

GLI GLOBAL
LEGAL
INSIGHTS

Energy

2024

12th Edition

Contributing Editors: **Michael Burns & Antony Skinner**

glg Global Legal Group

CONTENTS

Preface	Michael Burns & Antony Skinner, <i>Ashurst LLP</i>	
Australia	Darren Murphy, Dan Howard & Sophie Dilda	1
Austria	Thomas Starlinger & Laurenz Götzinger, <i>Schima Mayer Starlinger Attorneys at Law</i>	17
Canada	Christine Milliken, Ryan McNamara, MaryJane Ogbomo & Rayleigh Minhyu Lee, <i>Blake, Cassels & Graydon LLP</i>	26
Chile	Rodrigo Ochagavía, Ariel Mihovilovic, Vicente Allende & María Jesús Argandoña, <i>Claro y Cía.</i>	37
Denmark	Betina Wichmann & Malthe Siegfried Silverskiold Halckendorff, <i>Lundgrens</i>	47
Ghana	NanaAma Botchway, Alex Calloway & Ama Aboagye Da Costa, <i>N. Dowuona & Company</i>	52
Greece	Yannis Seiradakis & Eleni Stazilova, <i>Bernitsas Law</i>	66
India	Hemant Sahai, Molshree Bhatnagar & Parichita Chowdhury, <i>HSA Advocates</i>	81
Japan	Sadayuki Matsudaira & Tomohei Minatogawa, <i>Nishimura & Asahi</i>	92
Norway	Margrethe Antonsen Lilleng & Jon Rabben, <i>Wiersholm AS</i>	100
South Africa	Margo-Ann Werner, Alecia Pienaar, Jackwell Feris & Megan Rodgers, <i>Cliffe Dekker Hofmeyr Inc.</i>	111
United Kingdom	Michael Burns, Antony Skinner & Justyna Bremen, <i>Ashurst LLP</i>	122
USA	Regina Speed-Bost, <i>SB Law, PLLC</i>	136
Zambia	Joseph Jalasi, Jr., Lubinda Linyama, Nsokola Chilwana & Wana Chinyemba, <i>Dentons Eric Silwamba, Jalasi & Linyama Legal Practitioners</i>	139
Digital edition chapters		
Angola	Claudia Santos Cruz & Catarina Levy Osório, <i>Morais Leitão, Galvão Teles, Soares da Silva & Associados</i>	147
Mozambique	Claudia Santos Cruz, Tiago Arouca Mendes & Ana Corrêa Cardoso <i>Morais Leitão, Galvão Teles, Soares da Silva & Associados</i>	154

Angola

Claudia Santos Cruz & Catarina Levy Osório
Morais Leitão, Galvão Teles, Soares da Silva & Associados

According to the Organization of the Petroleum Exporting Countries (OPEC), Angola has overtaken Nigeria to become Africa's largest oil producer followed by Libya. The World Bank indicates that economic growth in 2023 was revised down to 0.8%.

The World Bank also concluded that oil production fell short of expectations as a result of a major maintenance shutdown in the first half of the year. Exports of oil were also lower than expected. This along with high debt service payments reduced the supply of foreign currency, triggering a 40% currency depreciation at the end of the first semester. Growth is expected to rebound in 2024, driven by non-oil sectors. Even though Angola's GDP *per capita* has been increasing over the past 20 years, there has been no significant reduction in poverty.

Overview of the current energy mix, and the place in the market of different energy sources

Despite its efforts towards a swift energy transition, following the main global concern in searching for an energy matrix aimed at low carbon emissions and based on renewable sources to substitute fossil energies, Angola still relies heavily on fossil fuels. According to the country's Ministry of Energy and Water (*Ministro da Energia e Águas*), the hydroelectric potential of the country is vast, but the development of projects is still lengthy. The Angolan government plans to focus on hydroelectric power as one of its key energy sources in the future and is aiming to launch several related projects as early as 2025, balancing competitiveness, regional development and environmental sustainability. Angola's hydroelectric potential is currently estimated at 150TWh/year; however, despite the current efforts towards the transition referred to above, the full potential of other renewable sources such as wind, solar and biomass is still far from being fully achieved, with the country's economy remaining extremely dependent on oil.

The production, consumption and export of natural gas have increased in recent years and this, in conjunction with oil, is a key source for the production of power. Natural gas is expected to play a pivotal role in Angola's long-term plan for the generation of power, and its connection with hydropower production is fundamental for the energy sector, considering eventual drier years.

The potential of photovoltaic energy (through heat and sunlight) in the country is estimated at 17.3 GW, putting Angola in an attractive position for investment in this renewable source.

