



# ICLG

The International Comparative Legal Guide to:

## Oil & Gas Regulation 2015

**10th Edition**

A practical cross-border insight into oil and gas regulation work

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## EDITORIAL

Welcome to the tenth edition of *The International Comparative Legal Guide to: Oil & Gas Regulation*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of the oil and gas sectors.

It is divided into two main sections:

Four general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting oil and gas regulation, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in oil and gas regulation in 40 jurisdictions.

All chapters are written by leading energy lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Geoffrey Picton-Turbervill of Ashurst LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

*The International Comparative Legal Guide* series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk).

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# Angola



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## 1 Overview of Natural Gas Sector

**1.1 A brief outline of Angola's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; import and export of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.**

Angola has proven gas resources to supply a nominal 5.2 million tons/year (6.8 billion cubic metres/year) liquefied natural gas (LNG) plant for over 20 years. Possible natural gas resources of 10.5 trillion cubic feet (297 billion cubic metres) have been identified (as per the Angola LNG website). Historically, the majority of 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% of all the natural gas produced in the country. To date, natural gas sector regulations focused on the development of the country's first LNG facility in Soyo. The first exportation of LNG took place in June 2013. The LNG plant is reportedly producing well below its capacity of 5.2 million tons per year due to technical problems.

**1.2 To what extent are Angola's energy requirements met using natural gas (including LNG)?**

Based on data made available by the United Nations Development Program, despite being the third-largest economy in Sub-Saharan Africa, in terms of GDP, around 36% of Angolans live below the poverty line. In 2011, about 55% of Angola's primary energy consumption consisted of traditional solid biomass and waste. Petroleum occupies the second place, representing 33% of the primary energy consumption in 2011. Natural gas, hydroelectricity, nuclear and other renewable energies still occupy a small percentage in Angola's primary energy consumption.

**1.3 To what extent are Angola's natural gas requirements met through domestic natural gas production?**

The development of the natural gas market is in its early stages. There is no official government information about natural gas imports. It is estimated that about 20% to 30% of the country's energy needs, consumed primarily by the industrial sector, will be met through the Angola LNG Project.

**1.4 To what extent is Angola's natural gas production exported (pipeline or LNG)?**

According to the 2014 Annual Statistical Bulletin of the Organization of the Petroleum Exporting Countries, Angola's natural gas exports correspond to 517 million cubic metres. Information on exports to each country is not available.

## 2 Overview of Oil Sector

**2.1 Please provide a brief outline of Angola's oil sector.**

Angola holds almost 9.1 billion barrels of proved crude oil reserves, according to the latest estimates from the *Oil & Gas Journal* (OGJ) released in January 2014. Exploration and production activities related to oil and natural gas in Angola are governed by Act 10/04 of 12 November ("Petroleum Act" or "Act 10/04"). The right to produce and explore for oil or natural gas is granted by concession agreement, generally preceded by a public tender procedure. Concession for exploration and production, after the public tender procedure, is granted by concession decree, issued by the Angolan government, attributing to the national concessionaire Sonangol (the exclusive concessionaire for mining rights in Angola) the right to develop a specific oil concession.

**2.2 To what extent are Angola's energy requirements met using oil?**

In 2013, according to the United States Energy Information Administration (USEIA) website, Angola produced 1.8 million barrels per day (bbl/d) of petroleum and other liquids, of which more than 1.7 million bbl/d was crude oil. Angola's oil production grew by an annual average of more than 15% from 2002 to 2008 as production started from multiple deep-water fields that were discovered in the 1990s. Angola consumed roughly 94,000 bbl/d of petroleum products in 2012, almost double the volume consumed a decade ago. Domestic demand for petroleum remains low due to low levels of economic development. According to a June 2013 International Monetary Fund report, Angola's fuel-subsidy costs are estimated to be the highest in Sub-Saharan Africa, estimated at about 5% of GDP in 2012, equivalent to half of total capital spending.

