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# Project Finance

## 2022

**Contributing editor****Aled Davies**

Milbank LLP

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Lexology Getting The Deal Through is delighted to publish the fifteenth edition of *Project Finance*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on India and Taiwan.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Aled Davies of Milbank LLP, for his continued assistance with this volume.



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# Angola

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## CREATING COLLATERAL SECURITY PACKAGES

### Types of collateral

#### 1 | What types of collateral and security interests are available?

Angolan law offers a range of collateral and security types. A borrower may provide a guarantee under the form of attachment, preferential credits, special guarantees such as money deposit, debt securities, precious stones or metals, pledge, mortgage or bank guarantee.

#### Real estate securities

Although the Angolan Constitution recognises private ownership alongside public and community ownership, it also states that the ownership of land originally belongs to the state and that it may, if considered appropriate and in the public interest, transfer it to private individuals or entities. While the Constitution allows private ownership with some latitude, the Land Law is more restrictive. Hence, the transfer of ownership in some categories of land seldom occurs. The transfer of minor land rights (eg, rights of customary dominium utile, rights of civil dominium utile, rights to temporary occupation, surface rights) is the most usual form of allocation of rights over land. Upon prior authorisation of the holder of such minor land rights, securities over said rights may be awarded. Given that such minor land rights relate to immovable property, the security shall be bestowed in the form of mortgage, and through the execution of a notarial deed and the subsequent relevant registration. It is possible to award a 'factory mortgage' over a plant, which includes not only the real estate property itself but also its contents (eg, all machines and equipment). Finally, a pledge over equipment may be granted, subject to the execution of a written agreement signed by the parties and duly certified by a notary.

#### Movable property

On 22 April 2021, Law No. 11/21 was published, establishing a specific legal framework for movable securities and determining the possibility of constituting securities over movable assets, whether tangible or intangible, including pledge, mortgage, assignment of credits in guarantee, fiduciary disposal in guarantee, sale with reserve of ownership and any other transactions whose function is the constitution of a security over a movable asset. This law will come into force on 19 October 2021.

#### Security over receivables

Under Angolan law a creditor is allowed to secure its rights against a debtor through:

- the grant of a security over receivables;
- the assignment of receivables, rights and credits; and
- the assignment of revenues.

The grant of a security over receivables shall be executed through a written agreement. Both the grant of a security over receivables and the assignment of receivables, rights and credits can only be executed upon notification of the relevant debtor. Through the assignment of revenues – which shall be executed by notarial deed – the debtor can ascribe to the creditor the revenues generated by its immovable and movable assets.

#### Security over shares

A pledge of shares can be granted over shares of commercial companies incorporated under the laws of Angola. The grant of a pledge of shares of a limited liability company by quotas (where the share capital is represented by a form of nominative shares) shall be executed through written agreement, and subsequently registered with the competent Commercial Registry Office.

#### Security over mining rights

The 2010 Constitution of Angola ascribes the ownership of all natural resources within the Angolan jurisdiction to the state. The Angolan jurisdiction comprises the onshore territory of Angola, the internal waters, the territorial sea, the exclusive economic zone and the continental shelf, and therefore all oil and gas fields located in such areas belong to the public domain of Angola. All mining rights are exclusively assigned to the National Concessionaire. Moreover, all petroleum deposits existing in Angola are an integral part of the public domain, with the National Concessionaire being the exclusive holder of all mineral rights related to such deposits. Pursuant to Petroleum Activities Law, mineral rights are granted to the National Concessionaire, which cannot assign these mining rights, but may associate with an upstanding domestic or foreign company having the necessary technical and financial capacity. The Associates of the National Concessionaire neither own the mineral rights nor may be deemed as a concessionaire; thus the provision of a security by a private entity over the mining rights cannot be provided, as such rights cannot be encumbered, given that such rights belong to the Angolan state.

#### Collateral perfecting

- 2 | How is a security interest in each type of collateral perfected and how is its priority established? Are any fees, taxes or other charges payable to perfect a security interest and, if so, are there lawful techniques to minimise them? May a corporate entity, in the capacity of agent or trustee, hold collateral on behalf of the project lenders as the secured party? Is it necessary for the security agent and trustee to hold any licences to hold or enforce such security?

