



ICLG

The International Comparative Legal Guide to:

Project Finance 2016

5th Edition

A practical cross-border insight into project finance

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Angola

Catarina Levy Osório



Irina Neves Ferreira



Angola Legal Circle Advogados (ALC Advogados)

1 Overview

1.1 What are the main trends/significant developments in the project finance market in your jurisdiction?

According to the World Bank, Angola is included in the top four sub-Saharan African countries in terms of deal volume for project finance, which stands at USD 4bn. The country stands out as one of the sub-Saharan African countries where project finance was, until the recent downfall in oil prices, more encouraged. The trends in Angola concerning project finance are well illustrated with the China example and funding, in particular, by the China Exim Bank. Most endeavours with the Chinese government and countries follow a model whereby the repayment of the loan for the development of infrastructure projects is made through natural resources, such as oil. Nonetheless, the current economic crisis and the problems affecting China are likely to put future projects on hold and impact the predisposition of lenders, the State and investors alike.

1.2 What are the most significant project financings that have taken place in your jurisdiction in recent years?

As referred to above, project finance activity has witnessed a boom, and the biggest projects on which project finance support has been applied are:

- Angola LNG Project – financing, construction, installation and operation of modern liquefied natural gas processing facilities in Soyo, Zaire province. This is the largest single investment ever made in Angola;
- Luanda International Airport – construction and financing of a new international airport; and
- Laúca Hydropower Station – development, construction and operation of a roller-compacted concrete dam on the Kwanza river.

2 Security

2.1 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

In accordance with Angolan civil law, fixed charges over specific assets are the only form of security interest admissible. The

provision of generic security is considered null and void due to the lack of determination of the specific assets subject to the security.

Therefore, it is possible to create security over different assets by a single security agreement, the security being in relation to each type of asset created in accordance with specific rules, terms and formalities.

2.2 Can security be taken over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground)? Briefly, what is the procedure?

The Angolan Constitution recognises private ownership; however, it determines that ownership of land originally belongs to the State. In practice, no contracts have been concluded transferring right of ownership to individuals, but the transfer of smaller land rights, such as the right of customary *dominium utile*, right of civil *dominium utile*, leasehold right, and right to temporary occupation, is common. Security over these rights can be created but it requires the prior authorisation of the grantor.

The creation of security over immovable assets, related rights or movable assets subject to registration is created through mortgage. The mortgage must be executed by notarial deed and is subject to registration.

A mortgage over a plant can be made through a specific type of mortgage – the “factory mortgage” – and will include the real estate property (if possible) and all the machinery and equipment used in the factory’s activities, which must be identified in the mortgage deed.

Also, under Angolan law it is possible to create a pledge over equipment through a written agreement signed by all parties thereto, duly notarised with a “*termo de autenticação*”.

2.3 Can security be taken over receivables where the chargor is free to collect the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

The most common form of security over receivables is a pledge of credits, which is created by a written agreement. The pledge of receivables is subject to the notification of the respective debtor. Payments must be made jointly to the borrower and the lender, but the borrower may authorise the debtor to carry out the payments to the lender.

Under Angolan law, the assignment of receivables, rights and credits to the lender is also allowed, which must also be notified to the respective debtor. The lender may collect the receivables in the absence of a default if so agreed between the parties.

In case of immovable assets or movable assets subject to registration, the borrower may pay its debt to the lender through the assignment of revenues (“*consignação de rendimentos*”) of such assets. Such assignment of revenues is created through a notarial deed.

2.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

A pledge over cash deposited in bank accounts is possible. The procedure includes the execution of an agreement and notification to the deposit bank.

2.5 Can security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Briefly, what is the procedure?

Security can be taken over shares in companies incorporated in Angola as a pledge of shares, which can be either in certificated form or in book-entry form.

In limited liability companies having their share capital represented by nominative participations (“*quotas*”), the taking of security requires a written agreement and registration of the pledge at the relevant Commercial Registry, notwithstanding any additional applicable formal requirements.

In companies with their share capital represented by shares, the procedure to create the pledge is as follows:

- in case of bearer shares represented by share certificates – delivery of the share certificates to the lender;
- in case of nominative shares represented by share certificates – registration of the pledge in the share certificates and in the issuer’s share registry book and delivery of the share certificates to the lender; or
- in case of book-entry shares – registration of the pledge in the securities account.

