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The International Comparative Legal Guide to:

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A practical cross-border insight into project finance

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Chapter 6

Angola

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1 Overview

1.1 What are the main trends/significant developments in the project finance market in your jurisdiction?

Angola is facing several political changes since the new government was elected in September 2017. The new government has made positive progress in strategic areas to promote transparency, good governance and to open the country to foreign investment and competition. Two political measures recently imposed by the new administration promise to attract investment, partnerships and trade: (i) the new Law of Private Investment; and (ii) the new Competition/Anti-Trust Law. Respectively, these two laws set forth new principles and rules aimed at facilitating, promoting and accelerating private investment operations and ensure free and fair competition within the Angolan market. Also, it is worth noting that an amendment of the Law on Public-Private Partnerships is currently being drafted with the aim of mobilising private investment in the country.

Internationally, Angola is becoming more assertive and demonstrating a more steadfast commitment to compliance and international anti-money laundering practices. However, despite the new government's efforts, the economic situation is still critical and the Angolan government's major challenge is overcoming the economic stagnation.

1.2 What are the most significant project financings that have taken place in your jurisdiction in recent years?

The first deep-water port in the country, which is under construction in Caio, Cabinda province is the most significant public-private partnership transaction in recent years. The construction of the port is valued at $831.9 million and the Angolan State supported 85% of the costs.

The first tenders for public-private partnerships to develop the infrastructures of several industrial centres in the country was recently launched by the government.

2 Security

2.1 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

Under Angolan law, the terms and formalities for security creation vary depending on the type of the asset. The most frequently used *in rem* guarantees are mortgages and pledges.

Mortgages entitle the creditor to obtain repayment of credit through the sale of the mortgaged assets before and with preference over other creditors of the debtor, except for some privileged credits and other credits previously guaranteed by mortgages over the same assets. Specific authorisations may have to be obtained in order to mortgage rights (e.g. surface rights granted by Angolan authorities). A mortgage must be executed by means of a notary deed with a Notary Public and registered with the relevant Registry Office.

The pledge is generally created by means of a written agreement and delivery of the relevant asset to the creditor or to a third party. Pledges are not subject to special formalities (other than a written document) nor to any type of public registration, except in the case of pledges of certain types of securities. It should be added that specific requirements may apply to pledges depending on the type of asset being given as collateral. Certain specific economic sectors such as the financial, insurance, media, mining and petroleum sectors are subject to special restrictions or approval requirements, or both. Therefore, certain authorisations can be required from the government or other state entities, or both, in order to pledge assets or equity interests in those sectors.

Under Angolan law, a pledge or mortgage over future assets is not prohibited. Alternatively, security agreements may provide for a security of existing assets and a promise of security over future assets. In the latter case, a definitive pledge over the assets is subsequently executed and delivered as a supplement to the security agreement.

2.2 Can security be taken over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground)? Briefly, what is the procedure?

The most common form of security over real estate property is the mortgage. Due to the existing restrictions to foreign ownership of real estate property, foreign investors in Angola are granted surface rights over real estate.

Security over these rights can be created, but it requires the prior authorisation of the grantor (Angolan authorities). The creation of security over immovable assets, related rights or movable assets subject to registration is created through a mortgage. The mortgage must be executed by notarial deed and is subject to registration with the relevant Registry Office.

2.3 Can security be taken over receivables where the chargor is free to collect the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

The most common form of security over receivables is a pledge of credits, which is created by a written agreement. The pledge of receivables is subject to the notification of the respective debtor. Thus, it is also possible for security to be granted over the rental income from a property. This usually takes the form of an assignment whereby the tenants are directed to pay the rental income to the lender so that the rental income does not pass through the hands of the borrower.

2.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

A pledge over cash deposited in bank accounts is deemed as a pledge of credits (see above).

2.5 Can security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Briefly, what is the procedure?

The form of security over shares is a pledge over the company's share capital (shares or quotas). The pledge of share capital participations must observe specific requirements to be deemed valid and binding. The requirements vary depending on the type of project company. In the case of limited liability companies by quotas, the company must consent on the execution of the pledge, which must then be formalised by means of a notary deed entered before a Notary Public and registered with the Commercial Registry Office. As for limited liability companies by (nominative) shares, the pledge is deemed formalised by means of executing a written agreement, inscription of the pledge in the relevant share titles, and registration of the same in the company's share registration book.

2.6 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

The calculation of notarisation and registration fees are based on variable percentages, depending on the secured amount and the number of the pages of deed, if applicable.

