

Gas Regulation

In 30 jurisdictions worldwide

Contributing editors

David Tennant and Torquil Law



2015

GETTING THE
DEAL THROUGH

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Gas Regulation 2015

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Preface

Gas Regulation 2015

Thirteenth edition

Getting the Deal Through is delighted to publish the thirteenth edition of *Gas Regulation*, which is available in print, as an e-book, via the GTDT iPad app, and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the 30 jurisdictions featured. Our coverage this year includes new chapters on Hungary and Sweden.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to David Tennant and Torquil Law of Dentons UKMEA LLP, the contributing editors, for their continued assistance with this volume.

GETTING THE 
DEAL THROUGH 

London
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Angola

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Angola Legal Circle Advogados and

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Description of domestic sector

1 Describe the domestic natural gas sector, including the natural gas production, liquefied natural gas (LNG) storage, pipeline transportation, distribution, commodity sales and trading segments and retail sales and usage.

According to the US Energy Information Administration and to the *Oil and Gas Journal* estimates released in January 2014, Angola holds an estimated 9.7 trillion cubic feet of proven natural reserves. However, historically, the vast majority of this natural gas was re-injected into oil fields to help recovery or simply flared off as a by-product of oil operations. As recently as 2011, re-injection and flaring still accounted for 91 per cent of all the natural gas produced in the country.

Since 1997, the government has shown an interest in enhancing Angola's ability to produce and market its natural gas reserves, and by the end of 2006 enacted a policy to eliminate all flaring. This policy change, coupled with commitments by the oil companies to comply with certain environmental and social responsibilities and responsible custodianship of hydrocarbon resources, resulted in the need to find a solution for the management of gas obtained from oil and gas production offshore Angola.

A series of proposed solutions for the management of gas were submitted to the National Concessionaires, Sociedade Nacional de Combustíveis de Angola – Empresa Pública (Sonangol) by the oil and gas operators in response to the above-mentioned governmental policy, and the Texaco (now Chevron) proposal promoting LNG was selected as the preferred solution and developed into the Angola LNG Project.

To date, the natural gas sector regulations have been focused on the development of the country's first LNG facility in Soyo. Although the first exportation of LNG took place in June 2013, the plant has experienced technical problems and is still producing below its capacity.

2 What percentage of the country's energy needs is met directly or indirectly with natural gas and LNG? What percentage of the country's natural gas needs is met through domestic production and imported production?

The development of the natural gas market is still in its embryonic stage and Angola's primary energy consumption consists of biomass and waste, with petroleum occupying second place. No official government information in respect of the percentage of the country's natural gas needs met through domestic or imported production is available. However, it is estimated that about 20 per cent to 30 per cent of the country's energy needs, consumed primarily by the industrial sector, will be met through the Angola LNG Project.

Government policy

3 What is the government's policy for the domestic natural gas sector and which bodies set it?

Under the Constitution of Angola, the state is the owner of all national resources within the jurisdiction of Angola, and the Petroleum Act (Act 10/04) sets out the government's right to explore, develop, exploit, produce, process, refine and market petroleum within the territory, continental shelf and economic zone of Angola. According to said Act, the national

concessionaire (Sonangol) is the exclusive state concessionaire and the holder of mining rights over all oil and gas reserves. In exercising such rights Sonangol may, subject to prior authorisation from the government, associate with a national or foreign company or companies of proven suitability and technical and financial capacity in a manner established by law.

Two ministries oversee the gas sector: the Ministry of Petroleum, which oversees the exploration and production of oil and natural gas, their refining, distribution and marketing, and the import, export and conservation of petroleum, products and liquefied natural gas; and the Ministry of the Environment, which oversees projects' environmental licensing.

The law does not distinguish between conventional and unconventional oil and gas fields, both onshore and offshore. Both conventional and unconventional gas operations are likely to require, outside the scope of the prospecting licence, an association with Sonangol, which may take the following forms: a commercial company, consortium contract or production-sharing contract.

Enhancing Angola's ability to produce and market its natural gas reserves has been a government concern in recent years and specific legislation has been passed relating to the Angola LNG Project (Soyo), and recent legislation in 2014 has focused on the downstream segment.

Regulation of natural gas production

4 What is the ownership and organisational structure for production of natural gas (other than LNG)? How does the government derive value from natural gas production?

Under the legal system set out in the Petroleum Act, petroleum operations – a concept that includes the gas industry – are conducted based on the concession system, which, as opposed to the contractual system, assumes that the operating oil companies obtain a licence or a concession from the state under certain terms and conditions, most of which are established by legislation and some of which are negotiated on a case-by-case basis between the state and the relevant oil companies.

