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# Energy: Oil & Gas

**Angola**

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## Law and Practice

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## 1. General Structure of Petroleum Ownership and Regulation

### 1.1 System of Petroleum Ownership

The Angolan Constitution of 2010 sets forth that all national resources in the soil and subsoil, territorial waters, exclusive economic zone and continental shelf belong to the Angolan State. Additionally, the Petroleum Law enacted by Law 10/04 of 12 November provides that all petroleum deposits located in the available surface and submerged areas of the national territory, inland waters, territorial sea, exclusive economic zone and continental shelf are an integral part of the public domain of the State.

In 2019, the National Agency for Oil, Gas and Biofuels, in Portuguese “*Agência Nacional de Petróleo, Gás e Biocombustíveis*” (ANPG) has replaced the state-owned company “*Sociedade Nacional de Combustíveis de Angola*” (Sonangol) as the new National Concessionaire, and holder of all the mineral rights related to the petroleum deposits. Under the Petroleum Law, such mineral rights may not be transmitted in whole or in part under any circumstances.

### 1.2 Regulatory Bodies

The main governmental body in Angola responsible for the petroleum activities is the Ministry for Mineral Resources and Petroleum (MIREMPET). Originally created in 1978, the MIREMPET functions are mainly focused on political co-ordination and cooperation with other entities. Its organic statute is provided under Presidential Decree 159/20 of 4 June.

Subject to the supervision of MIREMPET, ANPG has also a dominant role as the National Concessionaire and holder of all the mineral rights related to the petroleum deposits, being responsible for the oil exploration and production in Angola. ANPG main role is to regulate, supervise and promote the execution of petroleum activities, namely the exploration, exploitation, development and production of minerals, crude oil and gas, refining, petrochemicals, storage, distribution and marketing of mineral and oil products. The Organic Statute of the ANPG is provided under the Presidential Decree 49/19 of 6 February 2019.

### 1.3 National Oil or Gas Company

Since 1978, the state-owned company Sonangol has owned all the mining rights in Angola. However, in order to ensure greater political coordination, eliminate conflicts of interest, increase transparency and create the proper conditions for internal and external investment, it was necessary to create ANPG under Presidential Decree 49/19 of 6 February 2019, giving it the status of the new National Concessionaire.

Although Sonangol no longer holds National Concessionaire privileges, together with its affiliates, it has been granted a number of alternative rights, including the benefit of carry-over financing in research operations, as well as specific pre-emption rights in the following cases:

- assignment between non-affiliated companies (applicable to Sonangol);
- allocation of a participation interest of up to 20%, and the award of operator status in situations where the production period is extended, subject to certain conditions (applicable to Sonangol);
- allocation of a minimum 20% participatory interest in new oil concessions (applicable to Sonangol and its affiliates); and
- the allocation of operator status in new concessions oil companies, subject to verification of certain conditions (applicable to Sonangol and its affiliates).

Sonangol implemented a regeneration programme in 2019 to develop projects in the exploration and production, refining, gas, storage, distribution and marketing of derivative products. Part of such projects relates to the sale of the company's assets, the value of which will help finance other projects distributed throughout the oil sector.

### 1.4 Principal Petroleum Law(s) and Regulations

The regulatory framework regarding the petroleum sector in Angola is fundamentally provided by Law 10/04 of 12 November 2004, as amended by Law 5/19 (the “Petroleum Law”). The Petroleum Law sets forth the general framework applicable to the oil operations in Angola, namely, it governs the activities related to prospection, concession, search, assessment, development and decommissioning of the oil sector.

Other relevant statutes governing the oil activities in Angola are:

- Decree 1/09 of 27 (“Regulation on Petroleum Operations”) defines and establishes the conditions and procedures to be observed in petroleum operations.
- Law 13/04 of 24 December, as amended by Law 6/19 (“Taxation of Petroleum Activities Law”), applicable to the taxation framework related to petroleum activities, namely, it defines the taxes, rates, deductions and incomes of oil and gas activities.
- Law 2/12 of 13 January (“Angolan Oil and Gas Foreign Exchange Law for the Oil Industry”) establishes a specific foreign exchange regime applicable to the payment of goods, services and capital operations related to the oil activities of prospection, research, assessment, development and production of crude oil and natural gas.

- Law 11/04 of 12 November (“Petroleum Customs Law”), establishes the customs and incentives regime applicable to the oil sector.
- Presidential Decree 5/18 of 18 May establishes the framework for the research activities involved in the Development Areas of petroleum concessions.
- Law 26/12 of 22 August (“Law on the Transportation and Storage of Crude Oil and Natural Gas”) establishes the legal framework related to downstream operations, namely, it defines the access and performance of transportation and storage activities of crude oil and natural gas.
- Presidential Decree 86/18 establishes the Regime applicable to Public Tenders within the Oil and Gas sector.

## 2. Private Investment in Petroleum: Upstream

### 2.1 Forms of Allowed Private Investment in Upstream Interests

In accordance with the Petroleum Law, the access to the production and exploration of oil activities is carried under a prospecting license issued by the MIREMPET, or under a petroleum concession, where the mineral rights are granted to the ANPG as the National Concessionaire. Under request to the MIREMPET, the prospecting license may be attributed to any domestic or foreign company with the necessary technical and financial capacity, in order to determine the petroleum potential of a given area.

In terms of petroleum concession, the National Concessionaire ANPG may associate with Angolan or foreign entities interested in performing oil operations, in order to share its technical and financial capacity. ANPG may associate through:

- a Corporation;
- Consortium Agreement;
- Production Sharing Agreement; and
- Risk Service Agreements.

The most common type of association with the National Concessionaire is the performance of Product Sharing Agreements, although there were recently associations between ANPG and oil companies by means of a Risk Services Agreement.

