

INVESTMENT REGULATION BETWEEN BRAZIL AND ANGOLA: INTERNAL FACTORS, INTERNATIONAL CONTEXT AND THE DESIGN OF THE AGREEMENT FOR COOPERATION AND FACILITATION OF INVESTMENTS (ACFI)

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Introduction

Angola and Brazil are deemed to have different levels of economic and social development. These countries have, nevertheless, a history of political and economic proximity, which has been highly regarded by the foreign policies of both countries. A similar proximity exists in regard to the regulation of foreign investment in these countries: distinct domestic positions and regulatory policies whilst attempting to regulate bilateral relations on the basis of a common axis of concessions.

The purpose of this article is to contextualize the regulatory scenario with regard to foreign investments in Angola and Brazil, in their individual and joint activities. This analysis is part of a wider project named “Empirical evidences of the regulation of International Trade and of Foreign Investment

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in Brazilian Perspective: the case of Angola”⁴, which seeks to identify the regulatory patterns of economic relations between Angola and Brazil, as part of a South-South cooperation project.

This paper relies upon a comparative analysis between the parallel activities of foreign investments’ regulation in Angola and Brazil, in order to argue that the divergences between these countries in relation to both the international investment agreements (IIAs) and the domestic legal reforms appear to have been reconciled with the negotiation of the Cooperation and Facilitation of Investment Agreement (CFIA), in April 2015.

The article is structured in four other sections, besides this introduction and the conclusion. In the second section we present an overview regarding foreign investments and their regulation in Angola and Brazil, as well as some historical remarks about the international regime of foreign investment regulation in order to demonstrate the context that created some similarities but many differences between the two countries. In the third section, regarding the regulation of foreign investments in Angola and Brazil, we argue that the Bilateral Investment Treaties (BITs) signed by these countries in the late nineties and in the beginning of the 21st century are an example of a divergent policy approach of the two countries. This divergence was also reflected – as we discuss in the fourth section – in the internal legal reforms enacted by Angola and Brazil, during the first decade of the 21st century. Finally, in the fifth section, we demonstrate that these countries have adopted a critical approach towards the foreign investment international regime and ended up reconciling their policy views due to the conclusion of the CFIA in early 2015.

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The significance of foreign investments for Angola and Brazil: general remarks

Brief history

In November 2015 Angola and Brazil celebrated forty years of mutual diplomatic relations. The fact that Brazil was the first country to recognize Angola's independence in 1975 was a milestone in the redefinition of significance of both countries' bilateral foreign policy, with both sharing a common colonial past, having Portugal as their historical colonial metropolis. However, the processes of colonization by Portugal seemed to be different in these countries, what has triggered specific cycles in their histories of economic reorganization.

Brazil, on the one hand, was a seat of the Portuguese Crown and, after being promoted to a united kingdom with the metropolis, achieved its independence in 1882. Later, Brazil underwent an imperial period and, still within the 19th Century, became a republic. After the independence, free initiative and the right to private property⁵ have always been acknowledged, even though the distinction between foreign and national capital has varied according to the historical and the economic sector.

Angola, on the other hand, due to the fact that it remained a colony during the neo-colonialism period until 1975, gained its independence in the context of the Cold War and reflected this conflict's polarities. In the first years following its declaration of independence, Angola decided to implement a socialist economy – which led to the nationalization and confiscation of a number of foreign investments at that time. However, this process was marked by certain anachronisms, including its relation with the foreign capital. In the 1st Republic (1975-1991) there was a coexistence between the protection of private property, even of the one belonging to foreigners under Article 10 of Constitutional Law of 1970, the 'economy of resistance' with the appropriation by the State of the productive assets under Law No. 3/76 and the mandatory association between national and foreign capital according to the Foreign Investment Law No. 10/79⁶. Between 1979 and 2002 Angola was

5 For instance, the political constitution of the Empire of Brazil of 1824, art 179.XXIII already states that: "XXII. The Right to Property is fully guaranteed. If the legally verified public good demands the use and the usage of the Citizen Property, he will previously receive an indemnity that corresponds to its predetermined value. The Law will define the cases in which this exception should be applied and will define the rules that will determine if there is going to be an indemnity or not."

6 According to Manuel Ennes Ferreira: "These assertions clearly appeared as being contradic-

plunged into intense civil war and its economy was heavily degraded. Such an unstable situation favored gradual reforms in its economic system until the beginning of the opening process in 1985, which was later incorporated in the scope of the Program of Economic and Financial Restructuring (known as SEF, in Portuguese) in 1988 and, finally, consolidated under the reform of the Constitution in May 1991⁷.

In Brazil, foreign capital has always been present and has had a significant level of contribution to the gross domestic product⁸. Whereas, from the 19th century until 1930, foreign investment had a relevant role in Brazil's participation in international trade, from the 1940s onwards, Brazil clearly adopted an industrialization policy aiming at the employment generation and the transfer of technology. Additionally, up to the nineties the Brazilian measures for promotion and protection of foreign investment were essentially adopted by means of domestic and unilateral legislation⁹ and ¹⁰. This develop-

tory, paradoxical and even absurd. Contradictory because, once seeking to banish private industrial activity (...) they contradict the Constitution (...). Paradoxical because at a time when the country needed to recover its economy obstacles for the operation of the private sector arose. Absurd because in (...) 1979, the Law of Foreign Investment was published (...)." (Ferreira 2002, 50). Angolan Carlos Teixeira describes this phase as "an almost uncontrollable presence of the State in the Economy, highly administrative, with bureaucratic barriers and rigid plans" (Teixeira 2011).

7 Catarina Antunes Gomes makes a detailed analysis of Angola's economic opening process as well as its internal and external determining factors (Gomes 2009). The author claims that the Angolan economic dependence on petroleum was detrimental to the organization of a centralized economy (page 233) and that the international petroleum crisis led Angola to a financial crisis. When resorting to multilateral financial institutions, Angola became subject to their conditions (page 236 et seq). and the author illustrates this situation with a quote by Ennes Ferreira, which qualifies "the SEF as a 'Letter of Intentions' addressed to the IMF and the World Bank, to which the government immediately manifested its interest in adhering" (Ennes Ferreira 1993, 13-4 apud Gomes 2009, 239).

8 Regarding the cases of Angola and Brazil it is very difficult to obtain precise data on investments that were based on similar methodologies in the periods prior to 1990, the year when the UNCTAD (United Nations Conference on Trade and Development) base began to standardize and systemize investment data (<http://unctad.org/en/Pages/Statistics.aspx>). In Brazil's case, some literature references strengthen the perception of the continuity of the importance of foreign investment and its relation to Brazilian development programs, e.g. (Gonçalves 1999) (see specifically pages 236-46), (Almeida 2003), (Caputo and Melo 2009).