It is also common to have a written agreement to set out the terms and conditions of the share pledge.

2.6 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

There may be notary fees and land registry fees, plus Stamp Duty, save if the creation of security is deemed ancillary to a financing transaction (which is already subject to Stamp Duty).

2.7 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

Normally there are no significant expenses, but it depends on the type of transaction and its complexity.

2.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground), etc.?

Security over real estate property (if possible) may require the authorisation of the grantor of the land rights.

3 Security Trustee

3.1 Regardless of whether your jurisdiction recognises the concept of a “trust”, will it recognise the role of a security trustee or agent and allow the security trustee or agent (rather than each lender acting separately) to enforce the security and to apply the proceeds from the security to the claims of all the lenders?

In Angola, the concept of a trustee has no legal basis.

3.2 If a security trust is not recognised in your jurisdiction, is an alternative mechanism available (such as a parallel debt or joint and several creditor status) to achieve the effect referred to above which would allow one party (either the security trustee or the facility agent) to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

Usually, one of the project lenders may be appointed as a security agent, enforcing the security and applying the proceeds of the security on behalf of all the lenders.

4 Enforcement of Security

4.1 Are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or the availability of court blocking procedures to other creditors/the company (or its trustee in bankruptcy/ liquidator), or (b) (in respect of regulated assets) regulatory consents?

The enforcement of security depends entirely on the type of security or asset at stake.

The enforcement of mortgages consists of the sale of the asset through court proceedings and the State has the right of first refusal. The sale of pledges may be conducted judicially or extrajudicially.

The Angolan jurisdiction is very bureaucratic; formal and enforcement actions usually take many years and out-of-court (extrajudicial) remedies are not common practice.

4.2 Do restrictions apply to foreign investors or creditors in the event of foreclosure on the project and related companies?

The same rules apply to foreign investors or creditors regarding the enforcement of security.

5 Bankruptcy and Restructuring 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 security?

Bankruptcy rules, established by the “Civil Procedural Code” (“CPC”), include mechanisms to protect creditors. If a company is declared bankrupt, assets and documents are, for instance, seized

in order to protect creditors' rights. A bankruptcy sentence by a court entails the immediate maturity of all a company's debts owed to creditors and some acts carried out by the bankrupt company affecting the company's assets may be deemed null and void/ineffective, provided certain legal requirements are met. Under the CPC, creditors can claim their credits, either common or preferential, which are paid in accordance with their ranking after the bankruptcy sentence is delivered by the court.

5.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g. tax debts, employees' claims) with respect to the security?

The "Civil Code" ("CC") establishes that some credits benefit from prior ranking over others, which means that some credits are paid with preference over others. There are two types of preferential credits: movable; and real estate. Preferential movable credits may be general, if they cover the value of all movables (e.g., credits emerging from an employment contract) or special, if they only cover the value of certain assets (e.g., State credits from taxes levied over donations). Preferential real estate credits are always special (e.g., State or local authority credits from taxes levied over real estate property). General preferential movable credits do not prevail over a third party guarantee. Between a special preferential movable credit and a third party's right, the oldest credit prevails. Preferential real estate credits always prevail over a third party's rights to real estate property. According to the CPC, when assets secured by a real guarantee are liquidated, creditors are immediately paid. However, if there is a conflict between said credit and a preferential real estate credit or an older special preferential movable credit, the latter prevails.

5.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

There are some entities excluded from bankruptcy proceedings. The Angolan Central Bank ("BNA") cannot be declared bankrupt. In addition, financial institutions are not subject to the legal framework regarding the preventive means of declaration of bankruptcy set forth by the "Commercial Code"; the provisions of the "The Framework Act of Financial Institutions" shall apply. Public companies are also not subject to bankruptcy general rules. The legal framework applicable to the liquidation and winding up of public companies is the "Public Business Sector Act".

5.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of the project company in an enforcement?

