Banking Regulation

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Angola

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Introduction

The Angolan banking system now comprises 26 banks, it being widely agreed that Angola's banking institutions will need to continue their consolidation over the next few years – particularly considering that Angolan banking institutions still have a high rate of non-performing loans (NPLs), despite the 5% reduction in 2018, and are being required to comply with international best practices and standards issued by the Basel Committee on banking supervision.

Angola's retail banking sector continues to expand. The network of physical branches and access to the ATM electronic payment system and automatic payment terminals (TPA) is still growing, in both urban and rural areas. A more diverse choice of electronic payment solutions and channels is expected to be further developed and disseminated, offering clients greater flexibility and ensuring more efficient transactions. The mobile payments system is also gradually being developed. At present, only Banco Angolano de Investimento (BAI) and Banco de Negócios Internacional (BNI) have a service that allows customers to make deposits and payments, receive money or buy goods and services using a mobile phone. Banco Nacional de Angola (BNA), Angola's central bank, has been actively updating regulatory aspects with a view to expanding and increasing the availability and use of the mobile payments system.

Angola's capital markets remain underdeveloped and unable to support companies' growth and financing needs. Foreign investors finance their operations, including in the country, using the international markets. The same goes for national private investors conducting major projects in Angola. However, 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 by the Angolan Securities Market Commission (*Comissão de Mercado de Capitais*).

As for applicable legislation, the Angolan Securities Market Commission and Angolan Debt Securities Market (BODIVA) have approved several consolidating regulations on the issuance and trading of debt and private equity. The repo operations market was regulated in 2018. It is thus expected that debut operations will continue in BODIVA regulated markets. The privatisation process is proceeding at a slow pace and the plans for 2020 are challenging, including the expected privatisation of the State's shareholding in Banco de Comércio e

Indústria (BCI) and the auction in the stock market of Banco Caixa Geral Totta de Angola (BCGTA) and Banco Económico (BEC), which are seen as a way to boost the stock market.

BNA has been struggling to improve transparency and credibility in the international markets to promote the country's economic growth and banking sector. 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 and the prevention of money-laundering and terrorist financing (AML/CFT). These contracts will be in force for about two years. The legislation issued in the previous three years – following Financial Action Task Force (FATF) and Basel Committee standards – was pivotal, seeing as the FATF has removed Angola from its AML/CFT monitoring process.

Angola continues to advance with the process started in 2017 and 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 continued to release basic macroeconomic data, applying the recommendations of the Enhanced General Data Dissemination System (e-GDDS), which has facilitated transactions.

Regulatory architecture: overview of banking regulators and key regulations

BNA is the banking supervisory and regulatory authority in Angola. Its activity is mainly subject to the rules set out in Law no. 16/2010, of 15 July 2010.

BNA is also the entity responsible for:

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

In addition, BNA participates in the development of legal acts intended 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's supervision, as well as those that own a qualified shareholding in financial institutions under BNA's supervision.

The main regulatory instrument with respect to banking activity is the Financial Institutions Law (Law no. 12/2015, of 17 June 2015), which sets forth the rules for the establishment, activity and supervision of both banking and non-banking financial institutions. Law no. 12/2015 further establishes 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 no. 2/2018).

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

a) receiving deposits or other reimbursable funds from the public;
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 applicable legal terms;
f) acting in the interbank markets;

g) providing consulting services to companies on capital structure, business strategy and related matters, as well as on mergers and acquisitions;
h) transactions on precious stones and metals, in accordance with the provisions of foreign exchange legislation;
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 applicable to 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:

- Securities and derivatives investment services are supervised and regulated by the Angolan Securities Market Commission. The Securities Code (Law no. 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 all related supervision and regulation.
- Insurance mediation carried out by financial banking institutions is supervised and regulated by 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 where the acquisition results from the reimbursement of credits made available by the relevant banking financial institution (in the latter case, property must be sold within a two-year period). Other limits may apply to the indirect conduct of non-financial activities, such as long-standing holdings and investment in fixed assets.

Recent regulatory themes and key regulatory developments in Angola

2019 saw the issuance of several regulations on foreign exchange transactions, international accounting and financial reporting standards, risk governance, credit conceptualisation, stress-testing and standards of conduct, aimed at strengthening the mechanisms protecting clients of financial products and services, which are all in line with the best international practices. In 2019, BNA began to report using the new methodology for calculating the solvency ratio, as directed by the IMF. Furthermore, since 2017, the IAS/IFRS standards on accounting and reporting have been fully adopted, which, *inter alia*, required the reinforcement of credit and collateral management processes.

During 2019, BNA regulations focused on exchange rate policy – with the approval of a floating exchange rate regime – and the stress-tests carried out during 2019. The most recent changes in the banking regulatory environment essentially concern money remittance services, credit services and payment systems. BNA also started to publish corrective measures applied to institutions under its supervision.