9 The only exception to this rule was the Investment Guarantee Agreement executed by Brazil and the United States, in the 1960s, published by Decree No. 57.943, of March 10, 1966. With regard to the particularities of this agreement as well as its differences in relation to a traditional agreement of promotion and protection of the investments, see Nusdeo 2007.

10 As examples of Brazilian unilateral measures, regarding specific legislation, in the commercial, banking, foreign exchange or insurance sectors, see (Almeida 2003), (Gonçalves 1999) and (Caputo and Melo 2009). The most specific legislation in this combination is Law

ment favored the later revival of Brazil's traditional strategy of domestically regulating foreign investment, as presented in section 4 below.

In a different way, Angola has, almost fifteen years after its independence, adopted standards and practices of a market economy, including opening itself to foreign capital in the late 1980s and early 1990s. This opening engendered international pressure for Angola to adopt international standards of promotion and protection of foreign investments¹¹. However, considering its historical transition from a planned economy to a market economy, the reliance of foreign investment regime upon a series of administrative controls and conditions as provided in Angolan domestic legislation is likewise noticeable.

As from 2002, according to Law No. 05/02 on the Delimitation of the Sectors of Economic Activity, Angola consolidated three general regimes for foreign investment, based on the relevant economic sectors (i) Angola reserved, according to Articles 11 and 12 of Law No. 05/02, some sectors for exclusive operation by the Angolan government (control or integral reserve regime); (ii) it established some sectors that, in spite of the exclusive property of the government, could be exploited by means of a concession agreement (relative reserve regime, according to Article 13 of Law No. 05/02), including, among others, the exploration of petroleum and diamonds, which have specific treatment by Angolan legislation; (iii) remaining economic sectors were eligible to receive tax benefits, depending on their classification by Angolan law as priority sectors or priority regions¹². Even though free initiative is protected

No. 4.131, of September 3, 1962, modified by Law No. 4.390, of August 29, 1964. At the time of its drafting Law No. 4.131/62 had the purpose of ensuring security for foreign capital, assuring non-discriminatory treatment for non-resident investors, attracting and stimulating the entry of investments in the country and defending the Brazilian interests, as per (Dias 2010, 82). To access the full text, see Law No. 4.131, of September 3, 1962, which it regulates the application of foreign capital and the remittance of funds abroad and provides on other measures (Brazil 1962).

¹¹ It is worth noting that the historical relationship of Angola with foreign capital was ultimately constructed in the 1st Republic, starting from a system of exception, ensuring positions and rights for foreign investors that were not even considered for domestic private agents. This led the Law of Foreign Investment, in its various editions, to assume a role that went beyond that of a guarantee instrument against domestic instabilities, incorporating exceptional rights within the general legal system. Thus the foreign investment legislation was outlined as an extensive legal statute, with provisions on investor's rights and duties and on matters involving foreign exchange, corporate issues, assignment and succession of rights, taxes, penalties, administration (as for the operation of government agencies of the government). This, or at least vestiges thereof, can be observed in the various laws enacted for investment in Angola: Law No. 10/79, Law No. 13/88, Law No. 15/94, Law No. 11/03, Law No. 20/11 and Law No. 14/15. For a presentation of these systems up to 2003, see (UNCTAD 2010).

¹² In relation to the current regulations on tax benefits and their levels, see Law No. 14/15, of

as a rule in the third regime, for the foreign investment in certain sectors, there is a requirement of mandatory partnership with Angolan companies (Article 9, Law No. 14/15). This requirement suggests that the attraction of foreign capital to Angola aimed not only at its insertion in international trade, most notably in the cases of the petroleum and diamonds industries, but also at the development of the domestic industry as a result of the combination between traces of control mechanisms, which were emblematic in planned economies, and more modern initiatives aiming at integrating foreign investment in the framework of national development policies¹³.

International scenario

The regulation of foreign investments started to gain importance under the framework of international investment agreements in 1950. UNCTAD has, therefore, recently systematized IIAs historic evolution, identifying four periods: (i) 1950-1964, the birth of the agreements; (ii) 1965-1989, the era of the dichotomy between the protection of investors and the establishment of obligations to investors; (iii) 1990-2007, the era of agreements proliferation; and (iv) 2008 until the present, the era of political re-orientation, based on complaints and revisions of the IIAs. (Unctad 2015, 121).

These four periods may also be seen as cyclical processes. Whereas, during the first phase (1950-1964), there was a prevalence of the position of capital-exporter countries in creating rules to protect their investments in less developed and high risk economies, the second phase (1965-1989) was driven by a contrary movement consolidated in the General Assembly of the United Nations by host States that sought to defended the principle of sovereignty over natural resources and the establishment of a new international economic order¹⁴. As aforementioned, Angola and Brazil did not take part in the crea-

August 11 (Attached).

¹³ This is a perception from the reading of (Gomes 2009), as well as from the explanatory statement of Law No. 14/15, of August 11. We highlight this part of the explanatory statement: "Private investment together with public investment, continues to be a strategic focus of the Government, for the capture and mobilization of human, financial, material and technological resources, aiming for the economic and social development of the country, for the diversification of the economy, for an increase in the competitiveness of the economy, for the growth of the employment offer and for the improvement of the population's living conditions" (our emphasis).

¹⁴ These first periods are closely related to the process of decolonization of many of the current countries of the African and Asian continents, as well as to their subsequent alignment against the oppressive regimen of the international economic system. In relation to their manifestations within the sphere of the UN, see specially Resolutions of the General Meeting of the UN No. 1.803/1962 and No. 3.201/1974. Access to such documents can be obtained on <http://

tion of international rules for foreign investments: Angola was still a colony of Portugal and Brazil kept reacting to the internationalization of investment regulation with unilateral rules that provided for the promotion of foreign investments and accorded certain guarantees to them.

The following phase of the development of the IIAs (1990-2007) was driven by forces of economic liberalization and globalization. Further than the 404 IIAs existing in the previous phases, 2,663 new IIAs were signed in the third phase, including bilateral, plurilateral and multilateral agreements¹⁵. In relation to the investment promotion objective, some doubts were raised about the effectiveness of these agreements and, concerning the investment protection objective, the rules contained in IIAs were associated with a reduction of policy space from host States, which became more exposed to international investor-State dispute settlement mechanisms. This antagonism between policy space and investment protection illustrates the fourth phase (2008-onwards), which has resulted in specific reforms of the existing rules as well as in the termination of IIAs by some capital-importing countries.