### 2.2 Issuing Upstream Licences/Obtaining Petroleum Rights

As previously mentioned, upstream licences may be issued under a prospecting license or petroleum concession.

### Prospection Licence

The prospecting licence is granted for a three-year period (exceptionally extendable) and must be preceded by a request to the MIREMPET with the necessary evidence of its technical and financial capacity. Such request must contain, inter alia, the objectives of the applicant, the target area, the technical and financial means as well as the provisional budgets to be used by the applicant. It should be noted that the issuance of a prospecting licence does not grant its holder any exclusive rights to carry out the intended activities, nor any pre-emption rights for the purpose of becoming an associate with the National Concessionaire.

The prospecting licence includes geological, geochemical and geophysical research, and the processing, analysis and interpretation of the acquired data, as well as regional studies and mapping, for the purpose of locating oil and natural gas fields.

### Petroleum Concession

In relation to a petroleum concession, ANPG as the National Concessionaire, may associate with third parties in order to perform petroleum operations in a given area. In this context, ANPG shall request MIREMPET the due authorisation to open a public tender, in order to properly define which entities ANPG will associate with. However, in exceptional situations, ANPG may directly negotiate with interested entities, namely, in case of a public tender without any interested company, due to the lack of bids or due to bids considered unsatisfactory by MIREMPET.

Additionally, with the amendment to the Petroleum Law in 2019, for the substitution of Sonangol by ANPG, as the new National Concessionaire, one of the main changes enacted was the pre-emptive rights of SONANGOL, directly or indirectly through an affiliate, in relation to:

- the allocation of a minimum 20% participating interest in new petroleum concessions;
- the allocation of operator status in new petroleum concessions by evidenced technical and financial capacity, in accordance with internationally accepted practices by the oil industry; and
- the right to be financially carried in 20% by international Associates, in case it is not appointed as operator.

### 2.3 Typical Fiscal Terms Under Upstream Licences/Leases

The tax charges applying to E&P Companies are the following:

- Petroleum Production Tax at a 5% rate (not applicable in case of Production Sharing Agreement);
- Petroleum Income Tax at a 25% rate – recently adjusted under Presidential Legislative Decree 7/18 18 May 2018;

- Petroleum Transaction Tax (not applicable in case of Production Sharing Agreement);
- Surface Fee annual amount of USD300 per each km<sup>2</sup>; and
- Levy for the training of Angolan personnel which may vary between USD 200,000 annually, USD0.15 per barrel and 0.5% of gross annual income, depending on the type of payer entity.

## 2.4 Income or Profits Tax Regime Applicable to Upstream Operations

The most relevant tax implications and regulations of upstream sector are related to Petroleum Income Tax (PIT) and the contractual obligation of payment of profit oil to the National Concessionaire.

Taxation of Angolan upstream sector is featured mostly by the procedures involving the Fixation Committee which purpose is to assess and determine the PIT amount due by each E&P company for each block concession and the Revision Committee which is the authorised entity to review any administrative claims against the decision of the Fixation Committee.

### Petroleum Income Tax

Under Angolan law, Ministry of Finance holds powers to assess the Petroleum Income Tax (PIT), based upon the information provided by taxpayers in the relevant annual tax returns and supporting documents, by way of the Fixation Committee.

### Profit oil

As to the calculation of profit oil, this is based upon the relevant provisions of the PSA. Therefore, profit oil should be assessed and claimed by the National Concessionaire and not by Ministry of Finance, as Profit Oil qualifies as a contractual obligation.

However, Angolan authorities take the view that profit oil due by E&P companies qualify as a tax obligation (or as a parafiscal obligation), and issue additional assessments on profit oil as well as additional assessments on PIT.

In view of the above, from a strictly legal standpoint, PIT and profit oil are the most relevant income taxes and contractual obligations of upstream sector and are subject to different mechanisms of dispute. However, the practice in Angola has forced petroleum companies to follow the same procedures to dispute both type of decisions, ie, the procedure set out under Angolan law to dispute decisions on PIT is applicable to profit oil). The main argument is that any change on profit oil will have a direct impact on the PIT.

## 2.5 National Oil or Gas Companies

All mining rights in the Angolan territory are exclusively assigned to the National Concessionaire. For purposes of petro-

leum concession, ANPG has the right of becoming an associate to any entity in order to jointly execute oil operations in a given area, or alternatively, ANPG may execute such operations independently, by means of a concession granted by MIREMPET.

Regarding the National Concessionaire's participation interest, the Petroleum Law expressly states that, in the event ANPG decides to execute petroleum operations together with an entity with technical and financial capacity, through a Corporation or Consortium Agreement, ANPG shall hold a percentage higher than 50% of the association's shares. In case of a Production Share Agreement, ANPG is contractually entitled to receive part of the profits under the terms and conditions of such Agreement.

The Petroleum Law states that the risk of application of the investments in the exploration period runs on behalf of the entities which have associated with the National Concessionaire. Meaning, that in the event where there is no economically exploitable discovery, the entities will not be able to recover the invested capital or to be compensated.

## 2.6 Local Content Requirements Applicable to Upstream Operations

The fundamental principle regarding the local content requirements in Angola is the promotion and development of Angolan business. MIREMPET is primarily responsible for adopting the necessary measures to promote and encourage the participation of companies in the oil sector composed by Angolan citizens. Additionally, ANPG and its associated entities shall cooperate with government authorities regarding public actions in order to promote the socio-economic development of Angola.

### Goods and Services

In respect of the use of Angolan goods and services, all entities that collaborate in the execution of petroleum operations, namely, the licensees, the National Concessionaire and its associates shall acquire Angolan production materials, equipment, machinery and consumer goods, as well as hire local service providers. However, it should be noted that the acquisition of local goods and services may never exceed 10% when compared to the costs that would arise from similar foreign services and goods, provided that such amounts include transport costs, insurance and customs charges due.