As a rule, Angolan law does not require any special formalities or written documents for the perfection of securities. The registry and execution of the documents supporting the grant of securities (namely mortgages)

are subject to the payment of a stamp duty tax. The applicable rates may vary between 0.1 per cent and 0.3 per cent. Notarial fees charged by the public notaries, whenever required, may vary according to the specific guarantee to be provided. The priority of the security interests is established according to the principle of succession in title, meaning that priority is given to the first security interest registered in the relevant certificate. A security interest may be held by third parties, which is the case, for instance, of bank guarantees on first demand or escrow accounts.

### Assuring absence of liens

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

Under the Angolan Civil Code (CC), some credits benefit from prior ranking over others, which means that some credits are paid with preference over others. Preferential credits may be over movable property or over real estate. Preferential credits over movable property may be general (when they cover all movable assets, as is the case of the credits arising from an employment contract) or special (if, otherwise, the preferential credit targets only certain assets). Conversely, preferential credits over real estate are always special given that they refer to certain real estate property (eg, state credits from property taxes).

The existence of any guarantee over an asset can also be assessed by consulting the relevant public certificates (eg, the Land Registry Certificate or the Commercial Registry Certificate, the latter notably in case of pledges over shares).

As per the Civil Procedural Code, after the liquidation of the debtor's assets, the creditors shall be paid according to the above-mentioned rules.

Hence, in light of the principle of succession in title, the timing of the registration of a security is relevant for the purposes of determining the priority of the creditor.

### Enforcing collateral rights

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

As a rule, the enforcement of guarantees depends on judicial proceedings. However, the CC foresees some mechanisms to enable the creditors to secure their rights outside (or before) a judicial proceeding. For instance, the creditor is allowed to retain the debtor's assets until the latter complies with its contractual obligations. Moreover, if the debtor does not do so, the creditor may replace the debtor in the exercise of its patrimonial rights against a third party (unless, owing to its nature, such rights can only be exercised by the debtor). The CC also foresees that if there is a pledge over a certain asset, the parties can agree that the asset may be sold outside a judicial proceeding, with the product of the sale delivered to the creditor.

This procedure of selling a pledged asset outside a judicial proceeding, or in other words, to promote the extrajudicial enforcement of the pledge, is now expressly foreseen following the recently approved Law No. 11/21. This extrajudicial enforcement includes the appropriation of the asset by the creditor and the direct sale of the asset given as guarantee if expressly provided for in the contract.

### Enforcing collateral rights following bankruptcy

#### 5 How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the collateral? Are there any preference periods, clawback rights or other preferential creditors' rights with respect to the collateral? What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes other than court proceedings are available to seize the assets of the project company in an enforcement?

On 10 May 2021, Law No. 13/21 was published, establishing the Legal Framework for Company Recovery and Insolvency in Angola. This piece of legislation revoked articles 1122 to 1274 and 1279 to 1325 of the Code of Civil Procedure, the statute that previously regulated bankruptcy procedures. In contrast to the previous regime, Law No. 13/21 privileges mechanisms for the recovery of economically viable companies and the reallocation of efficient resources.

In terms of limitation of a project lender's ability to enforce its right over a collateral given to a secured party, we note that the declaration of insolvency or the approval of a recovery plan suspends any lawsuits against the debtor, whether said lawsuit consists in a declaratory or in an enforcement procedure. Conversely, the secured party may only claim its credits against the debtor in the context of such insolvency proceeding. The declaration of insolvency also suspends the possibility of the debtor's shareholders selling their shares, which is relevant in terms of the possibility of extrajudicial enforcement of the collateral.

The credits from foreign entities are not treated differently from a legal standpoint. In fact, the new insolvency Law establishes the following hierarchy of credits:

- 1 credits derived from employment legislation and those arising from work accidents;
- 2 credits with a guarantee up to the guaranteed amount;
- 3 tax credits, regardless of their nature, with the exception of tax fines and credits of the entity responsible for managing social security system;
- 4 credits with special privileges;
- 5 credits with general privileges;
- 6 ordinary credits;
- 7 fines of any nature, including criminal and tax fines; and
- 8 subordinated credits (eg, credits of persons that are specially connected with the debtor, such as shareholders).