Sonangol may associate with national or foreign investors of proven suitability and technical and financial capacity, subject to prior authorisation from the government and, in matters concerning production of natural gas, such association may take one of the following forms: a commercial company, consortium contract or production sharing contract.

In the cases of a commercial company or a consortium contract in which Sonangol holds a participation interest it must, as a rule, be greater than 50 per cent. However, the government may, in duly justified cases, authorise Sonangol to hold a lesser stake.

In addition to the above-mentioned forms of association, Sonangol is also allowed to exercise oil operations through risk services contracts.

However, the most common form of association is the production sharing contract.

The government will derive value from the following taxes: petroleum production tax, petroleum revenue tax, petroleum transaction tax, surface area charge and contributions towards the training of Angolan staff. As a part of all production-sharing agreements, Sonangol is entitled to part of the production. Similarly to what happens in crude oil exploration, the tax applicable to assessable profits is as specified by the Taxation of Petroleum Activities Act (Act 13/04), and ranges from 50 per cent to 65.75 per cent.

5 Describe the statutory and regulatory framework and any relevant authorisations applicable to natural gas exploration and production.

The statutory framework for domestic natural gas sector is set out in various laws and regulations, as follows:

- Act 10/04 – Petroleum Act;
- Act 13/04 – Taxation of Petroleum Activities Act;
- Act 2/12 – special foreign exchange regime for oil industry; and
- Act 11/04 – oil industry customs framework.

Other relevant legislation includes:

- Act 26/12 – Crude Oil and Natural Gas Transportation and Storage Act;
- Act 28/11 – refining of crude oil and the storage, transportation, distribution and commercialisation of petroleum products;
- Presidential Decree 132/13 – the legal regime for activities of refining of crude oil, storage, transportation, logistic superintendence system of petroleum derivatives and of the operation of the wholesale and retail market;
- Decree 39/00 – environmental rules applicable to oil activities;
- Executive Decree 224/12 – regulation on management of operations;
- Executive Decree 38/09 – safety rules for oil operations;
- Executive Decree 187/08 – gas volume meters rules;
- Executive Decrees 188/08, 189/08, 193/08, 200/08 and 203/08 – technical regulations on design, construction and operation of gas pipelines; and
- Decree-Law 17/09 – recruitment, integration and training of Angolan staff for the execution of oil-related operations.

As per the Petroleum Act, mining rights are granted to Sonangol as the exclusive state concessionaire, which is barred from assigning all or part of the mining rights granted and any actions to the contrary are invalid and ineffective.

The Ministry of Petroleum is the government branch responsible for regulatory policies governing the production, transmission, distribution and supply of natural gas, and for authorising and monitoring drilling and production activities

Under the Petroleum Act, any dispute arising in connection with any licence or concession instruments or between the Ministry and the licensee or Sonangol and associates of Sonangol (associates) will be settled by arbitration, usually in accordance with the arbitration rules established in the individual contracts, unless the matter is expressly excluded from arbitration under the Petroleum Act (eg, security of public maritime ownership and concessionaire, tax, environment and supervision of oil activities).

The law does not distinguish between conventional and unconventional sectors, and the above-mentioned regulation applies to both sectors.

6 Are participants required to provide security or any guarantees to be issued with a licence to explore for or to store gas?

Participants are required to provide evidence of financial resources and technical capability before they can qualify to participate in crude oil and natural gas operations. Additionally, a bank guarantee ensuring fulfilment of work obligations under prospecting licences and concession is required and Sonangol may require associates to present parent company guarantees.

Regulation of natural gas pipeline transportation and storage

7 Describe in general the ownership of natural gas pipeline transportation, and storage infrastructure.

Under Act 26/12, Angolan companies or consortia set up between Angolan individuals or Angolan companies may be granted a licence by the Ministry of Petroleum to carry out natural gas pipeline transportation and storage from the exit flange to the processing facilities, LNG plant, petrochemical units or export terminal. Upon the expiry of the transportation or storage licence, assets used in natural gas pipeline transportation and storage become the property of the state.

Similarly, under Presidential Decree 132/13, assets that are part of downstream concession activities, such as pipeline transportation of natural gas, shall also revert to the state at the end of the concession period, as established by law or set out in the respective concession agreement.

8 Describe the statutory and regulatory framework and any relevant authorisations applicable to the construction, ownership, operation and interconnection of natural gas transportation pipelines, and storage.

Transportation and storage of the oil and gas that result from oil operations performed under the Petroleum Act is governed by Act 26/12 (Oil and Gas Transportation and Storage Act). This Act does not apply to:

- pipelines within the exploration and production concession areas;
- pipelines connecting concession areas to the shore included in the development plan of the respective concession area;
- pipelines of a concession area crossing a different concession in the middle of two parts of such first concession area; and
- storage activities in the exploration and production concession areas.

