



Employment & Labour Law

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CONTENTS

Preface	Charles Wynn-Evans and Jennifer McGrandle, <i>Dechert LLP</i>	
Angola	Rui Andrade, Bruno Melo Alves & Sónia Dixon, <i>Vieira de Almeida & Associados – Sociedade de Advogados, SP RL</i>	1
Australia	Leon Levine, Dan Williams & Gordon Williams, <i>MinterEllison</i>	7
Austria	Hans Georg Laimer & Martin Huger, <i>zeiler.partners Rechtsanwälte GmbH</i>	19
Brazil	Nelson Mannrich, <i>Mannrich, Senra e Vasconcelos Advogados</i>	28
Bulgaria	Radoslav Alexandrov, <i>Boyanov & Co.</i>	36
Chile	Eduardo Vásquez Silva & Cristhian Amengual Palamara, <i>EVS/Concha. Abogados</i>	47
China	Jiang Junlu & Zhang Hongyuan, <i>King & Wood Mallesons</i>	55
Finland	Jani Syrjänen, <i>Borenius Attorneys Ltd</i>	64
France	Lionel Paraire, <i>Galion Avocats</i>	75
Germany	Dr. Christian Rolf, Jochen Riechwald & Martin Waškowski, <i>Willkie Farr & Gallagher LLP</i>	85
Greece	Charis Chairopoulos & Kyriaki Samara, <i>Nikolaos Ch. Chairopoulos & Associates Law Offices</i>	90
Hungary	Dr. Ildikó Rátkai & Dr. Nóra Feith, <i>Rátkai Ügyvédi Iroda</i>	98
India	Anshul Prakash & Parag Bhide, <i>Khaitan & Co</i>	107
Ireland	Mary Brassil, Mary Kelleher & Stephen Holst, <i>McCann FitzGerald</i>	119
Italy	Vittorio De Luca, Roberta Padula & Claudia Cerbone, <i>De Luca & Partners</i>	129
Japan	Daisuke Mure & Ryotaro Yamamoto, <i>Oh-Ebashi LPC & Partners</i>	139
Macau	Pedro Cortés & Helena Nazaré Valente, <i>Rato, Ling, Lei & Cortés – Advogados</i>	151
Macedonia	Emilija Kelesoska Sholjakovska & Ljupco Cvetkovski, <i>Debarliev, Dameski & Kelesoska, Attorneys at Law</i>	161
Malta	Marisa Vella, Ron Galea Cavallazzi & Edward Mizzi, <i>Camilleri Preziosi Advocates</i>	169
Pakistan	Aemen Zulfikar Maluka & Pir Abdul Wahid, <i>Josh and Mak International</i>	186
Spain	Ana Alós Ramos & Inés Ríos García, <i>Uria Menéndez</i>	195
Sweden	Jenny Lundberg, Caroline Wassdahl & Erika Björkén, <i>Hannes Snellman Attorneys Ltd</i>	203
Turkey	Ahu Pamukkale Günbay, Duygu Abbasoğlu & Başar Kural, <i>Günbay Attorney Partnership</i>	212
United Kingdom	Charles Wynn-Evans, Jennifer McGrandle & Alexis Westwood, <i>Dechert LLP</i>	221
USA	Ned H. Bassen & Margot L. Warhit, <i>Hughes Hubbard & Reed LLP</i>	229

Angola

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General labour market and litigation trends

Bordering the South Atlantic Ocean, between Namibia and Democratic Republic of Congo, Angola is the seventh-largest state in Africa. Despite its tumultuous history, in the last decade the country experienced high growth rates which were essentially driven by high international prices for its oil: oil production and its supporting activities contribute about 85% of GDP, and oil represents over 90% of Angola's exports.

With the slump in crude prices in 2015 – languishing at \$50 a barrel, down from over \$100 in mid-2014 – the Angolan economy slowed sharply and companies were compelled to resort to redundancy procedures to align their structures to market conditions. This macro-economic framework further accelerated the approval of a new General Labour Law (“NGLL”), enacted by Law no. 7/15, of 15 June 2015, which entered into force on 15 September 2015, aimed at addressing the most recent labour market demands.