This law also enshrines clawback rights in favor of the insolvency's estate, meaning that acts carried out prior to the declaration of insolvency with the intention of decreasing the assets of said insolvency estate and the creditors' guarantees (eg, the transfer of title over assets previously held by the debtor) may be declared null and returned to such insolvency estate.

There are certain entities excluded from bankruptcy proceedings, and others that are subject to special bankruptcy proceedings:

- the Angolan Central Bank cannot be declared bankrupt;
- the general preventive means of bankruptcy are not applicable to financial institutions (the regime governing said entities is the one set forth in the Basic Law of Financial Institutions); and
- the Public Business Sector Law is the statute governing the special procedures of liquidation and winding-up of public companies.

The CC foresees some mechanisms to enable the creditors to secure their rights outside (or before) a judicial proceeding. For instance, the creditor is allowed to retain the debtor's assets until the latter complies with its contractual obligations. Moreover, if the debtor does not do so, the creditor may replace the debtor in the exercise of its patrimonial

rights against a third party (unless, owing to its nature, such rights can only be exercised by the debtor). The CC also foresees that if there is a pledge over a certain asset, the parties can agree that the asset may be sold outside a judicial proceeding, with the product of the sale delivered to the creditor, under the terms of Law No. 11/21.

As an alternative to judicial proceedings, Law No. 13/21 also provides mechanisms of extrajudicial recovery of companies, which allows creditors to establish an agreement or plan with the debtor to satisfy their credits, through the recovery from a difficult economic situation that the debtor is experiencing. This procedure, however, is only possible when the company is economically recoverable and when certain requirements foreseen in the law are fulfilled.

## FOREIGN EXCHANGE AND WITHHOLDING TAX ISSUES

### Restrictions, controls, fees and taxes

#### 6 | What are the restrictions, controls, fees, taxes or other charges on foreign currency exchange?

The Foreign Exchange Law governs commercial and financial transactions having an actual or potential impact on the balance of payments of Angola and is applicable to capital transactions and foreign exchange (FX) trading. The FX operations deemed most relevant are the following:

- 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 or capital.

Payments between FX residents and non-FX residents are subject to the Angolan Central Bank's (BNA) control via the commercial banks (either through prior authorisation depending on the nature of the payments or if the amount of the transaction is higher than a certain threshold or subsequent notification), which intermediate the relations between private entities and the BNA. The specific FX rules applicable to currency transfers between an FX resident and a non-FX resident are subject to different requirements depending on whether the underlying transaction relates to invisible items of trade (service fees, royalties, etc), dividends or profits, goods or capital. The import, export or re-export of foreign currency can only be performed by financial institutions duly authorised by the BNA to carry out FX trade. The BNA periodically organises public auctions for the sale of foreign currency (US dollars and euros) to commercial banks. The repatriation of dividends by foreign investors is, in principle, subject to the approval of a private investment project (or similar process with the competent authorities).

### Investment returns

#### 7 | What are the restrictions, controls, fees and taxes on remittances of investment returns (dividends and capital) or payments of principal, interest or premiums on loans or bonds to parties in other jurisdictions?

As a rule, the remittance of investment returns is only possible under a private investment project approved under the Private Investment Law (PIL).

Once the private investment project has been implemented and upon proof of such implementation, the foreign investor enjoys the right to transfer profits and dividends abroad, as well as other amounts related to the investment made. There has been a major change in the repatriation of investment returns: the BNA has published Notice No. 15/2019, of 30 December 2019, which establishes the rules and procedures applicable

to foreign direct investment; investment in securities and other forms of corporate debt (portfolio investment); divestment operations; and income earned by foreign exchange residents from direct investment or portfolio investment. Investors having a private investment project (or holding a licence with a similar nature) are entitled to freely repatriate dividends as well as to perform repayments of shareholders' loans (provided that such loans do not exceed 30 per cent of the total amount invested) and to repatriate the amounts related to their divestment. In addition to these novelties, now foreign investors may also freely repatriate the funds related to 'portfolio investment' which is considered to be any investment made in securities or other forms of corporate debt (such as corporate bonds). In the case of the purchase of securities (shares) representing the capital of a listed company, portfolio investment will be considered only when the voting rights associated with the investment are less than 10 per cent of the listed company's capital stock.