### Employment and Training

In terms of employment and training, the Petroleum Law requires both domestic and foreign investors to hire only Angolan citizens in all categories and functions, except in case there is no Angolan citizens with the required qualifications and experience. Additionally, Angolan workers shall have the same remuneration rights, working and social conditions as foreign

workers occupying professional categories and performing the same functions.

The Decree-Law 17/09 of 26 June establishes the rules and procedures to be observed in relation to the recruitment, integration, training and development of workers within the oil sector. However, its main focus is to set the amount of the contribution payable by entities for training and hiring nationals. Companies operating in the oil sector need to allocate a certain specified amount for the training of nationals, in case of a company is holder of a prospecting license, such contribution is equivalent to USD100,000.

Further, companies are required to enter into a programme contract with the MIREMPET for the development of human resources and to present local content plans subject to obtaining a petroleum licence and additional continuous annual reports, which are subject to continuous operation within the petroleum industry.

## **2.7 Requirements for a Licence/Lease-Holder to Proceed to Development and Production**

The Petroleum Concession covers an:

- exploration period comprising prospecting, drilling, well-test activities and evaluation;
- a period for development and production; and
- the framework for prospecting within certain special areas (in which oil is very likely to be found), in order to promote the discovery of oil within previously agreed concessions.

ANPG, as National Concessionaire, may declare a commercial discovery if it considers that, within the scope of prospecting, exploration and evaluation activities, there is an oil deposit that may be exploited. The commercial discovery shall be reported to MIREMPET, and the ANPG shall carry out a preliminary demarcation of the deposit. 45 days after the declaration date of the commercial discovery, ANPG shall submit to MIREMPET an assessment report of the deposits.

### **Exploitation and Development**

Additionally, a concession area may be exploited and developed together in Angola. In this context, MIREMPET shall be immediately informed when the National Concessionaire discovers an oil field capable of viable commercial development and which extends beyond the area of the aforementioned concession and can only be developed commercially in conjunction with an existing oil field in an area adjacent to the concession area, or when it considers that such commercial discovery should be developed in conjunction with another commercial discovery adjacent to the aforementioned concession.

In the situation where both areas are under the oil concession regime, MIREMPET may determine that the oil discovered is developed and produced together, notifying the National Concessionaire for such purpose. As a result, the National Concessionaire together with its associates, shall prepare a general development and production plan within 180 days.

## **2.8 Other Key Terms of Each Type of Upstream Licence**

As previously mentioned, upstream licences in Angola may be issued under a prospecting licence or petroleum concession. The prospecting licence issued by MIREMPET shall contain:

- the identification of the licensee;
- the area and term of the licence (licences shall be issued for a maximum period of three years, however, it may be extended upon application to MIREMPET);
- the rights and obligations of the licensee;
- the description of the work to be carried out and the respective budget; and
- the definition of the ownership regimes of the data resulting from the prospecting.

These are the main features of the exploration period which comprise both search and evaluation. The second stage of production comprises development and effective production.

## **2.9 Requirements for Transfers of Interest in Upstream Licences**

In Angola, the transfer of interest in the upstream sector is generally processed under approval of MIREMPET by Executive Decree. Such authorisation allows ANPG associates to transfer part or all of its contractual position to third parties which have provided evidence of their suitability, technical and financial capacity. Further, under the contractual framework of both Production sharing Agreement and joint Operating Agreements (only between the members of the block concession), the transfer of participating interest is also subject to approval by the members of the block and most importantly by the National Concessionaire which holds a pre-emptive right in respect of the transfers, which is transferred to the national E&P companies if not exercised by the Concessionaire.

The participating interest will only be allowed to be transferred if such pre-emptive rights are not exercised.

The transfer to third parties of more than 50% of the share capital of an E&P company holding a participating interest in a block concession is equivalent to the transfer of the participating interest itself. Therefore, the transfer of shares equivalent to more than 50% of the share capital will be subject to all of the above-mentioned requirements.

## Transfers Between Affiliates

In the event such transfer of the participating interest occurs between affiliates and the assignor remains jointly and severally liable for the assignee's obligation, prior approval from MIREM-PET and pre-emptive rights are no longer applicable.

One of the most recent amendments to the Petroleum Law was the granting of pre-emption rights to Sonangol:

- when shares and quotas are transferred to non-affiliates of the transferor;
- in the attribution of participative interest of up to 20%; and
- in the attribution of operator status in situations of extension of the production period in the oil fields, reaching the end of the production period, upon demonstration of technical and financial capacity.

This means that the role of Sonangol and its affiliates in the petroleum sector will remain active and supported by enacted acts of legislation in Angola.

## 2.10 Legal or Regulatory Restrictions on Production Rates

Angola is a member of OPEC effective as of 1 January 2007 as per Resolution 95/06 dated 13 December 2006. With the entry in OPEC, Angola intended to enlarge its international role in the petroleum sector and attract foreign investment in addition to the significant participation in Angola of American E&P Companies. Angola is currently the second African largest producer of crude next to Nigeria and has been following OPEC decisions in respect of crude production based upon the analysis and strategy of OPEC on the international crude market.

Most recently and due to the oil price crash increased by the pandemic of COVID-19, OPEC members, including Angola, have agreed to reduce their supply of crude to the international market in 28% compared with the numbers of 2018. Although OPEC regulations and decisions are not reflected in Angolan legislation, Angola has been a compliant member of the organisation as the upstream sector is mostly based upon foreign investment which are during the course of the year of 2020 more focused on cost-control than on the promotion of new investments.