If Angola is able to promote the energy transition it aspires to, in the manner it plans and with sound investment, the country is well positioned to become the main driving force behind this transition in Sub-Saharan Africa, showing to other countries and the world its smooth transition from a fossil fuel-based economy to one focused on renewable energies.

Angola's current energy mix consists of 68% hydropower, 31.3% other fossil fuels and 0.7% hybrid (solar/fossil fuel). However, the Ministry of Energy and Water expects to reach 6.3 GW of generating capacity when the Soyo combined cycle gas plant (750 MW) and the Laúca hydroelectric project (2.1 GW) are fully operational.

Petroleum

According to the U.S. Department of Commerce, the Angolan oil and gas upstream market is expected to record a growth of more than 1.5% during the forecast period 2022–2027. The country expects to maintain crude oil production at a level of 1.1 million barrels a day.

Refining and refined oil products

There is currently only one refinery working in Angola, but there are at least three others under construction or scheduled to soon begin construction located in Cabinda, Lobito and Soyo. As the only operating refinery in the country, the Luanda refinery meets only 20% of the market's needs.

According to the most recent publicly available data, Angola's refining capacity was 60,000 barrels a day in 2021 and the country is aiming to expand such capacity.

With reference to the Cabinda refinery, a joint venture between Gemcorp and Sonangol, construction might conclude as early as mid-2024. The expectation is that this facility will meet Angola's need for oil products by *ca.* 10%.

Natural gas

Liquefied natural gas (LNG) exports have grown since 2019, and the Ministry of Energy and Water has identified the pressing need for adequate infrastructure for the transportation of LNG to enable Angola to become an active participant in the regional gas market. At present, the country exports 95% of its natural gas production in the form of LNG, but the goal is that, by 2030, the country will maintain 25% of this production through association with value-added industries.

Renewable energies – hydropower

Angola has everything it needs to achieve energy self-sufficiency through renewable sources – not only water, but also sun and wind. With these three natural resources, Angola could achieve the transition from oil and gas to renewable energies, and then boost its energy self-sufficiency.

For that matter, the government has identified hydropower as the key source for power generation in Angola for the coming years. The announced strategy includes connecting the hydropower infrastructure with those intended for LNG transportation.

Over 45% of the population now has access to power, which represents 100% growth in approximately the past 20 years. However, the country's resources are still heavily unexplored, with natural gas and hydropower being the two main alternatives to the economy's dependence on oil.

At the end of 2022, it was reported that around 300 MW of solar and 51 MW of biomass were operational.

Changes in the energy situation in the last 12 months that are likely to have an impact on future direction or policy

An updated framework on biofuels was approved in late 2023 aiming to bring clarity and facilitate licensing of activities related to biofuels.

In early 2024, Angola's Agency for Petroleum, Gas and Biofuels (*Agência Nacional de Petróleo, Gás e Biocombustíveis*, ANPG) announced the entities to which the blocks were awarded in the bidding process for the 12 oil blocks in the Baixo Congo and Kwanza basins. Etu Energias, Sonangol, Serinus Energy, Walcot Limited, Acrep, Simples Oil Group, Intank Group, Transoceanic and ACE Energy were selected as operators. The estimated potential for these blocks corresponds to 1.560 million barrels of crude oil for the Baixo Congo basin and 5.440 million for the Kwanza basin.

The Privatisations Programme

The petroleum sector has been undergoing a deep restructuring process since 2017, which has led to new legislation being passed. Moreover, ANPG was created, replacing the national concessionaire. This new regulatory entity was also created for the purposes of optimising the coordination of the petroleum sector and eliminating potential conflicts of interests. The Privatisations Programme (PROPRIV) was approved by Presidential Decree no. 250/19 of 5 August 2019, setting out a timeline for the partial and full privatisation of public companies. Sonangol EP, as well as some of its subsidiaries, is among the companies that will be privatised under PROPRIV (although the share capital of Sonangol EP is expected to be partially offered to the public under an initial public offering). It is also worth mentioning that an ambitious bid round programme (which will be continuously carried out until 2025) has been launched. In 2023, it was reported that Angola contracted EUR 1.3 billion with the privatisation of around 70 companies and has received *ca.* EUR 660 million since the Programme started. As a result, 2,000 job posts have been created.

Developments in government policy/strategy/approach

Liberalisation of access to information on oil blocks

Angola has been taking steps towards a more open oil market. The need for transparency and legal stability to attract foreign investment has made ANPG increasingly collaborative and committed to attracting such investments. Thus, ANPG will provide free data about blocks in the Kwanza and Lower Congo basins. The concessionaire explains that interested companies should express their interest in the bids and request free data consultation by sending a letter or email to ANPG.

