

INFORMATIVE NOTE



ENERGY AND NATURAL RESOURCES

ANGOLAN PETROLEUM OPERATIONS (POR)

INTRODUCTORY NOTE – Law No 10/04, of 12 November 2004, on Petroleum Activities (LPA) regulates and defines the activities of prospecting, exploration, measurement, development and production of oil. This law repealed the pre-1978 legislation and the current legal regime is part of a wider legislative package intended to embrace a new phase for this sector in Angola.

Following the entry into force of the LPA, Law no. 11/04, of 12 November 2004 approved the customs regime applicable to the sector and was followed by Law no. 13/04, of 24 December 2004 on the taxation applicable to petroleum activities.

From 2004 until the beginning of 2009, petroleum operations were regulated by the laws referred to above and covered by production sharing agreements signed between the Angolan national oil concessionaire Sonangol E.P and the operators.

GENERAL SCOPE – Angolan legislative choices in the oil and gas sector have evolved significantly since the end of the 90s and, predominantly, after 2002, following the end of armed hostilities.

The challenge of betting on a “crude economy” and its associated activities, through the approval of the Angolan Natural Gas Project (Angolan LNG) and the construction of the first liquefying plant in the Province of

Zaire together form the visible side of a country objectively prepared for faster industrial development.

Being attentive to the situation, the Angolan legislature has made efforts to (i) create legal mechanisms necessary to the logic of thoroughness and objectivity that offshore and onshore petroleum operations as well as other activities related to natural resources demand, and (ii) to establish uniform procedures and other applicable rules.

LEGAL REGIME – The POR, a regulation annexed to Decree Law No 1/09, of 27 January 2009, must be understood as a regulation applicable to the petroleum sector in the broader sense although its application is restricted to the upstream sector. Crude oil refining activities, storage, transport, distribution and commercialization are frequently addressed within the downstream¹ and midstream sectors and are not covered by the POR. Accordingly, they do not fall under the scope of the LPA².

¹ Following the late evolution of its crude oil economy, Angola has opened up the sectors referred to and approved specific legislation with a specific scope and with particular terms. We note that the national concessionaire, Sonangol was already engaged in activities with the Portuguese company Galp Energia through joint operations with an SPV, Sonangalp, operating petrol stations in Angola.

²(Cf. LPA art.º 1.2)

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“Corporate Law Firm of the Year - Southern Europe”
ACQ Finance Magazine, 2009

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Clients Choice Award - International Law Office, 2008

“Best Portuguese Tax Firm of the Year”
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ANGOLAN PETROLEUM OPERATIONS (POR)

The unification process has several phases. The first one is the codification of a number of technical definitions. We note that in order to avoid situations of overlapping definitions, the legislature has safeguarded the identity of the expressions used in the POR³ and the LPA, accepting both.

In principle, the POR will not apply to prospecting and concession licences awarded before the date of its entry into force despite the national concessionaire's evident desire, in the disposal of the mining rights granted, to apply the ROP to pre-existing contractual documents.

Following the wave of legislation relating to the gas sector, the POR has established a set of important definitions, namely for the definition of natural gas and for its means of transportation and measurement (for the purposes of measuring production and sales of natural gas).

PROSPECTING LICENCE – The prospecting licence enables the licensee to collect necessary data of a specific area to fully evaluate its exploration potential. The licensing system is set out and defined in article 33 of the LPA and articles 9 to 11 of the POR. The licence establishes the contents of the programme of works, enabling it to be identified and technically defined. The bringing together of the two pieces of legislation enables us to get a practical, cohesive and thorough understanding of the dimension of the rights and obligations of interested parties, for example, by defining the duration and prorogation deadlines of the licence, quarterly submission of prospecting reports, etc.

PETROLEUM CONCESSION – Regulated by Decree⁴, concessions can be the subject of public bids or direct

negotiation pursuant to articles 46 and 47 of the LPA. Art. 14 of the POR sets out the minimum items required to be inserted in the contracts between the national concessionaire and domestic and foreign entities. Art. 14 of the da LAP, referred in art.14 of the POR sets out the models of association⁵ and the risk services' contract.

The regime currently in force allows a clearer and more thorough understanding as well as setting up a uniform path to entering into of production sharing agreements (PSAs) in the oil and gas industry.

