



October 2020

angola@vdalegalpartners.com

ANGOLA

THE NEW LOCAL CONTENT LEGAL FRAMEWORK FOR THE OIL & GAS INDUSTRY

Presidential Decree 271/20, of 20 October 2020 (“**PD 271/20**”), approved the new legal framework for the promotion of local content in the oil and gas industry, expressly repealing Ministry of Petroleum Order 127/03, of 25 November 2003 (“**Order 127/03**”).

Maintaining the general goals and principles of the local content policy that has been followed by the Government untouched, PD 271/20 contains a number of novelties in relation to the preceding legal regime worth noting, of which we would like to highlight the following:

- **Encouragement to National Companies**

As a rule, the associates of the National Agency for Petroleum, Gas and Biofuels (“**Oil Companies**” and “**Concessionaire**”, respectively), as well as any other companies operating in the oil sector (all oilfield service companies and any other contractors and subcontractors, “**Contractors**”) [Oil Companies and Contractors are hereinafter jointly referred to as “**Oil Industry Companies**”] must acquire raw materials, goods and equipment manufactured in Angola and services provided by:

- **Angolan Companies** – means companies incorporated under the laws of Angola, whose share capital is wholly (100%) owned by national individuals or companies; and
- **Angolan Incorporated Companies** – means companies incorporated under the laws of Angola, irrespective of the nationality of its shareholding.

In order to bid for the tenders launched by the Oil Industry Companies, both the Angolan Companies and the Angolan Incorporated Companies are required to produce evidence that they have the capacity to supply the goods or provide the relevant services, namely, without limitation, in terms of equipment, staff or other criterion that may be deemed relevant.

Whenever Angolan Companies and Angolan Incorporated Companies compete on the same tender, preference should be given to the former in the award of the contracts.

- **Segregation of Services**

Similarly to what happened under Order 127/03, a fundamental principle of PD 271/20 is the segregation of the contracts to be entered into between the Oil industry Companies and their contractors in three categories, depending on the nature of the services to be provided, each of them subject to a specific legal regime, as follows:

- (i) **Exclusivity Regime** – only Angolan Companies are allowed to supply the goods and provide the services covered by this regime;
- (ii) **Preference Regime** – roughly corresponding to the semi-competition regime existent under Order 127/03, preference should be given to Angolan Companies or Angolan Incorporated Companies, whenever, for the goods and services falling within the scope of this regime, they offer better or similar terms and conditions in what respects to price, quality of goods and services, technical expertise and delivery time. Foreign companies may only be awarded with contracts for this type of goods and services whenever:
 - (a) the price of the goods and services quoted by Angolan Companies or Angolan Incorporated Companies exceeds in more than 10% the price quoted by a foreign company; or
 - (b) the goods and services required for the operations are either in short supply or not at all available in the country, which must be previously acknowledged by the Concessionaire.
- (iii) **Competitive Regime** – without prejudice to the establishment of partnerships between Angolan Companies and foreign companies (under either *unincorporated* or *incorporated* joint ventures), goods and services falling within the scope of this regime (all the ones not expressly included in the two previous regimes) may be freely supplied by either Angolan or foreign entities. In equal circumstances, preference should be given to Angolan Companies or Angolan Incorporated Companies, by this order, in the award of the contracts.

After hearing the Competition Regulatory Authority, the Concessionaire is required to prepare, submit to the Ministry of Mineral Resources, Petroleum and Gas's ("MIREMPET") approval and disclose to the public the lists of the goods and services to be covered by the Exclusivity and Preference Regimes. The above lists may be reviewed and updated at any time by MIREMPET.

- **Framework Agreement and Human Resources Development Plan**

Oil Industry Companies are required to enter into a Framework Agreement with MIREMPET establishing the rules, rights and obligations in relation to the recruitment, integration, training and development of their workforce, expressly containing the reporting obligations in relation to the integration and promotion of Angolan personnel and the replacement of expatriates (the *Angolanization* process), within the following timelines:

- (i) Oil Companies at exploration phase – 30 days as of the effective date of the relevant Concession Decree;
- (ii) Oil Companies at production phase – 60 days as of the date of declaration of a commercial discovery;
- (iii) Contractors – 30 days as of the effective date of each contract.

A copy of the Framework Agreement must be submitted to the Concessionaire within 15 days as of the date of its execution.

In order to implement the Framework Agreement, Oil Industry Companies are required to submit to MIREMPET for approval (i) a Human Resources Development Plan until the 31st October of each calendar year; and (ii) an implementation status report of the Human Resources Development Plan until the 31st March of each calendar

year. Upon approval by MIREMPET, Oil Industry Companies have 30 days to submit Human Resources Development Plans to the Concessionaire.

- **Local Content Plan**

In addition to the above, the Oil Industry Companies are also required to prepare annual Local Content Plans containing the following mandatory information (i) forecast of goods and services needed for each stage of the project, (ii) Local Content Plan's implementation cost estimate; and (iii) forecast on transfer of services into Angola, and submit such plans to the Concessionaire.

- **Foreign Technical Assistance and Management Services**

The contracts for foreign technical assistance and management services are subject to Concessionaire's supervision and must contain a detailed programs for training, knowledge and technology transfer, and development and improvement of skills of the national workforce.

- **Split of Contracts**

PD 271/20 expressly prohibits the split of contracts.

Are deemed as split the contracts entered into, cumulatively, (i) within a given period of 5 consecutive years, (ii) with the same or different entities, (iii) for the provision of the same services and/or with the same object or similar final purposes, (iv) in a total amount exceeding USD 5.000.000,00.

- **Procurement by Oil Companies with an Operator Role**

PD 271/20 reinforces the need of the Oil Companies with an operating role to comply with the procurement rules established in Presidential Decree 86/18, of 2 April 2018, in order to ensure a fair treatment to the Angolan Companies and the Angolan Incorporated Companies. The Oil Companies are also required to submit to the Concessionaire (i) a forecast of all contracts to be entered into in each calendar quarter 30 days in advance; and (ii) a report in relation to the contracts entered into in the immediately preceding calendar quarter as soon as practicably possible.

- **Local Content Clause**

As of the date of publication of PD 271/20 , all contracts must contain a local content clause.

- **Effective Date and Grandfather Provision**

The provisions of the PD 271/20 only apply to the contracts entered into after its effective date (20 October 2020), not impacting on the validity and enforceability of the ones executed prior to such date.

- **Infringements and Penalties**

Failure to comply with the provisions of PD 271/20 qualify as an administrative offence, triggering the applicability of fines ranging from USD 50.000,00 and USD 300.000,00, as well as ancillary penalties. Recidivism is punishable with twice the amount of the original penalties.