

THE OIL AND GAS  
LAW REVIEW

NINTH EDITION

Editor  
Christopher B Strong

THE LAWREVIEWS

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# PREFACE

International oil and gas law is a fascinating field, sitting at an intersection of law, politics and business. Practitioners in this field must be familiar not only with international norms and practices but also with local legal and regulatory requirements, which can vary substantially from jurisdiction to jurisdiction. The task can be daunting, especially in the context of fast-paced transactions or urgent legal or operational issues.

*The Oil and Gas Law Review* is intended to serve as a starting point for practitioners in gaining an understanding of the key legal requirements in the jurisdictions in which they may be advising clients on transactional and operational matters. The thinking behind the subtopics it covers has been to try to answer those questions that come up most frequently when dealing with a new or unfamiliar jurisdiction. Although not a substitute for detailed local law advice, the hope is that it will nevertheless serve as a reference guide and point users in the right direction when considering local legal issues.

I would like to thank the many experts who contributed to this volume. Without their substantial efforts, a work such as this would not be possible. Thanks also to the editors and publishers of *The Oil and Gas Law Review* for having the vision to publish a volume such as this and for their efforts in making it such a success.

**Christopher B Strong**

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# ANGOLA

*André Duarte Figueira, Lourenço Vilhena de Freitas, Francisco Silva Neves  
and João Sequeira Sena<sup>1</sup>*

## I INTRODUCTION

In 2020, Angola produced, on average, 1.3 million barrels of oil daily,<sup>2</sup> being the second largest oil producer in Africa.<sup>3</sup> Angola's challenge is to reverse this downward spiral and try to boost the most important sector of its economy.<sup>4</sup>

Angola's oil sector struggles with a lack of investment. Capital expenditure and investment in the industry declined to US\$3 billion in 2021, against US\$15 billion in 2014. The Angolan government has released a strategic plan for the exploration of hydrocarbons between 2020 and 2025 with the approval of new tax incentives to boost the oil industry.

The state of emergency imposed by the covid-19 pandemic had a huge impact on worldwide oil and gas operations, leading to the suspension of drilling activities and substantial limitations on production activities in general. The pandemic has affected all spheres of the Angolan economy, especially the oil and gas sector, both through the decline in prices of commodities and the decrease in the consumption of oil derivatives, but also through the difficulties caused in the mobilisation of resources for the renewal of activities. The Angolan government, in particular its Minister of Mineral Resources,<sup>5</sup> Petroleum and Gas (MIREMPET)<sup>6</sup> of Angola, tried to mitigate the effects of the pandemic in the oil and gas sector, revealing key strategic decisions and efforts on the short-, medium- and long-term outlook for the post-pandemic period.

Since early 2020 until now, the extractive industries have materialised and expedited their reforms with the consolidation of the role of the National Agency of Petroleum, Gas and Biofuels (ANPG)<sup>7</sup> as National Concessionaire (Granting Authority), and the execution of Sonangol EP's Renewal Program. MIREMPET and ANPG have pursued an effort to promote, internationally, the Concession Award Strategy for the 2019–2025 period,<sup>8</sup> with the start of several public tenders for oil and gas blocks in both the Benguela and Namibe basins.

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1 André Duarte Figueira is a senior associate, Lourenço Vilhena de Freitas is a partner, Francisco Silva Neves is a senior associate and João Sequeira Sena is a principal associate at Cuatrecasas.

2 The lowest level of production in the last 15 years.

3 [https://www.opec.org/opec\\_web/en/about\\_us/147.htm](https://www.opec.org/opec_web/en/about_us/147.htm).

4 In accordance with ANPG, the oil production in July 2021 reached 34.185.213bbl.

5 Mr Diamantino Pedro Azevedo.

6 <https://mirempet.gov.ao/ao/>.

7 Presidential Decree No. 1/20 of 6 January, Amends DP 49/19, which creates the National Agency of Petroleum, Gas and Biofuels (ANPG).

8 Presidential Decree No. 282/20 of 27 October approves the Angola Hydrocarbons Exploration Strategy 2020–2025.



Furthermore, investment to increase the national oil refining capacity is also planned, with new refineries expected to start operations by 2025. The midstream sector is key for Angola, which has led to the development of landmark projects essential to incrementing Angola's refining capacity. An agreement for the construction of the Cabinda Refinery was reached, the bidding was launched for the Soyo Refinery and the review of the technical and financial feasibility studies is underway for the public tender pertaining to the construction of the Lobito Refinery.<sup>9</sup>

This crisis led to major changes that were long due in the Angolan oil and gas industry. In the past 12 months, strategies for exploration in areas of development and marginal fields have begun to materialise. In this sense, the declarations of marginal fields have been approved for the Paje field, Astrea and Juno fields in Block 31, N'singa field (already in production), Lifua, Kambala and N'dola Sul fields in Block 0.

Alongside various initiatives taken in coordination with the national health authorities, ACEPA<sup>10</sup> and AECIPA<sup>11</sup> initiated the demobilisation of non-essential personnel to mitigate the effects of the covid-19 pandemic, along with the adoption of remote work for certain functions and the establishment of quarantine measures, social isolation and systematic testing of all personnel prior to access of offshore and onshore oil and gas installations.

The Angolan Health Ministry adopted further measures, such as the creation of medical-sanitary installations intended to serve the oil and gas industry and the training of emergency teams to deal with suspected and positive covid-19 cases. These actions aimed to guarantee the health of personnel and the continuation of operations, principally of production, with the minimum possible number of cases.

The reform process in the oil and gas sector has continued, particularly through Sonangol EP's Renewal Programme, which includes the privatisation of its non-core activities. However, the lack of market stability in the oil and gas sector and the poor visibility of the immediate future have delayed the privatisation process of the assets linked to the services subsector of the oil and gas industry.

The covid-19 pandemic acted worldwide as a catalyst to promote the transition to cleaner alternative energy sources, including natural gas. Angola has been working on its policies and programmes that aim for the energy transition, without forgetting that the main objective in the short to medium term is still to increase oil and gas production. The objective is to convert thermal power plants from diesel to gas, as is the case with the combined cycle power plant in Soyo, with a capacity of 750MW, or replace them with new hydroelectric plants. In parallel, renewables projects are being developed, namely the construction of a photovoltaic electric power plant in Namibe (50MW), a partnership between Sonangol EP and ENI, which is already in motion.

