Banking Regulation

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CONTENTS

Angola

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Introduction

The Angolan banking system now comprises 27 banks, and it is widely agreed that Angola's banking institutions will need to go through a consolidation phase over the next few years – in particular, considering that Angolan banking institutions have a high rate of non-performing loans (NPL) and are being required to adhere to international best practices and standards issued by the Basel Committee on banking supervision.

The first merger in the country has already occurred. In 2016, *Banco Millennium Angola* and *Banco Privado Atlântico*, the country's fifth- and sixth-largest banks by net loans market share, got the green light to form *Banco Millennium Atlântico*. Angola's retail banking sector continues to expand. Physical branch and ATM electronic payment system and automatic payment terminals (TPA) access to urban and rural areas is still growing. A more diverse choice of electronic payment solutions and channels are expected to be further developed and disseminated, giving more flexibility and efficiency to transactions and clients. A mobile payments system is planned to be launched in 2019.

Angola's capital markets remain underdeveloped, being unable to support companies' growth and financing needs. Foreign investors fund their operations, including in the country, in the international markets. The same goes for national private investors conducting major projects in Angola. Yet, the market for short-term and long-term State bonds is developing well. Most of these bonds are bought and held by local Angolan banks, which is contributing to a sustained start-up market. A trend towards more liquid equity and debt instruments is expected to emerge in the Angolan Stock Exchange. In 2018, Standard Bank de Angola (SBA) was the first private entity to issue senior bonds in Angola – the inaugural issue took place in December under a debt representative instruments programme of AOA 9.5 billion approved in 2018 by the Securities Market Commission (*Comissão de Mercado de Capitais*).

As for the applicable legislation, the Securities Market Commission and Angolan Debt Securities Market ("BODIVA") have approved a number of consolidating regulations regarding the issuance and trading of debt and private equity. The repo operations market was regulated in 2018. It is, therefore, expected that debut operations will continue in BODIVA regulated markets. For 2019, the launch of the stock market in Angola is anticipated, boosted by the privatisation programme.

The Angolan Central Bank (*Banco Nacional de Angola – BNA*) has been struggling to improve transparency and credibility in the international markets to drive banks and economic growth. In October 2017, BNA confirmed on its website the execution of contracts, with the International Monetary Fund providing technical assistance to strengthen its banking supervision, the prevention of money-laundering and terrorist financing (AML/CFT). The

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contracts will be in force for about two years. The legislation issued in the past three years – following Financial Action Task Force (FATF) and Basel Committee standards – was pivotal, as the FATF has removed Angola from its AML/CFT monitoring process.

Since 2017, Angola has been following a path of economic diversification, normalisation of correspondent relationships with international banks, and stabilisation of foreign exchange reserves and the national currency. The country has also started to release basic macroeconomic data, applying the recommendations of the Enhanced General Data Dissemination System (e-GDDS), which will facilitate transactions.

Regulatory architecture: overview of banking regulators and key regulations

BNA is the banking supervisory and regulatory authority. Its activity is mainly subject to the rules set out in Law 16/2010, of 15 July 2010.

BNA is also the entity responsible for authorising:

- the set-up of banking financial institutions (save for the incorporation of affiliates of non-resident banking institutions or which are in a controlling relationship with foreign or non-resident entities – these require the prior approval of the President, subject to BNA's favourable opinion);
- monitoring compliance with the rules of conduct and prudential rules governing their activity;
- issuing specific recommendations and rules; and
- sanctioning infringements and imposing corrective measures.

In addition, BNA participates in the development of legal acts to protect the soundness and stability of the Angolan financial system. BNA also has powers to supervise companies that, directly or indirectly, hold a participation in financial institutions which gives them control over companies under BNA supervision, as well as those that own a qualified shareholding in financial institutions under the supervision of BNA.