## 3. Private Investment in Petroleum: Midstream/Downstream

### 3.1 Forms of Allowed Private Investment in Midstream/Downstream Operations

The liberalisation of the downstream sector in Angola only occurred in 2009 with the entry in force of the Resolution

105/09 of 19 November. The Angolan government's intention was to focus on restructuring and recovering infrastructure for fuel refining, storage, transportation and distribution, which require large investments, in order to reduce imports and reorganise the domestic fuel market. For such reason, the Government decided to establish several goals, including:

- increasing efficiency in the refining chain, as well as storage, transport and distribution of fuel;
- encouraging and ensuring national coverage in petroleum product's distribution;
- establishing a more transparent charging system;
- sale of products throughout the territory; and
- allowing free access to distribution activities.

Due to the recent drafting and preparation of legislation related to the downstream sector, many of the recommendations introduced by the Government have been duly implemented. The Law 28/11 of 1 September is the main statute related to the downstream sector, namely it governs the crude oil refining and storage, transportation, distribution and marketing of petroleum products.

### Storage of Petroleum Products

In the meantime, more detailed legislation was implemented, notably, the Presidential Decree 173/13 of 30 October which approved the procedures and established the powers for the licensing and supervision of facilities for storage of petroleum products, facilities for the supply of liquid and gaseous fuels (ie, fuel stations), and distribution network connected to liquefied petroleum gas (LPG) reservoirs. More recently, the Presidential Decree 208/19 of 1 July established the legal framework to which the activities of refining crude oil, import, receipt, supply, storage, transport, distribution, marketing and export of petroleum products are subject, as well as the procedures and rules applicable to the public service obligations, planning and licensing of the facilities of the Petroleum Derivatives System of the Republic of Angola.

### 3.2 Rights and Terms of Access to Any Downstream Operation Run by a National Monopoly

Most of the players that operate in Angolan market of refined petroleum products have elected to start an open dialogue with IRDP and even with the National Concessionaire (Sonangol). In terms of downstream operations, the Republic of Angola has been known for the quasi-monopoly of Sonangol's subsidiaries operations on distribution and supply of fuel and petroleum products subject to State-subsidies.

Most of the entities that are engaged in the importation and distribution of petroleum products are affiliates of the National



Concessionaire or are petroleum companies which also hold participating interests in block concessions in Angola and have entered into joint-ventures with the National Concessionaire.

Also, private (foreign) investment is regarded as an opportunity for both Angolan authorities and private investors, specially of the investment in the downstream sector is directed to non-developed areas of the Angolan territory. The most recent example is the State intention of promoting port areas within the territory which may be future alternatives to Luanda and Cabinda, notably the port-area of Soyo, Zaire, which is also the location of the ALNG project. As a result, starting dialogue and building a case with Angolan authorities with commitment to the importation and storage of petroleum products with long-term, tend to be favourably considered by Angolan authorities.

### **Joint Ventures/Partnerships**

Most of the distribution of fuel in Angola is carried out in joint venture/partnership with Angolan authorities (the most recent example is of the E&P Company TOTAL which has agreed with Sonangol to have a partnership with Sonangol for the distribution of fuel in Angola).

### **Fuel Shortages**

Angola has also been known in the last couple of years to have regular shortage (or even lack) of fuel in gas stations. For that reason, the market is mainly supported by the State.

Most entities which engage in the distribution of fuel tend to supply large companies operating in Angola in other sectors of activities (manufacturing, food distributions, transportation) which for example have their own gas stations within their premises to fuel their own trucks and cars.

As a result, distributors of fuel in Angola and the existence of gas stations are directly linked. From the last gas stations mapping made available on Official Gazette publication of June 2019, there are 1107 gas stations in Angola, distributed as follows:

- 533 operated by small distributors qualified as “white flag” representing 48,15%;
- 444 operated by Sonangol Distribuidora representing 40,10%;
- 78 operated by Pumamgol representing 7,05%; and
- 52 operated by Sonangalp representing 4,70%.

### **COVID-19 Measures**

The main purpose of recent COVID-19 measures is that the distribution of fuel is not stopped so that the prices of distribution may be controlled (within possible). On that topic, the only effective “relaxing” measure undertaken by Angolan authorities on the importation of petroleum products is that the original

documentation for importation is not required prior to the importation – scanned documentation may suffice.

In the potential change on the subsidies by the Government, we do not expect that such change is enacted after COVID-19. It would be a change on a long-run because until such time as the oil price does not increase fuel distribution in Angola will need to be carried out with State support.

### **3.3 Issuing Downstream Licences**

Until now, petroleum importation, distribution and resale is subject to the terms and conditions set forth by the Presidential Decree 208/19.

Due to the recent outbreak of COVID-19 the legal diplomas that have been enacted set forth the principle that petroleum products (diesel, GPL and other liquid fuels) must be available to the public in general so that essential activities are not affected. However, until now no specific legal diploma has been enacted to relieve the importation procedures of refined petroleum products into Angolan territory.

For that reason, the Petroleum Importer Licence is required prior to initiate any importation procedures and each importation operation will then follow an independent procedure with IRDP.

### **Importation Licence Requirements**

The importation licence is subject to the following cumulative requirements:

- Have a total storage capacity of not less than 40,000 m3, through its own facilities or by entering into agreements for such purpose - at least 10,000 m3 of the said capacity shall be dispersed in logistical facilities in inland provinces.
- Have a distribution capacity of not less than 1,000 m3, through their own means or by entering into agreements for such purpose.
- Have a minimum of 20 filling stations, covering 60% of the provinces for imports of liquid fuels or at least 4 LPG filling units, distributed over four provinces for importing gas fuels.
- Hold at least 5% of the market share.
- Compliance with legal and technical standards applicable to the exercise of the activity.
- Presentation of the local content integration plan.