The CC allows creditors to protect their patrimonial guarantee by retaining assets belonging to another entity if such entity has not complied with its obligation under the contract. Creditors may exercise debtor's patrimonial rights over a third party when the debtor does not do so, unless the nature of the mentioned rights or a legal obligation requires that the right is exercised by its holder.

5.5 Are there any processes other than formal insolvency proceedings that are available to a project company to achieve a restructuring of its debts and/or cramdown of dissenting creditors?

Under the CPC, the board of directors or management board may file for bankruptcy before the company ceases all payments to creditors

or in the 10 days following this event. If the filing is performed in a timely manner, the CPC establishes that the insolvent company may propose an agreement to the creditors in order to achieve the restructuring of its debts and to avoid the declaration of bankruptcy. The agreement must be approved by creditors representing 75% of the credits. If the agreement is not proposed or approved, creditors may incorporate a limited liability company to continue commercial activity with the purpose of satisfying the existing credits.

5.6 Please briefly describe the liabilities of directors (if any) for continuing to trade whilst a company is in financial difficulties in your jurisdiction.

The "Companies Act" sets forth that directors are subject to duties of care and of loyalty. Directors are liable for damages caused by actions or omissions that breach legal or contractual duties, unless they are proven to have acted without fault. Directors are also liable before a company's creditors when, as a result of their wilful breach of a contractual or legal obligation meant to protect the creditors, the company's assets are not enough to cover debts. Fraudulent bankruptcy, resulting from the wilful or negligent misconduct of directors, is punishable by imprisonment or a fine. In cases of wilful or negligent misconduct, directors may be personally, albeit in a subsidiary fashion, liable for a company's debts arising from taxes and fines, if those debts cannot be paid by the company.

6 Foreign Investment and Ownership Restrictions

6.1 Are there any restrictions, controls, fees and/or taxes on foreign ownership of a project company?

Under the applicable corporate law, there are no direct restrictions on foreign ownership of a commercial company. However, from a practical standpoint, it is impossible to set up a company held by a foreign investor and repatriate profits abroad without the prior approval of an investment project by the competent authorities. The Regulation of Private Investment Procedures ("Regulation") sets forth that the competent authorities for the approval of a private investment project are the ministries responsible for the main activity of the concerned private investment project. According to the "Private Investment Act" ("PIA"), the incorporation of a local company qualifies as a "private investment operation".

6.2 Are there any bilateral investment treaties (or other international treaties) that would provide protection from such restrictions?

Despite the fact that Angola is a signatory to a few bilateral investment treaties, those do not provide any protection from the restrictions mentioned in question 6.1 above.

6.3 What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

Under PIA, and following the execution of an investment contract with the competent authority (on behalf of the Angolan State), rights of ownership deriving from the resources invested are protected by the State and, under normal circumstances, cannot be nationalised or seized without justification. Under PIA, in the event of investor assets being expropriated for compelling and duly justified reasons

of public interest pursuant to the law, the State guarantees the payment of fair, prompt and effective compensation.

7 Government Approvals/Restrictions

7.1 What are the relevant government agencies or departments with authority over projects in the typical project sectors?

As stated above, the Regulation sets forth that the competent authorities for the approval and monitoring of private investment projects are the ministries responsible for the main activity of the concerned private investment project. However, and depending on the businesses carried out by an investor, other authorisations may be required. Some business sectors such as mining, oil and gas or the provision of financial services are excluded from the scope of PIA. Depending on the type of activity being pursued (energy, infrastructure, transport, health, etc.), additional or different licences may be required.

7.2 Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

Project documents must be registered or filed with different authorities depending on the nature of the project. If the investment project falls within the scope of PIA, documents must be filed before the ministry responsible for the main activity of the private investment project concerned. Conversely, if the project entails the incorporation of a bank, documents must be filed with BNA. Under the CC, the general principle is contractual freedom, except for some specific cases in which the law requires notarial intervention (e.g., execution of agreements for the transfer of real estate must be done before a public notary).

7.3 Does ownership of land, natural resources or a pipeline, or undertaking the business of ownership or operation of such assets, require a licence (and if so, can such a licence be held by a foreign entity)?