Angola possesses a liquefied natural gas (LNG) power plant in Soyo that has been in operation since 2012, with an initial processing capacity of one million cubic feet of gas per day, which was founded because of the necessity of monetising natural gas resources, eliminating flaring in oil and gas operations.

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9 Angola currently imports around 80 per cent of refined products to satisfy its internal needs, at the expense of enormous quantities of foreign currency. Local refining compensates for part of the losses in low prices of crude with the referred projects aiming, through international investors, to advance in terms of internal self-sufficiency of refined products and the export of surplus to neighbouring countries.

10 Association of Petroleum Exploration Companies of Angola.

11 Association of Contractors of the Petroleum Industry of Angola.

Mitigating the natural decline of production represents one of the biggest challenges of the oil and gas sector in Angola, and as a result the Angolan government has recently approved a hydrocarbon exploration strategy<sup>12</sup> that sets forth five pillars, namely:

- a* the permanent availability and accessibility of the areas that constitute the sedimentary basins of Angola for research and evaluation activity;
- b* the expansion of geological knowledge and access to oil and natural gas resources;
- c* ensuring the successful execution of the General Concession Award Strategy in Angola;
- d* the actual intensification of research and evaluation of concessions for the sedimentary basins of Angola; and
- e* salvaging exploration projects, the development on marginal fields or other fields, that have already been approved but were suspended because of the pandemic, and the decline in oil prices.

The Angolan government aims to finish the restructuring process for Sonangol EP, with the dispersion of part of its stock exchange capital until 2022. The privatisation programme of Sonangol non-core assets should be executed, as should the implementation of its plan for production and exploration, consolidating its position as the main national company. Another important project is the new consortium of gas to feed the LNG power plant and enabling the development of domestic regional projects.

## II LEGAL AND REGULATORY FRAMEWORK

### i Domestic oil and gas legislation

The Angolan regulatory framework for the exploration and production of oil and gas is essentially established in the Petroleum Activities Law, but the following regulations are essential, and demonstrate what has been a recent effort from MIREMPET to promote the oil and gas industry in Angola and consequently try to increase production.

Law No. 10/04, of 16 November 2004 (Petroleum Activities Law), as amended by Law No. 5/19 (Amendment of the Petroleum Activities Law), is a cornerstone of Angola's oil and gas legislation. This law establishes the fundamental principles that govern the exploitation of the country's oil and gas potential, reaffirming the fundamental principle of state ownership of petroleum resources enshrined in the Constitutional Law, as well as the regimes of exclusive concessionaire and compulsory association within the scope of petroleum concessions.

It establishes the rules of access and exercise of oil and gas operations in the available surface and submerged areas of the national territory, internal waters, territorial sea, exclusive economic zone and continental shelf, but also tries to cover all sectors of the oil and gas 'chain-value', namely the refining of crude oil, the storage, transport, distribution and commercialisation of petroleum.

The definition of 'petroleum', as contained in the Petroleum Activities Law, comprises crude oil, natural gas and all other hydrocarbon substances that may be found in and extracted from a petroleum concession. The Petroleum Activities Law determines that all deposits of

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12 The strategy indicates an intensification of exploratory activity for hydrocarbons in Angola, in a manner so as to guarantee the continual expansion of knowledge of oil and gas potential, including non-conventional reserves, for the substituting of reserves and the resulting mitigation of decline and the stabilisation of oil and gas production.

liquid and gaseous hydrocarbons existing in the available surface and submerged areas of the national territory, inland waters, territorial sea, exclusive economic zone and continental shelf form part of the state's public domain, and that the mining rights for the prospection, exploration, appraisal, development and production of hydrocarbons (liquid or gaseous) are granted to the ANPG as the holder of such rights.

Decree No. 49/2019, of 6 February, created the National Agency for Petroleum, Gas and Biofuels (ANPG or the Agency) in Angola. The Decree approves the by-laws of the Agency, reorganising the hydrocarbons sector in the country, which was previously administered by Sonangol, the Angolan Concessionaire for Oil and Gas Exploration and Production Activities. ANPG 'extracted' from Sonangol its regulatory role. This is a model successfully adopted by other countries, having the merits of concentrating into an independent state-owned agency the strategic role of managing the petroleum sector without being directly involved in operations.

The above-mentioned Decree establishes that Sonangol and ANPG must assess the human resources and assets owned by Sonangol for the correct allocation between them, to ensure contractual stability. It also recognises the rights and obligations arising from previous contracts executed by Sonangol EP.

ANPG has the 'responsibility' of implementing all necessary actions for the procurement and management of oil and gas contracts, as well as implementation of MIREMPET's policy. ANPG now has generic powers to:

- a* implement national petroleum policy, in partnership with MIREMPET;
- b* coordinate with other regulators on matters of common interest;
- c* propose plans and programmes for the revaluation of reserves and exploration of hydrocarbon resources in the country;
- d* promote studies for block delimitation procedure;
- e* promote concession bids;
- f* execute the respective contracts; and
- g* stimulate the research and adoption of new technologies focused on the oil market.

Law No. 13/04, of 1 January 2005 (Petroleum Activities Tax Law), as amended by Law No. 6/19 (Amendment of the Petroleum Activities Tax Law), systematises the different tax regimes related to petroleum activities.

Several tax administration procedures have been simplified, adjusting them to today's new technological reality, as well as to the institutional context of the state and the tax administration. The standardisation of the tax systems applicable to petroleum activities set out in this law does not fail to take into account the specificities of the main forms of association in petroleum operations, namely in production sharing agreements (PSAs) and joint venture agreements, particularly with regard to the rate of tax on petroleum income, the determination of taxable income, as well as the exemption from tax on oil production and transaction tax in PSAs.

The main objective of this law is to establish the tax regime applicable to the entities referred to in Article 3, in relation to the exercise of activities of research, development, production, storage, sale, export, treatment and transport of crude oil and natural gas, as well as of naphtha, ozokerite, sulphur, helium, carbon dioxide and saline substances, when derived from petroleum operations. It is applicable to all entities, domestic or foreign, that

carry out petroleum operations within the national territory, as well as in other territorial or international areas over which the law or international agreements confer taxing jurisdiction to the Republic of Angola.