Nor does this Act apply to oil and gas transportation in the international market.

Midstream natural gas transportation and storage activities under Act 26/12 are subject to the authorisation of the Ministry of Petroleum, which has the authority to:

- approve the construction and expansion of pipelines, supervise the works, and authorise and license the operations;
- keep a database concerning pipeline construction and operation;
- define the rules for the granting of pipelines construction and operation licences and oil and gas storage, without prejudicing other authorisations required;
- set the term date of the licences and the procedures for their renewal;
- issue the rules concerning transportation capacity;
- promote pipeline construction and expansion studies, and submit its approval to the government; and
- propose to the government the expropriation of land necessary to carry out oil and gas transportation and storage activities.

The construction and operation of any oil or gas pipeline and storage facilities are subject to a licence issued by the Ministry of Petroleum.

The award of the licence is based on the credibility, experience and competence of the applicant, as well as its financial management and technical capacity for the construction and operation of pipelines and storage facilities in Angola. The application for the licence requires presentation of the environmental licence issued by the Ministry of Environment.

The term of the pipeline construction licence is five years and, subject to authorisation of the Ministry of Petroleum, may be extended for one year. The term of the licence to operate pipelines – from the exit flange to the processing facilities, the petrochemical units, or to the export terminal – and the term of operation licences for oil and oil and gas storage facilities is 25 years and, subject to the authorisation of the Ministry of Petroleum, may be extended one or more times for set periods of time.

There is no specific regulation concerning appeals to gas sector regulator decisions. Thus, decisions of the Ministry of Petroleum may be challenged pursuant to the general administrative procedure established by Decree 16-A/95. Consequently, a decision of the Ministry of Petroleum may be initially challenged by hierarchical appeal. If the competent public administration body overrules this hierarchical appeal, the appellant still has an opportunity to challenge this decision before an administrative court.

Downstream transportation of oil products is governed under Act 28/11 and Presidential Decree 132/13.

Under Act 28/11, oil products distribution shall be made by sea, air, inland waterways, road and rail, under market regime or through ducts, including networks and extensions of pipelines, under concession. The pipeline distribution is subject to licence. The licensee operator shall meet the following requirements:

- technical, economic and financial capacity;
- the project shall be in accordance with national energy policy; and
- land planning and environmental policy.

With the approval of Presidential Decree 132/13, the Logistic Superintendence System of Petroleum Derivatives (SLSDP) was created. The legal ownership, organisational and regulatory framework for natural gas distribution networks is governed by the SLSDP. Also, the Oil Derivatives Regulating Institute (ODRI), created by Presidential Decree 132/13, is the Angolan regulatory authority, with management, administrative and financial independence, responsible for regulating the activities of the oil-derived products sector.

9 How does a company obtain the land rights to construct a natural gas transportation or storage facility?

Licensed entities may negotiate the land rights with the respective holders and competent real estate and environmental authorities.

Pursuant to Act 26/12, the licensee has the right to occupy, under the legislation in force and with respect to existing land rights, the areas necessary for the implementation of the works included under the licence.

The government may declare of public interest – for purposes of expropriation and civil easement – the areas required for the construction of pipelines. In cases of expropriation, holders of land rights are entitled to fair compensation.

Pipelines shall be registered with the competent real estate registry office.

10 How is access to the natural gas transportation system and storage facilities arranged? How are tolls and tariffs established?

Under Act 26/12, the pipeline operator – from the exit flange to the processing facilities, to petrochemical units, or to the export terminal – is required to perform transportation of third parties' natural gas, without any discrimination and within acceptable commercial terms, provided that it has available capacity in the transportation system and it does not interfere with the system's technical and operational integrity.

The Ministry of Petroleum may exempt the pipeline licensee from these obligations if it is demonstrated and proven that additional gas transportation is not possible.

If, within six months after the date of commencement of pipeline access negotiations, the parties have not reached an agreement on the commercial and operational terms, this issue shall be submitted to the Ministry of Petroleum for consideration and decision.

Pursuant to Act 26/12, the licensee has the right to charge tariffs for the transportation or storage of natural gas or deny the service for lack of payment of such fees.

Tariffs shall be approved by the Ministry of Petroleum under fairness rules and shall allow owners or operators to recover their investment, keep their system operating and obtain profits consistent with the risk.