The main regulatory instrument to consider for banking activity is the Financial Institutions Law (Law 12/2015, of 17 June 2015), which sets forth the rules on the process for the establishment, activity and supervision of banking and non-banking financial institutions. Law 12/2015 also contains the set of corrective measures that may be applied by BNA to financial institutions. Currently, the minimum regulatory capital is AOA 7,500,000,000 (as established in BNA Notice 02/2018).

Banking financial institutions are expressly allowed to carry out the following transactions:

a) receiving deposits from the public or other reimbursable funds;
b) commitments, as well as leasing, financial leasing or factoring;
c) payment services;
d) issuing and managing other means of payment, not included in the paragraphs above;
e) conducting securities and derivatives investment services and activities, under the terms allowed by law;
f) acting in the interbank markets;
g) providing consulting services to companies on capital structure, business strategy and related matters, as well as consulting services and services on mergers and acquisitions;
h) transactions on precious stones and metals, under the terms established by the foreign exchange legislation;

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i) acquiring equity in companies;
j) insurance mediation;
k) providing commercial information;
l) rental of safes and storage;
m) leasing of movable property, under the terms allowed for leasing companies;
n) issuing electronic money; and
o) other analogous transactions not prohibited by law.

Without prejudice to the above, it is worth noting that:

- The activities of conducting securities and derivatives investment services are entrusted to the supervision and regulation of the Securities Market Commission. The Securities Code (Law 22/2015, of 21 April 2015) is the core legislation for securities, issuers, public offers, regulated markets, investment services in securities and derivatives, as well as for related supervision and regulation.
- Insurance mediation carried out by financial banking institutions is under the supervision and regulation of the Insurance Regulatory and Supervisory Agency (*Agência Angolana de Regulação and Supervisão de Seguros* – ARSEG).

As a rule, banking financial institutions cannot acquire real estate. An exception is made for real estate necessary for business purposes, installation and operations, and also where the acquisition results from the reimbursement of credits made available by the relevant banking financial institution (in the latter, property must be sold within a two-year period). Other limits on indirect conduct of non-financial activities, such as on long-standing holdings and investment in fixed assets, may apply.

Recent regulatory themes and key regulatory developments in Angola

In 2016–2017, several regulations were issued on regulatory own funds, international accounting and financial reporting standards, risk governance, credit conceptualisation, stress-testing and standards of conduct, aimed at strengthening mechanisms for protecting clients of financial products and services and their soundness, all in line with best international practices. And, since 2017, the IAS/IFRS standards on accounting reporting have been fully adopted, which, *inter alia*, required an effort in the reinforcement of credit and collateral management processes.

During 2018, to satisfy the *Policy Measures and Actions for the Improvement of the Economic and Social Situation* approved in 2017, BNA regulations gave special focus to regulatory own funds and share capital, exchange rate policy – with the approval of a floating exchange rate regime – and stress-tests which are expected to run in 2019. Latest changes in the banking regulatory environment essentially concern money remittance services and payment systems. BNA also started to publish corrective measures which are applied to institutions under its supervision.

Special attention will be paid to capital requirements, which tripled in 2018 and led to the revocation of the banking licences of Banco Mais and Banco Postal at the very beginning of January 2019. Before this enhancement in capital levels, which for some is still insufficient to address the banks' weaknesses, two leading banks – in 2014 *Banco Espírito Santo de Angola* (BESA now *Banco Económico*, majority held by Sonangol) and more recently *Banco de Poupança e Crédito* (BPC) – required BNA attention and intervention, mostly due to low liquidity and unsuccessful collection of debts.

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The restructuring measures used and approach taken by the regulators were different. In the first case, extraordinary reorganisation measures have been applied, including: the appointment of provisional directors; temporary waiver of prudential rules; assessment of the loan portfolio and assets to be sold in event of liquidation or restructuring; and some restrictions on banking activities and approval to recapitalise the bank, after which BESA was transformed into *Banco Económico* controlled by the State (through Sonangol). For BPC, a state-owned bank, a Plan for Restructuring and Recapitalisation was approved, which focused on the increase of the bank's share capital and sale of the NPL portfolio to Recredit (a bank created by the State to manage NPLs). Two other state-owned banks are now being restructured – *Banco de Desenvolvimento de Angola* (the Angola development bank) and *Banco de Comércio e Indústria* (a commercial bank).