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

The restructuring measures used and the approach taken by the regulators were quite different. In the first case, extraordinary reorganisation measures were 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; certain restrictions on banking activities; and the approval to recapitalise the bank, after which BESA was transformed into Banco Económico, controlled by the State (through Sonangol). A Restructuring and Recapitalisation Plan was approved for BPC, a State-owned bank. This plan focused on increasing the bank's share capital and selling its NPL portfolio to Recredit (a bank created by the Angolan State to manage NPLs). Two other State-owned banks are now being restructured – Banco de Desenvolvimento de Angola (the Angolan 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 must be nominative, thus allowing for the identity of the holder to be known. Furthermore, national law imposes a set of strict requirements to enable BNA's assessment of banks' economic and financial capacity.

Law no. 13/05 stipulates that banking financial institutions shall have administrative and supervisory bodies, the former being entrusted with the bank's management and its representation before any other entities, and the latter being responsible for auditing duties. To increase directors' involvement in the bank's management, the administrative body (equivalent to a board of directors) shall comprise at least three directors and at least two directors shall be entrusted with daily management issues.

On the other hand, the supervisory body may be constituted by 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 those entities dealing with banks (among which we will find clients, notably depositors) by ensuring that the management's actions 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 position to be occupied. This means that proof of sound and prudent management skills may be required, seeing as the relevant individuals will be carrying out 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 about previous posts held by administrative or supervisory board members to determine, for instance, if the person in question has been declared insolvent or bankrupt in other jurisdictions or was responsible for the bankruptcy or insolvency of companies under its control as administrator, director or manager. These inquiries may entail coordination with other supervisory bodies, such as the Angolan Securities Market Commission and the Insurance Regulatory and Supervisory Agency.

On a more practical level, with respect to everyday management, the key requirements for banking governance in Angola were fully revised in 2013 and further developed by BNA Notice no. 1/13, of 19 April. The general principles establish that all entities authorised as banking and financial institutions in the Republic of Angola are subject to the following duties: avoidance of conflicts of interest; transparency; and compliance with disclosure obligations. It is also established that the institution's administrative body shall be constituted by an odd number of members and, in cases where there are non-executive members, at least one such member must be independent, in order to fulfil the obligation of control and

evaluation of the executive committee (composed of the executive directors), as well as of matters related to business strategy, the disclosure of legally mandated information, and transactions that involve special or relevant risk-taking.

In terms of internal control, BNA Notice no. 1/13 sets out the following main functions that must be upheld by banks: compliance function; internal audit function; and risk function. These are further developed, in a high-level manner, by BNA Notice no. 2/13, of 19 April. In practice, the administrative body is deemed responsible for establishing an internal control policy suited to the purposes and dimension of the banking institution in question. This policy shall be duly formalised and disclosed to all employees, who must ensure, among other duties, a true and effective cooperation with the regulatory entity (BNA) and effectively implement a series of processes and evaluation metrics applicable to the management of conflicts of interest, remuneration, human resources and the control of all operations and transactions carried out 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 provide information about the relevant risks potentially arising from the business activities pursued by a banking institution. For this purpose, banks are required to appoint a responsible person with the necessary status and powers to execute such duties with independence, and with adequate access to all relevant information and to the administrative bodies, having the power to review and validate risk-assessment models and to provide the administrative bodies with regular reports and recommendations on the abovementioned subjects. The appointment of a second person, independently and solely responsible for compliance matters, and to whom the same principles apply, is also established therein.

(ii) *Information and disclosure systems* rest on two main pillars: (i) accounting and financial information, which must include a prudent and duly developed policy covering asset valuation and responsibility, transaction monitoring and disclosure of information to the regulator; and (ii) management information, which is required to include all financial and non-financial indicators regarding a 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 with respect to budgets and planning.

(iii) The monitoring of the functions and duties previously referred to must attend to hierarchy and the status of each person responsible for the various *internal control 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 monitored by the directors of each department); and general control over everyday business activities (required from the employees). Subject to these principles, banks shall appoint a third responsible and duly qualified person to monitor and uphold internal auditing tasks. This person must embody complete independence and shall act according to internationally recognised internal auditing principles, with all conclusions and suggestions being directly provided to the bank's administrative body.

With respect to remuneration matters, BNA Notice no. 1/13 establishes a specific range of rules applicable to the determination of staff and management's remuneration packages. The remuneration of members of administrative bodies shall be delegated to one or more

shareholders of the banking institutions, who must be independent, i.e., not members of said management bodies, and who shall, in turn, be assisted by independent entities with experience in remuneration matters. This internal regulation also determines that: (i) executive directors shall be granted a fixed remuneration, or a variable remuneration related to the bank's performance but which 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 points outlined in this section, banking institutions are obliged to publicly disclose (on their website) their remuneration policy, with express mention of the global amounts paid to each management body.