Further, there is also a special regime under which the applicant may be granted the importation license by IRDP provided that it:

- has a total storage capacity of no less than 40,000 m<sup>3</sup>, through its own facilities or by entering into agreements for such purpose (at least 10,000 m<sup>3</sup> of the said capacity shall be dispersed in onshore logistical facilities);
- has a minimum of 20 filling stations, covering 60% of the provinces for imports of liquid fuels or at least 4 LPG filling units, distributed over 4 provinces for importing gas fuels;
- complies with legal and technical standards applicable to the exercise of the activity; and
- most importantly the applicant undertakes to fulfil all other outstanding requirements within five years with annual objectives to be mutually agreed with IRDP.

The importation of petroleum products is subject to a number of subsequent requirements and responsibilities related to insurances, transportation, storage facilities, market research for the resale of the imported products and financial capacity and relationship with commercial banks to assure the payment of the imported products.

### **Proceeding with Importation Activities**

After obtaining the importation licence, the importer entity may then be in position to proceed with importation activities in terms that each specific importation will be subject to an independent authorisation (list of documents attached). Also, the importer shall have a report duty towards IRDP in respect of orders, origin certificates and arrival of petroleum products, as well as international prices and payments to suppliers.

### **3.4 Typical Fiscal Terms and Commercial Arrangements for Midstream/Downstream Operations**

Midstream and downstream operations are subject to general taxation regulations in Angola and not to the Petroleum Tax Law, Law 13/04.

Midstream and downstream operators do not qualify as E&P companies and are subject to Industrial Income Tax over profits, Capital Gains Tax over dividends and interests, VAT and Personal Income Tax (IRT) in respect of workforce.

The only similarity between midstream and downstream sectors with upstream sector is the mandatory training levy contribution. Services providers are subject to a 0.5% training levy withholding.

### **3.5 Income or Profits Tax Regime Applicable to Midstream/Downstream Operations**

As mentioned above, midstream and downstream operators are subject to the same taxation as general economic agents in Angola, as follows:

- 30% Corporate Income Tax, with 6.5% withholding over provision of services;
- 10% withholding of Capital Gains Tax on rent of equipment (royalties, lease of vessels);
- 14% VAT for provision of services and supply of goods;
- 10% on Capital Gains Tax over dividends; and
- 0.5% training levy withholding.

In case of entities incorporated or existing under private investment projects tax incentives may be granted in terms of reduction of Corporate Income Tax and Capital Gains Tax, as well as real estate property tax over the acquisition of real estate property.

### **3.6 Special Rights for National Oil or Gas Companies**

There is no specific legal regulation or provision that sets forth special rights for national oil and gas companies to downstream. As mentioned in **3.1 Forms of Allowed Private Investment in Midstream/Downstream Operations** and **3.2 Rights and Terms of Access to Any Downstream Operation Run by a National Monopoly**, most players of downstream sector are affiliates of the National Concessionaire and are mostly held by Angola-based entities and therefore qualify as Angolan Companies. There has been a tendency in Angola that access to petroleum sector (services providers and downstream sector) need to have a local participation based upon the existing pre-emptive right of hiring of local services providers.

However, it has also been understood that this type of activities entails a large scale of investment and, therefore, there is a concrete need for foreign investment specially in the downstream sector.

### **3.7 Local Content Requirements Applicable to Midstream/Downstream Operations**

Specific legislation for the Petroleum (E&P) and Diamond sectors set forth regulations that prioritise companies with registered office in Angola having its share capital held by Angolan citizens in at least 51%.

In respect of the Petroleum Sector, companies providing services to E&P companies and/or to petroleum industry are not formally required to comply with the 51% requirement. However, and considering that such companies must be registered with the Ministry of Petroleum to be authorised to provide

services to the Petroleum Industry, in practice this means the fulfilment of the Angolanisation requirement of 51% in respect of such companies is required and the trend has been that a very significant number of Joint Venture companies which are held by Angolans in 51% and 49% by the foreign contractors.

### **3.8 Other Key Terms of Each Type of Downstream Licence**

The current downstream model of licensing and activities carried out in Angola are represented by a very short number of players for the following main reasons:

- downstream sector is based upon the importation of refined petroleum products as Angola is not yet reached a development stage of refinery activities;
- refined petroleum products pricing is subject to fixed price regulations and are determined by the State; and
- sales in the market are subsidised by the State to overcome any lack of stoppage of supply.

This means that downstream sector entails a significant investment in infrastructures, training of workforce and funding, which have dispersed foreign investment in Angola and left the downstream sector to be supported by the Angolan State.

### **3.9 Condemnation/Eminent Domain Rights**

Under the downstream sector, the rights over plots of land and infrastructures are the general rules of acquisition of real estate property rights over plots of land and construction of infrastructures.

The expropriation of private lands and infrastructures is only expressly set forth for upstream operations, during exploration and production stages and not for downstream operations.

Having said the above, the Petroleum Activities Law provides and includes general guiding principles under which it may be possible to argue that all petroleum sector is of public interest and is part of public/State domain. In practice, downstream operations have been carried out by the National Concessionaire affiliates and Angolan authorities are now more opened to new players and new investments.

### **3.10 Rules for Third-Party Access to Infrastructure**

The downstream licences do not provide open access rights in privately constructed infrastructure to third parties. Downstream licences are typically granted to affiliates to the National Concessionaire of other forms of association and third parties do not have access to such infrastructures if the real estate rights have already been granted for the downstream licence, notably for distribution and storage of refined petroleum products.

Most probably the course followed by Angolan legislation is for the expropriation of private real estate property for petroleum operations (although most common on upstream sector).