Holders of large storage facilities must allow access to third parties, subject to transparent and objective negotiation with the interested parties and according to prices subject to publication. The Ministry of Petroleum may set prices for access to areas of the country where there is no effective competition in the provision of storage services, as well as for situations in which this activity should be exercised under a natural monopoly regime. Access may only be granted to licensed entities and may be denied to an interested foreign company with a registered office or management in a country that does not recognise analogous rights to Angolan citizens or companies.

Third party access duties are also set out under Act 28/11 and Presidential Decree 132/13, which should be negotiated by the parties with transparency and in accordance with the terms established by the ODRI.

11 Can customers, other natural gas suppliers or an authority require a pipeline or storage facilities owner or operator to expand its facilities to accommodate new customers? If so, who bears the costs of interconnection or expansion?

Under Act 26/12 the expansion of pipeline capacity – from exit flange to the processing facilities, to petrochemical units, or to the export terminal – may only be carried out if:

- it is technically and economically feasible and consistent with the safety standards;
- the legitimate interests of the owner or operator are respected;
- the new user does not become owner of all or part of the pipeline without the consent of the owner or operator; and
- the owner or operator are not required to finance part or all of the capacity expansion.

The new user shall be entirely responsible for the capacity expansion costs, including any equipment required for the processing of products of different qualities.

The pipeline operator shall not prevent, except for proven technical reasons, the expansion of the pipeline's capacity when such expansion does not interfere with the system's technical and operational integrity.

The Ministry of Petroleum may exempt the pipeline licensee from these obligations if it is demonstrated and proven that capacity expansion is not possible.

If, within six months after the date of commencement of negotiations for expansion of the pipeline's capacity, the parties have not reached an agreement on the commercial and operational terms, this issue shall be submitted to the Ministry of Petroleum for consideration and decision.

Act 26/12 does not detail requirements for storage capacity expansion.

12 Describe any statutory and regulatory requirements applicable to the processing of natural gas to extract liquids and to prepare it for pipeline transportation.

Under Act 28/11 (Oil and Gas Distribution and Commercialisation Act), oil derivatives processing activities are subject to licensing of the respective facilities by the holder of executive power (ie, the President) who may delegate his or her powers to ancillary executive bodies. In the past, these tasks have been performed by the Ministry of Petroleum.

The licensing procedure shall take into account:

- the reputation and technical, financial and economic capacity of the applicant;
- the compliance of the project with the national energy policy; and
- the land management plan and environmental policy objectives, as set out by law.

13 Describe the contractual regime for transportation and storage.

Apart from the approval of tariffs referred to above and specific rules of the transportation sector and international conventions on maritime transportation, no specific regulation on the subject has yet been enacted. These agreements are executed in accordance with private law.

Regulation of natural gas distribution

14 Describe in general the ownership of natural gas distribution networks.

Act 28/11 governs distribution of oil products in general (not only natural gas) and is further regulated by presidential Decree 132/13. Currently, there are no natural gas distribution networks (transportation from pipeline to consumer) in Angola, nor a market deriving thereof.

Nevertheless, natural gas distribution is considered essential public service under Act 28/11. The Ministry of Petroleum may declare the public utility of distribution facilities, when they exist, subject to recognition of the importance and relevance of the facilities to the national economy, its structural nature for safety or the autonomy of supply. Easements or expropriation of equipment, facilities and land that are of particular relevance to the national economy may be declared on grounds that they are necessary for the security of gas supply.

15 Describe the statutory and regulatory structure and authorisations required to operate a distribution network. To what extent are gas distribution utilities subject to public service obligations?

See question 14

Distribution by pipeline networks is subject to licensing by the Ministry of Petroleum of the respective facilities. The Ministry of Petroleum has the authority to:

- promote specific regulations on the exercising of natural gas distribution activities;
- specify the characteristics of natural gas and regulate its use;
- ensure the security of supply of natural gas through the constitution of reserves and the definition of the conditions for mobilisation in the event of an energy crisis;
- promote appropriate diversification of supply sources and the use of other alternative energy sources;
- promote efficiency and the rational use of resources;
- establish a centralised and updated register of facilities located in the country; and
- declare an energy crisis, in accordance with applicable law, and the adoption of restrictive measures contained therein, to mitigate the crisis effects and to ensure the supply of gas to priority entities.

There is no specific regulation concerning appeals of gas distribution regulator decisions. As previously mentioned, decisions of the Ministry

of Petroleum may be challenged pursuant to the general administrative procedure. If the competent public administration body overrules this hierarchical appeal, the appellant still has the opportunity to challenge this decision before an administrative court.

The distribution, including directly associated storage, and the commercialisation of liquefied petroleum gas and piped natural gas are considered essential public service and operators are subject to public service obligations, such as ensuring:

- the safety, regularity and quality of the supply;
- consumer protection;
- the satisfaction of consumers' needs in the health, military and social assistance sectors; and
- energy efficiency, the rational use of resources and environmental protection.