Angola and Brazil participated in the last two phases of the evolution of international regulation of foreign investments in an attempt to combine their development policies with the promotion of foreign investments. In the nineties, both Angola and Brazil signed IIAs known, in these countries, as Agreements for Reciprocal Promotion and Protection of Investments (BITs). Angola also signed such agreements in the first decade of the 2000s. However, similarly to other capital-importing countries, Angola and Brazil have revised their policies in recent years, taking a more proactive position in the definition of their commitments. These points will be analyzed in sections 3 and 4 below.

www.un.org/en/sections/documents/general-assembly-resolutions/index.html (last consultation in December 2015).

¹⁵ Notable examples of this diversity of arrangements, are: (i) the creation in 1994 of the World Trade Organization, containing rules that are applicable to foreign investments in some of its agreements; (ii) the conclusion of the Energy Charter Treaty, with detailed provisions on investments in this sector, among its members; and (iii) the completion in 1992 of the North American Foreign Trade Agreement (NAFTA), which, inter alia, creates specific rules for foreign investment and submits its disputes to the system of solutions of investor-State controversies. For further clarification on these systems, in the context of the IIAs, see (Unctad 2015, 126).

Responses to the proliferation of regulations for foreign investments

Brazil and the BITs (1994-1998)

During the nineties Brazil signed a total of fourteen BITs¹⁶. The Brazilian Constitution was approved in 1988, some years before the beginning of negotiations of investment treaties, and it provided, in the chapter addressing the economic and financial order, that ‘the law shall regulate, based on national interest, foreign capital investments, shall provide incentives for reinvestments and shall regulate the remittance of profits’ (Article 172). However, in the subsequent years, no such law on foreign investments was passed and the previous legal framework established under Law No. 4131/1962 remained in force. At the time the negotiations, BITs followed the orientation of a model draft proposed by an Inter-Ministerial Working Group, created in 1992, with the participation of representatives of the Ministry of Foreign Relations and of the then existing Ministry of Finance, Treasury and Planning¹⁷. This model text was subsequently ‘adapted to more realistic standards, which were the closest possible to those recommended by the Organization for Economic Cooperation and Development (OECD)’¹⁸.

Nevertheless, structural and substantial similarities of the BITs signed by Brazil prevailed. Quite alike provisions can be found in the totality of the agreements celebrated by Brazil on the matters of: (i) definition of investment, investor and territory, (ii) admission of investment, (iii) promotion of investments, (iv) safeguard standards for investments, (v) nationalization, expropriation and compensations, (vi) freedom to transfer and to repatriate investments, (vii) solution of controversies between state parties, (viii) dispute resolution between investors and states, and (ix) validity and withdrawn from the treaty.

In Brazil, the President has forwarded to Congress six out of fourteen

¹⁶ The APPIs were executed with Chile (1994), Portugal (1994), United Kingdom (1994), Switzerland (1994), Germany (1995), South Korea (1995), Denmark (1995), Finland (1995), France (1995), Italy (1995), Venezuela (1995), Cuba (1997), Netherlands (1998) and Belgium/Luxemburg (1999). The full texts of the APPIs executed are accessible in the database of the System of International Acts of the Ministry of Foreign Relations (<dai-mre.serpro.gov.br>, last access in December 2015).

¹⁷ As per Message 1.158, of December 15, 1994, which submitted the agreement executed with Portugal to examination by the Legislative Branch.

¹⁸ As per Message No. 8, of January 5, 1995, which forwarded to the National Congress the agreement executed with the United Kingdom.

BITs celebrated for ratification¹⁹ – i.e., the agreements executed with Germany, Chile, France, Portugal, United Kingdom and Switzerland. These treaties have faced significant reluctance during the ratification process²⁰.

During the negotiation process of the BITs with the United Kingdom, the Foreign Relations and National Defense Commission (CREDN, in Portuguese) of the Brazilian House of Representatives highlighted two controversial points which have drawn attention in the domestic debate. The first point concerned the compensations in cases of expropriation: the Constitution admits its payment through instruments of public debt or in instruments of land reform, which could contrast with the commitment to free and prompt transfer of funds, regardless of whether or not the foreign currency was available in the country²¹. If there were to be an assurance of an exception to the constitutional precept to the foreign investor, this would be classified as a differentiated treatment for the latter in relation to that offered to the domestic investor.

With respect to the provision of dispute settlement between the Government and the Investor, the CREDN's opinion was that such provision would violate the "exhaustion of domestic remedies", a rule of customary international law traditionally adopted in Brazil (Brazil 2000, 21.693). Furthermore, the direct access of foreign investors to the international arbitration procedures would result on a leveling of the private entities in equal terms with the Brazilian State, which would represent a "protection of international investors with detriment to the national policies and interests" (Alves 2014). Similarly, through a parliamentary opinion, members of the house criticized the possibility to shift the venue during the course of the action by choice of the investor since, as an outcome of the most favored nation clause, the same prerogative could be extended, regardless of express provision, to other countries with which Brazil could celebrate BITs with. (Brazil 2000, 21.693)

Some part of the criticisms directed towards the BITs celebrated by Brazil ended up leading to amendments of the proposals by the House of

19 The bills were the following: PDC No. 396/00 (Germany), PDC No. 366/96 (Chile), PDC No. 395/00 (France), PDC Mo. 365/96 (Portugal), PDC No. 367/96 (United Kingdom) and PDC No. 348/96 (Switzerland).

20 Concerning these proceedings and the particularities of the debate in their negotiations, see (Scandiucci Filho 2007)

21 According to the parliamentary manifestation, the "form of compensation defined in the text must be confronted with some of the constitutional precepts concerning the expropriation of urban and rural real estate" in force. In addition to the establishment of compensation payment for expropriation of land for purposes of agrarian reform in convertible currency, when the payment is made, in the same case it would be in instruments of agrarian debt that are redeemable in twenty years (Brazil 2000, 21.693).

Representatives²² which, later on, resulted into the withdraw of the BITs documents for ratification by the Executive Branch while at the House's processing²³. Besides considering that the BITs had granted an "excessively wide-range set of rights and prerogatives" to the foreign investors, the documents of the Brazilian Executive Branch²⁴ asserted that these Agreements were not necessary to Brazil, which maintained its position of a privileged destination for foreign capital²⁵.