The typical approach for downstream is to target the plot of land, reach an agreement with any potential existing holder of precarious right of use of the land and subsequently request the grant of a surface right (prior to the downstream licence application).

### **3.11 Restrictions on Product Sales into the Local Market**

The most relevant restrictions on the sales in the local market are related to the price of refined petroleum products which are set forth by government authorities through acts of legislation enacted in Angolan Official Gazette.

The supply of refined petroleum products is mostly dependent of importations as the refinery operations in Angola are not yet developed to the point of consumption and refinery of local crude oil.

Most supply of refined petroleum products is covered and carried by the State through the grant of subsidies and limitation of prices.

### **3.12 Laws and Regulations Governing Exports**

The exportation of crude oil is carried out by the E&P companies in partnership with block operators and maritime port terminal operators under Lifting Agreements. Angola does not export refined petroleum products. Although being the second largest African exporter of crude oil, Angola imports refined petroleum products due to the activity shortage of Angolan refineries.

The exportation of crude oil falls under the special customs regime set forth for the petroleum sector. Therefore, the exportation of crude oil is subject to the payment of 0.1% of customs general fees over the declared customs value of crude oil. The exportation of crude oil is exempt from VAT.

### **3.13 Requirements for Transfers of Interest in Downstream Licences**

Downstream licences are issued based upon the suitability of the applicants and most importantly on the facilities presented by the applicant. Typically, downstream licences are not allowed to be transferred or assigned and any change of control of the applicant or licensed entity is subject to prior approval of the licensing entity. These authorisations are granted on an ad hoc basis as the new holder of the licence or the new controlling entity must provide evidence of continuity of activities or improvement of such activities.

In practice, this is not a common procedure in Angola.

## 4. Foreign Investment

### 4.1 Foreign Investment Rules Applicable to Investments in Petroleum

Angolan petroleum sector is subject to specific regulations in respect of investment law in terms that E&P companies are not subject to Angolan Investment Law requirement and may have a legal and physical presence in Angola without having to submit and wait for the approval of an investment project. Most E&P companies operating in Angola are represented by representative offices for purposes of having a physical representative in the territory. The holder of the participating interests in block concessions are typically non-resident entities.

Angolan Investment Law is only applicable to foreign petroleum services providers and suppliers which intend to operate in Angola for a period exceeding one year and intend to have a physical presence in Angolan territory. In such scenario, petroleum services providers and suppliers are regarded as ordinary private foreign investors subject to the general investment obligation of submitting an investment project in order to obtain tax incentives and be granted investor visas so that foreign individuals may be lawfully in Angolan territory for long periods of time.

## 5. Environmental, Health and Safety (EHS)

### 5.1 Principal Environmental Laws and Environmental Regulator(s)

Principal environmental laws and regulations include the following:

- Law 5/98 – Environment Base Law, 19 June 1998;
- Decree 39/00, 10 October 2000, issued by the Ministers Counsel, which enacted the regulations on environment protection in the course of Oil Activities in the Republic of Angola;
- Executive Decree 8/05, 5 January 2005, issued by the Ministry of Petroleum, which enacted the Regulations on Management, Removal and Deposit of Waste generated in the course of Oil Activities in the Republic of Angola;
- Executive Decree 11/05, 12 January 2005, issued by the Ministry of Petroleum, which enacted the Oil Spill Alert Procedures;
- Resolution 87-A / 08, 22 December 2008, issued by the Ministers Counsel which enacted the National Contingency Plan Against Oil Spills at Sea;
- Presidential Decree 194/11, 7 July 2011, which enacted the Regulation on Liability for Environmental Damage, in compliance with the Basic Law on the Environment, approved by Law No. 5/98, of 19 June;

- Presidential Decree 190/12, 24 August 2012, which enacted the Regulation on Waste Management, notably the obligation to present a Waste Management Plan also applicable to the petroleum sector;
- Executive Decree 97/14, 8 April 2014, issued by the Ministry of Petroleum which enacted the Regulations on Management of Operational Discharges;
- Decree 31/94, 5 August 1994, issued by the Ministry Counsel, which enacted the Health, Safety and Hygiene Regulations;
- Executive Decree 21/98, 30 April 1998, issued by the Ministry of Labour, which enacted the Rules on the Committee for the Prevention of Accidents at Work;
- Executive Decree 128/04, 23 November 2004, issued by the Ministry of Labour, which enacted the Regulations on Health and Safety Signage at Work Place.

### 5.2 Environmental Obligations for a Major Petroleum Project

Under Angolan law, the regulations on environment protection are applicable to the National Concessionaire and the E&P Companies through the Operator of the Block and other oil companies.

In this context, the Concessionaire and the E&P Companies through the Operator and other oil companies are required to present a number of up-dated documents for the execution of Oil Activities in any new facility and/or to change any existing facility, as follows:

- Environmental Impact Assessment;
- Oil Spill Prevention and Response Plans;
- Waste Management, Removal and Deposit Plan;
- Operational Discharges Management Plan; and
- Site Abandonment and Rehabilitation Plan.

### 5.3 EHS Requirements Applicable to Offshore Development

Angolan petroleum sector is mostly focused on offshore block concessions (although there is an increasingly tendency to open to investment on onshore areas). For that reason, the most relevant requirements and regulations applicable to offshore development is related to oil spill prevention and response plans.

#### Prevention Plan

In order to prevent oil spills, the Concessionaire and the Associates, through the Operator and other oil companies, shall develop and maintain an up-dated prevention plan to oil spills that shall include a schedule for its implementation. The plan must be submitted before the Ministry of Petroleum and implemented prior to the beginning of any oil activities.