All guarantees and securities, irrespective of their nature or form, are subject to Stamp Duty (plus notary and land registry fees) provided that the security is granted in Angolan territory or if the security is granted outside Angola but submitted therein for any legal purpose (e.g. enforcement). Further, securities granted by non-resident entities to Angolan-based entities, regardless of the place where the security is granted, are always subject to Stamp Duty and is due upon issuance of the security. Stamp Duty over securities is calculated over the amount secured and the rates may vary between 0.1% to 0.3%, depending on the term of the security.

2.7 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

Stamp Duty and the notary and registration costs are usually deemed extremely high. As regards the filing, notification or registration requirements, they are quite straightforward and no longer time-consuming.

2.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground), etc.?

Provided that the security interests are created over assets belonging to private entities, Angolan law does not require any governmental or other consents. Securities over public domain assets are prohibited or restricted. These restrictions include governmental consent and/or approval, imposed through sector-specific regulations, the relevant concession contracts or general public administrative laws.

3 Security Trustee

3.1 Regardless of whether your jurisdiction recognises the concept of a "trust", will it recognise the role of a security trustee or agent and allow the security trustee or agent (rather than each lender acting separately) to enforce the security and to apply the proceeds from the security to the claims of all the lenders?

These concepts are not recognised by Angolan law.

3.2 If a security trust is not recognised in your jurisdiction, is an alternative mechanism available (such as a parallel debt or joint and several creditor status) to achieve the effect referred to above which would allow one party (either the security trustee or the facility agent) to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

See question 3.1 above.

4 Enforcement of Security

4.1 Are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or the availability of court blocking procedures to other creditors/the company (or its trustee in bankruptcy/liquidator), or (b) (in respect of regulated assets) regulatory consents?

Pursuant to Angolan law, no form of security can be enforced outside of court.

The enforcement of mortgages consists of a sale of the relevant assets through court proceedings. The sale of pledges may be made through court or through out-of-court proceedings, if the parties have so agreed. Therefore, in Angola, the appropriation of the assets is not available to pledges and mortgages.

4.2 Do restrictions apply to foreign investors or creditors in the event of foreclosure on the project and related companies?

Pursuant to Angolan law, there are no restrictions in this regard

(additionally, it must be noted that no different rules on enforcement of security interests in Angola apply for foreign creditors). However, loans, guarantees and other financial contracts, deposits and the acquisition and sale of shares, bonds and other securities, involving rights or obligations between residents and non-residents qualify as capital operations and are subject to foreign exchange requirements; notably, the Angolan Central Bank's ("BNA") prior approval (see section 6 below).

5 Bankruptcy and Restructuring Proceedings

5.1 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 security?

Upon the declaration of bankruptcy, all security must be enforced within the bankruptcy proceedings.

If a company is declared bankrupt, assets and documents are, for instance, seized in order to protect the creditors' rights. A bankruptcy declaration by a court entails the immediate maturity of all the debts of the bankrupt company and there are certain acts which are legally deemed to be detrimental to the bankruptcy estate (insofar as these transactions cause a depletion of the debtors' assets). For instance, *in rem* guarantees granted after the underlying debt within the year that precedes the declaration of bankruptcy or granted simultaneously with the underlying debt within 90 days preceding the mentioned declaration shall always be assumed to be detrimental to the bankruptcy estate. Therefore, the creditors may challenge the relevant transactions and claw back on those transactions.

Payments to creditors can only be made after the sale of the debtor's assets. In the case that there are creditors benefiting from guarantees *in rem*, payment of such creditors will occur immediately after the sale of the secured asset. Common creditors shall be paid *pro rata* every time a value equivalent to 5% of the amount in debt to common creditors is deposited in the bank for the account of the relevant bankruptcy.

5.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g. tax debts, employees' claims) with respect to the security?

The secured creditor has priority over unsecured creditors at the time of the payment of debts.

Only special privileged rights are given priority in relation to credits secured by pledges or mortgages. Angolan law provides that senior security ("*Privilégios Creditórios*"), in favour of the government and/or local authorities (e.g. taxes and outstanding court fees), or in favour of other third parties (e.g. employees credits), rank ahead of guarantees *in rem*.

It must be noted that retention rights (under which certain creditors are entitled to retain certain assets in their possession until their credit is paid) over a real estate asset prevails over a mortgage, even if such mortgage has been previously registered.

In case of different securities granted over the same asset, the oldest (for registration purposes) security shall be paid first. In fact, pursuant to Angolan law, the time of registration of a security is relevant for assuring the priority of the creditor.

5.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

The state and some public entities (e.g. BNA) are excluded from bankruptcy proceedings.