The payment of principal, interest or premiums on loans is classified as a capital operation under Decree No. 23/98 of 24 July 1998. However, full or partial repayment of loans and other credits is only deemed a capital operation when it is for a term exceeding one year, with the exception of loans and other credits exclusively civil in nature. Applications for capital operations must be submitted by the interested parties to a financial institution authorised to carry out FX trade, which forwards them to the BNA. Following authorisation of the operation and the issuance of a capital export licence, the applicant may export the capital, which can only be done through banks authorised to carry out FX trade in Angola.

### Foreign earnings

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

The PIL allows foreign investors to repatriate the earnings made in Angola of the relevant private investment project implemented in Angola. On the other hand, the question of whether project companies must repatriate foreign earnings is subject to local laws and regulation. However, according to BNA Notice No. 04/2021 of 14 April 2021, all revenues earned from the exportation of goods must be transferred into Angola. These earnings do not need to be converted to local currency upon repatriation.

#### 9 | May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?

Foreign currency accounts may be held by FX residents and non-FX residents subject to the limitations established by BNA Notice No. 2/17 of 3 February 2017. According to this Notice, foreign currency credit accounts may be held and managed for the following grounds:

- funds that came from abroad; or
- funds arising from financial applications made through financial institutions.

However, foreign currency debit accounts may be held and managed when:

- exercising an exchange operation to pay Angolan nationals in national currency;
- issuing payment or transfer orders abroad;
- transferring between banks to accounts held by FX residents that are a part of the same group;
- using electronic payment cards or other internationally accepted payment mechanisms; and
- paying any encumbrances arising from account maintenance and management.

The aforementioned BNA Notice does not apply to FX operations conducted in the petroleum sector. The opening and operation of bank accounts in other jurisdictions may be subject to the grant of a special authorisation by the BNA.

## FOREIGN INVESTMENT ISSUES

### Investment restrictions

- 10 | What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

The Private Investment Law (PIL) has been simplified, and private investors are now entitled to incorporate or invest in companies before the approval of the private investment project, namely before the issuance of the certificate for the registration of an investment project. Moreover, such profits are taxable, being subject to the application of capital tax before distribution to the shareholders (whether domestic or foreign). The ownership of land rights is still limited, as a foreign person is entitled only to have minor land rights, such as surface rights. Even though Angola is a party to a few bilateral investment treaties (with Cape Verde, Italy, Germany, Portugal, Russia and Brazil), these do not provide relief from the requirement to put forward an investment project for an investor intending to repatriate profits outside Angola.

### Insurance restrictions

- 11 | What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?

The conducting of insurance and reinsurance activities in Angola is limited to entities duly incorporated and authorised under the Insurance Activity Law. Such authorisation is granted by the Ministry of Finance upon consulting the Angolan Agency of Insurance Regulation and Supervision. The transfer of any amounts abroad under an insurance policy is deemed a foreign exchange (FX) operation, given that it entails the transfer of money between an FX resident and a non-FX resident. Upon the relevant authorisation of the Angolan Central Bank (BNA), insurance policies over project assets can be paid to foreign secured creditors. However, according to Circular Letter No. 01/ARSEG/2021, issued by the Angolan Agency for Insurance Regulation and Supervision, FX operations of current invisibles related to payments under reinsurance or similar contracts are subject to the applicable foreign exchange legislation in force and, as such, are exempt from licensing by the National Bank of Angola, under the terms of article 5(1) of Notice No. 02/2020 of 9 January 2020.

### Worker restrictions

- 12 | What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?

Presidential Decree No. 43/17 of 6 March 2017 (as amended by Presidential Decree No. 78/17 of 24 April 2017), regulates the professional activity of non-resident foreign workers, along with the General Labour Law (Law No. 7/15 of 15 June 2015). A quota rule is imposed on companies of all sizes, according to which 70 per cent of the workforce is to be composed of national workers (Angolan or foreign

residents) and up to 30 per cent may be non-resident foreign workers. Non-resident workers must be registered, and their salaries can be paid in any currency agreed between the worker and the employer. However, article 13 of BNA Notice No. 05/2021 determines that non-resident workers who carry out a remunerated activity in Angola are obliged to open a non-resident account in a financial banking institution based in Angola, in which their income must be domiciled.