**2.3 To what extent are Angola's oil requirements met through domestic oil production?**

Angola imports more than half of the petroleum it consumes, particularly refined products. Angola's production has been

stagnant as a result of persistent technical problems related to water injection systems, gas cooling, and floating, production, storage, and offloading (FPSO) units associated with some projects. Rapid reservoir depletion has also resulted in steep decline rates at some fields.

## 2.4 To what extent is Angola's oil production exported?

According to information made available by the Angolan Ministry of Finance, in January 2014, China accounts for 45% of sales of the country, according to Sonangol, which reported that India and Taiwan complete the top three biggest customers. India is the second largest client of Angolan oil, with 12% of total exports, followed by Taiwan. The United States of America, once one of the largest customers of petroleum of Angola, now occupies the fourth place. In the list of buyers were also cited South Africa in fifth place, and then Spain, Brazil, Panama, Malaysia, Japan, Ireland and Italy. In 2013, Angola exported 782,688 barrels of oil daily, 8.7% less than in 2012, when 857,457 barrels per day were exported. Angola may become the largest oil producer in Africa in 2018, exceeding Nigeria, and may overcome the barrier of 2 million barrels a day next year. According to the report, *Oil Gas & Insight*, Angola can overcome the barrier of 2 million barrels of oil per day next year, but will have to wait until 2018 to supplant the production of Nigeria, the current leader in production in Africa. Nearly all of Angola's oil production is exported as Angola's domestic refining capacity is limited.

## 3 Development of Oil and Natural Gas

### 3.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of oil and natural gas reserves including: principal legislation; in whom the State's mineral rights to oil and natural gas are vested; Government authority or authorities responsible for the regulation of oil and natural gas development; and current major initiatives or policies of the Government (if any) in relation to oil and natural gas development.

The statutory framework for the exploration and production of oil and natural gas reserves is mainly encompassed in the Petroleum Act. In addition, other relevant statutes are:

- Law 13/04, of December 24 ("Taxation of petroleum activities" or "Act 13/04");
- Act 2/2012, of January 13 ("Angolan Oil and Gas Foreign Exchange Act for Oil Industry" or "Act 2/2012");
- Act 11/04, of November 12 ("Petroleum Customs Act" or "Act 11/04").

Under the 2010 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. Consequently, all mining rights are exclusively assigned to the National Concessionaire. All petroleum deposits existing in Angola are an integral part of the public domain, Sonangol being the exclusive holder of all mineral rights related to such deposits. The Petroleum Act is also applicable to the development and exploration of natural gas. Thus, the provisions provided by the Petroleum Act are equally enforceable for oil and gas exploration – if the gas exploration is made under the oilfield licences.

### 3.2 How are the State's mineral rights to develop oil and natural gas reserves transferred to investors or companies ("participants") (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

Under the applicable law, *i.e.*, the Petroleum Act, mineral rights are granted to the National Concessionaire and the National Concessionaire may associate with Angolan or foreign entities of recognised capacity, technical knowledge and financial capability, and such association may take the following forms:

- (a) Corporation;
- (b) Consortium;
- (c) Production Sharing Agreement;
- (d) Risk services agreements.

The most common type of association with the National Concessionaire is the execution of Production Sharing Agreements.

### 3.3 If different authorisations are issued in respect of different stages of development (e.g., exploration appraisal or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

According to the Petroleum Act and to Decree 1/09, of January 27 ("Angolan Petroleum Operations Regulation" or "Decree 1/09") petroleum operations (*i.e.*, prospecting, exploration, appraisal, development and production of crude oil and natural gas) can only be exercised under a prospecting licence issued by the Ministry of Petroleum, or pursuant to an oil concession awarded by the Government. As for the prospecting licence, any upstanding domestic or foreign company having the necessary technical and financial capacity may apply to the Ministry of Petroleum for the issuance of a three-year prospecting licence (exceptionally extendable at the request of the licensee) to determine the petroleum potential of a given area. The prospecting licence includes geological, geochemical and geophysical research, and the processing, analysis and interpretation of the acquired data, as well as regional studies and mapping, for the purpose of locating oil and natural gas fields. On the other hand, the development of exploration and production activities can only be performed by private sector companies if they join up with the National Concessionaire, as described under question 3.2 above. These joint activities undertaken between national or foreign companies of proven competence and technical and financial capacity and the National Concessionaire are subject to the prior approval of the Government.