The annual bidding rounds until 2025 are aimed at attracting “medium-sized explorers to Angola's basins that have proved productive in recent years and provided returns for companies well above industry averages elsewhere”, as stated by ANPG.

Angola seeks tax incentives for gas projects

A specific framework applicable to the activities related to the oil sector was created in 2018. Having been approved four years ago, this regime was already approved as part of Angola's effort to attract foreign investment, balancing the investors' expected returns and the State's legitimate interest. The General Tax Administration considers that there are currently good tax incentives for the implementation of gas projects in Angola.

Presidential Legislative Decree no. 7/18 of 18 May 2018 establishes the legal and tax regime applicable to the activities of prospection, exploration, appraisal, development, production and sale of natural gas in Angola. This legal regime was specifically designed for the promotion of gas exploration activities in Angola. This legal framework establishes the reduction of tax rates, namely petroleum production tax from 20% to 5%, and petroleum income tax from 50% to 25%, although this may be further reduced to 15%, depending on the difficulties identified in certain blocks.

The use of hybrid energy production systems

The possibility of developing hybrid systems of production of power is currently being studied. These systems would combine the production of power from solar energy with storage systems and would require substantial investment, but would strongly contribute to the desired energy transition.

This form of energy management and distribution would allow the creation of smaller production plants, facilitating access to more remote regions of the country. The possibility of distributing power to a larger area of the country would also promote the creation of new industries that rely on access to power that is currently non-existent, possibly bringing about a significant change to the country's economy.

Permanent offer programme

ANPG launched a permanent offer programme that will allow the negotiation of petroleum resources available in Angola throughout the year without the need for a bid round announcement.

The Angolan government approved the proposal in late August, and the new programme will allow the national concessionaire to take the initiative to promote and negotiate oil and gas concessions. This will enable it to adopt more competitive strategies in order to attract international investment in Angola's energy sector.

With the approval of the Permanent Offer Regime by Presidential Decree no. 249/21 of 5 October, it will be possible to dispose of free areas in oil concessions, or even those concessions that are not part of the strategy, as well as concessions that belong to the national concessionaire and those that, despite being part of the strategy, did not have any proposals for adjudication during a bidding process.

Developments in legislation or regulation

Presidential Decree no. 76/21 – the bankability of projects in the energy sector

A major legislative innovation has been the approval of Presidential Decree no. 76/21 (Regulation on the Activities of Production, Transmission, Distribution and Commercialisation of Electricity) of 25 March 2021, which strengthens the “bankability” of projects in the Angolan energy sector. This is aimed at tackling some of the most common concerns for foreign investors, also allowing the encumbrance of concession assets under certain conditions and enabling payments to be made in foreign currency.

These measures bring Angola closer to international market standards regarding trust and legal certainty, which offer investors increased comfort when deciding on their investments.

Amendments to the Environmental Conservation Areas Law

Law no. 12/21 of 7 May 2021 approved an amendment to the Law on Environmental Conservation Areas. The new statute exceptionally allows the exploitation of mineral resources, oil and gas, in partial and special natural reserves and in national parks. There are claims that this amendment was approved against the energy transition trend that Angola claims to be a part of.

A lender-friendly approach: the Movable Assets Registration

Although not specifically relating to the energy sector, reference should be made to a still recent legal framework, applicable to securities over movable assets and the creation of the Registration Office for Security over Movable Assets (*Central de Registo de Garantias*

Mobiliárias, which is not yet fully operational) – respectively, Law no. 11/21, approved on 22 April 2021, and Presidential Decree no. 114/21 of 29 April 2021, which created the Registration Office.

Considering that the energy sector is heavily dependent on external financing from private players, this framework created a shift in paradigm in this civil law jurisdiction by allowing the creation of security over movable assets and also by introducing novelties such as security over future or undetermined assets (in a way equating to a common law floating charge) or establishing the possibility to enforce such security by taking possession of the secured assets (which was also not possible prior to the enactment of this law). Extremely challenging to put into practice, the framework represents an unprecedented move by Angola towards attracting more external investment and external financing.

Judicial decisions, court judgments, results of public enquiries

In Angola, there is no available case law, judicial decisions, court judgments or results of public enquiries. This makes access to the interpretation and application of relevant legislation – including the legal framework applicable to the energy sector – very difficult. Angola often refers to Portuguese court decisions but, in the energy sector, no court decisions have been issued.

Major events or developments

The major developments we identify are related to ongoing projects, amongst which we highlight the following.

Electrification of rural areas

The long-term strategy “Angola 2025” establishes strategic objectives for the country that represent challenges for the development of the electricity sector independent of the current oil market situation.