Additionally, there are certain restrictions in their relationship with consumers, such as:

- adequate prior notice to consumers in the event of suspension of service;
- prohibition from imposing and charging minimum amounts;
- duty for invoices to discriminate amounts due, which should be on a monthly basis, and which must identify amounts due for supply and tariffs; and
- the burden of proof of compliance with duties and notices lies with the service renderer.

16 How is access to the natural gas distribution grid organised? Describe any regulation of the prices for distribution services. In which circumstances can a rate or term of service be changed?

See questions 14 and 15. The principles applicable to accessing large storage facilities referred to above are also applicable to accessing the distribution grid.

Retail prices shall be subject to a regulation mechanism that envisages ensuring the minimisation of costs to consumers and takes into account the cost differences between the various types of energy sources considering their value chain.

The incentives that may be granted to natural gas distribution activities are those set out in private investment legislation. Other tax incentives, currency and customs may be granted to promote natural gas distribution activities. In addition, administrative, financial or operational mechanisms may be established to boost the funding of distribution activities, providing direct access to credit on favourable terms.

17 May the regulator require a distributor to expand its system to accommodate new customers? May the regulator require the distributor to limit service to existing customers so that new customers can be served?

See questions 14 to 16. Notwithstanding, natural gas distribution is considered an essential public service, and the Ministry of Petroleum may declare that distribution facilities are a public utility and create civil easements or expropriate accordingly.

18 Describe the contractual regime in relation to natural gas distribution.

See questions 13 to 16. No specific regulation on the subject has been enacted.

Regulation of natural gas sales and trading

19 What is the ownership and organisational structure for the supply and trading of natural gas?

In the absence of a local market and, up until as recently as 2011, natural gas was mainly re-injected into oil fields to help recovery or simply flared off as a by-product of oil operations. Consequently, the supply and trading of natural gas is fairly recent and closely associated with the Angola LNG Project in Soyo, whose first cargo took place in June 2013.

Under Act 26/12, midstream transportation and storage of crude oil should be carried out by companies or a consortium and are subject to authorisation from the Ministry of Petroleum. The construction and operation of oil and gas pipelines is subject to licensing by the Ministry of Petroleum, and also requires prior authorisation of the entities responsible for land concessions.

In turn, Act 28/11 governs downstream operations of crude oil refining and the storage, transportation, distribution and commercialisation of petroleum products undertaken by refinery operators, storage operators, transportation operators, distribution operators, wholesalers and retailers. Access to such activities is further regulated by Presidential Decree 132/13.

20 To what extent are natural gas supply and trading activities subject to government oversight?

The constitutional rule of state ownership of natural resources is reflected throughout the oil and gas legislation, and the government is closely involved in their supply and trade. Activities undertaken by private entities in this area are subject to licensing requirements and governmental regulations. The commercialisation of natural gas and LNG are considered to be an essential public service, and Act 28/11 sets out various obligations that must be observed by refinery operators, storage operators, transportation operators, distribution operators, wholesalers and retailers to ensure:

- the safety, continuity and quality of supply;
- consumer protection;
- satisfaction of the needs of priority customers in the areas of health, the armed forces and social assistance; and
- the promotion of energy efficiency and rational use of resources, as well as environmental protection.

The state's participation in the natural gas sector is made through Sonangol – Gás Natural, Limitada (Sonangás), a subsidiary of Sonangol charged with the exploration, evaluation, production, storage and transportation of natural gas and its derivatives.

With the enactment of Presidential Decree 132/13, two new entities were created, the SLSDP, a public entity that governs the organisational and regulatory framework for natural gas distribution networks, and the ODRI, which is responsible for regulating the activities of the oil-derived products sector.

21 How are physical and financial trades of natural gas typically completed?

The physical and financial trade of natural gas in Angola is associated with the Angola LNG Project. Financial trading involves derivatives, and sophisticated contracts are usually negotiated between buyers and sellers.

Marketing natural gas may include all of the intermediate steps that a particular purchase requires, including arranging transportation, storage, accounting and any other step required to facilitate the sale of natural gas. Natural gas is sold as a commodity, its price is set by market forces; the buying and selling of the commodity by market players, based on supply and demand, determines the average price of natural gas.

22 Must wholesale and retail buyers of natural gas purchase a bundled product from a single provider? If not, describe the range of services and products that customers can procure from competing providers.

The country has only recently adopted legislation concerning the construction and operation of the necessary infrastructure to allow domestic transportation, storage and distribution of natural gas that will be supplied under the Angola LNG Project.