Only land rights over land forming part of the private domain (as opposed to public domain) of the State may be transferred. Legislation governing right of access to land includes the “Land Act” and “General Concession of Land Regulations”. According to the “Land Act”, the State may transfer or constitute, for the benefit of natural or corporate persons, a multiplicity of land rights on land forming part of its private domain that can be assigned. Although it is possible to transfer ownership over some categories of land, the transfer of State land almost never implies the transfer of its ownership, but only the formation of minor land rights (leasehold being the most common in Angola).

Regarding the ownership of natural resources, please see question 7.4 below.

Transportation pipelines and associated infrastructure is regulated by the State. Transportation activities are subject to authorisation from the Ministry of Petroleum. Operators of oil and gas pipelines have an exclusive right to explore and develop infrastructure for the 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 no longer in effect, the assets used in the transportation activity become the property of the State.

These assets are the property of the operator for the duration of the licence.

7.4 Are there any royalties, restrictions, fees and/or taxes payable on the extraction or export of natural resources?

The 2010 Angolan Constitution sets out that the State is the owner of all national resources within 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.

Under the “Petroleum Act”, mineral rights are granted to the national concessionaire (i.e., Sonangol EP). The national concessionaire may associate with Angolan or foreign entities of recognised capacity, technical knowledge and financial capability, and such association usually takes the form of a Production Sharing Agreement (“PSA”, which is the most common form of private participation). 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.

All entities, both national and foreign, carrying out petroleum operations in Angola, are subject to the payment of the following taxes:

- Petroleum Production Tax;
- Petroleum Revenue Tax;
- Petroleum Transaction Tax;
- Surface Area Charge; and
- a contribution towards the training of Angolan staff.

7.5 Are there any restrictions, controls, fees and/or taxes on foreign currency exchange?

The “Foreign Exchange Act” governs commercial and financial transactions having an actual or potential impact on the balance of payments of Angola, and applies to capital transactions and foreign exchange trading. The following are deemed the most important foreign exchange (“FX”) operations:

- purchase or sale of foreign currency;
- opening and operation of foreign currency accounts in Angola by FX or non-FX residents;
- opening and operation of local currency accounts in Angola by non-FX residents; and
- settlement of any transaction relating to goods, invisible items of trade (e.g., services) or capital.

Payments between FX residents and non-FX residents are subject to BNA’s control (either prior authorisation or subsequent notification).

Additionally, the Special Contribution on Current Invisibles Foreign Exchange Transactions Act is applicable to transfers made within the scope of provision of foreign technical assistance or management services, and sets forth the contribution amounting to 10% of the amount of the transfer to be made.

7.6 Are there any restrictions, controls, fees and/or taxes on the remittance and repatriation of investment returns or loan payments to parties in other jurisdictions?

Capital transactions (debt instruments, loans, granting of guarantees and other forms of collateral) require licensing with BNA. Please see question 17.2.

7.7 Can project companies establish and maintain onshore foreign currency accounts and/or offshore accounts in other jurisdictions?

An FX resident is allowed to open and operate both local and foreign currency bank accounts in Angola. An FX-resident company is not allowed to open and operate offshore bank accounts, unless granted special authorisation by BNA.

7.8 Is there any restriction (under corporate law, exchange control, other law or binding governmental practice or binding contract) on the payment of dividends from a project company to its parent company where the parent is incorporated in your jurisdiction or abroad?

The transfer of profits/dividends abroad depends firstly on the relevant investment project being approved under PIA, and is subject to the requirements set forth therein for repatriation of profits/dividends. It shall be noted that under PIA, profits and dividends distributed are subject to an Investment Income Tax surcharge “on that part [of those profits and dividends distributed] that exceeds the share of its equity”. This rate is progressive and may amount to 15%, 30% or 50%, depending on whether the excess amount is (i) less than or equal to 20%, (ii) greater than 20% and less than or equal to 50%, or (iii) more than 50% of the “share of its equity”. Moreover, the Special Contribution over Bank Operations’ Act was recently enacted, which subjects bank operations to a special tax of 0.1% (zero point one per cent) of the total amount of the operation.

7.9 Are there any material environmental, health and safety laws or regulations that would impact upon a project financing and which governmental authorities administer those laws or regulations?