Law No. 11/04, of 12 November (Petroleum Customs Law), is the customs regime for petroleum operations for all the entities that carry out petroleum operations (oil and gas companies and service providers) on their behalf being subject to it. Due to the high risk involved and the large volume of investments required in this type of operation, it is justifiable that these operations enjoy a different customs regime from that in force for other economic activities. This law establishes the customs regime by which petroleum operations are governed in the areas under the jurisdiction of the Republic of Angola. The National Concessionaire, its associates and the entities that carry out petroleum operations on their behalf shall be subject to the regime established therein.

Presidential Decree No. 86/18, of 2 April 2018, revoked former Decree No. 48/06 of 1 September and approved the rules and procedures of the public tenders, and the step procedure to acquire the 'quality' of associate of the National Concessionaire, for contracting services and acquiring goods in the petroleum sector. This regulation is applicable to the National Concessionaire and all national or foreign entities of proven technical and financial capacity that wish to associate with the National Concessionaire for the execution of petroleum operations.

Presidential Legislative Decree No. 5/18, of 18 May (Legal Regime on Additional Exploration Activities in the Petroleum Concession Development Areas), establishes the Legal Regime on Additional Exploration Activities in the Petroleum Concession Development Areas, which constitutes an exceptional rule before the General Petroleum Activities law, regulating additional exploration within these areas, cost recovery and deduction, production sharing, procedures, tax, foreign exchange and customs regime, thus revoking former Presidential Decree No. 211/15, of 2 December, which defined the terms and conditions applicable to petroleum exploration activity within targeted development areas.

Presidential Decree No. 52/19, of 18 February (General Strategy for the Allocation of Petroleum Concessions for the period 2019–2025), approved the General Strategy for the Allocation of Petroleum Concessions for the period 2019–2025, establishing the guiding principles for future petroleum concessions, through the identification of critical factors with the objective of ensuring the replacement of reserves to make up for the evident decline in production recorded in recent years.

Presidential Decree No. 282/20, of 27 October (Angola's Hydrocarbon Exploration Strategy 2020–2025), approves the Angola Hydrocarbon Exploration Strategy 2020–2025, which envisages boosting and intensifying the replenishment of reserves, with the objective of mitigating the decline in hydrocarbon production, guaranteeing the development of intense exploration activity, as well as ensuring the development of new oil concessions.

Presidential Decree No. 283/20, of 27 October (Model for Defining the Prices of Crude Oil and Natural Gas Derived Products), revokes former Presidential Decree No. 1/12, of 4 January, and establishing a new Model for Defining the Prices of Crude Oil and Natural Gas Derived Products, including the price regime applicable to the crude oil supply mechanism and the crude oil sale price to national refineries, the taxation regime and the flexible price adjustment mechanism. It also applies to crude oil refining activity as well as to the logistic import, distribution and commercialisation of derivative products, throughout the national territory, except for the refining, import, distribution and commercialisation of fuel, bitumen and lubricants.

Law No. 26/12, of 22 August (Law on the Transportation and Storage of Crude Oil and Natural Gas), defines the rules and licensing procedures for crude oil and natural gas transportation and storage activities, applicable to these activities when they take place within the scope of petroleum operations provided for in the Petroleum Activities Law, approved by Law No. 10/04, of 12 November, defining also the legal system and the penalty system, the modalities for transporting crude oil and natural gas, the tariffs, safety and environmental protection and the monitoring and inspection of activities.

Decree No. 1/09, of January 27, Law No. 10/04, of 12 November, defines in its Article 2, Paragraph 1, 'petroleum operations' as being the 'activities of prospecting, exploration, appraisal, development and production of petroleum'. Considering that petroleum operations carried out both onshore and offshore require the necessary compatibility with other activities relating to other natural resources exploited in the available areas of the national territory, it was necessary to establish the rules and procedures that would ensure that petroleum operations are carried out in accordance with the fundamental principles and rules set out in the Petroleum Activities Law.

The rules set out in this decree shall apply to prospecting and concession licences that have been awarded on the date of its entry into force. This regulation shall apply to all petroleum operations that are carried out onshore and offshore, in accordance with the terms set out in Law No. 10/04, of 12 November 2004. These regulations shall not apply to crude oil refining, storage, transportation, distribution and marketing activities.

Presidential Legislative Decree No. 5/18, of 18 May (Legal Regime on Additional Exploration Activities in the Development Areas of Petroleum Concessions), through the ANPG and MIREMPET, intended to maximise the geological potential of the development areas in the existing blocks in Angola. This scheme created an exceptional regime that would make it possible to carry out 'additional' exploration activities in concessions in production periods that reveal potential to rapidly increase the national production of hydrocarbons, without prejudice to the general regime of the law on petroleum activities.

Presidential Legislative Decree No. 7/18, of 18 May (Legal and Fiscal Regime Applicable to the Activities of Prospection, Exploration, Appraisal, Development, Production and Sale of Natural Gas in Angola), establishes a differentiated legislative and fiscal framework for the exploration of natural gas and its associated industries. It shall apply to national or foreign commercial oil companies that enter into an agreement with the ANPG, in any of the forms provided for in Paragraphs 2 and 3 of Article 14 of the Petroleum Activities Law.

The aforementioned law establishes longer time periods than those usually established for crude oil exploration and determines that the petroleum investing companies carrying out the activities defined therein are not subject, regardless of the contractual regime, to petroleum transaction tax, in addition to determining deductible costs and tax benefits.

Joint Executive Decree No. 331/20, of 16 December 2020 (Rules and Procedures for Fixing and Changing the Prices of Crude Oil Products and Natural Gas), is applicable to the activity of crude oil refining, as well as the import, logistics, distribution and marketing of crude oil products and natural gas throughout the national territory, except for the activity of refining, import, distribution and marketing of fuel, and lubricants, establishing the applicable price regime, regulating the price formation of oil and natural gas derivatives, the international reference prices, the publication of costs and maximum margins, the updating of prices of oil and natural gas derivatives, supervision and inspection, infringements and

fines, recidivism, establishing accessory sanctions and the revocation of Executive Decree No. 132/19, of 6 June, sale price of jet fuel and Executive Decree No. 706/15, of 30 December, and determines that diesel fuel will now have its prices formed under the free price regime.

## ii Treaties

Angola is a signatory of the New York Convention,<sup>13</sup> and of the International Centre for Settlement of Investment Disputes (ICSID), and has a long-established practice of agreeing to arbitration as the preferred method for settling disputes, even when the state is a party.