Angola and the BITs (1997-2011)

Angola began to sign BITs in 1997, before the civil war period (1992-2002). During the 1980s and 1990s, Angola went through some domestic economic reforms, which have foreseen certain elements of the BITs by introducing it in its national legislation. For instance, the Law on Foreign Investment No. 13/88, in its eagerness to attract capital, had offered beforehand guarantees for foreign investors which upheld a dialogue with the clauses of protection for the investors in the BITs, of which we highlight the following: (i) fair and equitable treatment, (ii) protection and safety, with a commitment to do not create difficulties for its operation, (iii) the transfer abroad of the net

22 For example, the amendments proposed for the legislative bill that would approve the text of the agreement executed with Germany. The bill contained the following provisions: "Article 2 The provision in Paragraph Two of Article 4 of the Agreement [on expropriation] may only be applied to whatever does not conflict with the cases provided in the Federal Constitution, particularly item III of Paragraph Four, of Article 182, and Article 184. Article 3. The expression "at the request of the investor", contained in Article 10 of the Agreement [concerning the solution of conflicts between the Government and the investor], is construed in the sense that the appeal for international arbitration necessarily depends on the approval of the Brazilian Government, when the investments are implemented on Brazilian territory. Article 4 The commitments assumed in this Agreement must be submitted to the regulations provided in Article 172 of the Federal Constitution". (Brazil 2003, 37795-6).

23 The decision to remove the BITs from being processed in the National Congress derived from a proposal made by the commission created in 2002, during the presidential transition between Fernando Henrique Cardoso and Luiz Inácio Lula da Silva, in order to assess the BITs around the country (Alves 2014, 423-46).

24 "The non-existence of agreements of this kind had not affected Brazil's position as an important receiver of international investment, particularly of direct investments, the inflows of which are among the highest in the group of developing countries. The stability of the legal rules within the domestic ambit and the intrinsic strength that the Brazilian economy began to demonstrate since 1994 explain this notable performance." (Brazil 2002, 54.414).

25 It is worth stressing that, according to UNCTAD data, Brazil, in 1994, the year of execution of the first BIT, recorded an inflow of foreign investment of US\$2.15 billion, and in 2000 this amount had reached the figure of US\$16.6 billion (while in 2000 it had reached the peak of US\$32.8 billion) (Unctad s.d.)

profits, by means of the Ministry of Finance's authorization, (iv) the provision for a fair compensation, in case of expropriation, and (v) the suppression of the control limit by foreign investors in Angolan companies (Angola 1988)²⁶. However, as part of a planned economy, this legislation still established a range of conditions and counterparts of the foreign investor.

Likewise, at the beginning of the 1990s, Angola agreed with the main international economic organizations – the Multilateral Investment Guarantee Agency, (1989), the International Monetary Fund (1989, with representation established in 1997) and the World Trade Organization (1996) – which strengthened the awareness for the need of investor protection. Taking into consideration that the amount of capital attracted was yet unsatisfactory; in 1994 the new Foreign Investment Law No. 15/94 was adopted, mainly aiming to reduce the bureaucracy involved in the inflow of foreign capital into the country.

Out of a total of ten BITs signed by Angola, eight were celebrated between 1997 and 2008²⁷. Thus, in parallel with the signature of certain BITs during the years 2000, Angola, immediately after the end of the civil war, sought to modernize its foreign investment related legislation. Thereby, the Law No. 11/03, known as the Basic Private Investment Law (PIL), was adopted, which sought to treat both national and foreign private investments equally (Angola 2003a). Although the purpose of the PIL had been to address, in a broader sense, the contractual, tax and monetary aspects of the national and foreign capital flow, it specifically aimed to incorporate certain foreign investors' demands, which are normally present in the BITs. Accordingly, the PIL adopts a broader concept of foreign investment which establishes,, assuming that the amount is equivalent to or greater than one hundred thousand dollars

26 Comments on the impacts of this Law are presented in (UNCTAD 2010, 8-11).

27 According to the UNCTAD base, Angola executed nine BITs and other eight IIAs. Of these nine BITs only four became effective. The nine BITs are: Cape Verde (executed and effective since 1997), Italy (executed in 1997, and effective since 2007), Portugal (one executed in 1997 and the other in 2008), United Kingdom (executed in 2000), Germany (executed in 2003 and effective since 2007), South Africa (executed in 2005), Spain (executed in 2007) Russia (executed in 2009 and effective since 2011) see <<http://investmentpolicyhub.unctad.org/IIA/CountryBits/5#iiaInnerMenu>> (last access in December 2015). In addition to these BITs, we had an access to another BITs executed by Angola with Cuba, a version that was published and has been effective since April 14, 2009, in the Official Gazette of the Republic of Angola I Series, No. 68. Thus, we assume that there are ten BITs executed by Angola so far, five of which are effective. On the contrary, the last report of revision of the commercial policies of Angola, by the OMC, shows that there are thirteen BITs executed by the country, with no reference to the agreement with South Africa, and including agreements with France, Guinea-Bissau, Holland, Namibia and Switzerland (WTO 2015, 26). However, we found no references to these latter agreements.

(Article 9.3): (i) national treatment (Article 4(c)); (ii) fair and equitable treatment (Article 12); (iii) free access to the markets, except in state monopoly areas (Article 4(a)); (iv) protection and security (Article 4(b)); (v) freedom to transfer profits (Article 13); (vi) fair, prompt and effective compensation in cases of expropriation due to justified public interest (Article 14.2); (vii) access to the Angolan courts (Article 14.1) access to arbitration held in Angola with application of Angolan Law (Article 33); and (viii) observance and full compliance with the international agreements (Article 4(d)). From the foreign investor's point of view, the PIL required compliance with Angolan laws (Article 17) and the recruitment of Angolan work force for positions on the operations carried out in the country (Articles 18 and 54), alongside with other specific remaining obligations from the conditions and counterparts of the planned economy era.

The regime established by Law No. 11/03 was supplemented by Law No. 17/03 which created development zones, dividing Angolan territory into three zones, in which the quantitative standards for investment, repatriation, granting of tax incentives and reinvestment would vary according to the zone; and by Decree No. 44/03, through which the National Private Investments Agency (NPIA) was created with the responsibility to monitor investment policy, management of procedures corresponding to capital flows and the authorization to grant investment incentives. (Angola 2003b; Angola 2003c).

