

THE BANKING  
REGULATION  
REVIEW

ELEVENTH EDITION

Editor  
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THE LAWREVIEWS

# ANGOLA

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## I INTRODUCTION

The banking industry in Angola is largely made up of state-owned banks, including Banco de Poupança e Crédito, SA, and private banking institutions that are subsidiaries of international banks.

Most of the legislation in the banking industry is issued by the Parliament, the Executive Power (the President of the Republic of Angola) and the regulatory authority (the National Bank of Angola (BNA)), which issues most of the practical rules and instructions to banking institutions, notably orders, instructions and directives.

The five largest banks in Angola in terms of net assets are Banco Angolano de Investimentos SA, Banco Fomento de Angola, SA, Banco BIC, Banco Económico SA and Standard Bank Angola, SA.

## II THE REGULATORY REGIME APPLICABLE TO BANKS

In Angola, the main regulatory legislation applicable to banking institutions is Law No. 12/15 of 17 June 2015 (the Financial Institutions Law (FIL)), which sets forth the rules on the process of incorporation and on the exercise of activity, supervision and funding of financial institutions, including commercial banks.

A financial institution is defined under Angolan law as a public or private company whose activities are conducted as a banking or non-banking financial institution. In this respect, there are two types of financial institutions that are highly regulated in Angola, namely, (1) banking financial institutions (e.g., banks and microfinance institutions whose main activity consists of receiving deposits or other reimbursable funds from the public, to be used in their own name); and (2) non-banking financial institutions (e.g., exchange offices and microcredit entities, which are subject to the supervisory powers of the BNA, and payment services entities and asset management and investment companies, which are subject to the jurisdiction of the securities market supervisory body, the Capital Markets Commission (CMC)).

Banking financial institutions in Angola provide a full range of banking services for both private corporate and public clients by receiving deposits and repayable funds from the public and offering products specifically tailored to their needs, such as investment solutions, lease of equipment and issuance of guarantees.

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Banking financial institutions with a head office in Angola are subject to a vast number of rules and principles including having to adopt the form of joint-stock companies (*sociedades anónimas*) and ensuring a minimum share capital of 7.5 billion kwanzas represented by nominative shares.

On the same terms as for Angola-based banking institutions, branches of overseas banking institutions considering operating in the Angolan territory require and must obtain authorisation from the BNA. In addition, the FIL requires that two-thirds of the branch's personnel must be national citizens.

### III PRUDENTIAL REGULATION

#### i Relationship with the prudential regulator

The supervision and regulation of banking institutions in Angola is primarily entrusted to the BNA whose additional responsibilities include ensuring the preservation of the national currency's value and participating in defining monetary, financial and exchange rate policies. In addition, the BNA is mainly responsible for the execution, monitoring and control of monetary, exchange and credit policies, and management of the payment system.

In terms of consumer protection, the BNA aims to ensure the transparency of information provided by supervised entities to clients in the sale of banking products and services, as well as ensuring entities comply with the regulatory framework for these products and services.

The activity of the BNA as a supervisor or regulator of banking institutions concerning rules of conduct, information duties, conflicts of interest and organisational measures is mainly set forth in Law No. 16/10 of 15 July 2010. In particular, the BNA has the authority to:

- a* grant authorisation to banking institutions to pursue banking activities in Angola, as well as to approve any subsequent corporate changes of existing banks;
- b* assess the reputation and capacity of financial institutions' management bodies;
- c* determine and monitor compliance of all prudential relationships, which banking institutions must observe to ensure their liquidity and solvency; and
- d* establish standards for the operation of banking institutions, in particular regarding accounting organisation and structures of income and internal control, as well as the information to be provided to the BNA and the public.

#### ii Management of banks

Under the FIL, the management of banking institutions shall be conducted by both executive and supervisory bodies (with auditing duties). To improve the daily management of a banking financial institution, the executive body shall be composed of an odd number of members with a minimum of three directors who are duly skilled and specialised in the management of banking institutions and subject to scrutiny and authorisation of both the BNA and the CMC.

Regulation on the daily management of banking institutions has been developed by BNA Order No. 1/13 of 19 April 2013, in which significant attention has been devoted to policies related to risk management, employee compensation, prevention of conflicts of interest, transparency and information disclosure, as well as internal control functions of global strategy and daily business activities.

Order No. 1/13 also provides that consistent remuneration principles should be implemented in line with the nature, size, complexity and economic situation of each Angolan banking institution.