As to the special bankruptcy proceedings, it must be noted that (i) the Financial Institutions Act foresees that the bankruptcy preventive measures applicable to financial institutions will be determined by the competent supervision authority, and (ii) the Public Business Sector Act sets out special procedures regarding the liquidation of public companies.

The Angolan Civil Procedural Code does not make distinctions between foreign or national creditors for bankruptcy purposes.

5.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of the project company in an enforcement?

Please see question 5.2 above for the retention rights.

5.5 Are there any processes other than formal insolvency proceedings that are available to a project company to achieve a restructuring of its debts and/or cramdown of dissenting creditors?

Pursuant to Angolan law, there are two types of preemptive insolvency procedures: the Composition; and the Creditors' Agreement.

The process known as Composition is an agreement achieved within the judicial process, to be homologated by the court. The company may file for bankruptcy before the company ceases all payments to creditors or in the 10 (ten) days following this event. If the filing is performed in a timely manner, the law establishes that the bankrupt company may propose an agreement to the creditors in order to achieve the restructuring of its debts and to avoid the declaration of bankruptcy. The agreement must be approved by creditors representing 75% of the credits. In case the Composition is not proposed or its terms are not approved, the creditors may incorporate a limited liability company to continue commercial activity, with the purpose of satisfying the existing credits – the Creditors' Agreement.

If there is no Composition or Creditors' Agreement, or if they are rejected by the court, the bankruptcy shall be, thereupon, declared.

Finally, it must be noted that the debtor who has been indicted or tried for fraudulent bankruptcy is prevented from proposing any of these rescue procedures.

5.6 Please briefly describe the liabilities of directors (if any) for continuing to trade whilst a company is in financial difficulties in your jurisdiction.

Directors of companies facing financial difficulties may continue to trade, provided they act with a special duty of care and do not violate any legal duties and legal principles applicable to the management of companies. In the event directors have contributed to the company's bankruptcy, they are liable and subject to penalties. Directors may also be held criminally liable for fraudulent insolvency and negligent insolvency.

6 Foreign Investment and Ownership Restrictions

6.1 Are there any restrictions, controls, fees and/or taxes on foreign ownership of a project company?

Foreign investment projects, such as the incorporation of a local company or acquisition of shares in an existing Angolan company, are subject to the prior approval of the State Investment Agency ("AIPEX").

The new Private Investment Law entered into force in June 2018 introduced significant changes to the applicable legal framework. Local partnerships are no longer mandatory for investing in certain sectors of the economy, notwithstanding the local content requirements provided for in regulations specifically applicable to certain sectors, such as oil & gas. Also, there is now no minimum investment amount in order to be eligible for benefits and incentives.

6.2 Are there any bilateral investment treaties (or other international treaties) that would provide protection from such restrictions?

The Angolan State has signed bilateral investment treaties ("BITs") with several countries, such as Cape Verde, Cuba, Italy, Germany, Namibia, Portugal, Russia, Spain and South Africa. Angola is a member of the Multilateral Investment Guarantee Agency (the "MIGA") which provides dispute settlement assistance. Its past efforts to resolve foreign investment disputes have proven to be extremely successful and, as a result, expropriation of private investment assets is today guaranteed to be fair. Angola also entered into a Trade Investment Framework Agreement ("TIFA") with the United States in May 2009.

6.3 What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

The rules on nationalisation and expropriation procedures in Angola are still regulated by the Nationalization Law (Law 3/76 of 3 March 1976) and the Expropriation Law (Law 2030 of 22 June 1948). These regulations were actively enforced in the post-colonial era and led to the nationalisation of companies and seizure of significant real estate assets in Angola during this period. Although still in force, this statute is clearly outdated and inconsistent with the Angolan economic environment, the present wording of the Constitution and with the protection that is granted to private (and foreign) investors under the Private Investment Law. Thus, under the Constitution, it is only possible to temporarily seize the said assets or carry out their expropriation for reasons of public interest, upon payment of fair and prompt compensation, which shall be a condition of effectiveness of the expropriation. In light of these Constitutional provisions, the validity of the old statutes on nationalisation and seizure of assets may even be challenged.

7 Government Approvals/Restrictions

7.1 What are the relevant government agencies or departments with authority over projects in the typical project sectors?

Normally, the governmental investment entity (AIPEX) is the relevant government agency with authority and may vary depending on the nature of a specific project. A project may fall under the authority of a specific ministry, but in certain cases several ministries may have authority. This often occurs with large projects that need, for example, to obtain an environmental licence, in which case the intervention of the Ministry of Environment ("MINAMB") will always be required at a certain stage.