The general structure of the ten BITs celebrated by Angola essentially reflects the following content: (i) a general purpose to protect the foreign investments by fixing traditional treatment standards, including national treatment, the most favored nation treatment and fair and equitable treatment; (ii) a broad definition of the covered foreign investments; (iii) a general clause establishing the prohibition of the foreign investments expropriation, except for public interests, case in which compensations must be paid and due process of law must be respected; (iv) provision for *ad hoc* or institutional arbitration between investors and the state, as well as the possibility of appealing to Angolan Tribunals and arbitration between states.

Thus one observes that the agreements signed and ratified by Angola practically followed the general format of the BITs, which have also been presented to Brazil. The difference in relation to Brazil is that, since 1988, Angolan domestic legislation had already directly interacted with the language of the BITs, particularly concerning the provisions for investor's protection. On the other hand, it is worth noticing that relevant elements of the system for foreign investment in Angola were not incorporated into the BITs signed by the country. At this point, We refer to the duties, conditions and counterparts, established for the foreign investors, (e.g. to hire local work force). The

assumption for this situation is that Angola's international bargaining power was too fragile to incorporate such commitments on the BITs basic general structure²⁸.

The genesis of the reorientation

Reforms in the Brazilian legislation

Considering that Brazil has maintained its historical position of non-adherence to the IIAs, the subject remained fully regulated by domestic norms after the 1990s. Nonetheless, many of the demands included in the BITs were incorporated into the national legal system by means of domestic reforms. As Lemos and Campello ironically affirm, only the provisions for the resolution of investor-State controversies were not incorporated (Campello and Lemos 2015, 1078)²⁹.

Effectively, throughout the 1990s, as a result of the process of re-democratization, some important institutional reforms for the Brazilian economic environment were implemented³⁰. These changes, however, were not performed by the National Congress through law reforms, but rather by regulatory actions of certain Government bodies (Salama 2010, 172)³¹. Additionally, in some specific ways, the change in the interpretative consensuses of the bodies responsible for normalizing and supervising the foreign exchange transactions contributed to update – albeit with a lower degree of legal secu-

28 Interestingly this provision is also valid for the BITs executed between Angola and Cuba (2008) and between Angola and Russia (2009). On the contrary, the Angola-Cuba BIT, as well as those executed with Germany and Italy, contain a clause (Article 20) in which it is stressed that if the domestic legislation has treatments that are even more favorable, they should prevail. A possible interpretation of the conditions and counter-parts of Angolan legislation is that they are treatments that are more burdensome for the investors and thus should not be required.

29 One observes that not even Brazil made changes in relation to the expropriations of foreign investments or of an update of the system of expropriations, perhaps because the country does not have a significant history of confiscating property from foreign investors.

30 There was a progressive liberalization of the system of control of foreign exchange, particularly by means of infra-legal rules deriving from the National Monetary Council (CMN) and the Central Bank. Since the end of the 1990s, for example, the entry of foreign capital began to be carried out by means of a declaratory record, not requiring any kind of authorization, on the terms of CMN Resolution No. 3.844/10 (Brazil 2010).

31 In this sense the author acknowledges that, although one could say that the measures implemented by the Government are “mechanisms that are procedurally complicated and have legal base on a questionable measure”, because it concerns an abuse of infra-legal regulatory power, the vision that ultimately prevailed was that “the legislation of origin in the Congress effectively opened the possibility of the Government implementing the changes that it made” (page 172).

riety – the Brazilian regulatory environment in relation to foreign investment (Salama 2010, 176).

In a broader sense, the structural developments of the Brazilian economy, which can be seen in areas such as the increase in the volume of business in the stock market, the increase in initial public offerings (IPOs), the modification in accounting legislation in order to align it with international standards, the minimization of investment risk and the increase of transparency and security in business transactions have contributed, by incorporating certain guarantees that are – by other means – sought by the investors, to the creation of a favorable economic and institutional environment for foreign investments in the country.³² In general terms these regulatory and institutional changes, combined with the economic policy and the international scenario, nearly tripled the volume of foreign capital received by Brazil between 2000 and 2015³³.

Despite the satisfaction with the new investment figures received, this was not enough, in Brazil, to completely settle the issue of IIAs apart from the Brazilian government. After the withdrawal of the BITs from the National Congress in 2002, the Foreign Trade Chamber (CAMEX) created an inter-ministerial taskforce to present options to move the Brazilian policy on this matter forward. At that point in history Brazil had already begun to register a much more significant volume of capital export, and a debate regarding the internationalization of Brazilian companies had already entered the national agenda³⁴. The taskforce recommended the renegotiation of the agreements with Brazil's strategic partners, so that in August 2005, CAMEX established a new inter-ministerial taskforce to define alternative wordings for the IIAs' central clauses. Other initiatives seeking an alternative model for the investment agreements continued in various Government bodies, but the negotiations remained without tangible outcomes for more than a decade (Brazil 2008, 18-21).

It was only in 2012 that CAMEX conferred a formal mandate to the

32 Among certain data on these matters, see the Stock Market index that, after 2005, proceeded to reach levels between 33.000-65.000 points (<http://www.bmfbovespa.com.br>); the Brazilian Securities Commission, from 2004 to 2013, recorded an annual average of 23 notices of public offerings of stock (<http://www.cvm.gov.br>). Electronic pages last accessed in December 2015. Concerning the changes in the legislation, see (Brazil 2007, 2), (Brazil 2011, 2) and (Brazil 2013, 1).

33 Whilst in 2000 Brazil recorded an inflow of US\$ 22.5 billion, in 2014 this figure was of US\$ 62.5 billion (Unctad s.d.)

34 In 2002 Brazil recorded US\$ 2.5 billion of exported capital, as opposed to US\$ 624 million in 1990 (Unctad s.d.). On the internationalization of Brazilian companies (see Camex et al. 2009).

Technical Group on Strategic Foreign Trade Studies (GTEX) to explore, among other topics, the development of a new investment agreement that was sensitive to Brazil's necessities, limitations and international aspirations.

Since the beginning of the negotiation process, Brazil envisioned a different agreement from those negotiated in the 1990s. In parallel with an international contestation movement against the asymmetry of investment relations and its regulations, the investment agreement designed by Brazil was equally influenced by the lessons learnt from the negotiation process of the 1990s, along with domestic demands for access to markets and some protection for Brazilian investors and investments. Hence, the GTEX began a consultation process with the private sector regarding the main challenges facing the internationalization of Brazilian companies – this process resulted in the publication of a report³⁵. A draft of this agreement, addressing the demands of the private sector and Brazilian foreign policy positions, was available in 2013, when it was approved by the CAMEX for subsequent bilateral negotiations.