PIA sets forth that foreign investors must comply with environmental rules (namely, the “Environment Framework Law” and the “Regulations on the Liability for Environmental Damages”), which are enforced by the Ministry of Environment. In some circumstances, the preparation of an environmental impact assessment study may be required by the competent authority for the approval of the concerned private investment project (see question 6.1 above). There is a wide array of statutes covering health and security in the workplace, which must also be followed by local companies and are enforced by the Ministry of Labour (through the Labour Inspection Department).

7.10 Is there any specific legal/statutory framework for procurement by project companies?

Certain business must be carried out by companies in which the majority of the share capital is held by Angolan shareholders. For instance, pursuant to Order 127/03 of 25 November, oil industry companies may be obliged to buy goods/hire services which are produced by national suppliers. Moreover, the public procurement legal framework (“Public Procurement Act”) contains several measures for the “promotion of Angolan business”, introducing a differentiated treatment for domestic and foreign entities.

Additionally, PIA sets forth a requirement of partnerships with Angolan citizens, publicly owned companies or Angolan companies, within the scope of foreign private investment in the following areas of activity: (i) electricity and water; (ii) hotel business and tourism; (iii) logistics and transportation; (iv) construction works; (v) telecommunications and IT; and (vi) media. Further regulating such

partnerships, PIA establishes that local partners shall own at least 35% of the capital and of the effective management, as envisaged in the shareholders’ agreement.

8 Foreign Insurance

8.1 Are there any restrictions, controls, fees and/or taxes on insurance policies over project assets provided or guaranteed by foreign insurance companies?

Insurance and reinsurance activities in Angola can only be performed by entities duly incorporated and authorised under the terms of the “Insurance Activity Act”. Authorisation for the incorporation of insurance companies in Angola is granted by the Ministry of Finance. In addition to this, and irrespective of the share capital ownership, the authorisation for the incorporation of an insurance company in Angola is always preceded by an opinion from the Angolan Agency of Insurance Regulation and Supervision.

8.2 Are insurance policies over project assets payable to foreign (secured) creditors?

Payments performed under insurance policies over project assets in Angola to foreign creditors are considered a foreign exchange operation, as they comprise the transfer of money between a resident entity in Angola and a non-resident entity. Insurance policies over project assets are payable to foreign (secured) creditors once duly authorised by BNA.

9 Foreign Employee Restrictions

9.1 Are there any restrictions on foreign workers, technicians, engineers or executives being employed by a project company?

The applicable law sets forth the rules for the employment of non-resident workers in Angolan territory. A non-resident employee can only enter into employment agreements with a minimum term of three months and a maximum of 36 months. Angolan or foreign employers which carry out their business in any part of the territory of Angola are bound by the general principle according to which Angolan employees should be hired whenever available and, conversely, foreign non-resident employees (expatriates) may only be hired when Angolan employees, with comparable qualifications and experience, are unavailable. Decree 5/95 sets forth that companies with more than five employees are subject to the 70:30 rule, i.e., if a branch or a company employs more than five employees, Angolan nationals have to constitute at least 70% of its work force. Foreign non-resident individuals who go to Angola to work under the employment of a third party are legally required to secure a work visa prior to the commencement of work.

10 Equipment Import Restrictions

10.1 Are there any restrictions, controls, fees and/or taxes on importing project equipment or equipment used by construction contractors?

Pursuant to procedures established under the applicable law, all importers and exporters must register with the Registry of Importers

and Exporters of the Ministry of Commerce in order to be able to undertake import, export and re-export operations through the system designated as *Sistema Integrado do Comércio Externo* (“SICOEX”). Under Angolan law, importation can be made on a definitive or temporary basis. Definitive imports of goods into Angola under the general customs regime are subject to the following charges: customs dues; Consumption Tax; Stamp Duty; general customs fees; and other fees payable for services actually provided by customs agencies associated with the importation of goods, notably customs brokers’ fees, port tariffs and administrative costs. Payments related to importation procedures are governed by a BNA Order. This statute allows advanced payments for the liquidation of such operations, up to a maximum amount of USD 100,000.00. In 2014, BNA enacted a new order setting forth a more flexible regime applicable to payments of importation procedures, which allows advanced payments in the amount of USD 1,000,000.00. In order to benefit from this more flexible regime, the importer must be registered with BNA and comply with a number of requirements.