Angola has ratified two treaties to avoid double taxation. The first is with Portugal and the second is with the UAE, and it has signed several bilateral investment treaties with Brazil, the United Kingdom, Cape Verde, France, Germany, Spain, Italy, Turkey, Russia and South Africa.

Angola is also a signatory of the United Nations Convention against Corruption (UNCAC), and has also ratified important international treaties related to safety and environmental protection for the industry, in particular the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), the International Convention on Civil Liability for Oil Pollution Damage (CLC) and the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

Another important treaty ratified by Angola on 4 November 2019 was the African Continental Free Trade Area (AfCFTA),<sup>14</sup> an agreement entered into force on 30 May 2019, with the objective of setting up a free trade area to improve regional integration and boost economic growth across the African continent. Among the agreement initiatives, these countries commit to removing tariffs on 90 per cent of goods, with 10 per cent of 'sensitive items' to be phased in later. It also aims to liberalise trade in services and might in the future include free movement of people and a single currency.

## III LICENSING

ANPG is the national granting authority, a prerogative formerly 'attributed' to Sonangol EP, with the specific prerogatives of regulating, supervising and promoting the execution of petroleum activities in the field of operations and contracting in the oil, gas and biofuels sector. ANPG therefore supervises the contracting related to oil and gas exploration and production activities.

In Angola, any company (national or foreign) that intends to carry out petroleum operations in the national territory outside the scope of the prospecting licence may only do so jointly with the National Concessionaire, under the terms of Articles 13 and 14 of the Petroleum Activities Law, and may be awarded under the following methods: public tender, where Sonangol will associate with third parties to perform operations within a given area,

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13 Resolution No. 38/16, of 12 August. Angola acceded to the New York Convention on 6 March 2017, which entered into force on 4 June 2017.

14 As at 27 August 2021, 38 countries have deposited their instruments of ratification (ordered by date): Ghana, Kenya, Rwanda, Niger, Chad, Eswatini, Guinea, Ivory Coast, Mali, Namibia, South Africa, Republic of the Congo, Djibouti, Mauritania, Uganda, Senegal, Togo, Egypt, Ethiopia, Gambia, Sahrawi Arab Democratic Republic, Sierra Leone, Zimbabwe, Burkina Faso, São Tomé & Príncipe, Equatorial Guinea, Gabon, Mauritius, Central African Republic, Angola, Lesotho, Tunisia, Cameroon, Nigeria, Malawi, Zambia, Algeria and Burundi.

where the concession is awarded by MIREMPET by decree, and will take the form of: (1) a commercial company; (2) a joint-venture (consortium contract); (3) PSA; or (4) through risk service agreements (RSAs), as stated in Article 13 of the Petroleum Activities Law.

The National Concessionaire share hold as per principle, majority shareholding, in the associations referred to in Article 14.2(a) and (b), where the National Concessionaire holds an associative participation, this shall, as a rule, be greater than 50 per cent. However, the government may, in duly justified cases, authorise the National Concessionaire to hold a shareholding lower than 50 per cent, but no less than a participating interest of 20 per cent.

Petroleum operations may be exercised only through a prospecting licence or a petroleum concession under the terms of the Petroleum Activities Law, where the issuing of prospecting licences shall fall within the jurisdiction of the relevant MIREMPET and ANPG and the grant of a concession for the exercise of mining rights shall fall under the competence of the government.

Article 12 of the above-mentioned law determines the maximum duration of each of the phases, but the terms of the prospecting licence and of the concession will be determined in each licence, concession agreement and concession decree. Notwithstanding the maximum term of a prospecting licence is three years, which may be exceptionally extended, following what needs to be a duly justified application submitted by the licensee to ANPG.

The concession is deemed to have been awarded on the following dates: (1) in the event the National Concessionaire associates with other entities under the terms of Article 14 from the moment the respective contract is signed, and (2) in the event the National Concessionaire does not associate with other entities, from the moment the concession decree enters into force.

The tender proceedings for acquiring the capacity of associate of the National Concessionaire and for goods and services in the oil sector are subject to Presidential Decree No. 86/18, of 2 April, which sets forth the rules and procedures for public tenders in the oil and gas sector. This Presidential Decree defines the public bidding procedure that takes place prior to the award and execution of the corresponding PSA. This process requires the prior qualification of MIREMPET, and the requirements for acceptance may vary depending on the criteria and characteristics of the bidding process, in addition to the mandatory characteristics that the candidate company must fulfil in terms of technical and financial capability.

In addition to this Decree, Law No. 41/20, of 23 December, which came into effect on 22 January 2021, establishes the new Public Procurement Law in Angola (LCP), and was recently approved, revoking Law No. 9/16, of 16 June, which is also applicable to all public procurement procedures initiated after that date and to the execution of subsequent contracts.

The LCP now covers, among other aspects, administrative concession contracts. In addition, two new procedures are introduced: the Electronic Dynamic Procedure aimed at the acquisition of standardised goods and services; and the Emergency Contracting, which can only be adopted to deal with unforeseeable situations not attributable to the contracting entity.

As for the changes brought by the LCP, among them we find the lack of the need to sign contracts in written form in certain cases, the creation of a penalty regime, the possibility of a company being removed from the List of Companies in Default, the power or ability to authorise expenses inherent to the formation and execution of contracts, the elimination of the provisional bond and the stipulation of a single bond (the former 'definitive bond') and mandatory for contracts worth more than 182 million kwanzas.

Bidding is currently underway for oil concessions in the onshore Congo and Kwanza Basins under ANPG's control. The tender is expected to be awarded by mid-October 2021.

#### **IV PRODUCTION RESTRICTIONS**

Each associated company with the concessionaire is entitled to freely dispose of its share of production in accordance with the participating interest in the PSA. Restrictions to this entitlement can only be imposed by a mandatory requirement from the Angolan state, and specifically for the purpose of satisfaction of domestic consumption, or in the event of a national emergency, where the government has the right to the acquisition of the referred production. In this case, the restriction to production may involve the petroleum installations besides the production of the concession area. In the event of war or national emergency declared by the government, all or part of the production may be requisitioned to ensure that Angola's strategic requirements are met. The associated company is entitled to compensation in an amount equal to the market value price of the quantity of the requisitioned product.