According to the legal regime established for the Angola LNG Project, Angola LNG Limited (a company held by the investing oil companies, in which Sonangás currently holds a 22.8 per cent stake and will head the LNG Project), dry processed gas that is intended to satisfy domestic use in Angola will be supplied free of charge to Sonangás.

Regulation of LNG

23 What is the ownership and organisational structure for LNG, including liquefaction and export facilities, and receiving and regasification facilities?

Existing LNG legislation is closely tied with the Angola LNG Project in Soyo that will have a capacity of 5.2 million tons (6.8 bcm) per year, full containment LNG storage, liquified petroleum gas (LPG) and condensate storage, and a loading jetty to accommodate ships. It will be primarily supplied with associated gas transported from the offshore oil Blocks 0, 1, 2, 14, 15, 17 and 18 through three high-pressure pipelines that will then be subject to conditioning and extraction of natural gas liquids before being subject to liquefaction.

According to the legal regime established for the Angola LNG Project, the project shall be executed by Angola LNG Limited, Sociedade Operacional Angola LNG and Sociedade Operadora dos Gasodutos de Angola.

Angola LNG Limited is the main party charged with the execution of the project and will receive revenue generated by the sale of LNG and NGL. Angola LNG operates is composed of a consortium oil and gas companies, including Sonangol (22.8 per cent) and affiliates of Chevron (36.4 per cent), Total (13.6 per cent), BP (13.6 per cent), and ENI (13.6 per cent) (collectively, the promoter companies).

Sociedade Operacional Angola LNG is charged with performing, in place of Angola LNG Limited, operations related to the land installations and the sea installations pursuant to an operational service agreement to be entered into with Angola LNG Limited.

Sociedade Operadora dos Gasodutos de Angola is charged with performing, in place of Angola LNG Limited, operations relating to the network of associated gas pipelines and non-associated gas pipelines pursuant to a service agreement to be entered into with Angola LNG Limited. After a certain period of time (which is not specified in the law), Sociedade Operadora dos Gasodutos de Angola has the option to assume direct responsibility for such gas pipeline operations, in replacement of Angola LNG Limited, according to the investment contract and annexes thereto entered into with Angola LNG Limited.

The initial shareholders of Sociedade Operacional de Angola LNG and Sociedade Operadora dos Gasodutos de Angola are also the promoter companies or their affiliates.

In addition to these three companies, the promoter companies may create new companies that are deemed necessary to the implementation of the project, particularly for the purposes of commercialisation or transportation of LNG or NGL. In such case, the new entities are considered as being independent from Angola LNG Limited, Sociedade Operacional Angola LNG and Sociedade Operadora dos Gasodutos de Angola for all legal and tax purposes.

Other than the structure adopted for the Angola LNG Project, the general rules applicable are the same as those established for the oil industry where, under Act 10/04, Sonangol has exclusive mining rights to gas exploration on the subsoil and continental shelf of Angola and may associate with both national or foreign private companies in the terms described above.

24 Describe the regulatory framework and any relevant authorisations required to build and operate LNG facilities.

The state is closely involved not only from a regulatory standpoint, but also because Sonangol is the exclusive holder of mining rights for oil and gas reserves, and therefore may associate with private companies in this role. The construction and operation of LNG facilities requires the following licences:

- the design, construction and operation of the LNG import project facilities will comply with internationally recognised and proven codes and standards for LNG installations;
- the LNG developer must obtain a licence to design, construct, operate and own an LNG terminal subject to satisfying technical, financial, and health, safety and environmental standards;
- the LNG developer or consortium will undertake a comprehensive environmental impact assessment of the design, construction and operational aspects of the project, including impact assessment of shipping associated with the project, in accordance with international standards and practices; and
- the site for setting up an LNG terminal (either land-based or offshore of any type) shall be selected by the LNG developer, taking into account various factors such as existing and projected population and demographic characteristics of the location, existing and proposed land use near the location, physical aspects and environmental considerations, and community concerns.

The LNG developer or consortium will have to obtain permits and licences from government departments such as the Ministry of Defence, the port authorities, the Ministry of the Environment, the Chief Inspector of Explosives, and provincial and local government agencies, as per applicable laws, rules and regulations.

According to the Petroleum Act, disputes between the Ministry of Petroleum and the licensees (in the event of prospecting activities) or Sonangol and its associates concerning contractual matters may be resolved through arbitration according to the rules set out in the respective licence or contract, and the arbitration proceeding will take place in Angola, according to Angolan law and in Portuguese.

Decisions by the ministries and governmental authorities constitute administrative acts and may be challenged under the general terms of law in the Angolan courts.