Finally, importing certain goods may be restricted or subject to quotas as a means to incentivise or protect national production. Most relevantly, in 2016 the importation of cement is prohibited, unless expressly authorised by the Cement Sector Commission (“*Comissão do Sector do Cimento*”).

10.2 If so, what import duties are payable and are exceptions available?

Import duties depend on the classification of the goods imported. However, some goods or equipment can only be imported upon satisfaction of special regimes. In particular, the importation of equipment in Angola is subject to the payment of customs duties, which can range from zero to 50%, Consumption Tax which can range from zero to 80%, Stamp Duty, and general customs fees. Under PIA, customs exemptions may be awarded to private investment projects approved by the competent authorities (see question 6.1 above) if certain prerequisites that are deemed “important” to the Angolan economy are met, and if the concerned private investment project is of a total amount equal to or higher than the equivalent in kwanzas of USD 1,000,000.00 (if it is a foreign private investment project), or the equivalent in kwanzas of USD 500,000.00 (if it is a national private investment project).

11 Force Majeure

11.1 Are force majeure exclusions available and enforceable?

The CC governs the situation where the impossibility or delay in fulfilling obligations under a contract is not attributable to the debtor. In a situation of objective impossibility of fulfilment (absolute impossibility related to the object of the contract and not to one of the parties) not attributable to the debtor, the obligation ceases to exist. If this impossibility is temporary and merely delays the fulfilment of the obligation, compensation may not be required. In a situation of subjective impossibility not attributable to the debtor (as with the impossibility related directly to the person of the debtor) the obligation will also cease to exist if the debtor cannot be replaced.

Enforceability of any contract clauses in Angola may face difficulties as a result of the shortcomings of the Angolan judicial system.

Angola is not part of the New York Convention, hence any foreign court decisions or arbitral awards are subject to a specific procedure of “recognition of foreign decisions” under the CPC.

12 Corrupt Practices

12.1 Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

The “Public Probity Act” establishes the primary rules and guidelines which public officials must follow. This Act states, in general, that public officials in the exercise of their public functions cannot request or accept, for themselves or for someone else, directly or indirectly, any presents, loans, facilities or any other gifts that may hinder their freedom of action, independence, judgment and the credibility and authority of the public administration, and its bodies and services. Moreover, the Angolan “Criminal Code” also addresses the matter of corruption; establishing and punishing the crimes of embezzlement, graft, arbitrary imposition of contributions, illegal reception of emoluments and the promotion of a particular interest by a public official. The “Act Against Money Laundering and Terrorism Financing” defines preventive measures and penalties against money laundering and the financing of terrorism, and is applicable to financial institutions, Angolan branches of foreign financial institutions, accountants, auditors, notaries, registry clerks, solicitors, lawyers and any independent professional who intervenes in certain specific cases. Also worth mentioning is the “Parliamentary Ethic and Decency Code”, which sets forth the probity guidelines for Members of Parliament.

13 Applicable Law

13.1 What law typically governs project agreements?

Private investment contracts negotiated with the competent authorities (see question 6.1 above) are governed by Angolan law and, in particular, PIA. The CC allows parties to choose the governing law of contract, provided that the choice of such law corresponds to a serious interest of one of the parties or there is a connection with the contract.

13.2 What law typically governs financing agreements?

Please refer to question 13.1 above. The general provisions enshrined in the CC and ancillary legislation regarding financing agreements should apply.

13.3 What matters are typically governed by domestic law?

Please refer to question 13.2 above.

14 Jurisdiction and Waiver of Immunity

14.1 Is a party’s submission to a foreign jurisdiction and waiver of immunity legally binding and enforceable?

According to the CPC, parties to an international contract of an economic nature may submit the settlement of disputes to the courts of their own country or to another international jurisdiction. However, Angolan courts of law are exclusively competent to judge disputes over real estate located in Angola, excluding any other jurisdictions.

15 International Arbitration

15.1 Are contractual provisions requiring submission of disputes to international arbitration and arbitral awards recognised by local courts?

