

INTO AFRICA

A publication from Capital Markets in Africa

MAY 2018

BOUNCING BACK AFRICAN OIL & GAS

**AFRICAN OIL & GAS:
OVERVIEW & PROSPECTS**

**OIL AND GAS M & A IN AFRICA:
KEY TRENDS AND PROSPECTS**

**NIGERIAN OIL AND GAS SECTOR:
REGULATIONS AND INCENTIVES**

**ANGOLA'S OIL AND GAS SECTOR:
REGULATION & LAW INSIGHT**

**FINANCING AND STRUCTURING
LNG PROJECTS IN AFRICA**

**LOCAL CONTENT:
OIL LESSONS FOR THE FUTURE**

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Welcome to the May 2018 edition of **INTO AFRICA**, a publication with fresh insight into Africa's emerging capital markets. This month's edition, titled: **Bouncing Back: African Oil and Gas** explores oil and gas laws and regulations across African countries as well financing options for oil and gas projects.

With the oil price pushing through to the US\$70 mark, and further confidence that the price will remain more stable in 2018. As a result, 2018 is set to see an increased level of activity in Africa. As well as bringing a greater level of exploration activities by international oil companies (IOCs). The renewed confidence in the market is leading African jurisdictions to actively compete to attract investment from foreign investors, as well as carving out a more active role for National Oil Companies (NOCs). Established jurisdictions (such as Nigeria and Angola) are being joined by new oil jurisdictions (in particular, Senegal, Gambia, Liberia, Kenya, Uganda and Ghana) and one expects to see the establishment of new cross-border exploration/production zones.

In term of availability of finance, there will remain tightened controls from international commercial banks which will make it more difficult to raise finance. Banks will remain active (but cautious) and lending will be relationship driven with priority given to projects in "easier" jurisdictions. Export credit agencies and DFIs remain a key to financing the large-scale oil and gas projects and there is a notable trend of increased availability of Chinese financing for such projects.

We open this edition, with a discourse from **DEREK BOULWARE** (Senior Manager, PwC Energy Advisory Operations South Africa) where he gives insight into African oil and gas sectors and of the view that the African oil & gas industry continues to play catch-up with the rest of the world. Also, he advised that oil & gas organizations need to rethink the way they embrace change to their benefit.

Looking at the laws and regulation, **IRINA NEVES FERREIRA** (Partner, ALC ADOGADOS Angola), **ALUKENY NEINDA** (Lawyer, ALC ADOGADOS Angola) and **LILIANA CANUDO CRUZ** (Associate, MLGTS Legal Circle Portugal) discuss Angolan oil and gas regulations and laws as well as offer insight into the proposed laws on oil and gas in the country. While **JEAN-PIERRE BOZEC** (Managing Partner, Project Lawyers Gabon) dissects Gabon 2018 hydrocarbons law reform and emerging incentives and opportunities.

PAULO RAGE (Partner, T & C Mayer Brown Brazil) explores Mozambique oil and gas regulations as well as emerging challenges and opportunities. In parallel, **ONA OKWESA** (Associate, Ukiri Lijadu Nigeria) and **OBARO OBUKOHWO** (Associate, Ukiri Lijadu Nigeria) look at the Nigerian oil and gas sector laws and emerging incentives. Further, **LIZEL OBERHOLZER** (Director, Norton Rose Fulbright South Africa) guide us through the key Mineral and Petroleum Resources Development (MPRDA) amendments for the South African oil and gas industry.

On the other hand, **PAUL EARDLEY-TAYLOR** (Oil & Gas Southern Africa, Standard Bank) and **DEZLYN MAKHETHA** (Oil & Gas Southern Africa, Standard Bank) delve into financing and structure of liquefied natural gas (LNG) in Africa with some selected projects. In parallel, **ADAM BLYTHE** (Partner, Bracewell (UK) LLP) explores some of the significant trends that have emerged from recent oil and gas upstream deal activity in Africa following in the aftermath of 2015's oil price crash, as well as considering the outlook for future transactions and the dynamics in play that influence acquisitions and disposals in the industry.

Still more, we bring you an exclusive write-up by **NJ AYUK** (Chief Executive Officer, Centurion Law Firm) titled: Local Content: Oil Lessons for the Future. He noted that despite decades of continued oil and gas exploration and production, some of Africa's wealthier oil producers have failed to not only integrate their own people in this dominant industry but also to provide their general population with a better standard of living.