### Equipment restrictions

- 13 | What restrictions exist on the importation of project equipment?

The carrying out of import, export and re-export operations, which is made through the Integrated System of External Trade, is subject to prior registration in the Registry of Exporters and Importers (REI) of the Ministry of Commerce. Registration in the REI is mandatory and valid for a period of five years. The applicable law foresees two different regimes of importation: temporary and permanent. Permanent importation of goods into Angola under the general customs regime is subject to the payment of various charges (eg, customs duties, consumption tax and stamp duty). As the payment for the imported goods also entails an FX operation, the procedures applicable to said payments are expressly governed by BNA Notice No.04/2021 and BNA Instructive No. 9/18. That said, the settlement of FX import operations executed between an FX resident and a non-FX resident may be done either by advance payment or by document-based remittances. BNA Instructive No. 9/18 establishes that any importation transaction of an amount higher than €100,000 must be performed with resort to a documentary letter of credit. However, the FX regime also establishes a special regime in which an importer may request the application of different rules and thresholds for the settlement of importation procedures.

### Nationalisation laws

- 14 | What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected (from nationalisation or expropriation)?

According to the PIL, under a private investment project, the investor's ownership rights are protected by the Angolan state and cannot be nationalised or seized unless a public interest purpose is being pursued. In the event of nationalisation or seizure, the PIL foresees that the state undertakes to fairly, promptly and effectively compensate the investor. The 2010 Angolan Constitution provides that the state respects and protects the property and further property rights of natural and legal persons, and therefore expropriation for public utility is subject to the payment of fair compensation, which is a prerequisite of the effectiveness of the expropriation. The procedures applicable to expropriation are further regulated by the Expropriation Regulations. Said regulations are based on statutes of the pre-independence period, namely Law No. 2030 of 24 October of 1953 – Public Expropriations, and Decree No. 43587 of 8 April of 1961 – Regulations on Public Expropriations. Considering the age of the regulations in force, the president of Angola recently approved the creation of the Commission for the Revision of the Legal Regime of Expropriations.

## FISCAL TREATMENT OF FOREIGN INVESTMENT

### Incentives

**15** 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?

Benefits granted under the Private Investment Law (PIL) may be of a fiscal or financial nature. The attribution of benefits and incentives relates to investments of any amount, provided that the investment meets the criteria outlined in the PIL. Tax benefits may consist of deductions from taxable income, amortisations and accelerated depreciations, tax credit, tax exemption and reduction of taxes (industrial tax, property transfer tax, urban land tax and capital gains tax), contributions and import duties, deferment over time of tax payments and other exceptional tax measures to benefit the taxpayer investor. Incentives are granted automatically, but they are exceptional in nature, meaning that they are not a rule, but an exception limited in time. Thus, they can only be granted upon request, and take into consideration two main factors: the priority sectors of activity and the development areas. Regarding the location of the investment, the new framework establishes four development areas from A to D, once again seeking to attract investment to areas usually less sought after by investors (Areas C and D).

The recent amendment to the PIL provides that the investment projects included in the regimes of prior, special and contractual declaration benefit from the tax benefits provided for in the Code of Tax Benefits, which according to Angolan General Tax Administration representatives will be published soon.

Angola also recently approved Law No. 35/20 of 12 October 2020, approving the Law of Free-trade Zones, and Regulation No. 4/21 of 4 January 2021, which regulates the aforementioned law, which provides tax and foreign exchange benefits, as well as special regimes and facilities for investment operations in these zones.

The registry and execution of the documents supporting loans, mortgages and other securities is subject to the payment of a stamp duty tax – the applicable rates may vary between 0.1 per cent and 0.3 per cent for guarantees, and between 0.1 per cent and 1 per cent depending on the financing operation.

