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Recent trends in the Angolan oil and gas sector

Helena Prata, Sofia Cerqueira Serra and João Pedro Honorato Angola Legal Circle Advogados (Angola) in association with Morais Leitão, Galvão Teles, Soares da Silva (Portugal)

Angola has gradually emerged as one of Africa's leading economies and the revenue generated through its rich natural resources, particularly oil, has played a preponderant role in the country's development and in the national economy. Presently, Angola vies with Nigeria as Sub-Saharan Africa's biggest oil producer. In addition to the exploration of its vast oil reserves, the country has also turned its attention to exploiting its natural gas reserves and has attracted the attention of international oil and gas companies. The following is a brief overview of recent activity in the oil and gas sectors and changes that have been made to the foreign exchange regime.

2013 round bid for pre-salt blocks

Angola's Ministry of Petroleum has recently announced a bid round for exploration of onshore pre-salt blocks, to take place this year. The last Angolan pre-salt round took place in 2011 and included 11 offshore blocks disputed by numerous multinational companies resulting in production sharing agreements between Sociedade Nacional de Combustível de Angola, Empresa Pública, Sonangol, EP ('National Concessionaire' or 'Sonangol') and BP, Total, Eni and Statoil along with Cobalt Energy International (a Houston-based company) that were the winners in the limited pre-salt licensing round presaging further deep-water exploration initiatives in offshore Angola.

Angola's regime for awarding blocks

Under the Constitution of Angola, the State is the owner of all national resources within the Angolan jurisdiction. Consequently all oil fields and gas in the onshore and offshore areas of Angolan territory, in internal waters, in territorial sea, in the exclusive economic zone and on the continental shelf belong to the public domain of the Angolan State and exclusive mining rights are assigned to the National Concessionaire.

According to the Angolan Petroleum Act (Act 10/04, of November 12) and the Angolan Petroleum Operations Regulation (Decree 1/09, of January 27) oil operations (i.e., prospecting, exploration, appraisal, development and production of crude oil and natural gas) can only be exercised under a prospecting license issued by the Ministry of Petroleum, or pursuant to an oil concession, awarded by the Government.

As to the prospecting license, any upstanding domestic or foreign company having the necessary technical and financial capacity may apply to the Ministry of Petroleum for the issue of a three-year prospecting license (exceptionally extendable at the request of the licensee) to determine the petroleum potential of a given area. The prospecting license 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. These prospecting rights are not exclusive to the licensee, nor is the licensee granted any right of first refusal with respect to oil production in the area to which the license relates. The data derived under the license is considered State property and may be used by the licensee and the National Concessionaire. The Ministry of Petroleum may authorise the sale of the data by the licensee, the proceeds of which is to be shared by the licensee and the National Concessionaire.

In relation to oil concessions, petroleum operations outside the scope of a prospecting license may only be performed by the interested companies if they join up with the National Concessionaire. The joint exercise

The country has also turned its attention to exploiting its natural gas reserves

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of these activities between national or foreign companies of proven competence and technical and financial capacity and the National Concessionaire is subject to prior approval of the Government and may lead to: (i) the incorporation of a company; (ii) the entering into of a consortium agreement; or (iii) the entering into of a production sharing agreement. The National Concessionaire may also carry out petroleum operations through risk service contracts.

The concession covers: (i) an exploration period comprising prospecting, drilling, well-test activities and evaluation; and (ii) a period for development and production. However, the concession may cover just the development and production period and the Government may assign a concession directly to the National Concessionaire, should it wish to carry out petroleum operations in a particular area without having to associate with other entities.

If the National Concessionaire wishes to associate with other companies, it shall request the Ministry of Petroleum to issue a public call for tenders for the selection of the companies that will become associates for oil exploration and production in a given area. Direct negotiation may only occur when, after a public call for tenders, there was a lack of tenders or the tenders were not satisfactory. Upon extinguishment of the concession, operation assets and technical and economic data obtained shall revert to the National Concessionaire.

The point of transfer of ownership of the oil produced lies beyond the mouth of the well, and the associates of the National Concessionaire may freely dispose of their share of the oil produced, except in cases of need for domestic consumption and of national emergency requisition. The specific terms of the concessions and their different periods and phases are laid down in the relevant concession decree.

Regarding local content, prospecting licensees, companies that are granted oil concessions in association with the National Concessionaire and the National Concessionaire, shall acquire Angolan materials and

equipment and hire Angolan service providers, insofar as they are identical to those available in the international market for delivery in good time and to the extent that their prices are no more than 10% higher than the cost of imported items or services, including customs, tax and shipping and insurance costs. Consultation of Angolan companies under the same conditions as the consultation of foreign companies is mandatory. Companies that perform oil operations in Angola shall employ Angolan citizens in every category and function, unless the domestic market lacks skilled and experienced Angolan citizens.