Indeed, the NGLL brought significant changes to the Angolan labour market, and one of its main purposes was to ensure the creation of employment and the economic and social development of Angola. By way of example, the NGLL relaxed the rules on execution of contracts for a limited period of time, and significantly extended their maximum duration. This will allow employers to hire employees under fixed-term contracts during periods where the near future is uncertain due to the economic environment.

On the other hand, labour authorities are being particularly active in enforcing the complex administrative and reporting duties established by the employment laws. Indeed, it is highly likely that the great majority of large companies operating in Angola are inspected by labour authorities at least once in a 12-month period.

Redundancies, business transfers and reorganisations

Redundancies and business transfers are highly regulated by the NGLL. In the event that duly substantiated economic, technological or structural circumstances occur, which entail an internal reorganisation or conversion, the reduction or discontinuance of activities, and this results in the need to eliminate or significantly change job positions, employers may terminate employees who hold such positions.

Angolan law provides for two main types of redundancy procedures: (i) *collective dismissal*, when the redundancy reasons affect more than twenty (20) employees and the termination of the respective employment contracts occurs within a period of three (3) months; and (ii) *individual redundancy*, when the redundancy reasons affect fewer than twenty (20) employees.

The NGLL establishes a very tight procedure by obliging the employer to provide detailed information to the General Labour Inspectorate, notably, regarding: (i) the economic, technological or structural reasons triggering the intended redundancy; (ii) the employees covered; (iii) measures of reorganisation; and (iv) *criteria* to be followed in selecting the employees.

The General Labour Inspectorate may within fifteen (15) days take any measures deemed required for a proper clarification of the situation, though it cannot issue any binding decision regarding the lawfulness of the intended redundancy procedure.

In the event that they do not agree with termination, employees or their representatives may, without prejudice to the out-of-court dispute resolution mechanisms provided for in the NGLL, challenge the decision before the court having jurisdiction.

The NGLL also regulates the business transfer or transfer of undertaking. The concept of transfer of undertaking is very broad and covers all cases of change in the legal status of the employer and the change of ownership of the company or work centre. Alteration of the legal status is deemed to be succession, merger, transformation, division or another legal change undergone by the company. Change of ownership is deemed to be the conveyance, lease assignment or any other fact or act which involves the transfer of the company's exploitation, or that of the work centre or part of same, through a legal transaction executed between the previous owner and the new one.

The main legal principle under the NGLL is that the alteration of the legal status of the employer and the change of ownership of the company or work centre do not extinguish the employment relationship and do not constitute just cause for termination. In other words, cases of transfer of undertaking cannot determine the termination of relevant employees covered by the transfer of undertaking or cause the redundancy thereof.

As long as the same business is maintained, the new employer takes the position of the former employer in the employment contracts and is legally assigned to the rights and obligations arising from the employment relationship, even if such have ceased before the change of employer. The employees keep their seniority and the rights they enjoyed at the service of the former employer.

Business protection and restrictive covenants

A contractual clause restricting the activity of the employee for a period of time of up to three (3) years as from termination of the employment contract is lawful provided that all the following conditions are met: (i) such clause is included in the written employment contract, or in an addendum; (ii) the activity in question could cause effective damage to the employer and qualify as unfair competition; and (iii) the employee is paid a salary during the period of restriction of work, the amount of which shall be stated in the contract or in an addendum. In determining such salary, consideration shall be given to the fact that the employer incurred significant expenditure in the employee's professional training.

A clause imposing on an employee, who has benefited from professional improvement training or a higher education course at the expense of the employer, the obligation to remain at the service of the same employer for a certain period of time, shall also be lawful, provided that such clause is put in writing and provided that such period does not exceed: one (1) year in the case of professional improvement training; and three (3) years in the case of a higher education course.