## GOVERNMENT AUTHORITIES

### Relevant authorities

**16** What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

Private investment projects shall be approved by a sole centralised entity: the Private Investment and Export Promotion Agency. In addition to this approval, other licences or authorisations may be required, depending on the business carried out by the investor. For example, projects in oil and gas are approved and monitored by the Ministry of Petroleum and Natural Resources through the National Agency for Petroleum, Gas and Biofuels (ANPG) and projects in the mining sector are approved and monitored by Ministry of Petroleum and Natural Resources (projects in such special sectors do not need to have a private investment project approved for foreign investors to repatriate profits). The prerequisites for conducting different activities of course vary, and, therefore, additional or different licences may be required, depending on the activity at stake.

Regarding the history of state ownership in the above-mentioned sectors, it is worth mentioning the following:

- the state is involved in oil and gas and mining sectors through its national concessionaires (ANPG and Endiama (E.P.), which, in spite of having been legally replaced by the National Agency of Mineral Resources, still acts as the national concessionaire, until such agency is fully functional);
- within the water treatment sector, EPAL, a public company, is engaged in the provision of water treatment services. There are also a number of private companies engaged in the water treatment sector; and
- the distribution and transportation of electricity is secured by the state through public companies.

The economic delimitation sector law sets out that assets and undertakings operating in certain sectors cannot be held by private entities. Examples include production, distribution and marketing of war material, ownership of infrastructure relating to port and airport activities and basic postal services.

## REGULATION OF NATURAL RESOURCES

### Titles

**17** Who has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

The 2010 Constitution of Angola ascribes the ownership of all natural resources within the Angolan jurisdiction to the state. The Angolan jurisdiction comprises the onshore territory of Angola, the internal waters, the territorial sea, the exclusive economic zone and the continental shelf and, therefore, all oil and gas fields, minerals, water and other resources located in such areas belong to the public domain of Angola.

The state can only transfer rights over land that is part of the private domain. In any case, the transfer of rights almost never entails the transfer of ownership, but merely the transfer of minor land rights (although the applicable law foresees a wider range of land rights that can be assigned, including ownership).

Pursuant to the Petroleum Activities Law, mineral rights are attributed to the National Concessionaire, which cannot assign these mining rights but may associate with a reputable domestic or foreign company having the necessary technical and financial capacity. Such association is usually undertaken through a production sharing agreement, under which the National Concessionaire is entitled to receive part of the profits generated by the petroleum activities.

As per the Mining Code, the mining rights of prospection, exploitation, treatment and trade of minerals are exclusively attributed to the National Concessionaire. Additionally, mining rights may also be granted to natural or legal persons, national or foreign, with proper technical and financial capacity for the performance of the mining activities, through the issuance of one of the following permits:

- a prospection permit;
- an exploitation permit;
- a mining permit; or
- a mining pass.

Under the Mining Code, the holders of mining rights have a number of obligations connected to health and safety, training, financial commitments, environment protection, use and enjoyment of the land, and use of explosives. The acquisition or exercise of the rights at issue is not affected by the rights of aboriginal, indigenous or other recognised groups of people.



## Royalties and taxes

### 18 | What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

The taxes applicable to the performance of petroleum operations, either by foreign or national entities, are the following:

- petroleum production tax;
- petroleum revenue tax;
- petroleum transaction tax;
- surface area charge; and
- contribution towards the training of Angolan staff.

Furthermore, under the Mining Code all national and foreign entities performing activities of mineral prospection and exploitation in Angola, depending on the developed activity, are subject to the payment of the following taxes:

- revenue tax;
- royalty;
- the surface fee; and
- the artisanal fee.

## Export restrictions

### 19 | What restrictions, fees or taxes exist on the export of natural resources?

Under the Mining Code, when so required by the interests of the country, the state may request the purchase of the produced minerals at a market price to allocate them to local industry. Additionally, Angolan Central Bank Notice No. 13/20, of 29 May 2020, establishes that the sale of diamonds and the provision of services to foreign buyers must be made in foreign currency, and the product of such operations must be deposited in foreign currency accounts located in Angola. The Petroleum Activities Law also foresees that in case of national emergency, armed conflict or natural disaster, the government may require all or part of the production of any oil concession and determine that the National Concessionaire and its associate companies increase the production to the maximum limit technically feasible.