Bank guarantee ensuring fulfillment of the work obligations assumed in prospecting licenses and oil concessions is required. In the case of a prospecting license, the amount of the guarantee shall be 50% of the value of the estimated work. As for the associates of the National Concessionaire, the guarantee shall correspond to the value attributed to the mandatory work schedule of the oil concession. The National Concessionaire may also require to its associates to present parent company guarantee.

The activity of the licensees, the associates of the National Concessionaire and the National Concessionaire, related with the petroleum operations is overseen by the Ministry of Petroleum. Disputes between the Ministry of Petroleum and the licensees or between the National Concessionaire and its associates concerning contractual matters, which cannot be resolved by agreement, shall be resolved by arbitration.

The arbitral tribunal shall sit in Angola under Angolan law and the arbitration shall be conducted in Portuguese.

It is within this legal background and after a successful bidding process for offshore pre-salt blocks in 2011, that Angola is planning a second bid for pre-salt to take place this year, this time for onshore blocks. 10 blocks are expected to be auctioned in the Soyo Basin and another five in the Kwanza Basin with the focus to attract small and medium companies. Further details concerning the 2013 bid are still to come.

Angola LNG Project

Alongside the announcement of the 2013 onshore pre-salt bid, it was confirmed that there would be a delay, due to technical problems, on the commencement of production of the Angola LNG (liquefied natural gas) Project, previously forecasted for the beginning of 2012. It is expected that the project will start exporting LNG in the second quarter of 2013.

While Angola has extensive natural gas resources (according to data available in 2011 the proved reserves were in the amount of 10.95 trillion cubic feet) 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 and even as recently as 2011, re-injection and flaring still accounted for 91% of all the natural gas produced in the country.

Since 1997 the government has shown interest in enhancing Angola's ability to produce and market its natural gas reserves and in 2001 activities involving reception and processing of gas, production of LNG and its commercialisation were declared to be public interest (Resolution 17/01, of October 12) and ultimately resulted in the 'Angola LNG Project'.

The Angola LNG Project legal framework was enacted in 2007 (Decree-Law 10/07, of October 3) and to date, those regulations specific to the natural gas sector have focused on the development of the country's first LNG facility in Soyo.



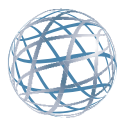
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The Angola LNG Project is being executed by Sonangol, Chevron, Total, BP and ENI groups ('Promoter Companies') through their investment in Angola LNG Limited (Angola LNG) – the holder of the corresponding rights in the project and the entity that will receive the revenue generated by the sale of LNG. The project also involves an operator for the onshore and offshore facilities and another for the gas pipelines net-

as well as (ii) acquire additional domestic gas and LNG for internal use in Angola.

Special Foreign Exchange Regime

Until 2012 companies operating in the oil and gas sector were subject to the foreign exchange rules set out in their respective concession agreements, however, with the enactment of the Angolan Oil and Gas Foreign Exchange Act (Act 2/2012, of January 13) the Government decided to change this situation and establish a general foreign-exchange regime applicable to oil and gas activities pursued under the Angolan Petroleum Act.

The new regime is intended to strengthen the country's banking sector and requires that Sonangol and its Associates (domestic or foreign corporate persons associated with the National Concessionaire through a commercial company, a consortium agreement or a production sharing agreement) make all payments of expenses and tax obligations, as well as payments for goods and services provided by residents and non-residents, through bank accounts domiciled in Angola. The Angolan National Bank (*Banco Nacional de Angola* – 'BNA'), entrusted with the implementation of these rules issued Notice 20/2012, of April 12, setting out the following milestones and requirements:

(i) as from October 1 2012, the National Concessionaire and its Associates are obliged to make the payments for the supply of goods and services through accounts opened with Angolan banks in both Kwanzas and foreign currency;

(ii) as from May 13 2013, the National Concessionaire and its Associates must also deposit in specific accounts with Angolan banks, the amounts resulting from the sale to BNA of the foreign currency required for payment of taxes and other fiscal obligations to the State;

(iii) as from July 1 2013, contracts for the supply of goods and services concluded by the National Concessionaire and its Associates with *forex* resident entities must be paid in Kwanzas (such payments are necessarily made through the accounts opened in Angolan banks, as per (i) above);

(iv) as from October 1 2013, payments for supplies of goods and services to *forex* non-resident entities must be made through the operator's accounts with Angolan banks.

However, the Angolan Oil and Gas Foreign Exchange Act does not define *forex* "resident" and "non-resident" and such concepts are found in Article 4 the Angolan General Foreign Exchange Act (Act 5/97, of June 27), which applies on a subsidiary basis, and according to which a *forex* "resident" in Angola includes not only companies with registered headquarters in the country but also the local subsidiaries, branches, agencies and other forms of representations of foreign companies in Angola.

Hence, for the purposes of the referred General Foreign-Exchange Act, companies with a registered head office abroad are considered *forex* non-residents, but their subsidiaries, branches, agencies and other forms of representations in Angola are considered *forex* residents. Consequently, as of July 1 2013, all payments made to such suppliers that are *forex* resident must be made through accounts with Angolan banks and in Kwanzas.