As usual, we provide you with timely updates on African Capital Markets as well as an update on commodity outlook and analysts views on African credit and economic outlook.

Tunde Akodu

Editor

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ANGOLA'S OIL AND GAS SECTOR: REGULATION & LAW INSIGHT



By **Irina Neves Ferreira**, Partner, ALC ADVOGADOS Angola
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Liliana Canudo Cruz, Associate, MLGTS Legal Circle Portugal

Angolan Oil and Gas sector in numbers

Angola holds almost 9.5 billion barrels of proved crude oil reserves and 308.1 billion cubic meters of natural gas reserves, according to the latest estimates from the 2017 Annual Statistical Bulletin of the Organisation of the Petroleum Exporting Countries. Angola is the second-largest oil producer in Sub-Saharan Africa, behind Nigeria. In the oil and natural gas industry, the focus is on inter alia ensuring the “Angolanisation” of upstream activities; implementing the liberalisation of the market and creating a new legal and regulatory framework; enacting a natural gas regulatory framework; reinforcing existing refining capacity; finishing short-term projects such as pipelines and railways; and defining a new tariff model and removing fuel price subsidies.

Oil / Minerals' ownership and access restrictions / Angolan State ownership of national resources

Under the Angolan Constitution and the Land Law, the land and its natural resources within the Angolan jurisdiction are original property of the State. As such, the Angolan State shall determine the access conditions for concession of prospection and exploration rights of its mineral resources. The Act 10/04 of 12 November (“Petroleum Act”) provides that all oil fields and gas in the onshore and offshore areas of the territory; internal waters; territorial sea; exclusive economic zone; and on the continental shelf, belong to the public domain of the State, as well as the oil deposits.

In this context, the Angolan State granted exclusive mining rights to the National Concessionaire, Sonangol – Sociedade Nacional de Combustíveis de Angola, E.P. (“Sonangol”), which cannot, under any circumstances, sell, in total or part, the mining rights, under penalty of such acts being considered null and void.

Forms of association with Sonangol and New rules for public tenders for associates and procurement of services in the oil sector

In order to share its technical knowledge and financial capability, Sonangol may associate with Angolan or foreign entities of recognised capacity as follows:

- a) Corporation;
- b) Consortium;
- c) Production Sharing Agreements (which is the most common type of association);
- d) Risk services agreements.

The selection of Sonangol's associates, irrespective of being block operators or not, shall be preceded by a public tender procedure, under the terms of the recently approved Presidential Decree 86/18, of 2 April 2018 (in force since this date) which replaced a diploma from 2006. This legal instrument does not substantially differ from previous 2006 Decree 48 and aims for the most part to speed up certain selection procedures in order to bring more efficiency to the oil and gas sector.

In 2016, this concern about efficiency has been also demonstrated by the Angolan Executive with the approval of the New Readjustment Model for the Organisation of the Sector (Presidential Decree 109/16, of 26 May) with the creation of a new regulatory agency and a new high council, the reallocation of Sonangol's current responsibilities and focus on Sonangol's role as National Concessionaire and the transfer of its ownership stakes to other State-owned entities.

One of the most significant changes arising from this legal instrument relates to public tenders for the acquisition of services by the block operators. Operators are not required to launch a public tender or to request the Concessionaire's approval (as long as Sonangol is informed, on a quarterly basis, that those service contracts have been entered into) for the acquisition of services up to USD 1 million, or the equivalent amount in Kwanzas (under Decree 48/06 the limit was only USD 250,000).

“The Angolan State granted exclusive mining rights to the National Concessionaire, Sonangol - Sociedade Nacional de Combustíveis de Angola, E.P.”

Operations licensing requirements

According to the Petroleum Act and Decree 1/09 of 27 January (“Angolan Petroleum Operations Regulation”), 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 (“MinPet”), or pursuant to an oil concession awarded by the Government.

The concession covers an exploration period comprising prospecting, drilling, well-test activities and evaluation and 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 Sonangol, should it wish to carry out petroleum operations in a particular area without having to associate with other entities.

Prospection

As for the prospecting licence, any upstanding domestic or foreign company with the necessary technical and financial capacity may apply to the MinPet for the issuance of a three-year prospecting licence (exceptionally renewable upon 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.