7.2 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?

Private documents with acknowledgment of a payment of obligation shall only be directly enforceable before the courts if authenticated by a Notary Public or by any competent authority.

Except for certain pledge arrangements which need to be authenticated by a Notary Public or by any competent authority, project documents are valid and enforceable without any need for registration, authentication or filing with any governmental authority.

Financing agreements which involve non-resident entities are subject to BNA's prior approval.

7.3 Does ownership of land, natural resources or a pipeline, or undertaking the business of ownership or operation of such assets, require a licence (and if so, can such a licence be held by a foreign entity)?

Private ownership of land has been restricted in Angola and, presently, land in Angola is divided, in terms of ownership, into private land (whose property rights are held by private entities and individuals) and state land (whose property rights are held by the state of Angola). State land is further divided into state private domain land and state public domain land. Rights over state private domain land can be granted to private entities or individuals, while the use of state public domain land is limited and subject to special public law rules. Please see question 2.2 above for details regarding ownership of land granted to foreign entities.

All mineral and natural resources found in the country's subsoil belong to the state, being deemed part of the latter's "public domain". The respective prospecting, exploration, development and production are normally carried out through a concession. Concession rights should be exclusively granted to the national concessionaires (e.g. Sonangol and Endiama).

7.4 Are there any royalties, restrictions, fees and/or taxes payable on the extraction or export of natural resources?

The export of natural resources is, typically, subject to specific customs regimes (e.g. subject to special authorisations, formalities and specific fees) that may vary with regards to the type of natural resource. By way of illustration, holders of mining rights are entitled to trade the product of the mine operations, in the terms set forth in both law and the relevant investment contract. The export of mineral resources duly extracted and processed is typically not subject to customs duties and charges, except for fees for services rendered by customs. In turn, the direct or indirect exportation of raw (not processed) mineral resources is subject to a 5% customs duty over the market value of the relevant mineral. The exportation of Angolan mineral resources that is not expressly allowed under the Mining Code is prohibited. The exportation of crude oil is also

subject to a specific customs regime and specific procedures must be followed. The exportation of crude oil is subject to a statistical tax of 1/100 *ad valorem*.

7.5 Are there any restrictions, controls, fees and/or taxes on foreign currency exchange?

BNA is the foreign exchange control authority, which has a key role in terms of any repatriation of funds outside Angola. Under Angolan law, any entity with a registered office in Angola and local branches qualify as resident for foreign exchange purposes (Foreign Exchange Residents). Any currency transfers between a Foreign Exchange Resident and a Non-Foreign Exchange Resident are subject to different requirements depending on the nature of the underlying transaction. The transfer of profits abroad qualify as invisible items of trade. As mentioned above, a precondition and sale of shares, bonds and other securities, involving rights or obligations between residents and non-residents qualify as capital operations. The following rules apply:

(i) capital operations are subject to BNA's prior approval. The only exception is for capital operations of a personal nature referring to donations from abroad, as well as inheritances and legacies made exclusively to individuals residing in Angola;

(ii) the transfer of currency requests for a capital operation must be made to the intermediary bank, which will then submit it to BNA; and

(iii) BNA's authorisation for the transfer is valid for a period of 180 days. The period can be extended one or more times in the case that the licence was not wholly or partially used.

7.6 Are there any restrictions, controls, fees and/or taxes on the remittance and repatriation of investment returns or loan payments to parties in other jurisdictions?

Please see question 7.5 above.

7.7 Can project companies establish and maintain onshore foreign currency accounts and/or offshore accounts in other jurisdictions?

An offshore bank account can only be opened by an Angolan project company in the rare situation where an authorisation from BNA has been obtained. Angolan project companies may freely open a foreign currency bank account in Angola, though the operation of the said account is subject to the following limitations.

Credit operations in a foreign currency account are limited to:

(i) a deposit of foreign currency arising from its activities; and

(ii) a deposit of interest accrued over funds in the relevant account.

Debit operations in a foreign currency account are limited to:

(i) withdrawal or sale of foreign currency; and

(ii) foreign exchange transactions in accordance with Angolan foreign exchange regulations.

7.8 Is there any restriction (under corporate law, exchange control, other law or binding governmental practice or binding contract) on the payment of dividends from a project company to its parent company where the parent is incorporated in your jurisdiction or abroad?

As mentioned above (see question 7.5 above), transfers of profits and dividends abroad qualify as invisible items of trade. A precondition for the right to transfer profits is the relevant company having approved an investment project under the Private Investment Law. Other conditions related to timings and submission of documentation to BNA will also apply.