Under the “Voluntary Arbitration Act”, arbitration may be agreed upon in all disputes concerning disposable rights provided that, by special law, they are not exclusively submitted to the appraisal of the judicial courts (such as labour disputes or those relating to real estate) or to necessary arbitration. Submission of disputes to international arbitration is lawful. Angola is not a party to the New York Convention, hence foreign court decisions or arbitral awards are subject to a specific procedure of “recognition of foreign decisions” under the CPC.

15.2 Is your jurisdiction a contracting state to the New York Convention or other prominent dispute resolution conventions?

Please see question 15.1 above.

15.3 Are any types of disputes not arbitrable under local law?

Under the “Voluntary Arbitration Act”, arbitration may be agreed on in all disputes concerning disposable rights provided that they are not exclusively submitted to the appraisal of the judicial courts (such as labour disputes or those relating to real estate) or to necessary arbitration. Thus, disputes over non-disposable rights are not arbitrable. Disposable rights are the rights that the parties may freely grant, extinguish or waive. Disputes over family law, tax law, labour law and bankruptcy are typically not arbitrable.

15.4 Are any types of disputes subject to mandatory domestic arbitration proceedings?

Pursuant to PIA, the settlement of disputes over private investment projects may be subject to arbitration, and in this situation the arbitration procedure must take place in Angola and the applicable law to the agreement and judicial action are Angolan law.

16 Change of Law / Political Risk

16.1 Has there been any call for political risk protections such as direct agreements with central government or political risk guarantees?

Please see question 6.3 above.

17 Tax

17.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

In general, an interest payable on loans is subject to Investment Income Tax. The assessment of such tax depends on the lender’s domicile: Investment Income Tax is usually assessed by the lender

(the entity which obtains a gain) except when the lender does not have a residence, effective control or permanent establishment in Angola (in such a scenario the tax must be assessed by the borrower on behalf of the lender).

However, earnings resulting from the payment of interest which have to be paid to financial institutions are not subject to the payment of Investment Income Tax if such entities are subject to the payment of Industrial Tax.

Although the applicable law is not straightforward and authorities may construe otherwise, the application of Investment Income Tax depends firstly on whether or not the lender is a financial institution and, secondly, on whether the lender is a domestic or a foreign entity. As such, it is arguable that:

- (i) interests payable on loans made by domestic lenders (financial institutions) are subject to the payment of Industrial Tax; and
- (ii) interests payable on loans made by foreign lenders (financial institutions) are subject to the payment of Investment Income Tax.

That being said, the domestic financial institution is subject to the payment of Industrial Tax, which is the general corporate tax, levied at the rate of 30%, applicable over a year’s income. Conversely, a foreign financial institution is subject to the payment of Investment Income Tax, applicable to the interest payable on loans. As mentioned above, the assessment of this tax is made by the debtor on behalf of the lender.

The proceedings of a claim under a guarantee or the proceeds of enforcing security are subject to the regime described above.

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

PIA is applicable to (i) foreign private investments of any amount, and (ii) national private investments of an amount equal to or higher than Akz. 50,000,000.00 (fifty million kwanzas). However, as already stated above, only foreign private investments with a global amount equal or higher than the equivalent in kwanzas of USD 1,000,000.00, and national private investments with a global amount equal to or higher than the equivalent in kwanzas of USD 500,000.00, are considered for the purposes of granting benefits and incentives.

With the purpose of reducing the discretion and the excess in the awarding of tax incentives and benefits, PIA foresees that the granting of tax incentives and benefits shall be objectively analysed according to the criteria prescribed in the table attached to PIA, which lists the prerequisites that are deemed important to the Angolan economy and that shall be fulfilled for the purposes of granting tax incentives and benefits (namely employment creation, value of the investment, location of the investment, agricultural/animal/forestry production, production to export, shareholding of Angolan citizens, and national value added).

For the purposes of registration and effectiveness of loans, mortgages or other security documents, the applicable tax is the Stamp Duty levied at a rate that ranges from 0.1% to 0.3% for the provision of guarantees (such as mortgages or pledges) and from 0.1% to 1% depending on the financing operation.