In pursuit of this strategy and in the Energy and Water Sector Action Plan 2018–2022, the Angolan President João Lourenço authorised an investment of EUR 85.9 million for the electrification of rural areas in the provinces of Luanda, Kwanza Sul, Humbo, Lunda Norte and Bié.

The project includes the construction of substations and associated transmission lines, distribution networks, household connections and public lighting. It will also allow the expansion of the electricity grid and access to electricity in urban areas, municipal headquarters and rural areas covered.

Caculo Cabaça hydroelectric project

This project began in August 2017, and four turbines are expected to be installed, for a production of 1,000 MW. According to the Ministry of Energy and Water, the project is expected to start generating power from 2026, noting that power generation from the first turbine of the Caculo Cabaça AH is scheduled for October 2026. Once all these turbines are installed, this project will become the largest hydroelectric facility in the country.

Technology group Voith stated in December 2023 that they were supplying all the electrical and mechanical equipment for the Caculo Cabaça facility.

Baynes hydropower plant

This cross-border project, located on the border between Angola and Namibia, is expected to produce between 400 and 600 MW from 2025 onwards.

Proposals for changes in laws or regulations

The main change that is most often mentioned by energy stakeholders is related to the implementation of a legal framework that is aligned with the so-called “Energy Plan 2025” presented by the Ministry of Energy and Water. The Plan establishes five major vectors: (i) to promote human development and the well-being of Angolans; (ii) to ensure a high rate of economic development; (iii) to harmoniously develop the national territory; (iv) to promote equitable and sustainable development; and (v) to promote Angola’s competitive insertion in the world economy. The Plan sets important and relevant goals, but unfortunately has not yet been accompanied by robust regulation or serious incentive policies for investors to get the Plan off the ground and implemented in practice. Some efforts have been made; however, without regulation to accompany the policies, it is unlikely that the goals proposed in the Plan will be fully achieved by 2025.

One of the key challenges in the Angolan energy sector is the relationship between the various applicable frameworks. For example, projects in the energy sector are generally subject to the licensing framework set forth in Law no. 27/15 of 14 December 2015, which amended and republished the General Electricity Law, but are usually also dealt with within the context of the public-private partnerships framework and public procurement framework. The tension between various frameworks sometimes gives rise to queries on the applicability of the respective provisions (which can have an impact, for example, on authorisations to be sought) that are oftentimes difficult to resolve considering that public entities are not always equipped to answer them (also because of a lack of practical experience). Perhaps it would be wise to use the current impetus to reform the legal framework applicable to the energy sector to try and bring more clarity to the interconnection between the various frameworks, so that such law could in fact codify most of the rules applicable to these projects; this would certainly have a positive impact on bringing not only more clarity to both public and private entities, but also on making procedures more streamlined and on reducing the time taken for getting a project approved across the border.

**Claudia Santos Cruz****Tel: +351 21 381 74 00 / Email: cscruz@mlgts.pt**

Claudia Santos Cruz is a partner and joined Morais Leitão (ML) in 2015, assisting clients on the international aspects of their investments in Angola, Mozambique and Portugal. She has close ties to Africa and England and holds dual Portuguese and Mozambican nationality. She is an English solicitor, having worked at DLA Piper and Watson Farley & Williams in London. Claudia is based in Lisbon and is registered with the Portuguese and Mozambique Bar Associations. She is a specialist in areas such as energy and oil and gas/mining, foreign investment into Angola and Mozambique, corporate and shipping. Claudia jointly leads the ML team that advises clients on both cross-border inbound and outbound investments into Lusophone Africa, very often in respect of large-scale project finance deals. Claudia coordinates the international Oil & Gas team and Shipping practice at ML and is also a member of the international Banking & Finance department.

**Catarina Levy Osório****Tel: +351 21 381 74 00 / Email: catarinaosorio@alcadvogados.com**

Catarina Levy Osório joined ML in 2010, became partner in 2016, and coordinates matters related to Angola. She is a founding partner at ALC Advogados, the Angolan member of the network ML Legal Circle.

Catarina is a member of the Angolan and Portuguese Bar Associations and has relevant experience in the Angolan market by accompanying and advising in the areas of private investment, tax and labour, and mergers and acquisitions, which involve private investment, corporate, foreign exchange and tax legislation matters. She also provides general legal advice to domestic and foreign companies in the commercial, corporate and real estate areas.

Morais Leitão, Galvão Teles, Soares da Silva & Associados

Rua Castilho, 165, 1070-050 Lisboa – Portugal

Tel: +351 21 381 74 00 / URL: www.mlgts.pt

Global Legal Insights – Energy

provides in-depth analysis of laws and regulations across 14 jurisdictions, discussing the current energy mix, changes in the energy situation in the last 12 months, developments in government policy and strategy, developments in legislation or regulation, judicial decisions and court judgments.