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.

### 3.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of oil and natural gas reserves (whether as a matter of law or policy)?

Through Act no. 13/78 of 26 August, the Petroleum General Activities Law, the Angolan government has enacted the fundamental principles

regulating the exploration of Angola's petroleum potential. As mentioned above, the mineral rights in Angola are owned by the state, the public ownership of all rights and benefits arising from the oil industry being one of the most important governmental aspects.

### 3.5 How does the State derive value from oil and natural gas development (e.g. royalty, share of production, taxes)?

According to official information, the State derived 75% of its 2013 income from taxes levied to the oil and gas industry and, therefore, it is the most important source of income for the Angolan State. Pursuant to Act 13/04 all entities both national and foreign carrying on petroleum operations on the national territory are subject to the payment of the following taxes:

- a) Petroleum Production Tax;
- b) Petroleum Revenue Tax;
- c) Petroleum Transaction Tax;
- d) Surface Area Charge; and
- e) Contribution towards the training of Angolan staff.

Additionally, Sonangol is the concessionaire of mining rights existing in Angola, being, therefore, part of all production sharing agreements executed in Angola. As a part of all PSAs currently in force in Angola, Sonangol is contractually entitled to receive part of the profits made under the terms and conditions established in each PSA.

### 3.6 Are there any restrictions on the export of production?

According to article 8 of the Act 11/04, the “*exportation of petroleum produced in each petroleum concession, either in its natural state or after having been processed, is exempt from duties and general customs service fee*”.

### 3.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

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 Act 2/2012, the Government established a general foreign-exchange regime applicable to oil and gas activities pursued under the Petroleum Act. As of July 1 2013, all payments made to such suppliers that are foreign exchange residents under the applicable law must be made through accounts with Angolan banks and in Kwanzas.

Foreign investor companies have the right, under said law and after all tax obligations are complied with, to transfer abroad their share of the amounts resulting from the payments of production agreed with the Angolan State.

### 3.8 What restrictions (if any) apply to the transfer or disposal of oil and natural gas development rights or interests?

The assignment of a contractual position in the exploration and production concession agreement requires the prior authorisation of the Ministry of Petroleum, provided that the transferee is of proven competence, and technical and financial capability, unless the assignment is made between subsidiary companies of the transferor. In the event such assignment is authorised, Sonangol has a pre-emption right. If Sonangol does not exercise this right, Angolan

companies that are a party to other concession agreements at the time of the transfer are entitled to exercise such pre-emption right.

### 3.9 Are participants obliged to provide any security or guarantees in relation to oil and natural gas development?

A bank guarantee ensuring fulfilment of the work obligations undertaken in prospecting licences and oil concessions is required. In the case of a prospecting licence, 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 its associates to present a parent company guarantee.

### 3.10 Can rights to develop oil and natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

The concessionaires of oil refining, storage and transportation of oil-derived products activities cannot freely transfer or encumber the assets pertaining to the concession, such acts being subject to prior authorisation of the grantor.

### 3.11 In addition to those rights/authorisations required to explore for and produce oil and natural gas, what other principal Government authorisations are required to develop oil and natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

According with Law 5/98 of 19 July (“**Environmental Law**”) and with Decree 39/00 of 10 October (“**Environmental Protection From Oil Activities Regulation**”), all projects to be developed within the scope of the oil and gas sector require the presentation of a number of different reports and studies. The most important report is an *Environmental Impact Assessment* (“*Avaliação de Impacte Ambiental*” – “AIA”).

Angola has ratified the following international treaties related to safety and environmental protection on the oil and gas activities:

- a) International Convention on Civil Liability for Oil Pollution Damage;
- b) International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties;
- c) International Convention on Oil Pollution Preparedness, Response and Co-operation.