Most Angolan banking institutions have created independent remuneration committees (whose members are appointed by the banks' shareholders). Remuneration policies applicable to executive and non-executive directors set forth that executive directors are remunerated through a fixed parcel or a variable amount aligned with the performance of the institution, but without encouraging excessive risk taking; non-executive directors are also remunerated by a fixed amount, although such remuneration is not connected with the bank's financial results.

With respect to staff remuneration, in terms of employees performing in risk-taking areas, such remuneration is typically associated with both monetary and non-monetary components. In contrast, employees performing control functions (e.g., internal audit, internal control, compliance and risk management) should not see their remuneration directly associated with the results of the risk-taking areas.

In terms of general staff remuneration policies, irrespective of the risk levels of employees' functions, banking institutions in Angola tend to implement talent retention programmes, which may include providing housing, private vehicles and family benefits, as long as these meet the objectives of each banking institution. In terms of assistance in retirement, most banking institutions (as well as insurance companies) create pension funds for their employees, the majority of which include contributions from both the banks and the employees.

### **iii Regulatory capital and liquidity**

Angolan capital and liquidity requirements have recently incorporated the European standards related to the capital adequacy requirements in line with the principles of Basel II and III. To ensure an adequate level of solvency and liquidity, banking institutions must comply with a minimum level of capital funds, provided that such amount is higher than the minimum share capital.

Angolan banks are required to have a minimum share capital of 7.5 billion kwanzas. In addition, the BNA, in its capacity as supervisory body, requires banking institutions to constitute minimum reserves of no less than 10 per cent of the relevant net profits of each year.

In contrast, if banking institutions breach regulations governing their activity or fail to comply with the conditions imposed by the BNA, jeopardising the interests of depositors and other creditors, or the normal operating conditions of financial or currency markets, the BNA has the authority to revoke the banking institution's authorisation.

In early 2019, the BNA proceeded with the revocation of the licences of two Angolan banking institutions due to their non-compliance, within the permitted time period, with the new share capital and regulatory own fund requirements under BNA Order No. 2/18. Consequently, the BNA has requested the Attorney General declare them bankrupt.

To further ensure economic sustainability, the BNA has also issued several orders for the creation of ratios and limits to banking institutions. Orders Nos. 2/2016, 3/2016, 4/2016 and 5/2016 mainly focus on banking institutions' compliance with the solvability ratio when accounting for own funds.

In this context, and following the European and international standards, several requirements must be analysed to determine the risk of compliance. For instance, Order

No. 3/2016 focuses on the credit risk and counterparty credit risk; Order No. 4/2016 deals with the market risk and the counterparty credit risk in trading books; and Order No. 5/2016 mainly concerns operational risk.

Since October 2017, the BNA has pursued additional monetary and foreign exchange reforms. Angola has taken significant steps to improve its banking regulations to be in line with internationally acceptable practices of banking regulation and supervision. Angola has enacted several important pieces of banking legislation and has introduced regulations based on the principles of Basel II and Basel III.

Additionally, the BNA has also implemented a project to adopt the International Financial Reporting Standards (IFRS). Banking institutions that met one of the following criteria were required to fully adopt IFRS standards:

- a* the institution has total individual assets above 300 billion kwanzas;
- b* the institution is listed on the stock exchange or is a subsidiary of a company listed on the stock exchange;
- c* the institution has one or more subsidiaries domiciled abroad;
- d* the banking institution's head office is in Angola; and
- e* the institution is a subsidiary of a company domiciled abroad.

By the end of 2017, all banking institutions operating in Angola had adopted the IFRS.

#### **iv Recovery and resolution**

The FIL sets forth that if a banking institution is unable to meet its financial obligations, or is at risk of reaching said situation, the management or supervisory body must immediately report this to the BNA. In this context, the BNA, as the competent regulatory authority, may decide on the application of the following procedures:

- a* imposition of additional corrective measures, including for the bank to hold own funds above the established minimum level;
- b* strengthening of the provisions, processes, mechanisms and strategies created for corporate governance, internal control and risk self-assessment;
- c* reduction of risk inherent to the activities, products and systems;
- d* limitation of variable remuneration in terms of percentage of net profits, when said remuneration is not consistent with maintaining a solid base of own funds;
- e* restriction or suspension of certain individuals from holding executive or managerial positions within the financial system;
- f* imposition of additional duties to report information;
- g* restrictions on granting credits and the allocation of funds to certain types of assets, particularly concerning operations executed with related parties, and with entities based in foreign jurisdictions; and
- h* restrictions on accepting deposits.

In early January 2020, the BNA concluded, after an asset quality assessment exercise that focused on 13 banking institutions operating in Angola, representing 92.8 per cent of total assets, that the Angolan banking system is 'globally robust'. However, the BNA pointed out recapitalisation needs in two Angolan banking institutions. This clearly reflects the active participation of the regulator and the BNA in the activities of Angolan banking institutions.