PETROLEUM OPERATIONS – (PO)

Prospecting, Exploration and Appraisal:

The legal framework applicable to POs includes two phases. In the first phase are the activities of prospecting, exploration and appraisal and in the second phase are the activities of development and production. In the phase of prospecting, exploration and appraisal, the preparation of a seismic survey and the drilling of a specific number of exploration and appraisal wells are mandatory. The concessionaire must prepare the annual work plans and present them to the Ministry of Petroleum (MinPet) within 60 days of the beginning of activities in the first year and by the end of October in each of the following years. The supplementary information to be attached to plan of works, both prior and subsequent to the appraisal of the fields is set out in art.17 of the POR. The associate's obligation to declare the commercial viability of a discovery or its "lack of commercial viability" must be implemented through the national concessionaire, which in turn forwards the evaluation to the ministry in charge, MinPet.

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Development and Production:

Each associate prepares a set of plans such as the ones set out below and presents it to the national concessionaire, which, in turn submits to MinPet for approval. For example:

- (i) The general development and production plan must include a set of required items as set out in the POR pursuant to art. 22.1. MinPet can request studies for alternative solutions;
- (ii) The annual production plan for oil production and gas production, the forecast of waste produced and its management, amongst other aspects considered relevant;
- (iii) The joint development and production plan agreed between the national concessionaire and its associates must include a set of items (following the list of items requested for the development and production plan).

Issues related to unitization⁶ inside and outside national borders, in a situation of partial extraterritoriality, have merited special attention from the legislature, in particular as regards possible cases of failure to perform of contractual obligations.

(iv) The abandonment or continuation plan of the POs shall be considered and submitted with a set of items such as the field's production reports, calendar of the abandonment activities, technical, economic, environmental and safety aspects of the options for abandonment, etc.

⁵Recitals a), b) e c) in art. 14.2. refer to commercial companies, consortiums and production sharing agreements. No 3, refers specifically to the possibility of the national concessionaire setting itself up under the risk services' contract regime for operating in the petroleum sector.

⁶Unitization is defined in art. 3.1 hh) has a set of operations in a field located in more than one concessionaire area.

³(Cf. POR art.º 3.2)

⁴Decree Law No 48/06, of 1 September 2006, jointly with the applicable dispositions of the LPA.

Following closely what was established for the LPA in 2004, this legislation on petroleum activities came into force to regulate a variety of situations previously regulated either by the LPA and by the production and sharing agreements, or in some cases not regulated at all.

LIFTING OF CRUDE OIL – The lifting of crude oil follows a set of procedures and operational rules that regulate the programming and storage of the crude oil produced in a specific development area, on behalf of the associates of the concessionaire and within 30 days of presentation of the procedures and rules referred to above, the operator must comment on them or recommend any changes. The comments and recommendations of the operator are subsequently analysed by the concessionaire, which will issue a final document within 60 days of the presentation, acknowledging the comments and suggestions of the operator.

CRUDE OIL AND GAS – The operator submits the equipment and procedures to be used, or that may serve as the basis of measurement of the production and sales of oil and natural gas for consideration by MinPet and for its decision on the measurement system.

OFFENCES AND FINES – The POR reinforces a set of rules and corresponding heavy fines for the set of typified offences. The amounts vary between the equivalent in Kuanza of an average of US\$ 50 000.00 and US\$ 1 440 000.00, repeated offences being punished by fines of double the amount of the initial fines.

SUPERVISION – PO supervision is done by the ministry in charge under art. 76 of the LPA, namely through supervision procedures, carrying out audits, or the collection of oil samples or other substances relating to the PO for analysis, etc.

CONCLUSION – Following closely what was established for the LPA in 2004, this legislation on petroleum activities came into force to regulate a variety of situations previously regulated either by the LPA and by the production and sharing agreements, or in some cases not regulated at all.

The legislature's wish to unify or codify the system and to clarify the issues that were not regulated is clear to see. Reading and understanding the "new" POR is essential to the understanding of the oil and gas production sharing agreements and of the 2004 legislative package referred to in the introductory note.

Finally, in summary, the POR creates more safeguards, increasing legal certainty for the activities of the petroleum including prospecting, exploration, appraisal, development and production of hydrocarbons.

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