Oil field operators are subject to strict rules regarding to health and safety (HSE) measures to be taken in order to ensure the quality of life of their employees.

### 3.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in oil and natural gas development? If so, what are the principal features/requirements of the legislation?

Pursuant to Act 10/04, at least one year prior to termination of the concession or the date of abandonment of any area included therein, the National Concessionaire shall prepare and deliver to the supervising Ministry a plan providing for the cases of decommissioning the wells, facilities, equipment for the rehabilitation of the landscape and continuation of the petroleum operations. The plan shall provide the supervising Ministry with

sufficient information in order to assess the future purpose of facilities from a technical, financial, safety and environmental standpoint.

### 3.13 Is there any legislation or framework relating to gas storage? If so, what are the principal features/requirements of the legislation?

The main legal framework regarding to gas storage is provided in Act 26/12 and in the recently published Executive Decree 288/14. Please refer to our comments in section 6 below.

## 4 Import / Export of Natural Gas (including LNG)

### 4.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

See the answer to question 5.1 below.

## 5 Import / Export of Oil

### 5.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of oil and oil products.

Activities regarding the import, entry, export and dispatch of petroleum products and crude oil are subject to licensing, as per the Oil & Gas Distribution and Commercialisation Act – Act no. 28/11 (“Act 28/11”). Companies in charge of the import/export activities must be controlled by Angolan citizens. The import of petroleum products into the national market is exclusively implemented by the “*Superintendencia Logística do Sistema de Derivados de Petróleo*” (also referred to as “SLSDP”). 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.

## 6 Transportation

### 6.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

The transportation pipelines and associated infrastructure is regulated by the State. The transportation activities are subject to authorisation from 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 facilities in Angola.

Operators of oil and gas pipelines have an exclusive right to explore the infrastructures of transport of oil and natural gas. The licence authorises its holder to occupy the necessary areas to implement the activities established by the licence. Once the licence is extinct, the assets used in the transportation activity become the property of the State. These assets are the property of the operator during the validity time of the licence. Sonangol is a party to every exploration and production agreement and the Sonangol Group operates as a vertically integrated company that has its main

activities focused in all phases of the oil business chain. Its activities include transportation of oil and gas which Sonangol may perform independently or in association with other companies, national or foreign. The transportation of oil and gas must be executed by a company or a consortium, at their own risk, under the authorisation from Ministry of Petroleum.

### 6.2 What Governmental authorisations (including any applicable environmental authorisations) are required to construct and operate oil and natural gas transportation pipelines and associated infrastructure?

As per Act 28/11, the construction and operation of pipelines is subject to licensing by the Ministry of Petroleum. In order to contract the services of transport via pipeline, the National Concessionaire, its associates and all the other companies have to conduct a tender procedure. The licence can only be granted to legal persons who meet, *inter alia*, the following requirements: (i) technical, logistic and operational capacity; and (ii) economic and financial capacity. In addition, an environmental licence issued by the Ministry of Environment is required. The company or the consortium interested in obtaining pipeline construction rights must have the necessary authorisations issued by the entities competent to grant land rights (please refer to question 6.1).

The pipeline construction licence is granted for a five-year period by the Ministry of Petroleum and may be extended for one year. The licence to operate pipelines – from the exit flange to the processing facilities, the petrochemical units, or to the export terminal – is granted for a twenty-five-year period by the Ministry of Petroleum and it may be extended one or more times for set periods of time.

### 6.3 In general, how does an entity obtain the necessary land (or other) rights to construct oil and natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

The Executive Power may declare of public interest – for purposes of expropriation and civil easement – the areas required for the construction of pipelines and associated infrastructure. In these cases, holders of land rights must be compensated. 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. Please refer to question 6.1 above. Licensed entities may negotiate the land rights with the respective holders and competent real estate and environmental authorities. Pipelines shall be registered with the competent real estate registry office.

### 6.4 How is access to oil and natural gas transportation pipelines and associated infrastructure organised?

Please refer to questions 6.6 and 6.7 below.