7.9 Are there any material environmental, health and safety laws or regulations that would impact upon a project financing and which governmental authorities administer those laws or regulations?

The general principle set forth in the Angolan Constitution is that all citizens have the right to live in a healthy and unpolluted environment and that the government must take the necessary measures to protect the environment. The Environmental Framework Law provides guiding principles for the prevention and control of pollution and standards to protect the environment. A series of other laws and decrees provide for relatively extensive regulation of environmental protection and industrial licensing. Environmental licensing is mandatory in the case of construction, installation, refurbishment, extension, modification, operation and decommissioning of activities that require an environmental impact assessment study (e.g. agricultural, forestry, industrial, commercial, residential, tourism or infrastructure projects, which, by virtue of their nature, size or location, may have implications for the environmental and social equilibrium and balance or those activities that have a potentially hazardous nature) or in the case of activities that are likely to have a considerable environmental and social impact. The MINAMB is responsible for implementing and supervising the protection of environmental regulations.

Crude oil exploration and production activities are subject to a specific regime on environmental protection for the petroleum industry. In addition to general obligations, oil companies should take the necessary precautions to protect the environment and limit to the greatest extent possible their impact; several environmental plans are required for operations. The Ministry of Petroleum supervises the oil industry in Angola and is responsible for implementing national policy and coordinating, supervising and controlling all petroleum-related activities.

7.10 Is there any specific legal/statutory framework for procurement by project companies?

The legal framework for public procurement in Angola applies to a wide range of public contracts, including: (i) public works; (ii) lease or purchase of movable assets; (iii) acquisition of services; (iv) other contracts to be entered into by public entities that are not subject to a special legal regime; (v) public-private partnership contracts; and (vi) defence and security contracts. Several amendments have been implemented with regard to the specific awarding procedures, which are now: (i) a public tender (without a qualification phase); (ii) limited bidding by pre-qualification; (iii) a limited tender by invitation; and (iv) a simplified procurement. As a general rule, a public tender or a pre-qualification procedure is mandatory for contracts with an estimated value equal to or higher than Kz 182,000,000.00 (approx. $1,075,126.55). The Law introduced the framework agreements in order to allow public contracting entities to set the terms and conditions applicable to contracts that shall be entered with one or more contractors/suppliers for a given period of time.

8 Foreign Insurance

8.1 Are there any restrictions, controls, fees and/or taxes on insurance policies over project assets provided or guaranteed by foreign insurance companies?

Under the Angolan General Insurance Law and the Insurance Regulations, all insurance contracts with (i) Angolan authorities, (ii) activities carried out in Angola, or (iii) assets located in Angola have to be entered into by insurance companies duly authorised to carry out insurance activity in Angola.

However, the Ministry of Finance may authorise that insurance contracts to be entered into outside Angola with a foreign non-admitted insurer, subject to the favourable opinion of the Angolan Insurance Regulator ("ISS") whenever the specific insurance in question cannot be obtained from a local insurer. The consequence of taking insurance outside Angola without the Ministry of Finance's authorisation is that the obligations arising from such contracts, as well as foreign court or arbitration decisions regarding the said insurance contracts, will not be enforceable in Angola. The Law sets forth specifics regulations for co-insurance for the oil & gas, mining, aviation and agriculture sectors.

8.2 Are insurance policies over project assets payable to foreign (secured) creditors?

Yes, in case all the foreign exchange requirements are fulfilled.

9 Foreign Employee Restrictions

9.1 Are there any restrictions on foreign workers, technicians, engineers or executives being employed by a project company?

Pursuant to the Angolan labour requirements, foreign nationals may only be hired for professional, technical or scientific job positions provided no Angolan nationals are available for such job positions.

Companies operating in Angola are required to comply with a statutory ratio of a minimum of 70% Angolans and a maximum of 30% expatriates (the so-called "Angolanisation" policy). Failure to comply with this ratio may result in a fine of between seven and 10 times the company's average monthly salary per each expatriate employee unlawfully employed.

In order to work lawfully in Angola, an expatriate employee must first obtain a work visa from the Angolan immigration authorities, which is, under Angolan law, the only visa that allows an individual to carry out paid work in the employment of a third party. Work visas depend on a local employment relationship between the relevant expatriate employee and an employer with some sort of legal representation in the country (such as a branch or local company).

The use of any other visa to perform work is illegal. In the event an employee works in Angolan territory without a work visa, the Angolan Visa Law stipulates fines applicable to the employee and to the employer (Kz 1,000, equivalent to $5,000). In addition to this, the employee will be expelled from the country and the employer will have to pay all related expenses.