## LEGAL ISSUES OF GENERAL APPLICATION

### Government permission

#### 20 | What government approvals are required for typical project finance transactions? What fees and other charges apply?

A project finance project (provided that is not focused on the mining or oil and gas sectors) requires the approval of a private investment project under the Private Investment Law (PIL). In relation to loans and remittances by foreign parties or by local companies owned or controlled by foreign parties, foreign exchange (FX) and private investment issues must be considered. Further operations and transactions are not, in general, subject to any government approvals. However, the specifics of each operation and transaction shall be assessed on a case-by-case basis to evaluate if any relevant authorisations are applicable.

### Registration of financing

#### 21 | 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?

The entity before which the project documents shall be filed will vary according to the nature of the project. If the project is subject to the PIL's scope, project documents shall be filed before AIPLEX. If the project comprises, for instance, the purchase of a participating interest in a

certain block (a farm-in operation), then the project documents must be submitted, as a rule, to the National Agency for Petroleum, Gas and Biofuels. Regarding legal formalities, the contractual freedom prevails as the general principle under the Angolan Civil Code (CC); however, the law imposes notarial intervention for certain specific cases (eg, the execution of agreements for the transfer of real estate require the intervention of a public notary). All documents related to the project shall be in Portuguese. The original documents issued by other states shall be subject to legalisation and recognition procedures (normally before the Ministry of Foreign Affairs and the Angolan consulate of the relevant state).

### Arbitration awards

#### 22 | How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

The Voluntary Arbitration Law establishes that disputes regarding rights that the parties may freely waive, extinguish or assign may be subject to arbitration, upon agreement of the parties, and under the assumption that such dispute is not mandatorily submitted to the judgment of a judicial court (eg, labour disputes or those connected to real estate) or to necessary arbitration. Conversely, disputes regarding non-disposable rights cannot be subject to arbitration. The applicable law allows the submission of disputes to international arbitration. Angola is, since 6 March 2017, a Contracting State of the New York Convention, which became enforceable on 4 June 2017. The application of the Convention is subject to the reservation of reciprocity: Angola will apply the Convention to the recognition and enforcement of awards made in the territory of another contracting state. Conversely, in spite of continued reports on the Angolan Executive having approved the the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States, or ICSID Convention, said adherence still lacks formalisation.

Furthermore, the Angolan Arbitration Law (which applies to domestic arbitrations and therefore to New York Convention awards) permits the making of a set-aside action to the Supreme Court of Angola and an opposition procedure to the enforcement of an arbitral award itself. Both procedures can only be based, in broad terms, on some specific formal grounds plus one that may be of a substantive nature – any breach of Angolan public policy.

### Law governing agreements

#### 23 | Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?

Under the general rule provided by the CC, parties are free to choose the applicable law. However, in our experience, contracts entered into with the state are usually subject to Angolan law. Conversely, financing agreements are usually subject to English law.

### Submission to foreign jurisdiction

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

Although there are some matters that must be referred to Angolan courts (such as the disputes regarding real estate property located in Angola), the Civil Procedural Code expressly allows the parties of a contract to submit any disputes regarding such contracts to the courts of the respective country or to other jurisdictions.

## ENVIRONMENTAL, HEALTH AND SAFETY LAWS

### Applicable regulations

- 25 | What laws or regulations apply to typical project sectors?  
What regulatory bodies administer those laws?

The Ministry of Environment is the entity responsible for the enforcement of the environmental rules. Depending on the nature of the project at issue, its approval by the competent authority might require the elaboration of an environmental impact assessment study. Additionally, investors shall also consider, throughout the course of their businesses in Angola, the regulations regarding health and safety in the workplace, which are enforced by the Ministry of Labour (by the Labour Inspection Department). The Regulation of Environmental Protection in the course of Petroleum Activities sets forth the rules specifically applicable to this sector and provides that the National Concessionaire and all the oil companies must adopt appropriate measures to prevent negative effects of pollution and, as far as possible, mitigate its consequences. Said statute is enforced by the Ministry of Petroleum.

## PROJECT COMPANIES

### Principal business structures

- 26 | What are the principal business structures of project companies? What are the principal sources of financing available to project companies?