### 6.5 To what degree are oil and natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

There is no available official data concerning the integrated and interconnected pipeline system.

**6.6 Outline any third-party access regime/rights in respect of oil and natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport oil or natural gas compel or require the operator/owner of an oil or natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?**

The operator of the oil transportation pipeline must transport the crude oil from a third party, with no discrimination and in acceptable commercial terms, provided it has the capacity available in its transport system. The operator cannot impede the expansion of the pipeline, except if the expansion interferes with the technical and operational integrity of the system. However, the entities wishing to expand the pipeline must contribute to the expenses involved. The Ministry of Petroleum may exempt the pipeline licensee/operator from these obligations if it is demonstrated and proved that additional transportation is not possible. The expansion of pipeline capacity may only be effected if:

- It is technically and economically feasible and consistent with 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. If, within six months after the date of commencement of negotiations for expansion of the pipelines' capacity, the parties have not reached an agreement on the commercial and operation terms, this issue shall be submitted to the Ministry of Petroleum for consideration and decision.

**6.7 Are parties free to agree the terms upon which oil or natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?**

Under Act 26/12, the licensee has the right to charge tariffs for the transportation of oil and gas or deny the service for lack of payment of such fees. The tariffs applied shall be approved by the Minister of Petroleum, considering the needs for the operator to recover his investment and obtain profits consistent with the risk.

## 7 Gas Transmission / Distribution

**7.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.**

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. Plus, Act 28/11 and Presidential Decree no. 132/13, from September 5 2014 (Activities of Oil

Products Sector Act, hereinafter "Decree 132/13") govern distribution of oil products in general (not only natural gas). With the approval of Decree 132/13, the *Superintendencia Logística do Sistema de Derivados de Petróleo* (SLSDP) was created. The legal ownership, organisational and regulatory framework for natural gas distribution networks is governed by SLSDP. Also, the Oil Derivatives Regulating Institute (ODRI), created by 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.

**7.2 What Governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?**

Under Act 28/11, oil products distribution shall be made by sea, air, inland waterway, 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.

**7.3 How is access to the natural gas distribution network organised?**

The distribution network of oil products is under the competition regime. The principles applicable to accessing large storage facilities are also applicable to the accessing of the distribution network.

**7.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?**

The distribution operators must allow third party access to facilities, under agreement and following a transparent and objective negotiation. The tariffs shall be published by the distribution operators.

**7.5 What fees are charged for accessing the distribution network, and are these fees regulated?**

Please refer to the previous question. The tariffs are established under a negotiation process with the distribution operator.

**7.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?**

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.

## 8 Natural Gas Trading

### 8.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

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 open to all economic agents, who may even exercise several of the above-mentioned activities subject to licensing. The trade of oil products may be executed through wholesale and retail traders, as per Act 28/11.

The retail trade of natural gas includes the trade and distribution of LPG (liquefied petroleum gas), and the trade of LPG bottles. The storage facilities connected to trade of LPG are subject to licensing under the applicable law. The applicable framework to the licensing of the facilities connected to the trade of LPG is the Presidential Decree no.173/13, of 30 of October (“Decree 173/13”). The facilities connected to retail trade of LPG bottles are also subject to licensing under the applicable law.

### 8.2 What range of natural gas commodities can be traded? For example, can only “bundled” products (i.e., the natural gas commodity and the distribution thereof) be traded?

Natural gas commodities are usually traded as bundled products in Angola and there is no specific legislation implementing unbundling procedures for the natural gas industry (in contrast, Presidential Decree 132/13 contains unbundling provisions regarding to oil storage and transportation activities).