### ***Recovery plan***

The BNA may request a banking institution to submit a recovery plan in situations that could seriously jeopardise its financial stability or solvency. This could include capital increase or disposal of shares and other assets.

However, if such conditions are not accepted by the banking institution, or if the approved recovery plan is not complied with, the BNA may determine the alteration, suspension or replacement, in part or in full, of the functions of one or more members of the management, executive or supervisory bodies, or shareholders, of the banking institution, with these parties being required to provide all the relevant information requested by the BNA or a supervisory committee.

Moreover, if the banking institution remains in a situation of financial instability that, due to its size or the duration of the instability, constitutes a serious threat to solvency and, consequently, does not comply with its obligations, the BNA may impose the following corrective measures:

- a* partial or total disposal or sale to another authorised banking institution; and
- b* partial or total transfer of the activity to one or more financial institutions.

Once verified that the extraordinary measures adopted were considered insufficient to complete the recovery process of the banking financial institution, the BNA must revoke the authorisation for the performance of its professional activities and shall ask the Attorney General to request a declaration of bankruptcy.

## **IV CONDUCT OF BUSINESS**

Banking institutions in the Angolan territory are highly regulated in terms of compliance with extensive regulations concerning the implementation of financial and foreign exchange policies as well as the disclosure of information on activity in Angola. According to the FIL, banking institutions must observe the relevant rules applicable to banks' relationships with clients and third parties when performing their activities in the general interest of the public. In this respect, banking institutions are required to establish an internal organisation structure to support their activity. The concept of general interest may include the observance of rules applicable to banking institutions when dealing with:

- a* technical capacity maintenance;
- b* diligence, neutrality and loyalty in client relationships;
- c* market transparency and the public disclosure of information;
- d* client complaints;
- e* implementation of codes of conduct;
- f* preservation of confidentiality; and
- g* cooperation with other entities, such as the CMC and the Angolan Agency for Insurance Regulation and Supervision.

Conduct of business rules related to transparency are generally followed in most jurisdictions where clients are provided with clear and appropriate information when acquiring products and services from banks. The BNA is responsible for establishing the minimum requirements of this information (enforced by BNA Order No. 14/2016 regarding information requirements related to credit agreements).

In addition, the contractual relationship between a banking institution and its clients is subject to the banking duty to maintain secrecy in terms of fact and elements. In particular, such preservation of confidentiality includes clients' names and details regarding bank accounts, financial movements and other banking operations. In contrast, the elements resulting from the contractual relationship are allowed to be disclosed to third parties when required by the BNA, the CMC or the Angolan Agency for Insurance Regulation and Supervision, within the scope of their powers, or when deemed necessary within the context of judicial proceedings, ordered by a judge or public prosecutor.

## **V FUNDING**

Funding of Angolan banking institutions is typically composed of deposits made by their clients, usually funded by the petroleum sector and foreign exchange auctions.

In this respect, banking institutions usually attend foreign exchange auctions financed by the BNA. Under Order No. 1/18 of 19 January 2018, the BNA established the procedures for buying and selling foreign currency in auctions carried out electronically in the Exchange Market Management System. The BNA may also carry out direct sales to cover sovereign requirements, and, on an exceptional basis, whenever the supply of goods and services of critical importance to the country is at stake.

For private operations, the BNA may also make direct sales to commercial banks based on the relevant bank's demand maps. Further, the BNA may organise specific auctions for exchange rate coverage of letters of credit. In addition, Order No. 1/18 establishes the requirements that banking institutions must meet to attend such auctions, including those related to the national currency mandatory reserve, the limit of foreign exchange position and compliance with the minimum regulatory solvency ratio.

In sales auctions, each bank may submit up to four bids with different exchange rates, with the maximum and minimum limits being set at 2 per cent of the reference rate at the date of the auction. The value of each bid shall not be less than the equivalent of €500,000. The amount of each bank's bid shall be limited to the equivalent of 15 per cent of its own funds and the maximum purchase amount for each bank is also limited to 25 per cent of the offer placed by the BNA.

Since the beginning of 2020, oil companies have been allowed to sell foreign exchange to banking institutions, which is intended to have a significant impact on the funding capacity of banking institutions in Angola in terms of foreign currency availability, as Angola is highly dependent on the oil and gas industry.