The satisfaction of domestic consumption requirements shall not exceed the proportion between the annual output derived from the concession area and the total annual output of petroleum in Angola, nor shall it exceed 40 per cent of the total output from the relevant concession area.

In addition to rules and restrictions that may be embodied in the law or in each of the concession contracts and PSAs, the transfer of the contractual position held by private companies that are associates to ANPG to a third party requires the prior authorisation from MIREMPET, through an official executive decree, and the transfer of a stake or shares representing more than 50 per cent of the associated share capital, deemed equivalent to a transfer of contractual positions. This authorisation is not required if the transfer is made to an affiliate as defined by law, provided the assignor remains joint and severally liable. In the case of transfer to a third party of a stake or shares representing more than 50 per cent of the associated share capital, ANPG is granted the right of first refusal.

#### **V ASSIGNMENTS OF INTERESTS**

Subject to prior approval from MIREMPET, requested through ANPG, the concessionaire (or licensee) can assign all or part of its rights to third parties. The sale of 50 per cent or more of the concessionaire's or licensee's shares will be deemed an assignment.

In accordance with Article 16 of the Petroleum Activities Law, 'Associates of the National Concessionaire may only transfer part or all of their contractual position to third parties of proven suitability and technical and financial capacity after obtaining prior authorisation for such from the Minister responsible, in the form of an executive decree'.

Notice that transfers to third parties of quotas or shares representing more than 50 per cent of the share capital of the transferring company shall be treated as a transfer of contractual position.

If the transfer is between affiliated companies and if the transferor remains jointly and severally liable for the obligations of the transferee, there will be no need for the above-mentioned authorisation, taking into account that the conditions will be set in the PSA.

The National Concessionaire shall enjoy the right of pre-emption in the transfers, when such transfers are made to non-affiliates of the transferor. If, however, the National



Concessionaire does not exercise this pre-emption right, the same shall be immediately transferred to national associates enjoying the special status of a national company, in accordance with Article 31(3).

The assignment may be subject to competition sanctioning according to applicable legal provisions.

If the assignment is made by selling a participating interest, the gain (difference between book value and actual selling price) resulting from the proceeds of the sale will be subject to tax.

## VI DISPUTE RESOLUTION

Any dispute arising in connection with any licence or concession instruments, or between MIREMPET and the licensee, or ANPG and its associates could be settled by arbitration. Angola is a signatory of the New York Convention, since 2017, and has a long-established practice of agreeing to arbitration as the preferred method for settling disputes, even when the state is a party. Angola has also ratified ICSID. Thus, unless a certain matter is expressly excluded from arbitration under the Petroleum Act, in each concession contract negotiation, ANPG and MIREMPET allow for the stipulation of an arbitration clause.

The Petroleum Act will not be applicable to activities such as refining, transportation, storage, distribution and commercialisation of petroleum. MIREMPET and ANPG's decisions may also be challenged through a general administrative procedure, in accordance with Decree Law No. 16-A/95, Law No. 2/94 and Decree Law No. 4-A/96.

## VII TAX

The Law on Taxation of Petroleum Activities (Law No. 14/04, of 24 December) determines the special tax regime applicable to oil companies carrying out upstream petroleum operations. The tax charges applicable under this regime include petroleum production tax, petroleum income tax, petroleum trading tax, surface tax and the contribution for the training of Angolan staff. Ring-fencing of the tax charges shall be applied to each concession or development area, notwithstanding the important ring-fencing rule, and exception to this rule might change soon, to promote the development of marginal fields, the use of new technologies and the retrieval of new reserves.

Under the PSA, which covers most of the oil blocks, the company's share of the 'profit oil' is subject to petroleum income tax (PIT) at a rate of 50 per cent, this tax being increased to 65.75 per cent if the petroleum operations are carried out under an RSA or any other form of business association with the National Concessionaire. In any case, if the oil company is public or fully owned by Angolan citizens, the PIT is reduced to 35 per cent (i.e., the current industrial tax applicable to oil companies).

The petroleum production tax (PPT) is levied on the total oil produced minus oil used in operations, and is set at 20 per cent (with a possible reduction to 10 per cent) and the petroleum transaction tax (PTT) is levied on the taxable income at a 70 per cent rate, but can be taken as deductible cost against the PIT. Both taxes are not applicable to the PSA's agreements.

Other taxes:

- a surface charge: US\$300 per km<sup>2</sup>, per year, per concession/development area;

- b* contribution for the training of Angolan staff (training levy) of oil companies fully owned by the state or Angolan citizens are exempt from training levy;
- c* US\$100,000 – to oil companies that only have a research licence;
- d* US\$300,000 – to oil companies that are carrying out research activities;
- e* US\$0.15 per oil barrel – to oil companies that are in a production stage;
- f* US\$0.15 per oil barrel – to oil companies that carry out oil refining activities;
- g* 0.5 per cent of the annual turnover – to companies that carry out storage, transportation, distribution and commercialisation activities of crude oil; and
- h* 0.5 per cent of the values of contracts – to companies that render services to oil companies on a regular basis.

The State Budget Law for 2021 approved a reduction from 15 per cent to 6.5 per cent of the withholding tax rate applicable to services provided by non-resident entities to oil companies in Angola.

Regarding VAT, although the production and exploration of oil are exempt, the oil companies are subject to a captivation regime, where the input VAT mentioned in the supplier's invoice is withheld by the oil company and paid directly to the state. Also, the input VAT related to the following costs are not deductible for VAT purposes (but may be qualified as a deductible cost against the company's PIT):

- a* supply of water and energy;
- b* services relating to electronic communications and telecommunications;
- c* hotel and accommodation services;
- d* lease of equipment, except if it qualifies as a royalty payment;
- e* consultancy, legal, tax, financial, accounting and IT services;
- f* security services; and
- g* lease of vehicles.

As for oil and gas service companies, Law No. 10/21, of 22 April, which amends the Private Investment Law (Law No. 10/18, of 26 June) provided new amendments to the law with the aim to make private investment more attractive to investors. A new contractual regime was introduced, and the value of the investment and the jobs created are now included among the factors deemed relevant for the allocation of tax incentives.