## 9 Liquefied Natural Gas

### 9.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

The existing LNG legislation is closely tied with the Angola LNG Project. Its legal regime also includes the legislation referring to petroleum activities. 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 will receive revenue generated by the sale of LNG and NLG. The initial shareholders of Angola LNG Limited are Sonangol, Cabinda Gulf Oil Company Limited, Total LNG and BP Exploration (Angola) Limited. The promoter companies may create new companies particularly for the purposes of commercialisation or transportation of LGT 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. Under the Petroleum Act, Sonangol has exclusive mining rights to gas exploration on the subsoil and continental shelf of Angola, and may associate with both national and foreign private companies in the terms described above. The National Concessionaire is barred from assigning all or part of the mining rights granted and any actions to the contrary are invalid and ineffective. As per the Petroleum Act, the oil fields (*jazigos petrolíferos*) are public domain.

### 9.2 What Governmental authorisations are required to construct and operate LNG facilities?

Under Angolan law, natural gas pipeline transportation and storage ancillary to production are treated differently from non-ancillary activities. Ancillary pipeline transportation and storage, with the intention of making natural gas extraction viable, is regulated by the above-mentioned rules governing natural gas exploration and production. Non-ancillary transportation and storage, performed in order for natural gas to be commercialised and consumed, is governed by Act 26/12 (Oil and Gas Transportation and Storage Act). Natural gas transportation and storage activities are subject to the authorisation of the Ministry of Petroleum, which has the authority to, *inter alia*: (i) approve the construction and expansion of pipelines, supervise the works, and authorise and license the operations; (ii) keep a database concerning pipeline construction and operation; and (iii) define the rules for the granting of pipeline construction and operation licences and oil and gas storage, without prejudicing other authorisations required. The construction and operation of any oil or gas pipeline and storage facilities are subject to a licence issued by the Ministry of Petroleum.

### 9.3 Is there any regulation of the price or 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:

- i. The safety, continuity and quality of supply;
- ii. Promoting energy efficiency and rational use of resources, as well as environmental protection;
- iii. Satisfying the requirements of priority consumers in the areas of health, armed forces and social assistance; and
- iv. Consumer protection.

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.

### 9.4 Outline any third-party access regime/rights in respect of LNG facilities.

As per the Petroleum Act, the Ministry of Petroleum may allow the use of a third-party’s facilities, if that use contributes to a more efficient use of the existing resources. However, this can only be done if it does not result in the decrease of production levels or ineffective functioning.

## 10 Downstream Oil

### 10.1 Outline broadly the regulatory framework in relation to the downstream oil sector.

The downstream sector commonly refers to the refining of petroleum crude oil and the **processing and purifying** of raw natural gas, as well as the marketing and **distribution** of products derived from crude oil and natural gas. The processing of oil derivatives and purifying of crude oil is subject to the licensing of the facilities, taking into consideration:

- The technical, economic and financial capacity of the applicant;
- The compliance between the project and national energy policy;

- The land-planning scheme and the goals of environmental policy.

The licence should be granted by the Ministry of Petroleum. The distribution of petroleum products may be carried out:

- Via sea lane, water way, by air, by road or via railway;
- Through pipeline.

The pipeline distribution is subject to licensing, taking into consideration:

- The technical, economic and financial capacity of the applicant;
- The compliance between the project and national energy policy; and
- The land-planning scheme and the goals of environmental policy.

## 10.2 Outline broadly the ownership, organisation and regulatory framework in relation to oil trading.

The marketing of oil products is subject to licensing, as per Act 28/11, and may be performed through wholesale or resale trade. The licensee's project shall fulfil the following requirements:

- The technical, economic and financial capacity of the applicant;
- The compliance between the project and national energy policy; and
- The land-planning scheme and the goals of environmental policy.

## 11 Competition

### 11.1 Which Governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the oil and natural gas sector?

At present Angola does not have a general competition law or an anti-trust 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 to promote consumer protection, equal treatment, and equal opportunities among players in competition.

Developments in this area are also expected in light of recent legislation, namely Presidential Decree 68/10 that established that the co-ordination and consistency of revenues and price would be entrusted to the Ministry of Economy and pursued through *Instituto do Mercado e Concorrência* (Market and Competition Institute).

### 11.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

Please refer to question 11.1. 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.

### 11.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

Please refer to our answer to question 11.2 above.

