



Banking Regulation

Second Edition

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Published by Global Legal Group

CONTENTS

Preface	Peter Hsu & Rashid Bahar, <i>Bär & Karrer Ltd</i>	
Albania	Ada Braho, <i>Frost & Fire Consulting</i>	1
Angola	Hugo Moredo Santos & Nádía da Costa Ribeiro, <i>Vieira de Almeida & Associados</i>	11
Argentina	Javier L. Magnasco & Daniel Levi, <i>Estudio Beccar Varela</i>	18
Canada	Blair W. Keefe & Eli Monas, <i>Torys LLP</i>	24
Chile	Max Spiess, Juan Pablo Baraona & Ricardo Vásquez, <i>Baraona Abogados</i>	33
China	Dongyue Chen & Xingyu Wu, <i>Zhong Lun Law Firm</i>	45
Colombia	Luis Humberto Ustáriz González, <i>Estudio Jurídico Ustáriz & Abogados</i>	58
Congo D.R.	Angeline Mangana & Gaby Kabue, <i>MBM-Conseil</i>	65
Cyprus	Elias Neocleous & George Chrysaphinis, <i>Andreas Neocleous & Co LLC</i>	71
Ecuador	Dr Boanerges Rodríguez Freire & Pedro José Izquierdo LL.M., <i>Coronel & Pérez</i>	81
Finland	Andrei Aganimov & Niina Nuottimäki, <i>Borenus Attorneys Ltd</i>	87
France	Jean L’Homme & Gaël Rousseau, <i>Fidal</i>	96
Germany	Dr. Maximilian von Rom & Sebastian Tusch, <i>Gleiss Lutz</i>	105
Greece	George Bersis & Smaragda Rigakou, <i>Potamitis Vekris</i>	113
Japan	Koichi Miyamoto, <i>Anderson Mōri & Tomotsune</i>	122
Mozambique	Orlando Vogler Guiné, João Mayer Moreira & Filipe Ravara, <i>Vieira de Almeida & Associados</i>	132
Netherlands	Joris van Horzen & Joost Achterberg, <i>Kennedy Van der Laan N.V.</i>	140
Portugal	Hugo Moredo Santos & Benedita Aires, <i>Vieira de Almeida & Associados</i>	149
Russia	Alexander Linnikov, Sergei Sadovoy & Leonid Karpov, <i>LEAD Consulting Law Firm</i>	158
Rwanda	Julien Kavaruganda & Emmanuel Muragijimana, <i>K-Solutions & Partners</i>	174
Singapore	Elaine Chan, <i>WongPartnership LLP</i>	183
Spain	Fernando Mínguez Hernández, Íñigo de Luisa Maíz & Rafael Mínguez Prieto, <i>Cuatrecasas, Gonçalves Pereira</i>	192
Switzerland	Peter Hsu & Rashid Bahar, <i>Bär & Karrer Ltd</i>	205
Togo	Martial Akakpo & Sandrine Badjili, <i>MARTIAL AKAKPO & PARTNERS, LLP</i>	215
United Kingdom	Ben Hammond, Nicola Higgs & Lorraine Johnston, <i>Ashurst LLP</i>	224
USA	Reena Agrawal Sahni & Timothy J. Byrne, <i>Shearman & Sterling LLP</i>	235
Uzbekistan	Mels Akhmedov & Irina Tsoy, <i>Business Attorney Service</i>	245
Venezuela	Gustavo J. Reyna & Carlos Omaña, <i>D’Empaire Reyna Abogados</i>	256

Angola

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Introduction

Almost eight years ago the fiasco associated with sub-prime lending triggered the first global financial crisis of the 21st century. The banking sector is (still, some may say) recovering from the impact of said crisis and the crises it originated from. For the banks that were able to survive the storm, and some did not, said crisis was translated into a shortage of liquidity, restructuring of financial products, deleverage, lower revenues stemming from interest rates, rethinking of bank governance and in some cases unprecedented recapitalisation and injection of public funds.

Unlike many other previous crises, the sub-prime lending crisis took place in an era of globalisation. It is undeniable that the alluded circumstances were most strongly felt in financial institutions in the United States and in the eurozone. However, as financial and commercial relationships are and will continue to become more complex, intricate and involving entities from multiple geographical areas, banking sectors from all over the world were influenced, to a greater or lesser extent, by the severe variation that occurred in those jurisdictions.