Also as a result of these rules, as from October 1 2012, the National Concessionaire and its Associates are obliged to hold accounts in Angolan banks in both Kwanzas and in foreign currency. In what concerns the foreign-currency accounts, after the sale to the BNA of the foreign currency required for payment of taxes and other fiscal obligations to the State, the balance of such accounts will be primarily used for the payment of current expenses (cash call) to *forex* non-resident suppliers and only then will the surplus balance be allowed to be placed by the foreign

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work, both having entered into operation agreements with Angola LNG and also being held by the Promoter Companies.

The Angola LNG Project was initially designed as an integrated value chain along which LNG would be transported from the liquefaction plant in Soyo, Angola, to the regasification facilities in Pascagoula, United States of America and after undergoing regasification, the gas would be sold to an affiliate of the Promoter Companies.

However, recent developments in the world markets have made LNG sales profitable in markets other than those for which the project was designed. As a result, in 2012, Angola LNG started planning the adjustment of its marketing strategy in order to allow LNG shipments to be redirected to other markets with potentially higher value. This redirection may open the possibility for Angola LNG to: (i) process the domestic share of gas Sonangol is entitled to (and which is not used for internal consumption);



Associates on the domestic or foreign market; on the other hand, the national Associates are allowed to periodically transfer such funds as dividends or profits to their respective non-resident shareholders, according to the terms of their articles of association.

National Concessionaire and Associates must individually submit to BNA an annual forecast of foreign-exchange transactions by November 30 each year and update such information on a quarterly basis. The block operator shall likewise quarterly submit to the BNA a detailed list of all contracts concluded with non-resident suppliers.

Given the requirements of the oil and gas sector in what concerns payments of goods and services, Angolan Oil and Gas Foreign Exchange Act allows National Concessionaire and its Associates to carry out foreign-exchange transactions without the prior permission of the BNA (excluding capital operations aimed at foreign investment, which require such authorisation), but such foreign-exchange transactions must be registered with the banking financial institutions via the Integrated Foreign-Exchange System of the National Bank of Angola (SINOC).

The foreign Associates must fully fund their share of the investment needed to implement oil operations in foreign currency and Angolan banking financial institutions are not allowed to extend credit to foreign

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Associates without the prior authorisation of the BNA, unless, in either of the aforementioned cases, the financing is secured by assets held by the said foreign Associates in Angola.

On a final note, the settlement of production requisitioned by the Government to the National Concessionaire and its national Associates is made in foreign currency and paid to accounts with Angolan Banks; settlements to foreign Associates are made in foreign currency that is internationally traded, and can be made to accounts with Angolan Banks.



Helena Prata

Lawyer

Angola Legal Circle Advogados
Luanda, Angola

Tel.: +244 222 441 935/443 341

Email:

helenaprata@angolalegalcircle.com

Web: www.angolalegalcircle.com

[LinkedIn](#)

About the author

Helena Prata's expertise ranges from advisory to complex corporate and asset financing and restructuring transactions, incorporation of SPV (special purpose vehicle) and structured security arrangements and labour law. Highly experienced in corporate law, environmental law and oil and gas she has assisted national and international clients in these areas. She is the author of several articles published in specialised Angolan magazines and also teaches Business Law at the Law Faculty of the Agostinho Neto University. She was recently elected a member of Luanda's Provincial Council from the Angolan Bar Association.

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Sofia Cerqueira Serra

Lawyer

Porto, Portugal

Tel.: +351 22 616 69 50

Email: sofiaserra@mlgts.pt

Web: www.mlgts.pt

About the author

Sofia Cerqueira Serra is a member of the Africa Team, an internal structure of Morais Leitão, Galvão Teles, Soares da Silva & Associados (MLGTS) that guarantees, on a permanent basis and in close cooperation with the member firms of the MLGTS Legal Circle, personalised day-to-day assistance to clients on matters that involve or are related to the jurisdictions of Portuguese speaking African countries. Within this team she regularly assists clients in the areas of oil and gas. In addition to her work as a member of the Africa Team, Ms Serra has advised both national and international clients on various M&A operations, the negotiation of international commercial contracts and provides regular advice and assistance to clients on their ongoing commercial activities, particularly in the areas of agency and distribution agreements, telecommunications, software licensing and intellectual property.



João Pedro Honorato

Lawyer

Lisbon, Portugal

Tel.: +351 21 381 74 00

Email: jhonorato@mlgts.pt

Web: www.mlgts.pt

About the author

João Pedro Honorato is also a member of the Africa Team in which he assists clients in the areas of oil and gas. His experience also includes negotiating project finance structures, including the financing of wind farms, motorways and football stadia. He also provides legal advice on financial derivatives and has focused on the incorporation and marketing of mutual and real estate investment funds. Mr Honorato is permanently working at the São Paulo office of Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados and his activity in Brazil has a special emphasis on the oil and gas sector, including negotiation and risk analysis of concession contracts, construction, supply and operation agreements, development of research centers, joint operation agreements (JOA) and farm-in/farm-out operations.