Bank governance and internal controls

Banking financial institutions must 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 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 comprise 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, 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 been responsible for the 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 Market Commission and the Insurance Regulatory and Supervisory Agency.

On a more practical and everyday-management note, the key requirements for banking governance in Angola have been fully revised in 2013 and further developed essentially by Notice 1/13, of 19 April, issued by BNA. The general principles establish that all entities authorised as banking and financial institutions in the Republic of Angola are subject to duties of: avoidance of conflicts of interest; transparency; and compliance with a number of disclosure obligations. It is also established that the administrative body shall be constituted by an odd number of members and, in case there are non-executive members, at least one of

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such members has to be independent, on whom rest obligations of control and evaluation of the executive committee (composed by the executive directors), as well of matters of business strategy, disclosure of legally mandated information, and transactions that involve special or relevant risk-taking.

In terms of internal control, BNA Notice 1/13 sets out the following main functions to be upheld by the banks: compliance function; internal audit function; and risk function – these are further developed, in a high-level manner, by BNA Notice 2/13, of 19 April. In practice, the administrative body is referred as the body responsible for establishing an internal control policy that is adequate to the purposes and dimension of the banking institution in question: the policy shall be duly formalised and disclosed to all employees, and associates or collaborators of the banking institution have to ensure, amongst many other duties, a true and effective cooperation with the regulatory entity (BNA), and to effectively implement a series of processes and evaluation metrics applicable to the management of conflicts of interest, remuneration, human resources and control of all operations and transactions pursued by the various departments functioning within the bank's corporate structure.

There are three main points of focus foreseen by the abovementioned base regulation: (i) compliance and risk management; (ii) information and disclosure; and (iii) internal control supervision.

(i) *The risk management and compliance function* shall seek to identify, evaluate, control and inform all about the relevant risks that the business activities pursued by the banking institution may comprise. For this matter, the institution is required to appoint one responsible person, with adequate status and powers to execute such duties with independence, and adequate and sufficient access to all the relevant information, as well as to the administrative bodies, having the power to validate and review risk-assessment models and provide the administrative bodies with regular reports and recommendations on the abovementioned subjects. Within this function, it is also established that a second person is appointed who shall be responsible solely and in an independent manner for compliance duties, and to whom the same principles will apply.

(ii) *Information and disclosure systems* rest on two main pillars: the accounting and financial information, which must include a prudent and duly developed policy of asset evaluation and responsibility, transaction-monitoring and information-disclosure to the regulator; and management information, which is required to include all financial and non-financial indicators of the banking entity's activity, exposure and risk-assessment results, as well as a high level of detail on products, services, business departments and operating costs in order to provide for an effective and transparent decision-making process on budget and planning.

(iii) The monitoring of all the functions and duties referred to up to this point must attend to the hierarchy and status of each person responsible for the various *internal control functions*, functions such as: global strategy and general supervision (upheld by the administrative body or board of directors); purposes and objectives established for the various departments (implemented and supervised by directors of each department); and general control over everyday business activities (required from the remaining employees). Subject to these principles, the banks shall appoint a third responsible and duly qualified person to monitor and uphold internal auditing tasks, who must embody complete independence and shall act in the light of internationally recognised internal auditing principles, with their conclusions and suggestions to be directly provided to the administrative body.