## VIII ENVIRONMENTAL IMPACT AND DECOMMISSIONING

In Accordance with Article 24 of the Petroleum Activities Law,

*when carrying out their activities, licensees, the National Concessionaire and their associates shall take the necessary precautions to protect the environment, with a view to ensuring its preservation, namely with regard to health, water, soil and subsoil, air, preservation of biodiversity, flora and fauna, ecosystems, landscape, atmosphere and cultural, archaeological and aesthetic values.*

The National Concessionaire and their associates shall submit to the ministry in charge, within the legally established time limits, the plans required by current legislation, specifying the practical measures to be implemented with a view to preventing damage to the environment,

including environmental impact assessment studies and audits, landscape rehabilitation plans and contractual and permanent structures or mechanisms for environmental management and auditing.

Law No. 5/98, of 19 June (Environment Framework Law), defines the concepts and basic principles of protection, preservation and conservation of the environment, promotion of the quality of life and the rational use of natural resources in accordance with Article 24, Paragraphs 1, 2 and 3, and Article 12, Paragraph 2 of Article 12 of the Constitutional Law of the Republic of Angola.

Executive Decree No. 11/05, of 12 January, on the protection of the environment during petroleum activities, states that notwithstanding the existence of an environmental management plan, oil and other pollutant spills may occur during petroleum activities, and of other polluting products that may occur during the development of petroleum activities either onshore or offshore. It is therefore mandatory to define and standardise the procedures for notification of the occurrence of such spills to MIREMPET by all oil companies.

Presidential Decree No. 91/18, of 10 April 2018 ('abandonment of wells and dismantling of oil and gas installations'), sets the rules and procedures applicable for abandonment of wells and dismantling of oil and gas installations in Angolan territory, which are applicable in petroleum operations carried out onshore and offshore. The general principles on which they are based are defined, as well as regulation on the abandonment plan, the handing over of installations and wells to the ANPG, inspection and auditing and the provisioning, methodology and estimation of costs.

## **IX FOREIGN INVESTMENT CONSIDERATIONS**

Law No. 10/21, of 22 April, was recently enacted, amending Law No. 10/18, of 26 June (Private Investment Law), which establishes the principles and general bases for private investment in Angola.

Considering that the legal framework for private investment in force did not provide for the possibility of negotiating incentives, benefits and other rights for investors, particularly for structuring projects that have a significant economic and social impact, the new law introduced the contractual framework to allow an effective negotiation of benefits and incentives for private investors.

The contractual regime was created, applicable to all sectors of activity, which allows the negotiation of tax incentives and facilities and the conditions for the implementation of the investment project. Prior declaration and special regimes continue to be applicable. The tax benefits are now referred to the Tax Benefits Code (still to be approved) but, taking into account that the law allows in Article 36-A for a true negotiation between the investor and the Private Investment and Export Promotion Agency of Angola (AIPEX), this does create a problem. The investment amount and number of jobs created are now additional criteria for the purposes of granting benefits and facilities and will be important in the negotiation with AIPEX.

Foreign investors may now transfer abroad investment-related amounts (e.g., dividends) before the full implementation of the investment project. Domestic credit is now accessible to foreign investors and companies' majority held by them (previously only accessible after implementation of the investment project).

Investors are now exempt from obtaining provisional licences and other authorisations for the purpose of implementing investment projects. In case such licences and authorisations prove to be indispensable, the relevant issuing entities are obliged to comply with the deadlines set out in the implementation schedule agreed with the investor.

Companies with prior investments executed without a private investment project may now regularise the registration of the investment (which may entitle the right to repatriate dividends), although with no access to tax benefits.

Under the terms of Article 36-A,

*The contractual regime applies to Private Investment projects, carried out in any sector of activity and involves a negotiation between the promoter of the Investment Project and the Angolan State, regarding the conditions for the implementation of the project, the incentives and facilities to be granted under the private investment contract.*

Furthermore, under Article 37 'Private investors may freely opt for any of the investment regimes'.

Finally, Article 48, Paragraph 2, allows projects that have already been approved under Law No. 10/18 to be subject to the new regime. Indeed, the law does not determine what new incentives and benefits may accrue to the investor, but it certainly opens the possibility of negotiation, something that the previous law allowed in a very limited way.

This law applies to private investments of any value, whether made by international investors or not. However, it does not apply to investments made by public domain commercial companies in which the state holds the whole or majority of the capital. It shall not apply also to those sectors of activity whose investment regime is regulated by special law, such as the energy, telecommunications and tourism sectors.

Without prejudice to the preceding paragraph, the investment projects regulated by a special law shall be registered with AIPLEX, under such terms as may be regulated, for the purposes of statistical control and the granting of private investor status.

## **X LOCAL CONTENT**

The pressing need to develop the national business community and its workforce in the oil and gas sector, as well as the incorporation of national raw materials, to reduce Angolan imports, ensuring the increase in domestic production of goods and services, led to the approval of a new legal regime applicable to the Angolan oil sector. Presidential Decree No. 271/20, of 20 October, revoked former Decree No. 127/03, of 25 November, which established the basic rules to be observed when contracting national companies, suppliers of goods or services (service companies), by companies operating in the oil sector, thus ensuring, as a premise, the protection of the national companies, the use of national services and goods in support of oil operations and the respective industry.

It has become mandatory to introduce a local content clause in all contracts and Article 34 of the above-mentioned law states that 'contracts entered before, October 20, 2020, are valid and remain valid and in force'.

Failure to comply with this obligation constitutes an administrative offence punishable by a fine corresponding to a minimum amount in kwanzas of US\$50,000 and a maximum of US\$200,000.

For managing and monitoring all activities related to local content, the new regime establishes that the service providers must prepare and submit to ANPG the following documents:

- a* the annual local content plan;
- b* the annual human resources development plan, which must be submitted yearly, until 31 October;
- c* the annual balance of the development plan and human resources, which must be submitted until 31 March;
- d* the programme contract, which must be signed according to the respective research and production phase or service provision contract;
- e* the investment plan; and
- f* the list of contracting foreseen for each quarter (only for associates of the National Concessionaire, holders of service contracts with risk and others who collaborate in oil operations).

Regarding foreign technical assistance and management contracts, it is now necessary to include a detailed programme for training, transfer of know-how, technology and development of the national workforce.

The new regime maintains the three types structure: (1) exclusivity; (2) preferential; and (3) competition. The difference between the referred regimes lies in the type of companies (Angolan or foreign) that have access to the provision of the services in question, and the conditions (preferential or not) for such access.