Following the strategy managed by the GTEX, the Brazilian Ministry of Industry, Foreign Trade and Services (MDIC) started to present this agreement model to countries that received Brazilian investments, as part of a “Brazilian initiative to establish investment agreements with countries of the African and South American continents” (Brazil 2013)³⁶. Mozambique and Angola were the first countries to execute this new agreement format with Brazil, followed by Mexico, Malawi, Colombia and Chile, all in 2015 (Brazil 2015a; Brazil 2015b).

The Agreements for Cooperation and Facilitation of Investments (ACFIs) negotiated so far present the following fundamental characteristics: (i) the design of the agreement's institutional management; (ii) the system to prevent and solve any controversies within the scope of the agreement; (iii) the rules for foreign investor protection, (iv) the incorporation of sensitive issues in the context of the agreement, and (v) the inclusion of thematic agendas, conceived to be a more dynamic part of the agreements. Even though it is possible to identify a standard structure for the ACFIs signed up to the

35 The consultations with the private sector involved the Federation of Industries of the State of São Paulo (FIESP) and the National Confederation of Industry (CNI). The results were to a major extent consolidated in the report (CNI 2013). We describe a little more of this process in another article (Morosini and Sanchez Badin 2015).

36 According to the information of the Secretary for Foreign Trade, “these agreements that we are seeking are instruments of support for Brazilian investors for their actions abroad. We are proposing to address relevant and practical day-to-day themes, such as the granting of visas and others that affect the process of decision on the investment”.

present date, we recognize that there are variations between such agreements, which can be explained by the different demands presented by different partners. Our analysis, starting from section 5, will focus on the specific traits of the investment agreement with Angola.

The reforms in Angolan legislation

Historically, in Angola, the process of re-orientation has consisted of a combination of new reforms in its investment law, the continuity in the negotiation of traditional BITs and the search for appropriate standards for the IIAs. Since 2005, in contrast to Brazil, Angola has presented figures of disinvestment in the country and an increase in its own exports of capital³⁷. In some way this data indicates some concerns of the country with regard to its legislative reforms, which led to the adoption of the Private Investment Law No. 20/11, recently substituted by Law No. 14/15.

Law No. 20/11 has brought some significant innovations to the Angolan foreign investment system. Whilst the previous Law (No. 11/03) sought to maximize investment attraction to a country that had recently come out of a civil war, the philosophy of the Law No. 20/11 was to subject investments to Angolan development, attracting foreign investments in greater volume, preferentially for the defined strategic areas. For this reason the law was one of the most extensive laws on investment, providing numerous details on investors' commitments and procedures. For this reason, the PIL of 2011 established the principle of political and legal conformation and introduced the requirement of prior approval of all the investment projects by the National Agency for Private Investment (NPIA) (Article 52), extinguishing the system of tacit approval that existed in the previous law. Additionally, but also as an echo of the international movement of protest regarding the BITs, an important alteration was the suppression of the clause prohibiting expropriation (Article 14 of Law No. 03/11, in contrast with Article 16 of Law No. 20/11).

In 1994, in parallel with the PIL reform, Angola approved a paradigm for the BITs, with the purpose of creating a model of agreement to be used by the country in negotiations with other countries. A noteworthy feature of the Investments Paradigm (Angola 2014) is the reference it makes to domestic law of contracting States for purposes of – for example – (i) definition of investor and investments (Articles 1.2 and 2); (ii) the policy for admission of

³⁷ If in 2003, the year of approval of Law No. 11/03, Angola recorded an inflow of foreign investment amounting to US\$3.6 billion, in 2011, the year of the new legislative alteration, there was a negative record, a divestment of approximately -US\$3 billion. This figure was practically maintained in 2014 (Unctad s.d.).

foreign investments (Article 3.1); (iii) determination of areas reserved for the Government (Article 3.2) and (iv) transfer of funds (Article 7). In addition, the granting of fair and equitable treatment and the guarantee of protection and security are conditioned to the “social realities” of the contracting States (Article 4.1).

In relation to the guarantees for the investor, the Investments Paradigm maintained (i) the prohibition of arbitrary measures (Article 4.2); (ii) the observance of obligations expressly assumed by the States towards the investor (Article 4.3); (iii) the treatment of the most favored nation (Article 4.4); (iv) the national treatment (Article 4.8); and (v) the payment of a fair, adequate and effective compensation in cases of non-discriminatory expropriation due to public interest, with the possibility of appeal to national courts by the party responsible for the expropriation (Article 5). As for investor’s obligations, the Investments Paradigm establishes that “the investment must focus on the protection of the environment and on sustainable development” (Article 10.2), in addition to “promoting recruitment of a national workforce” (Article 10.3).

Another noteworthy provision of the Investments Paradigm is related to the system of conflict resolution, which is different from those provided by other BITs executed by Angola. As regards conflicts between investors and States, the Investments Paradigm expressly forbids the appeal to international arbitration, determining that conflicts must be resolved “on the terms of the respective national legislations” (Article 14.5). In relation to the conflicts between States, there are provisions for consultations and negotiations, with possible participation of the private sector (Articles 14.1 to 14.3). In the case of such negotiations being unsuccessful, the controversies can be taken to the International Court of Justice (Article 14.4).

To a certain extent, the Investments Paradigm sought to reproduce some of the guidelines existing in domestic Angolan laws, including by directing mentioning them. Distinctive aspects of Angolan law – such as the need to contract national labor – finally found echo on the Angolan international agreement model. In turn, the paradigm also reverses many of the traditional concessions of BITs, which had already been previously integrated into the Angolan PIL.

Lastly, among the most recent legislative activities in Angola, one finds Law No. 14/15, of August 11. The new PIL has reinforced the previous proposals of associating investment regulation “with the economic and social development of the State, with the diversification of the economy, with the increase in employment offers and with the improvement of the population’s living conditions” (list of reasons). Imbued in this spirit, Law No. 14/15 elim-

inated from its text the general principle of national treatment and of respect and full compliance with the IIAs. The new PIL also associates investments' incentives and approvals with projects taking place on the country's economic and special zones, duty-free zones and development centers (Articles 35 et seq.) – part of a national project for industrial and regional development. By means of this law, the National Private Investment Agency (NPIA) was extinguished and will be replaced by another body in the near future.