10 Equipment Import Restrictions

10.1 Are there any restrictions, controls, fees and/or taxes on importing project equipment or equipment used by construction contractors?

Equipment entering Angolan territory that is to be used in the country must be declared to the customs authorities and subject to proper importation procedures. Only companies duly registered in Angola as importers are allowed to carry out import operations. As a rule, importations are subject to prior licensing procedures with the Ministry of Commerce and attract payment of customs duties and other customs duties (in aggregate up to a maximum of 83% of the customs value). In addition, depending on the nature of the equipment, some specific authorisations may be required (from the ministry supervising the use of the relevant equipment) and some additional procedures may apply.

10.2 If so, what import duties are payable and are exceptions available?

Equipment to be used directly and exclusively in petroleum exploration and production operations or in mineral exploration, evaluation, mining and processing operations may benefit from customs benefits.

The importation of equipment under a private investment project approved by the AIPEX may also benefit from customs exemptions.

11 *Force Majeure*

11.1 Are *force majeure* exclusions available and enforceable?

There is no legal definition for *force majeure*, but this concept is generally accepted and enforceable (by doctrine and the Angolan courts). It usually relates to events from which liability does not arise for those responsible for performing the obligation affected by *force majeure* because the relevant events are by nature unpredictable, inevitable and irresistible.

12 Corrupt Practices

12.1 Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

Corruption in the private sector is not a crime in Angola. In Angola, this crime may take the form of fraud, abuse of trust, forgery and other related common crimes.

Corrupt business practices and bribery targeting the public sector and public officials within the scope of the projects sector may generally constitute a crime of corruption in Angola.

Corruption offences are addressed in the Law on the Criminalization of the Infractions Relating to Money Laundering (Law 3/14 of 10 February). Law 3/14 was enacted in the context of the fight against money laundering, international criminal organisations and the financing of terrorism in compliance with obligations undertaken by the Angolan State under international conventions. The Law on

Money Laundering and Financing of Terrorism (Law 34/11 of 12 December) sets forth the crimes of terrorism, money laundering, financing of terrorism and terrorist organisations.

Among other offences, Law 3/14 sets forth corruption-related criminal offences, including active and passive corruption (already provided for as criminal offences under the Criminal Code of 1886), and enacts the new criminal offences of trading in influence, receiving undue benefits and economic participation in business. Pursuant to Law 3/14, any person who makes a payment, gift, offer or promise to a public employee with the intent of exerting influence to obtain or retain business is criminally liable, and so is the public employee who has been bribed. Any person who gives or promises an undue pecuniary or non-pecuniary benefit to a public official carrying out the duties of his or her office, or because of those duties, commits a criminal offence of receiving undue benefits, and so does the public employee. Finally, provided that some conditions are met, public officials may be deemed criminally liable for the crime of economic business participation when obtaining unlawful advantages related to interests under their control or supervision as public officials. The chapter of Law 3/14 relating to corruption also includes the criminal offences of trading in influence and corruption in international business.

Corruption practices involving customs officials are governed by a separate regime set forth in the Customs Code, approved by Decree-Law 5/06 of 4 October. However, the Customs Code did not fundamentally change the definition of corruption practices previously contained in the Criminal Code and now in Law 3/14. The Angolan legislator accepted that customs officials are entitled to receive small gifts made for cultural or protocol reasons. The Customs Officials Career Statutes (approved by Presidential Decree 18/11 of 12 January) describes which gifts are permissible.

A Public Probity Law (Law 3/10 of 29 March) was enacted in 2010, the provisions of which have a major impact on the regulation of corruption in Angola. Among other objectives, this law aims to unify in one statute the different rules applicable to bribery in Angola, as well as to the actions of public officials. In brief, the mainstay of the Public Probity Law is the principle of administrative probity under which public officials must perform their duties in an honest manner, and shall not request or accept anything of value which may affect their independence or the good name of the public institution they represent. This means that, as a rule, public officials should not receive or benefit from offers, either directly or indirectly, from Angolan or foreign individuals or corporations for the performance of their duties.

At an international level, Angola ratified:

(a) the Protocol Against Corruption of the Southern African Development Community ("SADC"), as per Council of Ministers' Resolution 38/05 of 8 August 2005;

(b) the United Nations Convention Against Corruption, as per National Assembly Resolution 20/06 of 23 June 2006; and

(c) the African Union Convention on Preventing and Combating Corruption, as per National Assembly Resolution 27/06 of 14 August 2006.