The plan shall describe the facility location and define the features of the project, operating and maintenance actions used in the prevention of spills, including:

- spill containment systems;
- controllers of fluid level from tanks and pressure vessels;
- collector systems and drainage for collection of leakages;
- systems for fire prevention and explosions;
- inspection programs for equipment and instruments;
- corrosion control programs; and
- training programs to staff on oil spill prevention.

Further, the Concessionaire and the Associates, through the Operator and the other oil companies, shall develop and maintain an up-dated response plan to oil spills to assure a swift and effective response in case of oil spill that may damage the environment.

### **Implementation Plan Contents**

The plan shall include a schedule for its implementation, shall be submitted to the Ministry of Petroleum and implemented prior to the beginning of any oil activities.

The plan shall describe the facility location and define:

- Response strategies to small, medium and major oil spills.
- Water resources, soil and subsoil, air, flora and fauna, ecosystems, landscape, atmosphere, cultural and archaeological heritage which are more likely to suffer damage caused by oil spills, as well as actions for its preservation, according to the Environmental Impact Assessment.
- Alert and notification procedures for oil spills.
- Establishment of response structure and main functions of service providers in oil spill response.
- Equipment, supply and services available to respond to oil spills.
- Categories and rate of occurrence of training and practice exercises for responding to oil spills.
- Procedures for the removal of waste from the cleaning of oil spills.

In respect to oil spill alert procedures, all and any oil spills in quantities exceeding a barrel, or which environmental impact is significant in accordance to the classification and evaluation rules of environmental impact, shall be notified by the Concessionaire and Associates, through the Operator and other oil-related companies, within eight hours as from the occurrence knowledge by the oil spill emergency response group of the Operator to the Ministry of Petroleum.

### **Notifications and Final Report**

The notifications shall be served via e-mail, fax or by phone call and shall be confirmed by the Operator within 12 hours as from the occurrence knowledge through the notification sheet duly completed. The Ministry of Petroleum shall confirm good receipt of the notification sheet within 12 hours.

After the oil spill control procedures and the replacement of the environmental conditions of the site, the Operator and other oil-related companies shall address to the Ministry of Petroleum a final report of the oil spill addressing the following aspects:

- Description of oil spill containing procedures and replacement of environmental conditions.
- Results of the internal investigation conducted by the Operator in respect to the oil spill causes and relevant adjustment actions.
- Level of recover of environmental conditions on the affected zone.

### **5.4 Requirements for Decommissioning**

Until recently, the decommissioning requirements were generally set forth as guiding principles in PAL and in Decree 1/09. However, there has been an increasingly need to legislate on the decommissioning requirements and recovery of abandonment costs. In order to address such lack of legislation, Presidential Decree 91/18, 10 April was enacted and set forth the following main decommissioning requirements/obligations:

- preparation and submission of Provisional Abandonment Plan reviewed and updated every three years and submitted to the National Concessionaire 90 days prior to beginning of each subsequent civil year;
- preparation and submission of Definitive Abandonment Plan to be submitted to the National Concessionaire 24 months prior to the production termination and subsequently submitted for approval to the MIREMPET;
- dismantling and delivery of facilities, including inspection and audit activities 18 months prior to the term of the Development Area;
- creation and funding of specific escrow account to deposit abandonment funds to address corresponding costs.

Both provisional and definitive models of abandonment plans are made available in Presidential Decree 91/18.

Decommissioning/abandonment procedures and concluded upon issuance of good standing certificate by the National Concessionaire discharging the Block members from any liability and claim (model also enclosed as Annex to Presidential Decree 91/18).

## 5.5 Climate Change Laws

Climate change laws have not yet been implemented in Angola in particular to the petroleum sector, notably the upstream sector. Although there is a significant and gradual awareness to the impact of petroleum operations in the environment, most actions undertaken by Angolan authorities have been directed to specific activities not directly related to production, but rather to waste management activities carried out by petroleum services providers.

### Climate Change Legislation

The following acts of legislation have been enacted focusing in climate change awareness.

Resolution of the Ministers Counsel 52/08, 5 June 2008, as approved the National Strategy for the Implementation of the United Nations Framework Convention on Climate Change, approved in Rio de Janeiro (Brazil) in June 1992, and of the Kyoto Protocol (Kyoto), adopted in Kyoto (Japan) in December 1997.

Executive Decree 98/19, of 10 April, has approved the Internal Regulation of the Climate Change Office of the Ministry of the Environment (GABAC), which is intended to be a direct executive service of the Ministry, responsible for the implementation of the National Climate Change Program and integration of policies leading to sustainability in the field of emissions reduction and programs and projects offsetting greenhouse gas emissions, which defines its duties and regulates its organisation, functioning and personnel. However, until now no specific actions have been undertaken on climate change regulations specifically addressed to the petroleum sector in Angola.

## 5.6 Local Government Limits on Oil and Gas Development

There is no specific legal provision or regulation that allows local governments (province or municipality) to limit oil and gas development.

Oil and gas sector in Angola is deemed to be of public interest and constitutes the vast majority source of revenues of the country. Although there are general guiding principles of environmental protection, there are no specific rules or effective ruling of local governments on oil and gas development. As mentioned, most Angolan authorities act on national government level over services providers and suppliers of goods to the petroleum industry and not directly against petroleum operations.

## 6. Miscellaneous

### 6.1 Unconventional Upstream Interests

Angolan legislation does not have specific regulations on unconventional upstream interests.

### 6.2 Liquefied Natural Gas (LNG) Projects

Angola has enacted in October 2007, through Law-Decree 10/07 of 3 October 2007, the special legal regime of the Liquefied Natural Gas Project named Angola LNG Project (ALNG), including specific maritime, tax, customs and foreign exchange regime.