One can observe that such responses to the international investment system are quite recent and thus there is not enough time to understand the impact they will have on Angolan foreign capital, as well as on Angolan capital exportation to other countries. After all of these amendments in its internal legislation, Angola has not signed any new BITs. The only new investment agreement that has been executed was the one with Brazil, which sprung from the initial proposal of the ACFI structured within the sphere of the Brazilian government. For this reason and for the sake of political-economic interest, an analysis of the agreement executed between Angola and Brazil can be an interesting test to verify the alignment of proposals or the concessions that burdened each of the parties.

The bilateral conciliation: the Angola-Brazil ACFI

Angola and Brazil, as already mentioned, have a very emblematic political relation and a quite meaningful economic tie. The asymmetry between their economies reflects, however, their relationship, as noted in their investment ties that shows a larger flow of investments from Brazil to Angola than the other way around. This flow increased from US\$ 73 million in 2007, to US\$ 1.3 billion in 2014. In contrast, the inflow from Angola to Brazil varied from US\$ 739 million, in 2010, to US\$ 803 million, in 2013³⁸. All in all, this flow has been growing in both directions and, as a consequence of the two countries disposition and interest, entailed on the negotiation of a bilateral investment agreement.

The agreement executed between Angola and Brazil on April 1st, 2015 assumed the ACFI basic structure – which differs from the structure that emphasizes the protection of BITs investments as well as of the Angolan Investments Paradigm. As previously noted, the celebration of ACFIs is recent and does not present many cases in Brazilian history. Also, the Angolan ACFI

38 This is official data systematized and published by the Central Bank of Brazil. For the data on Brazilian investments in Angola, see (BACEN s.d.a). For the data on Angolan investments in Brazil, see (BACEN s.d.b).

agreement was one of the first to be celebrated. This limits the inferences that can be made concerning the particularities of the ACFI celebrated with Angola. Below, we present an essay that focuses on: (i) demands that already existed for the regulation of foreign investments in each one of the countries; (ii) particularities of the ACFI in relation to other agreements celebrated by the parties in the past, and (iii) a brief context with five other agreements of the kind signed by Brazil up to December 2015, to analyze their possible impacts.

By possessing a general language and basic structure, the ACFI emphasizes a reciprocal investments facilitation in the economic relations between the parties and focuses on the discourse of the Angola-Brazil mutual strengthening. However, in addition to the discourse and the form, the Angola-Brazil ACFI also includes in its obligations some of both countries' domestic demands in relation to the international investment system. The first point to be stressed – and this point distinguishes the Angola-Brazil ACFI from others celebrated by Brazil – concerns the attribution of the concept of investment to national legislation (Article 3). This is particularly interesting in the case of Angola, which has altered the concepts of investment in its domestic legislation and that, above all, excluded the principle of respect and full compliance with international treaties from the PIL.

The ACFI between Angola and Brazil also revisits the international investment system's most sensitive points – in the particular case of the BITs – for both countries: (i) the theme of expropriation and (ii) the conflict resolution system for investor-State conflicts. With respect to expropriation, it is granted to the State the possibility to expropriate, as long as it concerns the public interest or utility, and provided that it is not discriminatory and it observes the principle of due process of law³⁹; yet and lastly, it must be accompanied by payment without delay of fair, adequate and effective compensation equivalent to the enterprise's market value (Article 9 of the ACFI).

In contrast to the BITs ratified by Angola, the ACFI does not provide to the investor the right to review the legality of the expropriation act or equivalent measure and the amount of the compensation – it should be noted that this provision was also integrated with the Angolan Investment Paradigm, published a few months after the execution of the ACFI (Article 5 of the Paradigm). It is also worth mentioning the provision, related to a Brazilian constitutional provision, that establishes the possibility of compensations through government bonds (Article 14.1(v) of the ACFI).

39 One must note that the inclusion of the clause concerning the need of observance of the principle of due legal process is a recent requisite in the investment agreements executed by Angola. Actually, it began to exist in the Paradigm of Reciprocal Promotion and Protection of Investments, of 2014, and the ACFI with Brazil is the first treaty that inserts this requirement.

In the dispute settlement part, three main points must be emphasized. The first concerns the valuation of the prevention and consultation mechanisms. The ACFI creates the focal points that provide support for the investments and to the investors, including addressing issues related to the investment in the receiving country (Article 5.1 of the ACFI). The focal point, in turn, performs also the role of contributing to the joint committee (Article 5.4(iii)), which acts as a space of debate between state representatives (Article 15). Thus, this structure also takes into account the restrictions made by Angola and Brazil regarding the investor-state clause. Which is to say that it assures to the investor an institutional space to maintain dialogue with the state, however in case of litigation the investor is granted access to the national courts (Article 11.7). The third outstanding point, however, is more sensitive. It concerns the mechanism for government-to-government conflicts resolution. Until April 2015, Angola had the possibility to choose for arbitration as a standard in its BITs⁴⁰, but in August of the same year the Investment Paradigm established the preference for the International Court of Justice (Article 14.4 of the Paradigm). It is not correct to say that international arbitration is prohibited in Angola. On the other hand it is clear that the provision of the ACFI differs from the one of the Paradigm⁴¹.

In addition to these specific issues, the ACFI also brings certain particular concerns that have always been associated with the developing countries demands, whether in thematic issues or whether regarding procedures in the regulation of foreign investment. The thematic agenda of the ACFI between Angola and Brazil provides for programs of payments and transfers, environmental legislation and technical regulations, visas for entry into the country, development of human resources and local labor force, technology transfer and cooperation in matters of sectorial legislation and institutional exchanges⁴². The thematic agendas enable the parties to negotiate special

40 The most disseminated mechanism in the BITs executed by Angola is the ad hoc arbitration - either by the use the UNCITRAL rules or the Regulations of the International Chamber of Commerce. Except for the agreements with Cuba and the United Kingdom, the others provide alternatively on the possibility of appealing to the International Center for Arbitration of Disputes on Investments (pursuant to the English acronym ICSID), of the World Bank. Although Angola is not a member of the ICSID, the BITs that establish this clause show the possibility of the use of the additional mechanism, formally adopted by the Administrative Council in 1978, in order to administrate procedures outside the scope of the Washington Convention of 1965 that established the ICSID. For access to the agreements, see references in previous footnote.

41 It is worth stressing that none of the ACFIs actually defined the government-to-government arbitration procedure. This is a competency attributed to the Joint Committee (Article 4.4(vi) Angola-Brazil). Such procedure will probably be established as soon as the internal processes for ratification of the ACFIs are completed.

42 In June 2014 Angola and Brazil executed a Protocol for Facilitation of Visas, which was

commitments, in additional lists, and other supplementary agreements as a party of the main agreement, whether to deepen or to expand their relations⁴³. In this regard the ACFI seeks to reinforce symmetry beyond the formal rules, incorporating the idea of cooperation within the investments international regime and, thus considers the domestic needs of both the importing and exporting capital countries.