Regulators from countries that were not at the epicentre of the crisis sooner or later realised the pandemic nature of the crisis. Some even realised that the contamination factor should determine the adoption of a more preventive approach in what concerns banking regulation, in order to ensure the wellbeing of institutions, their clients and markets in general against the effects experienced in North American and European markets. The Angolan banking sector was not an exception.

In the last thirteen years, following the end of the civil war, Angola has witnessed spectacular market growth and increased dynamism in several sectors, such as the Energy and Telecoms sector, mostly leveraged in the trading of commodities such as oil, minerals, and the dissemination of telecoms infrastructures and services. This evolution contributed to the expansion of the banking sector across the country, which comprises 23 banks, the majority of which are held by domestic shareholders, as well as multinational banking institutions strongly specialised in financial products for investment in the commodities sector.

According to KPMG Angola, from an October 2013 report focused on the analysis of the financial sector in 2012, the following banks are present in Angola (listed by name and date of establishment):

Bank	Year
BPC – BANCO DE POUPANÇA E CRÉDITO	1976
BCI – BANCO DE COMÉRCIO E INDÚSTRIA	1991
BCGTA – BANCO CAIXA GERAL TOTTA DE ANGOLA	1993
BFA – BANCO DE FOMENTO ANGOLA	1993
BAI – BANCO ANGOLANO DE INVESTIMENTOS	1997
BCA – BANCO COMERICAL ANGOLANO	1999
SOL – BANCO SOL	2001
BESA – BANCO ESPÍRITO SANTO ANGOLA	2002

Bank	Year
BRK – BANCO REGIONAL DO KEVE	2003
BMF – BANCO BAI MICRO-FINANÇAS	2004
BIC – BANCO BIC	2005
BPA – BANCO PRIVADO ATLÂNTICO	2006
BMA – BANCO MILLENIUM ANGOLA	2006
BNI – BANCO DE NEGÓCIOS INTERNACIONAL	2006
BDA – BANCO DE DESENVOLVIMENTO DE ANGOLA	2006
VTB – BANCO VTB-ÁFRICA	2007
BANC – BANCO ANGOLANO DE NEGÓCIOS E COMÉRCIO	2007
FNB – FINIBANCO ANGOLA	2008
BKI – BANCO KWANZA DE INVESTIMENTO	2008
SBA – STANDARD BANK	2009
BCH – BANCO COMERCIAL DO HUAMBO	2010
BVB – BANCO VALOR	2010
BPPH – BANCO DE POUPANÇA E PROMOÇÃO HABITACIONAL	2013
STC – STANDARD CHARTERED BANK ANGOLA	2013

Although in Angola the penetration of banking services is relatively low, acquisition of clients continues to be a main driver for banks. Nonetheless, according to a KPMG Angola Report, in 2013 the banking penetration rate was of *ca.* 30%, which represented a 7% increase in comparison to 2012, and according to BNA's estimates, this number is expected to double in 2016. Banking institutions are relying in particular on corporate and institutional clients to expand their customer portfolio, offering products specifically tailored to their needs, such as investment solutions, lease of equipment, issuance of guarantees and protocols with employees (see the abovementioned KPMG Angola Report).

In fact, the growth has been so expressive that, in 2011, the African Business Magazine listed six major Angolan banks in the top 100 banks of Africa. Moreover, in 2013, banks expanded their agencies network by 14.2% (on average, in 2013, 13 agencies opened each month, totalling 164 new agencies during 2013).

The market also shows it is competitive, evidence thereof being the fact that, in 2014, as per Banco Nacional de Angola's – BNA (Angola National Bank, the regulator for banking activities) – information, five more financial entities were undergoing the proper administrative procedures in order to establish themselves and operate in the Angolan market.

The quick expansion of the sector and the demand for investment has brought attention to the urgent need for a strong and sound financial system. National legislators responded with a series of legislative reforms to enhance transparency, level the playing field, and also, to a certain degree, harmonise the same, given the need to attract entities present in other jurisdictions to Angola, which were looking for standards and procedures familiar to them.

The fact that economic growth has taken place in the context of a financial crisis at a worldwide level most probably proved to be of high value to regulators in Angola. They appear to have quickly become aware of the need to endow the finance and banking system with regulatory instruments that, on the one hand, promote rapid investment or at least do not raise barriers to such an investment, and on the other hand, protect the banking institutions, the depositors who entrusted them with their savings and instil market confidence as the most valuable asset in the banking environment.