The ALNG is executed and managed by the company named Angola LNG Limited, which is held by the Promoting Entities:

- Cabinda Guil Oil Company Limited (CABGOC – Chevron in Angola);
- Sonangol – Gás Natural, Limitada;
- BP Exploration Angola Limited; and
- Total LNG Angola Limited.

The Promoting Entities or their affiliates also held and control:

- the “*Sociedade Operacional Angola LNG*” which undertakes the operations related to Territorial and Maritime Facilities for ALNG; and
- the “*Sociedade Operadora dos Gasodutos de Angola*” which undertakes the operations related to pipelines.

### Port Concession Agreement

The most relevant regime related to ALNG is the Port Concession Agreement executed by the Angolan State and Angola LNG Limited, under which the Angolan State granted to Angola LNG Limited the right to use the public domain related to the relevant maritime territory of interest to the ALNG project, notably in the Soyo Area and including powers to appoint the Terminal Operator of Soyo which in turn is allowed to appoint and hire any required services providers subject to ALNG special rules.

### Tax Regime

ALNG is subject to a specific tax regime under which the Promoting Entities hold a tax credit of 144 months as of the Commercial Production Date deductible against the PIT (which tax rate is of 35%). “*Sociedade Operacional Angola LNG*” and “*Sociedade Operadora dos Gasodutos de Angola*” are subject to general Angolan taxation, notably Industrial Income Tax. Angola LNG Limited is subject to a Gas Tax on a quarterly basis as of the date of the first LNG exportation outside Angola. The same procedures involving a Fixation and Revision Committee will be applicable to PIT and the Gas Tax.

## **Training Levy**

Angolan LNG Limited is also subject to training levy payment obligation corresponding to USD0.15 for each barrel of NGL accrued of USD0.020 for each mmbtu of sold LNG deducted of all costs incurred in Angolan workforce training.

## **Exemptions and Service Provider**

Angola LNG Limited, “*Sociedade Operacional Angola LNG*” and “*Sociedade Operadora dos Gasodutos de Angola*” are expressly exempt from Petroleum Production Tax, Petroleum Transaction Tax, Urban Property Tax, Real Estate Property Tax, Capital Gains Tax and Stamp Duty.

In terms of hiring of services providers and supply of goods, ALNG has been regarded as a special project in which the Angolanisation principles and pre-emptive rights of Angolan services providers is not deemed to be a priority. The most relevant criteria are the quality of the services and the complexity of the services to be provided. Therefore, local content requirement is not a first-rank criteria for the award of services contracts, notably on vessel-related services.

## **6.3 Unique or Interesting Aspects of the Petroleum Industry**

Angolan oil and gas sector is commonly known for the specific foreign exchange control regime due to the increasing devaluation of the local currency (kwanza) in the past five to six years. This local currency depreciation jointly with the enactment and enforcement of a strict foreign exchange control regime has created a unique environment for services providers and suppliers of goods of the petroleum sector in Angola. E&P companies are allowed to process payments outside Angola in foreign currency without being subject to any prior licensing or authorisation procedures from Angolan authorities. However, Angolan-based services providers and suppliers to petroleum industry must be paid in Angolan currency in bank accounts domiciled in Angola.

This foreign exchange control regime applicable to the petroleum sector has created a number of constraints to Angolan-based companies which are part of international group of companies which are required to settle payments outside Angola, notably the payment of expatriate workforce salaries.

For that reason, in more complex services (related to engineering, vessel operation, crane operation), the contractual framework entered into by and between E&P Companies is typically in the form of external consortium with both resident and non-resident services providers that provide respectively the in-country and international scope of services within one given block concession.

## **6.4 Material Changes in Oil and Gas Law or Regulation**

The most relevant change of law of the past year of 2019 was the replacement of Sonangol E.P. as the National Concessionaire and creation of the ANPG and the gradual transition of powers from Sonangol to ANPG. The members of the Board of the new Oil and Gas Agency have already been appointed during the year of 2019.

In addition, the Presidential Decree 52/19, 18 February approved the General Strategy for the Allocation of Petroleum Concessions for the period 2019-2025. The main principle of this Presidential Decree 52/19 was to set forth the strategy and contractual/tender procedures to be adopted for the following five years in Angolan petroleum concessions with the following two main purposes:

- increase of petroleum and gas production in Angola; and
- assure the petroleum reserves substitution as a result of the clear decrease of production registered in past years.

## **COVID-19**

During the first semester of 2020, the significant decrease of oil price greatly caused by the COVID-19 pandemic has reduced the efforts of the Angolan authorities in promoting the licensing of new petroleum block concessions which has been initiated in 2019. Nevertheless, petroleum operations were one of the exceptional activities which were mandatorily active during the State of Emergency in Angola due to the COVID-19 outbreak. The State of Emergency was declared in 25 March and entered into force on 27 March and ended on 25 May 2020.

Petroleum operations have not been authorised to be stopped and most block operators kept their activities following national and international safety and health measures, notably mandatory quarantine periods upon arrival in Angolan territory.



# ANGOLA LAW AND PRACTICE

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**MC JURIST Angola Advogados** (MC JURIST) is a boutique-type corporate and investment law firm based in Luanda specialised in providing legal and tax consultancy assistance to corporate clients carrying out business and/or holding investments in the Republic of Angola. MC JURIST was established in early 2009 in Angola, with a liaison office in Lisbon, by Nuno de Miranda Catanas and Ana Martins de Carvalho, who have

worked together for more than 20 years, notably in Macao, Hong Kong, Singapore and Angola. MC JURIST currently has 20 fee earners in both Angola and Portugal, with significant experience in industry sectors such as petroleum services, private equity, banking and insurance. MC JURIST is mainly focused in the following practice areas: oil and gas, corporate and investment, tax and customs, employment and HR assistance.

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