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# DOWNSTREAM OIL SECTOR LIBERALISATION

## THE NEW LAW ON CRUDE OIL REFINING, STORAGE, TRANSPORT, DISTRIBUTION AND TRADE OF PETROLEUM PRODUCTS



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### I - MAJOR INNOVATION

The new framework **Law on Crude Oil Refining, Storage, Transport, Distribution and Trade of Petroleum Products** was approved by Law no. 28/11, of 1 September 2011 ("LCOR").

The LCOR revokes the 2000 framework, deriving from the Strategy for liberalisation of the fuel sector and the schedule for its implementation set forth in 2009 by means of the Council of Ministers' Resolution no. 105/09, of 19 November. This Resolution established a model for the liberalisation of the fuel sector all through its value chain, **from Crude oil refining to distribution and trade, including storage and transportation** activities (the "Activities"), aiming to bring competition into a revised and sustainable development model.

The resolution included 3 stages of implementation of this strategy with revision of the applicable legislation in Phase I, followed by enactment of new legislation and, finally, by the creation of a regulatory body with supervisory powers.

The main aims of this newly enacted policy are to create **transparent and impartial market access** rules for all interested market agents and centralize all licensing powers under a **sole regulator** to make this procedure efficient, striving, in the short term, to open access to all consumers – the final client of petroleum products – searching

to implement **standards of quality with clear rules for the definition of tariffs.**

After market liberalisation, a fast expansion of petrol stations is expected throughout Angola. This will serve sustained national economic expansion, with joint development of several ancillary industries and sectors of activities. It should be noted that "filling up the tank" in Luanda is a time-consuming task, queues in petrol stations taking up to 2 or 3 hours. The Government is fully aware of the domestic needs and thus strives to accommodate and regulate a desirable and potentially highly-profitable market.

### II - MAIN MEASURES

The main measures of this innovative law include the following characteristics:

**1- The LCOR aims to set the basic rules for the organisation and functioning of the petroleum derivatives sector**, providing the main set of rules applicable to petroleum product Activities (LPG and piped natural gas included), thus still being subject to further regulation.

From the outset, the LCOR gives us a hint of its aims with terms such as "Wholesale Trader", "Importer Trader", "Retail Trader", "Licensing and Supervisory Entity", "Petroleum Installations Operator" and "Strategic Reserves". These terms - easy on the

eye in countries where former energy sector monopolies are being replaced by competitive markets with access by international players - are, on the Angolan socio-economic scene, a sign of innovation and structure and of a true effort to establish a sustainable energy market. The **effort and innovation** are even more praiseworthy considering the sector of implementation – the oil & gas sector in its wide definition and which has been singled out as the engine (highs and lows considered) of the Angolan economy for decades.

**2- The main guidelines** provided by the LCOR that we may expect to see further regulated in the future are the guarantees of:

- Planning of infrastructures, security of supply and technical supervision policies;
- Freedom of access to the Activities, non-discrimination and equality of treatment and of opportunities;
- Access to information and confidentiality of sensitive information;
- Freedom of choice of the distributor of oil products;
- Freedom of choice of trader of oil products;
- Third party access to large storage, transportation and piped distribution installations with non-discriminatory practices and published prices; and

- State compulsory purchase of petroleum installations based on public utility principles and subject to compensation.

**3- Public service obligations:** are to be observed by wholesale traders and retail traders as well as petroleum installations operators in terms to be further regulated but which include safety, regularity and quality of supply, consumers protection, satisfaction of priority consumers needs (healthcare, the armed forces and social assistance sectors) and promotion of energy efficiency and of the rational use of resources jointly with environmental protection. **GPL and piped natural gas distribution** (and respective storage) and trade are qualified as **essential public services** and suspension of their supply is subject to adequate prior notice.

**4- Consumer protection rights:** are well defined and include protection against abusive clauses, information, quality of the services and rights in dispute resolution. In particular, specific provision is made for exemption from payment of costs related to changes of LPG or piped natural gas trader and the prohibition on minimum consumption obligations.

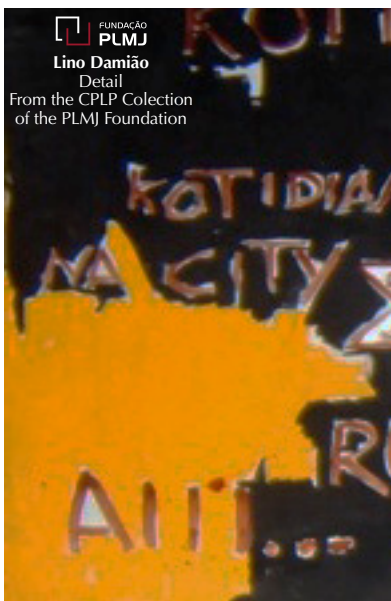
**5- Measure to control distortion of competition:** when in event of an energy crisis, the President of the Republic may propose to the Parliament

any contingency measures due to a distortion of competitive market rules or to deal with negative effects of the functioning of the petroleum derivatives market, with the consequent compensation to relevant third parties.

**6- Prices:** Prices shall be regulated so as to ensure minimum costs to consumers by means of a maximum price fixation mechanism for sale to the public of the petroleum products, considering cost differences between the different types of products and regulated Activities as per the respective value chain. Revision of the current criteria for petroleum products price setting is also provided for. To be noted that mandatory or minimum consumptions are expressly forbidden.

**7- Incentives:** Incentives will be granted for the purposes of carrying out these downstream Activities under the private investment laws or under other legislation. The President of the Republic may also attribute additional tax, currency exchange or customs incentives deemed necessary to promote the development of the Activities. Administrative, financial or operational mechanisms may also be established as a driver of the financing of the Activities, promoting direct access to loans under favourable conditions.

**8 – Market agents:** the Activities entail the separation of the roles of market



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agents – provision is made for the possibility of concentration of roles although subject to legal and accounts unbundling between Activities - these roles being identified as:

- Refining operators;
- Storage operators;
- Transportation operators;
- Distribution operators;
- Traders of petroleum products;
- Other agents intervening in the petroleum market such as importers; and
- Consumers of petroleum products.

**9- Licensing:** all Activities are subject to licensing, namely as regards construction, exploration, alteration of capacity, licence renewal and other matters which impact on the safety conditions of the installations. Supervisory entities may be created and licensing instruction documents and licensing powers will be further regulated by Presidential decree. Other entities – for example, those with environmental powers – may be

consulted when legally required for the issue of an opinion within the licensing procedure. Import, reception, transport and export of crude oil and petroleum products are subject to licensing under future complementary legislation.

**10 – Public utility:** entities carrying out Activities in Angola may apply for a status of public utility. Recognition of such status is ascertained with basis on the specific project or facility's relevance to Angolan economy and/or on the location of said project or facility, considering its importance to the national distribution chain.

As with all framework laws, this LCOR requires and promises further regulation and specification. Although details on its further implementation and chosen procedures are not yet defined, this law represents a major breakthrough in the Angolan downstream market and its principles are in line with, and even go beyond, other initial international policies on energy sector market liberalisation.

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This newsletter was prepared by a multidisciplinary team made up of Angolan lawyers from GLA – Gabinete Legal Angola and Portuguese lawyers from PLMJ. This team was brought together under an agreement for international cooperation and membership of PLMJ International Legal Network, in strict compliance with applicable rules of professional ethics.

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