As for staff remuneration, there is a distinction between: (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 employees included in (i), BNA Notice no. 1/13 establishes the possibility of additional non-monetary remuneration, provided that it complies with certain institutional long-term principles and goals; and for employees included in (ii), the main concern is ensuring that their remuneration does not compromise their professional independence.

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

Bank capital requirements

As in many other European jurisdictions, Angolan banks are bound to comply with prudential rules aimed at ensuring that the monies applied by banks maintain, at all times, 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 stock capital required for incorporation, and to constitute minimum reserves, using the relevant net profits for such purpose.

Angolan banks are also subject to the ratios and prudent limits established by BNA, with a view to ensuring the sustainability of banking activities. Notices nos 2/2016, 3/2016, 4/2016 and 5/2016 further develop the technical and prudential percentages to be taken into consideration when accounting for a bank's own funds, which, when calculated, will determine if the bank is compliant with the solvability ratio (of 8.5% or 7.0%, depending on the type of elements incorporating their own funds for each specific case). In determining the risk, it is mandatory to analyse the following aspects, which are equivalent to the requirements set out in European and other international legislation: (i) credit risk; (ii) counterparty risk; (iii) market and counterparty risk in trading books; and (iv) operational risk.

In light of the above, and without detailing the relevant technical and accounting provisions in full, it is safe to conclude that bank capital requirements, as set out in national legislation, are showing increasing alignment 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 are still under

analysis by BNA, despite having already been implemented in other countries, and will only be applicable to Angolan banks if and under the conditions determined by the national regulator.

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

Law no. 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.

In terms of technical capacity, banking financial institutions must ensure high levels of competence in their interaction with customers and the technical and material means necessary to deliver their services under appropriate conditions of quality and efficiency. In their relationship with clients and other institutions, directors and employees must act with due diligence, neutrality, loyalty, discretion and respect, always conscientious as to the interests entrusted to them by depositaries.

As in most jurisdictions, clients are entitled to receive clear, complete and proper information on any banking products and services they may choose to purchase/acquire from banks, namely in respect of interest rates and commissions charged. To ensure transparency towards clients, BNA defines minimum requirements and duties that banking financial institutions must observe, including concerning information and the content of contracts (for example, BNA Notice no. 14/2016 imposes information requirements for credit agreements, including credit restructuring agreements).

Furthermore, banking financial institutions are required to adopt conduct policies and to disseminate these to their clients, including information on their internal mechanisms and procedures for handling customer complaints.

One rule of thumb which banking financial institutions must strictly observe is confidentiality. The duty of secrecy of banking information is inherent in the relationship between a bank and its clients, which is entirely built on trust. This duty of confidentiality covers a wide range of information, including client names, their deposit accounts and all transactions related thereto, and any other banking operation. However, it does not apply in cases where said information is required by BNA, the Angolan Securities Market Commission or the Insurance Regulatory and Supervisory Agency, within the scope of their powers, or its disclosure is deemed necessary within the context of judicial proceedings (in which case, an order issued by a judge or a public magistrate is necessary). Furthermore, the obligation to ensure confidentiality does not prevent banking financial institutions from exchanging information among themselves for risk assessment purposes or with the goal of guaranteeing the security of their operations, namely credit operations.

Regarding conflicts of interest, banking financial institutions are prohibited from granting credit, directly or indirectly, to members of their corporate bodies or equivalents, or to companies or other 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. In addition, it does not apply to entities holding a qualified interest in the lending financial banking institution. Limitations concerning the assessment of, and decision-making on, credit operations are established for members of corporate bodies with respect to

companies or entities in which they hold a qualified interest or have managing offices. The granting of credit to linked persons is also generally forbidden.

The rules seeking to prevent anti-competitive behaviour by banking financial institutions, either in their mutual relationships, or when dealing with third parties, establish that any conduct undertaken 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.

Finally, clients are legally entitled to submit, directly to BNA, any claims related to non-compliance by banking financial institutions with the duties and rules governing banking activity.

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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 a partner in 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 and investors. He also provides ongoing advice on regulatory matters in the areas of banking law and capital markets.

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Law degree, Lisbon Catholic University.

Professional experience (VdA)

Filipa joined VdA in 2015. She is a managing associate in the Banking & Finance practice where she has been involved in several transactions, namely advising on cross-border insurance regulatory matters for a large insurance company operating globally, including in Portuguese-speaking countries and also in several francophone African jurisdictions, and on debt restructuring.

Further professional background

Before joining the firm, Filipa worked as a Senior Associate at Miranda Correia Amendoeira e Associados – Sociedade de Advogados (Miranda), an international full-service legal practice, where she focused on banking & finance and insurance & 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 has also had the opportunity to represent acquirers, target companies and sellers, in connection with cross-border acquisitions and dispositions of banking and insurance companies.

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