25 Describe any regulation of the prices and terms of service in the LNG sector.

The distribution, associated storage and commercialisation of natural gas and LNG are an essential public service and entail obligations concerning:

- the safety, continuity and quality of supply;
- consumer protection;
- satisfying the requirements of priority consumers in the areas of health, armed forces and social assistance; and
- promoting energy efficiency and rational use of resources, as well as environmental protection.

Consumers must be informed of the terms of service and tariffs that will apply, and the service is subject to the following requirements:

- supply cannot be interrupted or suspended without prior notice, except in situations of force majeure;
- supply to a consumer who is in breach of or delays his or her duties can only be suspended after the consumer is notified in writing with at least 10 days' prior notice;
- supply cannot be interrupted based on the non-payment of any other service, even when included in the same invoice, unless they are functionally inseparable;
- a minimum consumption fee cannot be imposed or charged to consumers, nor can they be charged:
 - (i) any amount for the lease, amortisation or periodic inspection of meters or any other service measurement instruments;
 - (ii) any tariff with an equivalent effect as the measures referred in (i), regardless of their designation;
 - (iii) any tariff that does not directly correspond to a cost the service provided effectively incurs, except when established otherwise by law; or
 - (iv) any other tariff not included in the previously mentioned situations that is consideration for a change in the terms of service or the equipment used for such purpose, except when expressly requested by the consumer; and
- invoices shall be made on a monthly basis and specify the amounts being charged.

Additionally, Act 28/11 sets out that a retail price regulation mechanism shall be established to ensure that consumer costs are minimised and to take into account the cost differences between the various types of energy sources considering their value chain.

However, further regulation, particularly in what concerns the terms and relationship between the agents and the clients, quality of service and access terms and tariffs, can be expected to be issued by the ODRI.

Mergers and competition

26 Which government body may prevent or punish anti-competitive or manipulative practices in the natural gas sector?

Angola currently does not have a general competition law or an antitrust authority; however, this has become a growing concern and more recent legislation, such as Acts 28/11 and 26/12, reflect the government's policy of promoting consumer protection, equal treatment and opportunities among players, and market competition.

Developments in this area are also expected in light of recent legislation, namely Presidential Decree 68/10, which established that the coordination and consistency of revenue and price would be entrusted to the Ministry of the Economy and pursued through the Market and Competition Institute, and Presidential Decree 162/11, which delegated these duties to the Ministry of Finance, to be pursued through the Pricing and Competition Bureau, which was created under this act.

Update and trends

Recent legislation has focused mainly on the downstream sector, further expanding on the framework established by Act 28/11 regarding the refining of crude oil and the storage, transportation, distribution and commercialisation of petroleum products. The following statutes were enacted in late 2014:

- Executive Decree 173/14 – approval of the internal regulations of the National Commercialisation Directorate, which is the entity charged with executing the national policy regarding the commercialisation of crude oil, petroleum products and biofuels, as well as for the licensing of transportation, distribution, storage, industrial treatment and commercialisation of petroleum products and biofuels;
- Executive Decree 282/14 – Regulation of the project, construction and exploitation of petrol stations;
- Executive Decree 283/14 – Regulation of the project, construction, exploitation and maintenance of LPG with a storage capacity in excess of 200m³;
- Executive Decree 295/14 – Regulation of the project, construction, exploitation and maintenance of LPG with a storage capacity less than or equal to 200m³; and
- Executive Decree 296/14 – Regulation of the project, construction, exploitation and maintenance of petroleum products storage facilities (excluding LPG).

27 What substantive standards does that government body apply to determine whether conduct is anti-competitive or manipulative?

See question 26. However, one may occasionally find statutory prohibitions of certain restrictive agreements and practices, in which case such matters would be subject to the governmental body in charge of the respective activity (eg, in matters concerning oil and gas, the Ministry of Petroleum).

28 What authority does the government body have to preclude or remedy anti-competitive or manipulative practices?

While there is no governmental authority that generally oversees competition matters, such matters are subject to the governmental body in charge of the respective activity (eg, in matters concerning oil and gas, the Ministry of Petroleum).

29 Does any government body have authority to approve or disapprove mergers or other changes in control over businesses in the sector or acquisition of production, transportation or distribution assets?

In addition to rules and restrictions that may be embodied in individual contracts, we note that under the Petroleum Act, the transfer of the contractual position held by private companies who are associates of Sonangol

to a third party requires the prior authorisation of the Ministry of Petroleum (which will be granted in the form of an executive decree) and, for the purposes of this Act, the transfer to a third party of a stake or shares representing more than 50 per cent of the associates' share capital is deemed equivalent to a transfer of a contractual position.