Project companies are almost invariably incorporated under the form of private limited liability companies by quotas or public limited liability companies by shares as special purposes vehicles. The most common structures adopted in Angola are secured by lending syndicates and multilateral institutions.

## PUBLIC-PRIVATE PARTNERSHIP LEGISLATION

### Applicable legislation

- 27 | Has PPP-enabling legislation been enacted and, if so, at what level of government and is the legislation industry-specific?

With a view to intensifying the use of the management capacity of the private sector by the state, and consequently developing public services and rationalising the use of public funds, in 2019 a new Law on Public-Private Partnerships was enacted. The Law on Public-Private Partnerships was approved at national level and is not industry-specific, and the state, the local regions, public institutions, public companies or companies belonging to the state domain, or public funds may enter into PPPs.

## PPP - LIMITATIONS

### Legal limitations

- 28 | What, if any, are the practical and legal limitations on PPP transactions?

The Law on Public-Private Partnerships foresees that the formation of PPPs must be compliant, for example, with the financial planning rules set forth in the State Budget Law. Additionally, the Delimitation of Sectors of Economic Activity Law imposes reservations (absolute, control or relative) in certain economic sectors.

Also, the Angolan government has highlighted the creation of a Public-Private Partnerships (PPP) governance body with the aim of identifying priority projects, already provided for in the public-private partnerships law.

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## PPP - TRANSACTIONS

### Significant transactions

- 29 | What have been the most significant PPP transactions completed to date in your jurisdiction?

In late 2020, it was reported that the Angolan government had hired a consortium of consultants to develop feasibility studies for four PPP projects linked to industry, agriculture, energy and maritime transport. The projects are related to the Chicapa II hydroelectric facility in Luanda Sul, an estimated investment of US\$231 million (€196 million); the national cabotage network (Luanda-Soyo-Cabinda and vice versa); the Mucoso irrigation perimeter (Kwanza-North); and the Fútila industrial development hub (Cabinda). Several multilateral institutions have been providing assistance to the Angolan government for the development of PPP.

## UPDATE & TRENDS

### Key developments of the past year

- 30 | In addition to the above, are there any emerging trends or 'hot topics' in project finance in your jurisdiction?

With the aim of boosting foreign direct investment in key areas, an important reform has been enacted by the Angolan Central Bank regarding the foreign exchange controls applicable in the country. There are no longer thresholds available for the performance of foreign exchange operations related to the payment of services or capital remittances (or both). The privatisation programme launched by the Angolan executive intends to privatise 195 companies by 2022. The list of companies to be privatised was updated by Presidential Decree No. 250/19 of 5 August 2019, which determined the inclusion of companies and assets in the agricultural, industrial, mineral resources and petroleum and financial sectors, and the exclusion of companies and assets in the industrial, fishing, transport, telecommunications and IT sectors.

The oil sector has seen major proposals, including the Cabinda refinery, which is in its development phase, and the National Agency

for Petroleum, Gas and Biofuels' (ANGP) Licensing Round 2020, with ANGP planning to bid for 55 new oil blocks up to 2025 in onshore and offshore basins.

Moreover, as previously mentioned, and to encourage foreign investment, the Angolan government has approved Law No. 35/20 of 12 October 2020, which approves the Law of Free-trade Zones, having recently decided to create the first free zone in Barra do Dande. However, this approval has not yet been formalised. We also highlight Angola's ratification of the African Free Trade Area, in which the Angolan government has already begun organising its structure to meet the agreed objectives.

Lastly, in what concerns tax incentives, it is expected that the Code of Tax Benefits will be published in 2021, as well as the enactment of agreements for the elimination of double taxation between Angola and Cape Verde and Angola and China.

### Coronavirus

31 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Angola was under a state of emergency for a significant period (approximately two months) during which certain measures were adopted to prevent the expansion of the disease. Such measures included, among others, the closure of most public services and businesses, only leaving those that were expressly deemed as essential. There were also measures aimed at relieving the pressure felt by businesses, namely the deferral of deadlines for the payment of industrial tax, the waiver of the mandatory issuance of a commercial licence for certain activities and the elimination of the obligation for companies to keep a statistical registry.

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