On that note, it is worth mentioning that in the summer of 2014, the BNA decided to undertake a phased Transversal Inspection Program ("PTI") for an Evaluation of Assets' Quality ("AQA"). The first phase of the rollout of the programme has mainly focused on loan portfolio and provision levels with reference to 30 June 2014. One would be tempted to say that this is nothing new for Europe

and the European banks for instance. However, in a business environment marked by informality and strong personal relationships, such an exercise tested banks' practices and procedures in order to ascertain whether the Angolan banks were actually doing their job – i.e., in essence, holding and lending money – properly, as they would be expected to.

The AQA shall definitely allow the regulator to have a more accurate and in-depth vision of the soundness and robustness of the banking sector. The exercise is expected to allow the BNA to more accurately design the proper regulatory remedies to correct and to prevent policies and management tools that may not be efficient and effective in terms of performance and investor protection, and most probably will allow the banks to undertake the reforms deemed necessary to improve the management of products portfolio and their governance.

These aspects may indeed prove to be of critical importance, particularly as the Angolan economy has been impacted by the current currency exchange crisis as a result of the sharp decrease in oil prices since last summer. The price of this commodity – which is outside the control of the Angolan government – will strongly impact the State Budget, originally drafted taking into account an optimistic price of US\$81 per barrel. Consequently, it is expected to affect trading between companies present in the Angolan market and their foreign counterparts, investments in infrastructure, as well as the internal market – similarly to what happened, for example, in a dozen countries in the eurozone.

With this overall context in mind, in this article we intend to present an overview of the main regulatory rules applicable to the banking sector in Angola, as well as go into some detail regarding legislative measures in the pipeline, intended to stimulate the creation and development of a securities market in Angola.

Regulatory architecture: overview of banking regulators and key regulations

As mentioned in the introductory section, in their core banking activities, such as loans and deposits, Angolan banks are subject to the supervision of the BNA. It is worth noting that we speak mainly of banks – even though the legal framework contemplates financial institutions in the broader sense – since the Angolan market has not yet noticed a surge in other credit institutions, mostly because the socioeconomic conditions of the country do not require the presence of said entities. Nonetheless, as more people are joining the middle class ranks and the country is experiencing growth rates unknown in Europe, for instance (taking into account the estimations made by the BNA, Angola has witnessed an average growth rate of 10.2% between 2000 and 2013), soon the market may require more diversification of financing products.

On the other hand, due to fact that, until recently, payments to foreign companies and individuals were mostly made in dollars, Foreign Exchange Offices are also subject to strong intervention by the BNA, albeit being classified, under Law 13/05, as non-banking financial institutions.

One of the main regulatory instruments to consider is the Financial Institutions Law (Law No. 13/05, of September 30, 2005), which establishes the rules pertaining to the process for the establishment, activity and supervision of financial institutions. Law No. 13/05 also contains the set of corrective measures that may be applied by the BNA to financial institutions.

The activity of the BNA is subject to the rules set out in Law No. 16/10, of July 15, 2010, which is responsible for defining conduct and implementing the country's monetary and foreign exchange policy under the applicable legal and constitutional framework.

In terms of supervision, the BNA is responsible for managing the payment system as well as the national currency – the Angolan kwanza – in line with the economic policy defined by the Government (mainly through the Minister of Finances).

In what concerns banking activity, even though the BNA is responsible for issuing authorisations for the incorporation of banking financial institutions in Angola, Law 13/05 reserves to the Angolan State the power to authorise the incorporation of foreign affiliate or non-resident banking institutions in Angola. However, for such authorisation to be granted, the BNA is required to issue a favourable opinion, thus ensuring that the banking regulator is involved and monitors the process. In addition, the BNA also has powers to supervise any companies that, directly or indirectly, hold any participation

in one or more financial institutions that gives them control over companies that are subject to supervision, as well as those that own a qualified shareholding in one or more financial institutions under the supervision of the national regulator.

Bank governance and internal controls

Banking financial institutions shall be incorporated under the form of a joint stock company. Shares representing the relevant share capital are required to be nominative, hence allowing for the identity of the holder to be known. Furthermore, the national law imposes a set of strict requirements intended for the BNA to assess the economic and financial capacity of the bank.

Law 13/05 stipulates that banking financial institutions shall have administrative and supervisory bodies, the former entrusted with the management of the bank and its representation before any other entities, the latter committed to auditing duties. To enhance the involvement of the directors in the management, the administrative body (equivalent to a board of directors) shall be comprised of at least three administrators; at least two administrators shall be entrusted with daily management issues.