These prospecting rights are not exclusive to the licensee, nor is the licensee granted any pre-emption right with respect to oil production in the area to which the licence relates. The data arising from the license is considered State property and may be used by the licensee and Sonangol. The MinPet may authorise the sale of the data by the licensee, the proceeds of which is to be shared between the licensee and Sonangol. Prospecting licenses may extinguish by termination, resignation or expiration.

Exploration and Production

Exploration and production activities can only be performed by private sector companies if they join up with Sonangol under one of the aforementioned four possible types of association.

An associate of Sonangol shall meet the following requirements:

- a) Expertise and experience in managing and performing petroleum activities;
- b) Technical and operational expertise;
- c) Efficient organisational structure;
- d) Disclosure of information regarding safety, environmental protection, prevention of pollution events and employment, integration and training of Angolan staff.

Transportation and Distribution

Under the Law for the Transport and Storage of Oil and Natural Gas, the transportation of oil and gas must be performed by a company or a consortium, at its/their own risk, under the authorisation of the MinPet.

The award of the licence is based on the credibility, experience and expertise of the applicant, as well as its financial management and technical capacity for the construction and operation of pipeline facilities in Angola.

Operators of oil and gas pipelines have an exclusive right to explore the infrastructures for the transportation of oil and natural gas. The licensee is authorised to occupy the necessary areas for the implementation of the activities arising from the licence. Whilst these assets are owned by the operator during the validity time of the licence, once the licence expires the assets which have been used for transportation purposes become the property of the State.

Brief overview of the Competition Act (Lei da Concorrência)

The Angolan Parliament unanimously approved the New Competition Act on 19 April, which establishes the legal framework for competition in Angola and creates the Autoridade Reguladora da Concorrência (Competition Regulatory Authority or “ARC”).

This legal instrument, which is inspired by the laws in force in most European countries, comes as a result of the efforts made recently by the Angolan Government to promote growth and economic development.

The new law has a wide scope, as it applies to both private companies and State-owned companies, and covers all economic activities which produce effects in Angolan territory.

Moreover, this statutory instrument prohibits agreements and practices which restrict competition, both between competitors (“horizontal” practices) and between companies and their suppliers or customers (“vertical” practices).

The law also prohibits abusive practices by dominant undertakings, as well as the abuse by one or more companies of the state of economic dependence of their suppliers or customers.

The new law will also introduce merger control in Angola. All concentrations which meet the market share or annual turnover criteria, to be defined in regulations to be approved, will be subject to mandatory notification to the ARC, and cannot be implemented before clearance.

Prohibited practices and the implementation of concentrations without clearance are punishable with heavy sanctions, which may go up to 10% of the annual turnover of the companies involved.

While a number of important provisions for the practical application of the law will still depend upon the approval of further regulations, the New Competition Act will constitute an important milestone for the Angolan economy and may contribute for the promotion of corporate efficiency and the functioning of the national economy.

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Contributors' Profiles

Irina Neves Ferreira joined ALC ADVOGADOS in 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 the support to the negotiation of lease contracts for petrol compa-

nies), tax law, foreign exchange law and customs. She is also highly experienced in corporate compliance attained throughout her experience as counsel for the EMEA (Europe, Middle East and Africa) 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 in the areas of commercial and corporate law.

She holds a Law Degree (Law Faculty of Nova University of Lisbon, 2003). Postgraduate Studies in Information Society Law (Law Faculty of the University of Lisbon, 2007). Specialization course: "Introduction to the common law" (ISCTE and Law Faculty of Nova University of Lisbon, 2008).

Alukeny Neínda joined ALC ADVOGADOS in December 2017. Alukeny Neínda has assisted several national and international companies in a wide range of legal practice mainly in corporate and commercial law, private investment, real state and migration. She holds a Law Degree (Catholic University of Angola, 2014). Post Graduate studies in Corporate Law, Tax Law and Corporate Accounting (IDET, Law Faculty of the University of Coimbra, 2017).

Liliana Canudo Cruz joined MLGTS Legal Circle in November 2015. Liliana is an Associate focusing on cross border aspects of corporate, finance, insurance, foreign investment, telecommunications, energy (in particular mining and Oil & Gas) matters in the Portuguese, Angolan and Mozambican jurisdictions. She holds a Law Degree (Law Faculty of the University of Lisbon, 2012). Master's Degree in Forensics (Law Faculty of the Portuguese Catholic University, 2014).