Some of these commitments were already included in Angola's PIL as a condition for the authorization of foreign capital and as legal obligations of the foreign investor. One of the points mentioned above is the training and employment of local labor force, known as the process of *Angolinization* of labor, with emphasis on managerial and leadership positions (e.g. see Articles 24 (b) and 51 of Law No. 14/15 and Article 10.3 of the Paradigm). The ACFI recognizes and interacts with these concerns at the same time that it expands them (Exhibit I ACFI, thematic agendas for cooperation and facilitation).

Another concern of this kind is the authorization of restrictive measures for transfers that are implemented aiming to protect the equilibrium of the balance of payments by one of the parties, or to fulfill obligations with the International Monetary Fund (Articles 14.2 and 14.3 of the ACFI). This protection had already appeared in Brazilian foreign capital legislation (Article 28 of Law No. 4131/62, as amended) and it is a common concern to Angola and Brazil, which historically underwent periods of economic imbalance with severe restrictions for the free flow of capital.

In addition, the second appendix to the agreement brings a combination of standards and principles of corporate social responsibility (RSC), among which the respect for human rights, the strengthening of the local human resources, the adoption of good corporate governance practices and the abstention from interference in the involved countries domestic policy are emphasized. This concern appeared to be already included in Angola and Brazil's domestic regulation, even in the Angolan PIL, but its structure as an IIA is innovative. Brazil, specifically, has not presented a regulation referencing the language of foreign companies' duties in this area⁴⁴. Angola, on the

taken into account in the thematic agenda on visas in the ACFI, as per Exhibit I, sub-paragraph 1.2(i).

43 Daniel Godinho, current Secretary of the Foreign Trade Office (SECEX) and one of the Brazilian civil servants that had a main role in the formulation and negotiation of the ACFIs, explains that the existence of such thematic agendas transform the ACFIs, in this way, into dynamic agreements that develop and are perfected according to the investment relations between the Parties. Daniel Godinho Interview on April 28, 2015 (on file with the authors).

44 Until then there was only the coordination of the OECD for Multinational Companies, within the ambit of the Ministry of Finance.

other hand, due to its history of planned economy, with the necessary definition of duties for the investors, would already have elements in its domestic legislation in this sense. The RSC as part of the text of the Angola-Brazil ACFI conferred strength in an international agreement to these commitments. In addition, the RSC is a precept that obtained distinct nuances in the ACFIs executed by Brazil so far. If in the Angola-Brazil ACFI only a generic reference is made to the obligation (Article 10), which is detailed in the Exhibit in the Brazil-Mexico ACFI and in subsequent ones, the obligations came to be part of the main body of the agreement. However, the expectation of the “force of law” disappears in the Brazil-Colombia ACFI, specifically when the RSC was excluded from the conflict solution mechanism (Article 23 Brazil-Colombia ACFI).

Over time the differences between the ACFIs are appearing, and it is natural that this should occur according to the interests of the parties involved. However, the Angola-Brazil ACFI’s structure may be a window to the unknown, considering the provision about the most favored nation treatment (Article 11, items 3 and 7). This principle is extended “to the defense of such investors rights”, which could lead to a possible allegation of the more favorable treatment clause application granted in a subsequent agreement (e.g. as mentioned above, an opportunity for this kind of understanding is found in the case of RSC).

In the principle-related field, it is worth commenting on the application of the national treatment, as provided in Article 11.2 of the Angola-Brazil ACFI. The new Angolan PIL excluded its provision on national treatment and indirectly discriminates national from foreign investment. This may be another point of future questioning of the ACFI, if ratified by the parties, and it is perhaps the most mismatching point in this new legal relationship between Angola and Brazil and their bilateral investment flow.

Final comments

This is not an article that leads us to final conclusions on the contrary, it enables us to assess the joint construction movement behind the ACFI and also relevant elements for its future implementation through identifying historical determining factors of foreign investment regulation in Angola and Brazil.

In their condition of developing countries, it is reasonable that for Angola and Brazil the attraction of foreign capital constitutes an important factor in the promotion of their development policies. Both countries show,

by their regulatory experiences, a greater understanding – in comparison with that in the 1990s and the beginning of the 2000s – of the viability of their commitments in the international arena taking into account their public policies' necessities and ambitions.

The Angola-Brazil ACFI does not respond to all of the countries' new demands – mainly because it still needs to be regulated, to some extent (e.g. the dispute settlement mechanism) – but interacts with a significant number of them. So far, the particularities of the ACFI celebrated between Brazil and Angola, as opposed to those celebrated with other countries, show that beyond the Brazilian demands, except for the principle of national treatment, the main Angolan demands regarding foreign investment and its system are taken into account by the agreement. Specifically, the Angola-Brazil ACFI delegates several definitions to national legislation. This requires special attention both of the private investor and the national governmental agencies, in the ACFI and beyond.

With regard to the countries' domestic legislation developments, it can be noted that Angola has modified its foreign investment legislation approximately every five years with revision of guarantees and important conditions. Brazil, on the other hand, has issued regulations that are subject to changes in the Federal Executive Branch's administrative bodies. These definitions by domestic legislation can lead to inconsistencies with the ACFI, as it is the case in the discrimination found in the Angolan PIL as opposed to the principle of national treatment in the ACFI. Therefore, in case of the ACFI's approval by the domestic incorporation processes of international agreements, a new way of dialogue for domestic regulatory spaces will be opened.

In this respect, the agreement itself still presents relevant points to be developed, for instance which institutions will manage the agreement. It is expected that the Joint Committee, the Focal Point and the current dispute settlement mechanism will have their operations regulated. These will be decisive spaces for the agreement's effective implementation and coordination with other national spaces. Not less relevant will be the construction of the continuous thematic agenda, which will depend on such bodies and their coordination capacity.

Thus, the ACFI has been introduced as a forum for effective coordination between the parties and their similar national peers in regard to bilateral investments, and for the institutional design and agendas that attend and respond to the common aspirations of domestic and bilateral relations.

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ABSTRACT

The goal of this article is to contextualize the regulation of investment in Angola and Brazil, contrasting their distinctive approaches during the 1990s and the beginning of the years 2000, and analyzing how their divergent approaches were reconciled with the signature of the ACFI, in the beginning of 2015.

KEYWORDS

Foreign Investment; Regulation; Angola; Brazil.

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