On the other hand, the supervisory body may constitute either an audit committee or a single auditor, depending on the type and size of the bank. At any rate, the law purports to enhance the protection of the entities dealing with the bank (among which we will find clients, notably depositors) by making sure that the actions of the management are scrutinised by another corporate body.

Influenced by European and American best practices, Angolan law requires members of the administrative and supervisory bodies to be suitable for the positions they shall occupy. This means that proof may be required on sound and prudent management skills – in the end, the relevant individuals will develop their functions in a bank authorised to receive monies from the public in general and lend money to the public in general. To that end, the BNA may inquire on previous posts held by administrative or supervisory board members, in order to determine, for example, if the person in question has been declared insolvent or bankrupt in other jurisdictions or responsible for bankruptcy or insolvency of companies under their control as administrators, directors or managers. These inquiries may entail coordination with other supervisory bodies, such as the Securities Supervision Entity and the Insurance Supervision Institute.

Another control instrument consists of the prohibition of banking financial institutions not being allowed to grant credit, in any way or form, directly or indirectly, including providing guarantees, to members of the administrative and supervisory bodies, such prohibition extending to other companies or institutions over which the former exercise some form of control. Notwithstanding, this does not constitute a legal impediment for banking institutes to execute operations of a social nature stemming from personnel policies.

Furthermore, the granting of credit to financial institutions of which members of administrative or supervisory bodies are managers or owners of qualifying holdings is subject to a specific procedure. Said persons shall not take part in the evaluation and decision-making process, and extending credit to said entities requires a decision approved by a majority of at least two-thirds of the remaining members of the administrative body and a positive opinion of the supervisory or equivalent body.

Bank capital requirements

As in many other jurisdictions, notably in Europe, Angolan banks are due to comply with prudential rules aimed at ensuring that the monies applied by the banks at all times ensure an adequate level of liquidity and solvability. Accordingly, it does not come as a surprise that Angolan banks are also required to comply with a minimum level of own funds, which shall not be less than the minimum amount of the stock capital required for incorporation, and constitute minimum reserves using for such purpose the relevant net profits.

Angolan banks are also subject to ratios and prudent limits that are established by the BNA, in order to ensure sustainability of banking activities.

Under the general framework, the BNA has at its disposal a set of corrective measures it may impose, for a determined period of time, upon financial institutions whenever it finds the latter are in a situation of financial imbalance. Said measures may consist of drafting and putting in place a recovery and

corrective plan, imposing restrictions on credit granted and to the application of funds in certain types of assets, particularly those regarding operations with an affiliate, or with a parent company, or with an affiliate of a parent company, suspending or prohibiting the distribution of dividends and subjecting certain operations or acts to prior approval of the regulator.

Rules governing banks' relationships with their customers and other third parties

Even though Angola is still undergoing a process of extending banking services to the general population, which are not available to a significant part of the population, Law 13/05 also regulates banks' relationships with customers and other third parties.

As a rule of law, banks have to ensure they possess high levels of competence and that their organisation has the technical and material means necessary to deliver services performed in appropriate conditions, in what regards quality and efficiency. In a country lacking widespread technological infrastructures at a national level, this still poses a challenge for banking institutions, but banks and the telecoms industry are duly tackling this issue. In fact, banks are not refraining from launching new products and services, such as home banking and mobile payment services, which constitutes evidence of the quick uptake of access to information services by the general population.

As in most jurisdictions, under Angolan law, customers are entitled to receive clear and proper information on banking products and services they choose to purchase/acquire from banks, namely in what concerns interest rates and commissions charged by banking institutions.

One rule of thumb banks have to follow is confidentiality. The banking duty to keep secrecy about banking information is inherent to the relationship between a bank and its clients, which is all about trust.

Confidentiality captures a wide range of information, including the clients' names, their deposit accounts and movements related thereto and any other banking operation. This shall not be the case whenever said information is required, within the scope of their powers, by the BNA, the Securities Supervision Entity and the Insurance Supervision Entity or is deemed necessary within the context of judicial proceedings (in which case an order issued by a judge or a public magistrate is necessary).

The obligation to ensure confidentiality does not prevent banking financial institutions from exchanging information among themselves for purposes of risk assessment and with the goal of guaranteeing the security of their operations, namely credit operations.