As regards the taxes applicable to foreign investments, it is noteworthy that under PIA, profits and dividends distributed are subject to an Investment Income Tax surcharge “on that part [of those profits and dividends distributed] that exceeds the share of its equity”. This rate is progressive and may amount to 15%, 30%

or 50%, depending on whether the excess amount is (i) less than or equal to 20%, (ii) greater than 20% and less than or equal to 50%, or (iii) more than 50% of the “share of its equity”.

18 Other Matters

18.1 Are there any other material considerations which should be taken into account by either equity investors or lenders when participating in project financings in your jurisdiction?

There are no other material considerations.

18.2 Are there any legal impositions to project companies issuing bonds or similar capital market instruments? Please briefly describe the local legal and regulatory requirements for the issuance of capital market instruments.

Public limited companies can issue bonds if the articles of incorporation have been registered for more than two years, the balance sheets for the last two financial years have been regularly approved and the company’s capital has been fully paid-up.

If a previous issue has been made, the new issue requires the full subscription and payment of the previous one. In some cases, special laws may require specific authorisation.

A company may only issue bonds for the maximum amount of the existing paid-up capital according to the last approved balance sheet, plus capital increased and paid-up.

19 Islamic Finance

19.1 Explain how *Istina’a*, *Ijarah*, *Wakala* and *Murabaha* instruments might be used in the structuring of an Islamic project financing in your jurisdiction.

Prior to the end of 2015, there were no reports of the use of Islamic instruments in project finance in Angola.

19.2 In what circumstances may *Shari’ah* law become the governing law of a contract or a dispute? Have there been any recent notable cases on jurisdictional issues, the applicability of *Shari’ah* or the conflict of *Shari’ah* and local law relevant to the finance sector?

See question 19.1 above.

19.3 Could the inclusion of an interest payment obligation in a loan agreement affect its validity and/or enforceability in your jurisdiction? If so, what steps could be taken to mitigate this risk?

It is common practice in Angola to include interest payment obligations in a loan agreement subject to Angolan law, which is fully valid and enforceable. The law foresees maximum rates of interest. In the event that such interest rates are higher, the interest rate shall be reduced to the maximum interest rate allowed.



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Catarina 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. She is a partner with Angola Legal Circle Advogados, founded in 2011 by a team of highly reputable lawyers of Angolan nationality. Angola Legal Circle Advogados is the Angolan member of the international network MLGTS Legal Circle, created by Portuguese law firm Morais Leitão, Galvão Teles, Soares da Silva & Associados (MLGTS) to address the needs of its clients throughout the world, particularly in Portuguese-speaking countries.

Previously, Catarina worked at another law firm as a consultant to the tax department, and as a senior tax consultant of 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 on the development of tax diagnostics and on the implementation of corporate structures following their tax impact.

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Irina Neves Ferreira joined Angola Legal Circle Advogados in September 2013. She is a lawyer with considerable international experience, especially in the Angolan jurisdiction. In this market she has been involved in operations concerning private investment, insurance law, real estate (including providing support in the negotiation of lease contracts for petrol companies), tax law, foreign exchange law and customs. She also has a high degree of experience in corporate compliance, attained through her role as counsel for the EMEA (Europe, Middle East and Africa) region in the international compliance team of the multinational company Hewlett Packard.

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Irina also provides general legal advice to numerous national and foreign companies in the areas of commercial and corporate law.



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Angola Legal Circle Advogados (ALC Advogados) was founded by a group of lawyers of Angolan nationality. We are focused on being a leading law firm in Angola, due to our dynamism, innovative capacity and the quality of service we provide.

Our team emphasises dedication and hard work, along with legal expertise, as the key to building a legal practice capable of meeting our clients' needs in the Angolan market.

Our office was created in the context of an association with Morais Leitão, Galvão Teles, Soares da Silva & Associados (MLGTS), a leading Portuguese law firm. We work in close collaboration with this firm's Africa Team.

We are also members of the MLGTS Legal Circle, an international network created by MLGTS for a select set of jurisdictions, including Angola, Mozambique and Macau (China). We work very closely with the other member firms of the MLGTS Legal Circle, which allows our firm to maximise the resources available to our clients. ALC Advogados also benefits from the privileged relationship established by MLGTS with the leading Brazilian law firm Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados (São Paulo).

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