealing with foreign investors and in rendering foreign investment legal services.

- Government should elaborate an efficient accounting system that would report on FDI to parliament.

- As far as corruption is concerned, the government should address this openly and comply with international principles of transparency, information access and accountability.

- Special measures should be considered to further combat corruption, including personal assets declaration by public officials working in FDI administration, so as to discourage the acceptance of “commission” or other undue advantages.

- A sound regulatory structure should be put into place to prevent mal-practice from the government institutions dealing with FDI.

- Angola should become a signatory of the OEDC Convention on Combating Bribery of Foreign Public Officials in International Business Transaction, as well as, ratify it, so that the international community can actually see that efforts are being done to overcome corruption.

- Government should bring tax rates in line with international norms, and seek to conclude double taxation agreements with its main trading and FDI partners, so as to protect investors from disadvantageous international tax effects.

- Government should promote and develop a well-managed and competitive banking system and accept to completely separate public funds from private funds, as well as oversee reserve bank policy so as to give security to investors and remove the reason that are currently still encouraging them to deposit their money in overseas banks.

- Strengthen the independence and effectiveness of the judicial system so as to afford investors a reliable recourse when it comes to enforcement of contracts and
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obligations.

- FDI should be guided so as to establish deeper linkages with the local economy, which would stabilize the local economy (e.g. decrease inflation rate), and providing to investors a sound and reliable macroeconomic environment.

- Local firms should be empowered with locally skilled and trained people in order to be able to better compete with foreign companies, and reverse discrimination (preferential treatment of foreign providers) should be discouraged, especially when it comes to services.

- Even though many foreign companies are now employing more locals as provided by Article 54 of Law no.11/03, instead of allowing foreign investors to repatriate all of the profits that they make in the territory, the government should develop incentives for them to re-invest in the country at least 5% of net profits, so as to contribute more to national skills development and capacity building.

- Because there is still a great centralisation of economic power in the state, local private investors cannot compete with foreign investors therefore a bigger effort should be made by the government to help local investors, trough privatisation and local content rules.

- Legal practitioners in the FDI field should become more involved in the development and implementation of the legislation and regulations, and the Angolan government should provide investors with efficient legal procedures and institutions, so as to give a credible guarantee of legal security, as well as, a stability of the legal parameters for their investments.

5.3 Conclusion

Even though Angola is one of the Sub-Saharan African countries that receive most of the FDI in the region, its development is still far from satisfactory. The process of globalisation has not yet had the expected impact in Angola, which is a former socialist country that has only recently abandoned the “dream of building communism”. In the author’s view the term globalisation can be seen as the process of integration of the world community into a common system either economical or social, where the increased internationalisation of trade, particularly financial product transactions of goods, can be felt from the national point of view. Key international organizations (e.g. IMF, World Bank and WTO) are the ones
implementing and furthering this process of globalisation, which Angola, to this day, and at least partially, is resisting.\textsuperscript{194}

Since the aborted multi-party election of 1992, Angola has been striving to become a democratic country. According to the definition of democracy, it is a form of government under which the power to alter the internal laws and structures of the government lies with the people. In the author’s view, this process is currently still incomplete, at least for as long as the second ever general elections in Angola have not been held. The current oligarchic government can be described as a form of government where most political power effectively rests with a small segment of society (typically the most powerful, whether by wealth, military strength, patronage, or political influence).\textsuperscript{195} It is the rule of few and those few are generally the people who are richer and more powerful than the others. As a former socialist country, Angola could follow the development model of China, thus avoiding the perils of unmitigated and uncontrolled capitalist growth. Today China has the second most developed economy in the world after the United States of America\textsuperscript{196}, and although internally it is characterised by many indicators of severe underdevelopment, it has managed to provide basic human security, in respect of food, health and education, to all its inhabitants. Angola’s economy is growing at rapidly increasing rates however its performance regarding basic human needs is still amongst the lowest in the World.\textsuperscript{197}

As was shown in this thesis, the current disparity between overall GDP growth and development in Angola can be explained by its exceptionally weak physical infrastructures, poor governance standards, and continued corruption at all levels of society, as a result of over 3 decades of civil war. High inflation rates and under-investment by the government in social sectors are major factors, which contribute to the destabilization of the macro-economic framework. China doubled the number of entrepreneurs and with good discipline halved the number of government bureaucrats. They also used their most abundant resource, namely their human resources, to develop their own key industries such as steel,

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\textsuperscript{194} See on the latest status of the long standing dispute between Angola and the IMF: http://www.imf.org/external/country/AGO/.
\textsuperscript{195} See for instance at http://www.wisegeek.com/what-is-an-oligarchy.htm
\textsuperscript{196} Available at http://www.economywatch.com/world_economy/china/
\textsuperscript{197} Available at http://www.answers.com/topic/economy-of-angola, and also at http://www.amnestyusa.org/countries/angola/document.do?id=9901D6D1EEB016BB80256DBE003CA02E
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electrolytic aluminium, cement and construction, on the basis of several decades of mass-
education strategies.\textsuperscript{198}

In order to build a nation, the basic and further education of its workforce is a crucial
Determinant in a globalised competition for foreign investment. It is time for Angola to get
more developed and better equipped to interact with its strongest economic partners, i.e.
the US, China and South Africa. The recent investment offensive in Angola by the China
could become a motor of development, offering Angolans at all levels the opportunity to
attain development and progress, and especially foreign investment in a more effective
manner than what we have seen in the past years.

Angola has taken many steps in the right direction with the passing of the Private (national
and foreign) Investment Law no 11/03. Further bold moves would be to open not only its
primary sector but also its secondary and tertiary sectors for further FDI. For Angola to keep
on attracting more FDI into the country it should make more concerted efforts to educate its
workforce, improve infrastructures, to better favour trade and investment policies, minimize
external debts, provide a safer macro-economic environment and come up with effective
competition policies, as well as, to set transparent and solid regulatory frameworks for
sectors in government that can and should be privatised.\textsuperscript{199}

\textsuperscript{198} See for instance at http://www.chinaembassy.org.in/eng/zgbd/t166712.htm
\textsuperscript{199} Like Uganda and Ghana did. See for instance at
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