Discrimination protection

The principle of equality and non-discrimination is defined in very broad terms in Angolan law. The NGLL establishes that all individuals are entitled to work and freely choose a profession, with equal opportunities and without any discrimination based on race, colour, sex, ethnic origin, marital status, place of birth and social rank, religious or political ideas, labour union affiliation or language. On the other hand, under the NGLL the employer shall guarantee, for the same job or for a job of the same value, equal compensation among the employees, without any discrimination whatsoever.

The NGLL goes further and deems contractual clauses, provisions and/or termination null and void if they breach the above-described principles.

Protection against dismissal

Employees in Angola enjoy extensive protection against dismissal. At the outset, there is no at-will employment termination. Moreover, the options for an employer to terminate an employment contract and respective procedures depend on whether the employee is hired on a temporary (under a fixed-term employment contract) or permanent basis (under an employment contract for an unlimited period of time).

Regarding fixed-term employment contracts, as the law does not provide for their automatic expiration, it is necessary that one of the parties gives prior and express notice, in writing, at least fifteen (15) days in advance from the contract end date, of its intention not to renew the contract at the end of its initial term. In this case, no compensation is due to the employee for termination. Moreover, fixed-term employment contracts may only be terminated before expiration of their term under the circumstances outlined below in relation to employment contracts for an unlimited period of time.

Should an employer wish to terminate one or more employees hired under employment contracts for an unlimited period of time, it may adopt one of the following options: (i) termination for cause; (ii) termination by mutual agreement; or (iii) termination for objective reasons.

Termination for cause is available in case the employee has committed a serious breach of his/her employment obligations as specified in the law, such as unjustified absences from work, provided that: (i) these exceed three (3) days in a month or twelve (12) days in a year; and (ii) they represent serious or repeated disobedience to lawful orders or instructions given by the employee's superiors. In this case, the dismissal process is subject to certain requirements and strict conditions, and in order to unilaterally terminate the employment contract, the employer must first conduct disciplinary proceedings.

Termination by mutual agreement may be exercised by employer and employee at any time, since the parties to an employment contract have the right to terminate it by mutual consent when they so wish. The contract termination has to be recorded in a written instrument which must contain certain details, such as effective date of termination and date of execution, and must be produced in duplicate.

Termination for objective reasons occurs when the employer is forced to reduce the level of its activities, or to close down certain segments of business, or otherwise to reorganise its operations in a way that requires a reduction in the number of employees. However, in order to dismiss an employee for objective reasons, the employer has to follow a somewhat lengthy procedure, which varies if the procedure followed is the individual redundancy or a formal collective dismissal.

Statutory employment protection rights (such as notice entitlements, whistleblowing, holiday, parental and maternity leave, etc.)

All the employment protection rights are set forth in submission to the fundamental principle of *Equality*, under which for the same or for an equivalent job position, employees with the same qualification and experience are entitled to the same payment without discrimination. The following may qualify as the major employment protection rights:

- *Daily breaks*: all employees are entitled to a break with a minimum duration of 45 minutes and maximum of one hour and a half (1.5) per day of work, so that between the end of a daily work period and the start of work in the next day there shall be a rest period no shorter than ten (10) hours.
- *Vacation periods*: the duration of the vacation period is twenty-two (22) working days in each year. The vacation referring to the year of hiring shall correspond to two (2) business days for each entire month of work, with a minimum limit of six (6) business days. The right to vacation referring to the year of hiring shall accrue on 1 January of the following year; vacation may only be enjoyed after six (6) months of effective work and refers to the work performed in the year of hiring.
- *Public holiday*: there are eleven (11) national public holidays in Angola which are mandatory and, thus, the employer is not allowed to disregard same. If the employees render work in these days, such work is deemed as overtime and paid as such.
- *Maternity leave*: the maternity leave starts at the time of the child's birth and has a duration of three (3) months; save in case of multiple births in which case the maternity leave is four (4) months. By request, the maternity leave may start four (4) weeks before the predicted date for the child's birth.
- *Notice entitlements*: in limited-period employment contracts, the NGLL requires that one of the parties gives prior and express notice, in writing at least two (2) weeks in advance from the contract ending date, of its intention to terminate the contract. In unlimited period employment contracts, only the employee may terminate the contract by serving a thirty (30) day pre-notice of termination.