The provisions of the SADC Protocol and the Conventions are not directly applicable in Angola but are directed at the Angolan legislative entities. These should subsequently develop legislation to implement the principles of the abovementioned Protocol and Conventions. Law 3/14 implements some of the principles adopted under those Conventions, significantly widening the scope of the crime of corruption (including conducts that qualify as trading in influence and the criminal offence of corruption in international business).

According to the information available, a new Criminal Code has been prepared and is expected to be enacted soon in Angola. Reportedly, the Criminal Code will be aligned with the principles contained in international conventions and does not differ much from the rules enacted by means of Law 3/14.

13 Applicable Law

13.1 What law typically governs project agreements?

Pursuant to the Angolan Civil Code, the general principle is that the creation and enforcement of the contracts are governed by the law chosen by the parties. Concession contracts and other project agreements entered into with public entities are governed by Angolan law.

13.2 What law typically governs financing agreements?

Please see question 13.1 above. Frequently, financing contracts are governed by foreigners laws.

13.3 What matters are typically governed by domestic law?

Angolan law shall apply whenever overriding mandatory provisions thereof are at stake (public order principles of the Angolan legal framework, such as clauses excluding or limiting liability in cases of wilful misconduct or gross negligence).

14 Jurisdiction and Waiver of Immunity

14.1 Is a party's submission to a foreign jurisdiction and waiver of immunity legally binding and enforceable?

Submission to a foreign jurisdiction and a waiver of immunity are effective and enforceable contract provisions, to the extent permitted by Angolan law.

15 International Arbitration

15.1 Are contractual provisions requiring submission of disputes to international arbitration and arbitral awards recognised by local courts?

Pursuant to the Angolan Voluntary Arbitration Law, the primary domestic source of law relating to arbitration, parties enjoy full autonomy to designate the rules governing their proceedings and in doing so may choose to include specific procedural rules or simply refer to institutional rules, including those of the International Chamber of Commerce ("ICC").

Hence, there should be no issues with the enforcement of an award based on the fact that it has been issued by the ICC. As to enforcement of arbitral awards *per se*, a domestic award is automatically enforceable in the country. However, awards rendered in international arbitration proceedings – determined as those where international trade interests are at stake, in particular where parties to the arbitration agreement have business domiciles in different countries at the time of the agreement's execution, or the

place of performance of a substantial part of the obligations resulting from the legal relationship from which the dispute arises is situated outside the countries where companies have their business domiciles, or where the parties have expressly agreed that the scope of the arbitration agreement is connected with more than one state, are subject to prior recognition proceedings before Angolan judicial courts under the Civil Procedure Code.

15.2 Is your jurisdiction a contracting state to the New York Convention or other prominent dispute resolution conventions?

Angola has been a signatory of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 12 August 2016, which is now fully applicable in national territory. However, in line with the reciprocity reservation made by Angola to the Convention's Article I (3), international arbitral awards are recognisable and enforceable, so long as granted in the territory of another Contracting State.

It is important to add that there is still a certain level of resistance from local courts and practitioners in respect of arbitration, although it is expected that the accession to the New York Convention and its implementation will encourage courts to adopt an arbitration-friendly approach.

15.3 Are any types of disputes not arbitrable under local law?

Under Angolan law, parties are generally free to submit their disputes to arbitration, with an exception made to disputes that fall under the state courts' exclusive jurisdiction and disputes that relate to inalienable or non-negotiable rights.

15.4 Are any types of disputes subject to mandatory domestic arbitration proceedings?

This is the case, for instance, with disputes arising from private investment contracts (entered into between the Angolan State and private entities under Angola's Private Investment Framework) that are referred to arbitration, the same applying to disputes concerning petroleum activities.

16 Change of Law / Political Risk

16.1 Has there been any call for political risk protections such as direct agreements with central government or political risk guarantees?

Typically, those agreements do not provide any particular political risk protections and the change-in-law risk is addressed by contract in the standard and international terms for project finance agreements.

17 Tax

17.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

Interest paid under a shareholder's loan to a local or foreign shareholder is subject to a 10% Investment Income Tax withholding. Any other interest derived from other loans or credit facilities paid by a local company to a non-resident entity is subject to a 15% Investment Income Tax withholding (for loans granted by resident entities, the tax should be assessed by the beneficiary of the interest). As a rule, the mere enforcement of a security does not trigger any income subject to tax. If the payment of any additional proceeds is agreed between the parties, Investment Income Tax withholding may apply.

17.2 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?

Foreign investment operations may benefit from tax and customs incentives provided that the investor's project is submitted and duly approved by investment entities under the Private Investment Law. The key elements considered by the Angolan authorities when granting tax and customs incentives are the location of the investment and the sector of activity (the so-called Development Zones and Priority Sectors).