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In respect of remuneration matters, BNA Notice 1/13 sets up a specific range of rules applicable to the determination of remuneration packages of the staff and management. The remuneration of members of administrative bodies shall be delegated to one or more shareholders of the banking institutions, as long as these are independent, i.e., not members of the said management bodies, which shall be, in turn, assisted by independent entities with experience in remuneration matters. The said internal regulation also determines that: (i) executive directors shall be apportioned a fixed parcel, or a variable remuneration amount which can be related to the performance of the institution but cannot incentivise excessive risk-taking; and (ii) non-executive directors are also remunerated by a fixed amount which cannot be, in any way, linked to the bank's financial results. Subject to the principle of transparency, transversally applicable to each of the main points exposed in this section, banking institutions are obliged to publicly disclose (on their website) the remuneration policy applicable, with express mention of the global amounts paid to each management body.

As for the remuneration of the staff, the two main distinctions regard: (i) employees from risk-taking departments; and (ii) employees from departments related to internal control (such as audit, corporate governance and risk assessment). In a nutshell, for (i), BNA Notice 1/13 establishes the possibility of additional non-monetary remuneration, as long as it complies with certain institutional long-term principles and purposes; and for employees of category (ii) as described above, the main point of focus is that the remuneration amount shall not compromise the independence of their functions.

Finally, banking institutions in Angola are also authorised to hire an independent consultancy service for assistance to such entities or boards with delegated competencies, as long as these outsourced entities maintain full responsibility for such activities. When hiring consultancy services, it is mandatory that levels of (i) integrity, (ii) competence and (iii) avoidance of conflicts of interest be fully and previously analysed by the bank prior to any decision. The main requirement, in outsourcing functions, is for the bank to ensure precise compliance with all the purposes and applicable corporate governance principles, especially as to the responsibilities of the board of directors.

Bank capital requirements

As in many other jurisdictions, notably in Europe, Angolan banks are bound 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 the relevant net profits for such purpose.

Angolan banks are also subject to ratios and prudent limits that are established by BNA, in order to ensure sustainability of banking activities. Notices no. 02/2016, 03/2016, 04/2016 and 05/2016 further develop the technical and prudential percentages to be taken into consideration when accounting for the own funds of a bank which, when calculated, will determine if the bank complies with the solvability ratio (of 8.5% or 7.0%, dependent on the type of elements incorporating the own funds for each specific case) or not. In determining the risk, it is mandatory to analyse all the following aspects, equivalent to the requirements set out in European and other internationally originated legislation: (i) credit risk; (ii) counterparty risk; (iii) market and (iv) counterparty risk in trading books; and (v) operational risk.

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In light of the above, and without exposing in detail the technical and accounting provisions, it is safe to conclude that bank capital requirements as set out in national legislation are showing an increasingly close connection with European standards, having been drafted in light of the recent Basel II standards and requirements, as indicated in the relevant internal regulations. Nonetheless, future international initiatives on bank capital and liquidity, despite having been implemented in foreign countries, are still under analysis by BNA and will only be applicable to Angolan banks if and under the conditions specifically determined and implemented by the national regulator.

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

Law 12/2015 regulates banks' relationships with customers and other third parties.

In a nutshell, pursuant to the Chapter dedicated to Market Conduct Supervision, banking financial institutions are required to ensure technical capacity, act with adequate diligence, provide proper information and assistance, handle customer complaints, set internal conduct policies, preserve confidentiality, cooperate with other authorities, report credit risks, and comply with conflict-of-interest and "antitrust" rules.

On technical capacity, banking financial institutions must ensure high levels of competence for clients, and that their organisation has the technical and material means necessary to deliver services, performed in appropriate conditions concerning quality and efficiency. In their relationships with clients and other institutions, directors and employees of the banking financial institutions must act with due diligence, neutrality, loyalty, discretion and respect, conscientious of the interests entrusted to them by depositaries.

As in most jurisdictions, clients are entitled to receive clear, complete and proper information on banking products and services they choose to purchase/acquire from banks, namely in respect of interest rates and commissions charged by banking financial institutions. To ensure transparency towards clients, BNA defines minimum requirements and duties that banking financial institutions must observe, including concerning information and contracts content (for example, BNA Notice 14/2016 imposes information requirements for credit agreements, including credit restructuring).