The services and supplies covered by the exclusivity regime may only be performed by Angolan commercial companies and commercial companies under Angolan law (SCDA). Under the terms of the law, Angolan commercial companies are defined as companies wholly (100 per cent) owned by nationals, while the latter correspond to companies incorporated in Angola, regardless of the nationality of their partners or shareholders.

In other words, all companies incorporated in Angola are covered also by the exclusivity regime, whether the capital is held by Angolans, foreigners or both. Foreign companies are excluded (incorporated or registered under a foreign law) and are prevented from providing services or supplies to the oil industry covered by the exclusivity regime

Under the preferential regime, access is allowed to all service providers and suppliers (national or foreign); however, national companies (according to the above-mentioned criteria) enjoy a preferential treatment in the award of the respective contracts. This means that the petroleum company (operator or not) must give preference to national suppliers provided that they are able to provide the intended service or supply with similar quality as an imported product, and provided that the price is equally competitive (not exceeding 10 per cent of the cost of the imported product in accordance with the general rule established in the Petroleum Activities Law).

The new legal regime establishes its own transgressional regime, stating that the violation of the rules established therein may lead to the application of fines ranging from US\$50,000 to US\$300,000. In addition, accessory penalties of prohibition from one to two years, suspension of establishment operation or prohibition to enter new contracts may also be applied.

In other words, with the entry into force of the new regime, control of the company by nationals as an essential criterion for considering it a national or Angolan company no longer exists. Considering that the previous legal regime for private investment did not

foresee the possibility of negotiating incentives, benefits and other rights to investors, namely for structuring projects, such as the oil sector, which will undoubtedly have a significant economic and social impact, the new law introduced the contractual framework to allow an effective negotiation of benefits and incentives to private investors.

Substantial changes in the Angolan local content paradigm in force in the oil sector are embodied in the following aspects:

- a* in the scope of its application, the current regime also applies to service providers to the oil sector;
- b* redefinition of the concept of national or Angolan company, and a new criterion was introduced as the SCDA;
- c* mandatory introduction of a local content clause in all contracts;
- d* obligation to prepare information and documentation to be submitted to the ANPG;
- e* different transgression regime; and
- f* different typology of goods and services.

Law No. 10/04, of 12 November (the Petroleum Activities Law), determined that

*the Government shall adopt measures to guarantee, promote and encourage the participation of commercial companies owned by nationals in the petroleum sector and establish the necessary conditions for the purpose, (. . .) considering that the operators, as well as all entities that collaborate with them in the execution of petroleum operations must acquire national goods and services, such as incorporating national raw materials, with a view to reducing imports and increasing domestic production.*

However, although the referred law has been in force since 2004 (and although amended), there was in our opinion a clear perception that the use of reservation policies and related regulatory constraints could in fact harm the much-needed foreign investment and undermine ANPG's programme for the auctioning of new oil blocks (onshore and offshore) between 2020 and 2025.

## **XI ANTI-CORRUPTION**

The government has introduced important reforms in recent years, especially regarding revenue and budget transparency. In December 2018, the International Monetary Fund (IMF) approved a grant for Angola of US\$3.7 billion, for a three-year extended fund facility (EFF) to support the country's economic reforms. The IMF's aims are to restore Angola's fiscal sustainability and provide the foundations for economic diversification, including through the implementation of PROPRIV.<sup>15</sup> The IMF has highlighted that the fundamental pillars of its programme include:

- a* reducing Angola's gross debt through fiscal consolidation;

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15 Presidential Decree 44/21, of 19 February 2021, which proceeds to the update of the Privatization Programme (PROPRIV) for the period 2019–2022, and updates Presidential Decree 250/19, of 5 August 2019, with the objective of reducing the size of the influence of the Public Enterprise Sector (SEP) in the economy, increasing the quality and variety of services available to the population. The procedures to be adopted for the privatisation of companies are public tender, public tender by prior qualification, stock exchange auction and initial public offering. It should be reiterated that the concept

- b* increasing exchange rate flexibility through exchange rate depreciation and a commitment to a market-determined exchange rate;
- c* introducing a supportive monetary policy to reduce inflation and allow the accumulation of international reserves;
- d* strengthening Angola's banking system through improved governance, credit-risk management and undertaking an extensive asset quality review; and
- e* updating and bolstering the anti-money laundering and counter terrorist financing frameworks.

Law No. 34/11, of 12 December (Law on Combating Money Laundering and the Financing of Terrorism), as amended by Law 19/17, of 25 August (Law on the Prevention and Combating of Terrorism), establishes preventative and repressive measures to combat laundering of illicitly derived gains and the financing of terrorism. Money laundering and terrorist financing shall be prohibited, prevented and punished under the terms of this law and applicable legislation.

The purpose of Law No. 19/17, of 25 August (Law on the Prevention and Combating of Terrorism), is to establish: (1) measures to prevent the occurrence of terrorism; (2) special investigative and procedural measures; (3) measures to support and protect the victims of terrorism; and (4) the creation of an organism to coordinate operations and share information on the threat of and the fight against terrorism.

Angola is also a member of the African Convention on Preventing and Combating Corruption, which Angola ratified on 20 December 2017, and has also ratified on 10 December 2003 the United Nations Convention Against Corruption, which intends to cover five main areas: (1) preventative measures; (2) criminalisation and law enforcement; (3) international cooperation; (4) asset recovery; and (5) technical assistance and information exchange. The Convention covers many different forms of corruption, such as bribery, trading in influence, abuse of functions and various acts of corruption in the private sector.

## **XII CURRENT DEVELOPMENTS**

The Angolan Council of Ministers, an auxiliary body of the Angolan Executive Administration, approved on 31 August 2021 a Presidential Decree proposal on the new Rules and Procedures of the Permanent Offer Regime for the Promotion of Oil Concessions.

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of privatisation defined in the Privatisation Framework Law, No. 10/19, of 14 May, allows for various forms of privatisation; namely, the sale of shares representing the share capital, an increase in share capital open to subscription by private entities, the sale of assets or the assignment of operation and management rights. The programme's objectives are to promote the country's growth by reducing the state's participation in the economy, promoting private investment that boosts job creation and increases tax revenue, as well as promoting greater availability of products and services to all citizens, among other benefits for every Angolan. PROPRIV marks a change in the paradigm of alienation of assets that are the property of the Angolan people. It is being implemented with principles and mechanisms that ensure rigour and transparency, seeking to guarantee the interests of investors, but also of all the employees of the companies that are part of the list, seeking to create a context in which the various companies and assets have better conditions to fulfil their social function.