The tax benefits available for private investment operations include temporary exemptions from corporate income tax on profits, withholding tax on dividends and conveyance tax on the acquisition of real estate property. Goods and equipment imported under a private investment project may also benefit from exemptions from customs duties and other customs charges.

Dividends paid by an Angolan resident company to its foreign shareholder – either individuals or corporate entities – are subject to a 10% Investment Income Tax withholding which is their final tax liability in Angola. Tax must be withheld and delivered to the Angolan Tax Authorities by the resident company. Said withholding tax is also applicable in the allocation of profits between a permanent establishment located in Angola and its foreign head office.

Additionally, there is a supplementary tax over dividends which was created by the new Private Investment Law. The supplementary tax is applicable whenever the amount of dividends distributed exceeds the shareholder contribution on the company's own capital, as detailed below:

(i) 15%, up to 20%;

(ii) 30%, between 20% and 50%; and

(iii) 50%, when it exceeds 50%.

The supplementary tax is not applicable whenever the dividends are reinvested in Angola.

Loans and securities are subject to Stamp Duty in Angola – rates vary from between 0.1% and 0.5% depending on the extent of the loan/guarantee – provided that one of the following requirements is met: (i) the loan/security is granted in Angolan territory; or (ii) the loan/security is granted outside Angola but submitted therein for any legal purpose. Loans and securities granted by non-resident entities to an Angolan resident entity are always subject to Stamp Duty regardless of the place where they are signed.

Securities that are deemed materially ancillary of another contract already subject to Stamp Duty (e.g. a loan agreement), provided both contracts are entered simultaneously (i.e. the guarantee must be entered within 90 days after the main contract), are not subject to Stamp Duty in Angola.

18 Other Matters

18.1 Are there any other material considerations which should be taken into account by either equity investors or lenders when participating in project financings in your jurisdiction?

There are no other material considerations.

18.2 Are there any legal impositions to project companies issuing bonds or similar capital market instruments? Please briefly describe the local legal and regulatory requirements for the issuance of capital market instruments.

The Angolan Securities Code is quite recent and the regulations contain the organisational rules and administrative requirements for open companies and other issuers of securities admitted to trading in regulated markets. There is little experience in capital markets in Angola regarding the emission of bonds or similar capital instruments.

19 Islamic Finance

19.1 Explain how *Istina'a*, *Ijarah*, *Wakala* and *Murabaha* instruments might be used in the structuring of an Islamic project financing in your jurisdiction.

There have been no reports of the use of Islamic instruments in project finance in Angola.

19.2 In what circumstances may *Shari'ah* law become the governing law of a contract or a dispute? Have there been any recent notable cases on jurisdictional issues, the applicability of *Shari'ah* or the conflict of *Shari'ah* and local law relevant to the finance sector?

Please see question 19.1 above.

19.3 Could the inclusion of an interest payment obligation in a loan agreement affect its validity and/or enforceability in your jurisdiction? If so, what steps could be taken to mitigate this risk?

It is common practice in Angola to include an interest payment in a loan agreement subject to Angolan law, which is fully valid and enforceable. The law foresees maximum rates of interest that should be quarterly updated due to the inflation rates in the country.

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Manuel joined VdA in 1991 and currently is the Group Executive Partner of the Infrastructure, Energy & Natural Resources group and heads the Energy & Natural Resources practice. In such capacity he has participated and/or led the teams involved in the most relevant projects carried out in Portugal to date in the power (including renewable energies), oil & gas, road, transport, water and wastes sectors. He has also been actively working on regulation and public procurement procedures of those sectors.

Published works

Author of various articles including the chapter about Portugal in *The Projects and Construction Review*, published by Law Business Research in 2016, 2017 and 2018.

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Vanusa joined RLA in 2015. She is a Managing Associate at the M&A, Banking & Finance, Corporate & Governance, Tax and Employment & Benefits practice areas, where she has been actively involved in several transactions in Angola. She has advised several clients in diverse sectors in transactions such as mergers, spin-offs, joint ventures and group restructuring operations. She has particular and vast experience in M&A transactions within the TMT and Banking & Finance sectors. Vanusa has also provided tax assistance to groups and corporations in the international and domestic tax optimisation of banking and financial structures, real estate projects and domestic supplies of goods and services.

Other professional background

Before joining the firm she worked as a Senior Associate at Siqueira Castro & Nobre Guedes and at Miranda Alliance (Miranda Correia e Amendoeira & Associados/Fátima Freitas) in Luanda.

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