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## SECTION 1 – Collateral/security

### 1.1 What types of collateral/security are available?

In Angola the following types of collateral are generally available: mortgages; pledges of assets and rights; assignment of rights by way of security; and, bank guarantees.

## SECTION 2 – Perfection and priority

### 2.1 How is a security interest in each type of collateral perfected and how is its priority established?

The Angolan legal system is very conservative in the sense that the majority of legal documents (agreements, securities, powers of attorney) must be authenticated by a public notary in order to be considered as evidence in a court of law. Further, if we are referring to pledged assets subject to registration or mortgages, the security would have to be registered in the relevant registry. For example, a pledge of an aircraft would have to be registered at the National Institute for Civil Aviation (INAVIC).

The priority of a security is assessed based on the date of the security's registration; earlier registered securities prevail over later ones.

### 2.2 How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

In accordance with applicable law this could be assessed by referring to the relevant registry. However, due to local constraints and legal practices, many of the existing liens subject to registration are not registered, which raises difficulties in obtaining confirmation of the existence of prior liens on assets.

It is important to note that in Angola the majority of real estate is owned by the Government, following a series of seizures in the post-independence period. The process of transferring property from the State to individuals, which allows them to sell or establish other liens on the real estate is time consuming. There are some mortgages registered, however the vast majority of real estate transactions are secured only by private contractual arrangements; there are no means to verify their existence.

### 2.3 Are any fees, taxes or other charges payable to perfect a security interest and, if so, are there lawful techniques to minimise or defer them?

All security agreements are subject to the payment of a stamp duty ranging from 0.04% to 0.6% depending on their duration. This duty is mandatory and not deferrable. Stamp duty will not be levied on a security if it is formalised together with the financing agreement.

### 2.4 May a corporate entity, in the capacity of agent or trustee, hold collateral on behalf of the project lenders as the secured party?

In Angola, the concept of trustee has no legal basis, so one of the project lenders may be appointed as security agent.

## SECTION 3 – Foreign investment and ownership restrictions

### 3.1 What restrictions, fees and taxes exist on foreign investment in or ownership of a project?

Foreign investors are subject to the same taxes as local investors: business income tax (35% or 20% reduced rate for agricultural, forestry and livestock activities); investment income tax (5% to 15%); employment income tax (5% to 17% withholding tax), social security contributions (8% paid by the employer).

As for restrictions, there are certain sectors that are reserved for national investment or that require that the companies pursuing such activities are held by a majority of Angolan shareholders. That is the case in certain services to be rendered to, inter alia, the oil and gas industry, mining, and fishing.

Foreign investment projects have to be approved by the Angolan National Private Investment Agency, which requires an investment of an overall amount equal to or greater than \$1 million. Certain areas, such as oil extraction, diamond exploration and financial institutions are excluded from this general private investment regime and are subject to special legislation.

### 3.2 Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

Angola has not executed any agreements to avoid double taxation with any country. There was a privileged agreement regarding taxes with Portugal but it is now suspended.

### 3.3 Can a government authority block or unwind a transaction involving foreign investors after it has closed for strategic/national security or other reasons?

Yes, that is possible in certain exceptional circumstances.

## SECTION 4 – Documentation formalities and government approvals

### 4.1 Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable?

Yes, but in order to be enforceable in Angola an award issued by a foreign jurisdiction must be subject to the Angolan Supreme Court for confirmation.

### 4.2 What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority?

The most relevant government agencies regarding projects involving foreign participation are the following: the Angolan National Private Investment Agency (ANIP); the Angolan Central Bank (BNA); the relevant ministries; and the Evaluation Ministry Commission for Public-Private Partnerships (PPP).

As noted previously, all foreign investment projects, such as the incorporation of a company with foreign shareholders or registration of a branch by a foreign parent company, will have to be approved by ANIP.

The BNA will monitor and issue the relevant authorisations regarding all transactions involving foreign exchange.

The Angolan law on PPPs establishes that all PPP projects must be analysed by the Evaluation Ministry Commission for PPP, which is composed of representatives from the Ministry of Economy, Ministry of Finance and Ministry for Regional Planning.

This Commission will decide on the conditions of the PPP as well as the winning bid.

#### **4.3 What government approvals are required in relation to environmental concerns for typical project finance transactions? What fees and other charges apply?**

In relation to environmental concerns, there is no general rule applicable to project finance transactions, so it depends on the project. Yet, in a PPP the environmental licence (if required) must be obtained from the State prior to the launching of the public tender.

### **SECTION 5 – Bankruptcy proceedings**

#### **5.1 How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the collateral/security?**

A bankruptcy proceeding will immediately freeze the project company's assets. Subsequently, the court will make a list of all of a company's creditors and establish a ranking of such creditors.

Creditors with real guarantees (mortgages for example) will take priority over other creditors.

#### **5.2 What processes, other than court proceedings, are available to seize the assets of the project company in an enforcement? For instance, is contractual enforcement (such as receivership) recognised?**

All proceedings to seize the assets of a project company would have to be performed through court order.