Furthermore, banking financial institutions are required to adopt conduct policies and disseminate to clients the same, including on internal mechanisms and procedures adopted for dealing with clients' complaints.

One rule of thumb that banking financial institutions have to follow is confidentiality. The banking duty to keep secrecy of 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 is not the case whenever the said information is required, within the scope of their powers, by BNA, the Securities Market Commission and the Insurance Regulatory and Supervisory Agency, 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). Obviously, the obligation to ensure confidentiality does not prevent banking financial institutions from exchanging information among themselves for the purposes of risk assessment and with the goal of guaranteeing the security of their operations, namely credit operations.

On conflicts of interest, banking financial institutions are prohibited to grant credit, directly or indirectly, to members of their corporate bodies or equivalents, or to companies or other

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entities in which they have a direct or indirect controlling interest. This restriction does not apply to credit operations in which financial institutions or holding companies, under the same supervision on a consolidated basis with the lending entity, are the beneficiaries. Also, it does not apply to entities holding a qualified interest in the lending financial banking institution. In addition, limitations concerning the assessment of, and decisions on, credit operations are established for members of corporate bodies regarding companies or entities in which they hold a qualified interest or have managing offices. In general, credit to linked persons is also forbidden.

The rules envisaging the prevention of anti-competitive behaviour by banking financial institutions, either in their mutual relationships, or when dealing with third parties, establish that any conduct with the goal of obtaining a dominant position in the monetary, finance or exchange markets is deemed illicit. Also, financial institutions are prevented from applying discriminatory conditions to comparable operations or from imposing on their clients, as a condition to benefit from their services, the acquisition of goods and products or the hiring of services.

The legal right is given to clients to submit directly to BNA, claims based on non-compliance of duties and rules governing banking activity by banking financial institutions.

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Academic background

Law Degree, University of Lisbon, Faculty of Law.

Master in law at the University of Lisbon, Faculty of Law ("*Transparência, OPA obrigatória e imputação de direitos de voto*" – "Transparency, Mandatory Bid and Attribution of Voting Rights").

Professional experience (VdA)

Hugo joined VdA in 2001 and is currently partner of the Banking & Finance and Capital Markets practice areas. He provides advice in the context of takeovers and public offerings, as well as in respect of the issuance of securities and structured finance products, including securitisation and covered bonds, advising issuers, offerors, financial intermediaries or investors. He also provides ongoing advice on regulatory matters in the areas of banking law and capital markets. Admitted to the Portuguese Bar Association.

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Law degree, Lisbon Catholic University.

Professional experience (VdA)

Filipa joined VdA in August 2015. She is a managing associate in the Banking & Finance area of practice, where she has been actively involved in providing legal advice on banking and capital markets' regulatory matters as well as in the structuring of several financing transactions, such as syndicated loans, the issue and placement of debt and debt restructuring, both in Portugal and in the Republic of Angola. Her practice is also focused on insurance matters for lead insurance companies operating globally, including in Portuguese-speaking countries and, also, in several francophone African jurisdictions.

Other professional background

Before joining the firm she worked, as Senior Associate, at Miranda Correia Amendoeira e Associados – Sociedade de Advogados (Miranda), where she focused on banking & finance and insurance and re-insurance related matters, having been involved in a wide variety of domestic and international transactions, notably in Portugal and in the Republic of Angola. She also had the opportunity to represent acquirers, target companies and sellers, in connection with cross-border acquisitions and dispositions of banking and insurance companies. At Miranda she was regularly involved in providing advice in connection with syndicated loans, acquisition financings, leveraged buyouts, asset-based financing, in particular ship and aircraft financing, including export credit and EXIM finance, sovereign debt matters, as well as on regulatory matters.

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