### 11.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the oil and natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

In addition to rules and restrictions that may be embodied in individual contracts, under the Petroleum Act, transfer of the contractual position held by private companies who are associates of the National Concessionaire ("Associates") 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 the transfer to a third-party of a stake or shares representing more than 50% of the Associates' share capital, deemed equivalent to a transfer of contractual position. Such authorisation is not required if the transfer is made to an "affiliate" as defined by law, provided the assignor remains joint and severally liable. We also note that in the case of transfer to a third-party of a stake or shares representing more than 50% of the Associates' share capital, the National Concessionaire is granted a right of first refusal. Although it may vary, the applicable timeframe for execution is usually six months.

## 12 Foreign Investment and International Obligations

### 12.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

Foreign companies who wish to acquire interests outside the scope of the prospecting licence may only do so in association with the National Concessionaire and will need to provide a bank guarantee to ensure compliance with the work obligations undertaken before Sonangol.

### 12.2 To what extent is regulatory policy in respect of the oil and natural gas sector influenced or affected by international treaties or other multinational arrangements?

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 Angolan Constitution.

## 13 Dispute Resolution

### 13.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the oil and natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to oil and natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; downstream oil infrastructure owners or users; and distribution network owners or users in relation to the distribution/transmission of natural gas.

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, will be settled by arbitration, usually in accordance with the arbitration rules established in the individual contracts, unless the matter is expressly excluded from the arbitration under the Petroleum Act.

The Petroleum Act does not apply to the refining, transportation, storage, distribution and commercialisation of petroleum. There is no specific regulation concerning appeals to gas sector regulator decisions. Decisions of the Ministry of Petroleum may be challenged by pursuant to the general administrative procedure established by Decree Law 16-A/95.

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**13.2 Is Angola a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID”)?**

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Angola is neither a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, nor a party to Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID”).

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**13.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?**

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According to Law Decree no. 44129, of December 28 1961 (“Angolan Procedural Code”), any award handed down by a

foreign court/foreign arbitration court is subject to judicial review upon an Angolan Court to be enforceable within the national territory. In practice, any decision made by an arbitrator and/or a foreign judge must be further revised by an Angolan court in order to be valid and enforceable.

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**13.4 Have there been instances in the oil and natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?**

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There are some ongoing suits in relation to tax issues (profit oil, mostly) but there is no publicly available information in relation to their outcome.

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## 14 Updates

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**14.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Oil and Gas Regulation Law in Angola.**

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The downstream sector was recently (late 2014) reformed through the enactment of new statutes, such as the technical regulation on the construction, exploration and maintenance of storage facilities for LNG, the technical regulation for the construction and development of fuelling stations, and the regulation on oil products to be traded in Angola.



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Irina Neves Ferreira is a lawyer, admitted to the Angolan and Portuguese Bars, with considerable international experience, especially in the Angolan jurisdiction. Her practice focuses on the petroleum sector, in its multiple aspects (regulatory, insurance, contractual), including matters relating to licences and concessions, transfer of participating interests and foreign exchange. She has a more general legal practice with involvement in operations concerning private investment, insurance law, oil & gas and real estate. She is also highly experienced in corporate compliance attained throughout her experience as counsel for the EMEA region in the international compliance team of a multinational company in the IT area. In the area of corporate and commercial law she has acted as legal advisor in several mergers, acquisitions and disposals of companies, including the acquisition and disposal of companies with head offices in Portugal and Angola, on behalf of domestic and foreign clients in various sectors, such as the oil sector, construction, information technologies and communications. Irina also provides general legal advice to numerous national and foreign companies.



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Sofia is also a member of the MLGTS Africa Team, an internal structure that guarantees, on a permanent basis and in close cooperation with the MLGTS Legal Circle member firms, personalised day-to-day assistance to clients on matters involving the Portuguese-speaking African countries. Within this team she regularly assists clients in the areas of oil and gas.

Sofia is the author and co-author of several articles on oil and gas relating to Angola and Mozambique and frequently speaks at conferences and seminars regarding investments in these jurisdictions.



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