#### **5.3 Outside the context of a bankruptcy proceeding, what steps should a project lender take to enforce its rights as a secured party over the collateral/security?**

It is recommended to first implement all the formalisation requirements established in Angolan law, in particular registration. Additionally, to facilitate the enforceability of the guarantees, it is common practice that an irrevocable power of attorney from the shareholders and the project company in favour of the project lender to sell the assets and rights granted as security is granted. However, sometimes the sale of the assets may be executed through a judicial proceeding.

### **SECTION 6 – Foreign exchange, remittances and repatriation**

#### **6.1 What, if any, are the restrictions, controls, fees and taxes on remittances of investment returns or payments of principal, interest or premiums on loans or bonds to parties in other jurisdictions?**

Angola has foreign exchange restrictions in the sense that all transactions involving non-resident entities and foreign currency (of a certain amount) require the authorisation of the Angolan Central Bank (BNA). In fact, all capital transactions (debt instruments, loans, granting of guarantees and other forms of collateral) require a licence (*Licença de Importação de Capitais* or LIC to import foreign exchange and *Licença de Exportação de Capitais* or LEC to export foreign exchange).

#### **6.2 Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?**

The Angolan local currency (kwanza) is not an active currency in the international monetary market. Therefore, the repatriation of earnings is usually made in a foreign currency, usually in American dollars.

Under the Angolan Private Investment Law, companies with foreign shareholders are only allowed to repatriate earnings after three years of their incorporation. However, in the context of a PPP, special conditions may be negotiated for the project company.

#### **6.3 What, if any, tax or other incentives are provided preferentially to foreign investors or creditors? What, if any, taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?**

Incentives, in the form of tax exemptions, are applicable to foreign investors with projects in specific sectors such as, among others, technology, education, and agriculture.

Taxes applicable to securities for effectiveness and registration purposes have been explained above (section 2.3).

### **SECTION 7 – Public private partnerships**

#### **7.1 Is there a public private partnership act or similar statute authorizing PPPs and are both greenfield and brownfield PPP projects permitted?**

On January 14 2011 the Angolan Parliament adopted the Law on PPPs; both greenfield and brownfield PPP projects are permitted.

#### **7.2 May a concessionaire grant security interest in the project to its lenders and, if so, is consent of the government or contracting authority required?**

The conditions to grant security interest in a project by a concessionaire to its lenders should be regulated under the terms of the concession agreement, whose draft is made available upon the launching of the public tender.

#### **7.3 Are government guarantees or other payment obligations of the government or contracting authority subject to appropriations or other periodic authorizations?**

Under Angolan law, the Government may suspend payments abroad in case of an imbalance in Angola's balance of payments. In a PPP, any payments to be made by the Government or any contracting authority must be regulated under the terms of the concession agreement.

#### **7.4 May the government or contracting authority unilaterally amend or terminate a concession?**

Yes, under the terms of a concession agreement, whose draft is made available upon the launching of the public tender.

### **SECTION 8 – National update**

#### **8.1 In no more than 250 words, please describe any relevant project finance developments within your jurisdiction. This can include noteworthy projects, new structures or techniques.**

To the best of our knowledge, to date, no project finance developments have been executed in Angola.


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**About the author**

Catarina Levy Osório is a partner at Angola Legal Circle Advogados, the Angolan member of the MLGTS Legal Circle, an international network created by Portuguese law firm Morais Leitão, Galvão Teles, Soares da Silva & Associados (MLGTS).

Levy Osório, a member of the Angolan and Portuguese Bar Associations, has relevant experience in Angolan law, having advised clients on private investment, tax, and labour law in that jurisdiction. Previously, she worked at another law firm as a consultant to the tax department and as a senior tax consultant in a major international consulting firm. In both firms she provided assistance to clients from different sectors on VAT and other indirect tax matters, acquiring relevant experience in the development of tax diagnostics and in the implementation of corporate structures and their tax impacts.

Levy Osório is also a consultant to MLGTS in all matters pertaining to Angola.

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**About the author**

Vanessa Pinto Rodrigues is a lawyer with considerable international experience, especially in the Angolan jurisdiction in the areas of corporate and commercial and banking and finance law.

Pinto Rodrigues has been involved in operations concerning foreign investment. She provides legal consultancy to oil companies and service providers in the oil and gas sector (particularly foreign exchange legislation), and to several international financial entities on regulatory issues related to the commercialisation and marketing of complex financial products (derivatives, swaps, and over-the-counter derivatives).

Pinto Rodrigues' experience in banking includes direct participation in the permitting process of an international bank in Angola, and preparation of the documentary package and negotiations with the National Bank of Angola (BNA) at various stages of the procedure.

Rodrigues has a law degree from the law faculty of the University of Lisbon, 2003 and she completed postgraduate studies in commercial law at the law faculty of the Portuguese Catholic University, 2006.