## **VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS**

### **i Control regime**

The acquisition of a controlling or significant interest in an Angolan banking institution is regulated under BNA Order No. 10/13 of 9 July 2013, where special attention is given to situations in which the BNA's prior approval is required. The direct or indirect acquisition of qualified holdings in financial institutions that are under the BNA's supervision shall generally be authorised in advance.

Prior notice must also be given to the BNA in situations involving the qualified holding's increased holding in financial institutions, provided that the proportion of share capital or the voting rights held reaches or exceeds the thresholds of 20, 33 or 50 per cent of

the share capital or voting rights in the target company. In addition, transactions between Angolan residents that hold more than 10 per cent of the capital, or any transaction involving non-residents (irrespective of the capital percentage), require the BNA's prior approval.

In turn, the reduction of a significant shareholding to below 20, 33 or 50 per cent of the issued share capital or voting rights of an Angolan credit entity, or the loss of control of a credit entity, is also subject to prior notification to the BNA, whereby the new amount of the person's participation shall be communicated.

The BNA may oppose any of the aforementioned authorisation applications if it has evidence that the buyer or the relevant person does not meet the conditions that ensure the careful management of the banking system; in particular:

- a* compliance with the conditions necessary for restructuring the financial banking institution;
- b* suitability of the proposed stakeholders; and
- c* suitability of the ultimate beneficial owner. If the ultimate beneficial owner is considered a legal person, the BNA must be informed of the identity of the holders of the legal person's capital and voting rights shares of a value equal to or greater than 20 per cent, and its:
  - full corporate name;
  - business purpose;
  - registered office address; and
  - commercial register registration number.

If the BNA does not oppose the application, the acquisition or the increase in qualifying holding must take place within 90 days.

## **ii Transfers of banking business**

The transfer of banking business in Angolan banking institutions is essentially processed through demergers or through asset or share deals.

BNA Order No. 10/13 governs the nature of such operations. As with most jurisdictions' banking regulations, prior authorisation must be required from the regulators; in Angola, the BNA approval relies on the shareholders' and ultimate beneficial owner's suitability and on the knowledge of the origin and control of funds; as well as a demonstration in the business plan of compliance with legal and regulatory requirements, and the feasibility of the plan, namely in terms of financial and human resources, intern controls and risk management.

In addition, a merger involving a banking institution shall be subject to the Competition Law approved in 2018 by Presidential Decree No. 240/18 of 12 October 2018, which requires prior submission of mergers of companies in which a market share of between 30 and 50 per cent is acquired, created or strengthened, and when the volume of business individually carried out in Angola in the previous financial year, by at least two of the merging companies, is higher than 450 billion kwanzas.

The first merger to involve banking institutions in Angola occurred in 2016 between Banco Millenium Angola, the sixth-largest bank, and Banco Privado Atlântico, the fifth-largest bank.

## **VII THE YEAR IN REVIEW**

2019 was a year of significant change in Angolan banking regulation, with the particular objective of addressing foreign exchange constraints resulting from the depreciation of the local currency due to decreased oil prices. The Angolan banking system has tried (and shall continue to try) to redirect the economy towards different economic sectors.

Most important developments have been brought about by changes in the methods of payment for imported goods (e.g., letters of credit, which can be used for transactions of up to €100,000 and must be exclusively used for transactions over €100,000), which allow banking institutions in Angola to offer their clients a variety of payment-related products that were previously unknown or rarely used in the country.

Also, significant changes were enacted in the oil and gas sector in late 2019, whereby petroleum companies were permitted to sell foreign currency directly to commercial banks. This illustrates that the BNA, in its capacity as banking and foreign exchange regulator, intends to become more active in regulating directly with banks rather than in controlling economic operations.

## **VIII OUTLOOK AND CONCLUSIONS**

While Angola is highly dependent on the oil and gas sector, banking institutions play a significant role in balancing the economy because of their responsibility for reviewing and assessing foreign exchange transactions (i.e., transactions that involve payments into bank accounts outside Angola), which the BNA has delegated to them. This has had a significant impact on international transactions.

As a result of the growing role of banking institutions in Angola, it is foreseen that their compliance departments will need to be strengthened and that they will undertake the new role of scrutinising their clients' transactions, which, until recently, had been carried out by the BNA and other governmental authorities.

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Nuno is the founding partner of MC Jurist Attorneys-at-Law and heads the corporate transactions and investment projects group. He has been heavily involved in international transactions for over 20 years, handling corporate and commercial issues. Nuno practised for five years in South-East Asia, notably in Macao and Hong Kong, and acted as foreign legal consultant in Houston, Texas for a period of two years, advising petroleum service providers primarily on Angolan law. Nuno is a licensed lawyer in Angola, Portugal and Macao.

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