The 'draft proposal' is an additional measure to the 2019–2025<sup>16</sup> general bidding strategy and arises from the need to implement new rules, thus allowing for the permanent availability and negotiation of non-awarded tender blocks, 'free areas' in concession blocks, with the intention to boost investment, exploration and production activities for oil and gas, through limited public tenders and direct negotiation procedures, under the terms allowed by the Petroleum Activities Law, in particular Article 44 of Law No. 10/04, of 12 November.

Angola has a pressing need to replace reserves, and only through a more attractive legal and tax framework for the sector could that be possible. The Permanent Offer Regime is intended to guarantee that the punctual proposals from investors have a full response from ANPG and MIREMPET, through rules aligned with the procedures instituted by the above-mentioned regulations of the oil sector, which provide flexibility and clarity in trying to capture value for Angola.

Two important projects have started development and are worth mentioning. Firstly, the 'Barra do Dande project' in Bengo province is of strategic and national interest and it is part of the objectives set out in the Angolan government's 2018–2022 National Development Plan, as the main platform for storing and receiving oil derivatives and products for Angola's strategic, security and operational reserves. This promotes Dande as an important hub for fuel storage and marketing in the region, which provides a storage capacity of 580,000m<sup>3</sup> of refined products. The first phase is scheduled for completion by the end of 2022, and is intended to meet the country's needs and, associated to existing capacity, will also make the process of receiving and distributing refined products more efficiently and less costly. This is a strategic project that began in 2014 but was interrupted in 2016 as a result of the economic context that the country and the company were experiencing during that period.

In April 2021, ANPG announced the launch of the bidding round for nine onshore blocks, which had a very good reception from national investors. The timeline for this bidding round is quite ambitious, with the Angolan government aiming to: (1) receive the proposals by 9 June 2021; (2) open the proposals on 10 June 2021; (3) evaluate the proposals by 26 July 2021; (4) award the concession areas by 13 September 2021; (5) negotiate the agreements by 19 October 2021; and (6) sign the agreements on 22 November 2021. The areas being offered include blocks in both the Lower Congo and Kwanza basins: Blocks CON1, CON5 and CON6 in the Lower Congo Onshore Basin; and Blocks KON5, KON6, KON8, KON9, KON17 and KON20 in the Kwanza Onshore Basin.

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16 The objective of the 2019–2025 strategy aimed that in 2019, the following blocks were awarded through public tender: Namibe Basin: Blocks 11, 12, 13, 27, 28, 29, 41, 42 and 43; Benguela Basin: Block 10. In 2020, the following blocks were awarded through public tender: Congo Basin: CON1, CON5, CON6; Cuanza Basin: KON5, KON6, KON8, KON9, KON17, KON20. In 2023, the following blocks will be awarded through public tender: Congo Basin: CON2, CON3, CON7, CON8; Cuanza Basin: KON1, KON3, KON7, KON10, KON13, KON14, KON15, KON 19. The tender process is accessible to companies meeting the criteria specified in the Decree and applies to special areas, most notably areas abandoned or relinquished by Sonangol. During 2021, the following offshore blocks will be awarded through limited public tender: Blocks 7, 8, 9, 16, 33, 34 and free areas within Blocks 31 and 32. During 2025, the following offshore blocks will be awarded through limited public tender: Blocks 22, 24, 25, 26, 35, 36, 37, 38, 39 and 40, and through Direct Award. In this case, Sonangol will directly hire (through risk service agreements) selected contractors to explore certain concessions. During the first half of 2019, direct negotiations of the following blocks should be concluded: Blocks 6, 30, 44, 45, 46 and 47.



After the launch of the bidding round, investors will have 40 days to submit bids, proof of payment of the 'entry fee' in the amount of US\$1 million, considering that they are onshore blocks, and with mandatory documents having to be provided by each bidder to verify their good standing and technical and financial capabilities.

Specific blocks and basins will be assigned to each licensing round continuing until 2025, in accordance with Presidential Decree No. 52/19, which defines the general strategy for the allocation of petroleum concessions. The blocks will be awarded by public tender, restricted public tender and direct negotiation, with clear timelines put in place.

The government's plan to accelerate growth in the Angolan energy industry through improved legislation that focuses on supporting and enhancing local businesses development could be key. The most important strategy in the energy industry continues to be human capital and the increased participation of local companies to supply products and services made in Angola, supporting the oil and gas sector. As Angola shifts its focus to energy transition efforts, it must implement investment initiatives that foster local skills development that will drive the hydrocarbons industry. From 2020 onwards, the Angolan government has approved new legislation focused on maximising the benefits of the oil and gas industry value chain and to promote local content, a task supervised by ANPG.

Collaboration between the African Petroleum Producers Organization (APPO) and the Organization of the Petroleum Exporting Countries (OPEC) in adjusting to the clean energy transition and promotion of gas monetisation and utilisation is also at the forefront of the Angolan government's strategy.

Although it is our understanding that a huge effort has been made, in the right way, to revert the decline in oil production, and despite the government's best efforts, a recent report from the Centre for Studies and Scientific Research of the Catholic University of Angola has still estimated a 2 per cent recession in the Angolan economy in 2021, thus indicating the sixth consecutive year of recession.

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In the US, he was involved in the entire process of creating and approving the oil and gas operator Petro Lions, LLC, together with the competent institutions, including the Internal Revenue Service and the Texas Railroad Commission. In the field of oil and gas, he participated in the negotiation of various international agreements, particularly in the US, with Schlumberger, High Sierra and Superior (mineral rights and lease negotiation, operating and participation agreements, farmouts and regulatory compliance).

In Portugal, he worked as head of legal affairs at Portfuel, Lda, during which he negotiated with the Portuguese state and obtained two concessions (Aljezur and Tavira) for the prospecting, operating and marketing of oil and gas in Portugal.

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He was aid to the Secretary of State for Taxation (XV Constitutional Government – 2002); deputy chief of staff of the State Department of Public Administration (XVI Constitutional

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He advised the Portuguese government on the project of legislative reform of the oil sector concerning production, storage and transportation, and on the contentious administrative reform in Guinea-Bissau. He also advised on the Portuguese Cultural Heritage Act.

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