Notwithstanding the absence of a general antitrust law, the national legislator was cognizant of the fact that competition is of relevance to the continued expansion of the sector. Hence, Law 13/05 establishes a set of rules which envisage the prevention of anti-competitive behaviour from banks, either in their mutual relationships, or when dealing with third parties. In this regard, any conduct with the goal of obtaining a dominant position in the monetary, finance or exchange markets shall be deemed illicit. Furthermore, financial institutions are prevented from applying discriminatory conditions to comparable operations or from imposing to their clients, as a condition to benefit from the services, the acquisition of goods and products or the hiring of services.

Recent regulatory themes and key regulatory developments in Angola

Considering that capital is a limited resource, this is an issue of particular relevance for banking regulators. And, in the case of Angola which is currently undergoing a change in the economic conditions due to sharp decrease of oil prices (oil representing *ca.* 47% of the national GDP), there is an awareness of the need for the BNA to pay special attention to capital requirements, due to the risk that many banks may face stemming from low liquidity and unsuccessful collection of debts.

In this context, the BNA intends to introduce a series of legislative measures in what concerns minimum capital of financial institutions and other regulatory measures aimed at allowing banks to have a more accurate image on the return of investment and assessment of risk pertaining to investment operations. In this context, we highlight the recently approved Regulations No. 10/2014, on guarantees for prudential purposes, No. 11/2014, on specific requisites applicable to credit transactions, No. 12/2014, on the creation of provisions, and No. 2/2015, on methodology for the creation of provisions.

Earlier in 2014, the BNA began publishing a set of documents on the implementation, in the Angolan finance sector, of the International Accounting Standards/International Financial Reporting Standards (IAS/IFRS), expected to be fully implemented by the beginning of the fiscal year of 2016. As per the schedule published by BNA on June 12, 2014, this process implies a high level of cooperation and commitment between financial entities and the national supervisory body.

Hence, in 2015 we are expecting the BNA to define the terms under which banks shall regularly issue reports on the adoption of the IAS/IFRS in terms of implementation and respective supervision. Additionally, the BNA has already made public that it considers it is relevant to have credible reporting information on impairment losses stemming from the credit portfolio. In this regard, and following the results of the public consultation that took place in the third quarter of 2014, the regulator intends to issue an instruction containing a practical implementation guide (“GIP”) to be followed by banks for purposes of determining impairment losses with respect to their loan portfolio.

Linked to this aforementioned aspect is the issue of recovery of credit. With the deterioration of economic and financial conditions, banks most certainly shall pay special attention to this matter, although we do not foresee the BNA intervening in this regard, save if the need to safeguard customers’ rights towards financial institutions arises.

On the other hand, and taking into account the steady growth and increased competition of the banking sector, it is expected that the BNA shall issue regulation imposing more operational requirements on banking institutions (envisaging improvement of quality of service to customers). This matter should be also linked to the issue of computer systems banks use. The rapid growth of the sector has put enormous pressure on IT systems used by banks and the BNA may be tempted to issue guidelines or even soft regulation on this matter, in order to guarantee users’ rights.

The debut of capital markets

A final word on capital markets. After many years of promises and postponements, trading of public debt on secondary market made its debut on December 2014. There is a great expectation about the role that listing and trading of public debt may play in the development of a capital markets culture.

Corporate bond issues were expected to follow, but like many other projects in Angola it will not avoid the impact on the Angolan economy of the decrease in oil prices. At any rate, one cannot neglect a consistent series of measures aimed at stimulating capital markets. On the one side, a new securities code is in the pipeline and should soon be approved. This new legal framework has been designed to follow, to the greatest possible extent, the European precedents as they derive from EU directives and their implementation. In that, shaping rules familiar to international investors could enhance their confidence and appetite to invest in Angola and Angolan banks and companies; however, one should not lose sight of the differences between a mature market and an unsophisticated one. On the other side, to close the gap that separates the complexities of finance and potential investors, the Securities Supervision Entity has taken the initiative of creating an academy that is in charge of promoting financing literacy. Finally, a wide range of regulations has been subject to public consultation and now waits to step forward. Among the matters subject to regulation one may find commercial paper, issuers and offers, investors and similar matters.

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Hugo Moredo Santos joined Vieira de Almeida & Associados in 2001 and is currently managing associate of the Banking & Finance practice area. In such capacity he has been involved in several transactions in the Portuguese and international markets, mainly focused on structured financial deals, including the issue and placement of debt and equity instruments, securitisation and other types of asset-backed transactions and preferential shares. He has also been quite active in public offerings of securities and takeovers, rendering regular advice in capital markets-related matters. Further, he provides legal guidance in aviation finance deals. Since 2014 he has also been the Country Manager for Angola. He is admitted to the Portuguese Bar Association.

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