In addition, there are three (3) mandatory allowances in Angola which also constitute employment protection rights:

- *Annual vacation allowance*: in the minimum amount of fifty per cent (50%) of the monthly base salary. If the employee has served less than one (1) year, this bonus will be paid *pro rata* to the actual work time, plus one additional twelfth. The vacation bonus should be paid before its enjoyment.
- *Christmas allowance*: in the minimum amount of fifty per cent (50%) of the monthly base salary. If the employee has served less than one (1) year, this allowance will be paid *pro rata* to the actual work time, plus one additional twelfth. The Christmas allowance is payable each year in December.
- *Family allowance*: aimed at helping families in the subsistence and education of their offspring. The monthly amounts which are set for family allowance vary according to the employee's salary.

Worker consultation, trade union and industrial action

Provided that they are legally established in Angola, trade unions can, through company committees, exercise a number of rights within the company. Alternatively employees may

gather in representative bodies without any affiliation to a union.

Employees should be consulted by means of any of the abovementioned representation: (i) upon the setting of the working periods for the various units of the company and in the establishment and/or alteration of work schedules; (ii) in the preparation of the company's internal regulations; (iii) in the setting of the annual national minimum wage; and (iv) upon the collective (individual) dismissal proceedings.

Unions/union committees may also negotiate collective bargaining agreements and call strikes as long as the legal procedure is followed.

As for industrial action (strikes), pursuant to the Angolan Strike Law (Law 23/91, of 15 June 1991), before a strike takes place, a union or an “*ad hoc*” company's committee should serve the employer with a list of claims (“*Caderno Reivindicativo*”), which immediately triggers a mandatory negotiating process.

Employers are required to reply to the list of claims in writing during the five (5) days after being served with the union's/employees' committee document (or other period that may be granted by the union and/or employees' committee) and initiate collective negotiations on the relevant subject matters. The negotiations should be concluded in a period of twenty (20) days (or other period that may be agreed to between the parties), otherwise the employees may promote the relevant procedures to declare and execute a strike.

In case the employees' committee/union decides to declare a strike, employees' absences during the strike are considered justified absences but shall imply the full loss of their pay during the days of strike. During the strike the employer may not make any discrimination or victimisation as regards employees who have adhered to a strike legally declared and carried out.

Employee privacy

The Angolan Constitution establishes, in Article 32, a general right to dignity and privacy. This provision also includes an express prohibition on processing personal data for discriminatory purposes when this data relates to a person's political, philosophical or religious beliefs, trade union membership, political affiliations, ethnicity, or private life.

Both the Angolan Civil Code and the NGLL further create an additional general duty to respect the private lives and the right to employees' integrity and dignity, aimed at limiting and restricting any interference with a person's right to privacy.

The protection of employees' privacy must be analysed in light of the Data Protection Law, published in the Angolan Official Gazette as Law 22/11, of 17 June 2011.

Lastly, the Data Protection Law (Law 22/11, of 17 June 2011) lays down a general regime to regulate the processing of personal data in Angola, which includes the collection, transfer and use of personal data for any purposes whatsoever. The processing of personal data, as well as any cross-border transfers of personal data, are subject to strict notification and registration requirements with the Angolan Data Protection Agency (yet to be created). These requirements are applicable regardless of whether the entities to which the data are being transferred are part of the same corporate group as the entity that transfers them.

Other recent developments in the field of employment and labour law

Due to the sharp slowdown of the Angolan economy triggered by the fall in the oil price, there is a growing number of litigation cases related to this new phenomenon, since thus far the Angolan economy has been growing at a very high pace. Accordingly, no relevant changes in the current Angolan labour market are expected soon.

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