Such authorisation is not required if the transfer is made to an affiliate, as defined by law, provided the assignor remains jointly and severally liable.

It should also be noted that, in the case of transfer to a third party of a stake or shares representing more than 50 per cent of the associates' share capital, Sonangol is granted a right of first refusal.

30 In the purchase of a regulated gas utility, are there any restrictions on the inclusion of the purchase cost in the price of services?

Act 28/11 sets out that a retail price regulation mechanism shall be established to ensure that consumer costs are minimised and to take into account the cost differences between the various types of energy sources, and further regulation in this area is expected.

31 Are there any restrictions on the acquisition of shares in gas utilities? Do any corporate governance regulations or rules regarding the transfer of assets apply to gas utilities?

The LNG trade is still at an embryonic stage, and currently there is no specific legislation on gas utility companies to allow us to provide a general answer. However, given the involvement of the government in the licensing of such activities, it can be expected that such rules will be set out in the individual contracts.

International

32 Are there any special requirements or limitations on foreign companies acquiring interests in any part of the natural gas sector?

In what concerns upstream activities, foreign companies who wish to acquire interests outside the scope of the prospecting licence may only do so in association with Sonangol, and will need to provide a bank guarantee to guarantee compliance with the work obligations under the licence or the contract entered into with Sonangol. As previously mentioned, the transfer of an associate's contractual position or 50 per cent of an associate's share capital to a third party is subject to the prior authorisation of the Ministry of Petroleum. A transfer between affiliated companies is not subject to such prior authorisation, but the transferor must remain jointly and severally liable.

Finally, corporate law requires foreign companies that perform activities in Angola for more than a year to incorporate a subsidiary or branch in Angola.

In what concerns downstream activities, it should be noted that Angola has enacted legislation intended to promote the involvement of national



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entrepreneurs in the economy, including the oil and gas sector, which is reflected in both Act 28/11 and Presidential Decree 132/13. Accordingly, Presidential Decree 132/13 establishes that candidate companies to concession or licensed activities, such as storage, reception and pipeline transportation of oil products should be controlled by Angolan citizens. For such purposes, 'control' is understood as meeting the following cumulative requirements:

- holding more than 51 per cent of the share capital;
- holding the majority of the voting rights;
- being entitled to nominate more than half of the members of the management and supervisory bodies; and
- having the power to define operational and strategic policies.

33 To what extent is regulatory policy affected by treaties or other multinational agreements?

Treaties and multinational agreements are directly enforceable only to the extent that they have been passed into law by the National Assembly of Angola, pursuant to the Constitution.

34 What rules apply to cross-border sales or deliveries of natural gas?

Presently, the only existing LNG project is the Angola LNG Project (Soyo). There are currently no specific rules that apply to cross-border sales or deliveries of natural gas. Such activities are regulated by contract between the parties. An export permit issued by the Ministry of Commerce is, however, required to export natural gas.

Transactions between affiliates

35 What restrictions exist on transactions between a natural gas utility and its affiliates?

There are no laws directly addressing these issues in the gas sector. Depending on the nature of the transaction, such issues would be governed by existing laws or by agreements between the government and the companies, or both.

36 Who enforces the affiliate restrictions and what are the sanctions for non-compliance?

See question 35.

Getting the Deal Through

Acquisition Finance	Dispute Resolution	Life Sciences	Real Estate
Advertising & Marketing	Domains & Domain Names	Mediation	Restructuring & Insolvency
Air Transport	Dominance	Merger Control	Right of Publicity
Anti-Corruption Regulation	e-Commerce	Mergers & Acquisitions	Securities Finance
Anti-Money Laundering	Electricity Regulation	Mining	Securities Litigation
Arbitration	Enforcement of Foreign Judgments	Oil Regulation	Ship Finance
Asset Recovery	Environment	Outsourcing	Shipbuilding
Aviation Finance & Leasing	Foreign Investment Review	Patents	Shipping
Banking Regulation	Franchise	Pensions & Retirement Plans	State Aid
Cartel Regulation	Gas Regulation	Pharmaceutical Antitrust	Tax Controversy
Climate Regulation	Government Investigations	Private Antitrust Litigation	Tax on Inbound Investment
Construction	Insurance & Reinsurance	Private Client	Telecoms & Media
Copyright	Insurance Litigation	Private Equity	Trade & Customs
Corporate Governance	Intellectual Property & Antitrust	Product Liability	Trademarks
Corporate Immigration	Investment Treaty Arbitration	Product Recall	Transfer Pricing
Cybersecurity	Islamic Finance & Markets	Project Finance	Vertical Agreements
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