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ANGOLA

NEWS

New local content rules for the oil sector

The new legal framework applicable to the Angolan oil sector was approved by Presidential Decree 271/20 of 20 October (the "Decree"). The Decree makes a substantial change to the rules on local Angolan content applicable in the sector and it naturally repeals Order 127/03 of 25 November.

The new legal framework now extends to service providers and suppliers of goods and services to the oil sector ("Providers") and not only which oil companies (i.e., associates of the National Concessionaire, holders of service contracts with risk and others that work in oil operations - "E&Ps"). Although, roughly speaking, most of the obligations relating to the contracting of goods and services fall on the E&Ps, the general framework of obligations and the provision of information also falls on the Providers. For the purposes of this framework, companies that are in the oil sector value chain and/or that perform or collaborate in the performance of oil activities are considered as Providers.

One of the main changes is the redefinition of the concept of national or Angolan company. Under the new rules, only Angolan companies wholly owned by Angolan citizens or companies are considered as Angolan Companies" (Sociedades Comerciais Angolanas - "SCA"). This change represents a break with the previous rules, which established an element of control. Under these rules, holding a majority of the capital of the company, a typical characteristic of JVCOs (joint-venture companies), was sufficient to qualify as an Angolan company. Under the Decree, the other companies incorporated in Angola are considered to be "Commercial Companies under Angolan Law" (Sociedades Comerciais de Direito Angolano - "SCDA"). Thus, JVCOs with external investors in their capital are now considered to be SCDA's, regardless of whether they are controlled by Angolan shareholders.

As for the type of services and goods, the Decree maintains the structure of three types of arrangements: (i) exclusivity; (ii) preference; and (iii) competition.

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ANGOLA

"As a general rule to promote Angolan companies, the Decree establishes the obligation for E&Ps to acquire goods and equipment manufactured in Angola (SCAs and SCDAs) and to contract services from SCAs that demonstrate they have the equipment, personnel and capacity to perform the service. All other things being equal, preference will be given to SCAs over other competitors."

The goods and services subject to the exclusivity arrangements must be supplied and provided by SCAs. The rules on preference seems to indicate that, despite the preference for SCAs, it is open to SCDAs and, if the price or quality of the goods or services available in Angola does not comply with the Petroleum Law, to foreign suppliers. Finally, the competition rules allow E&Ps to freely contract foreign suppliers, even if subject to the preference for domestic suppliers under the terms of the Decree.

After consulting the Competition Authority, the National Concessionaire is responsible for approving the list of goods and services subject to the exclusivity and preference rules. SCAs and SCDAs must, in turn, be registered and entered on the list to be approved by the National Concessionaire in order to be able to provide their services. Goods and services not included in the exclusivity and preference arrangements are, by default, subject to the competition rules.

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The National Concessionaire must register and certify companies involved in the oil sector (E&Ps and Providers). Furthermore, all service providers, whether domestic or international, are subject to a prior certification process in order that their contracting process can be finalised.

The introduction of a local content clause in all contracts is now compulsory. With regard to technical assistance and foreign management contracts, the inclusion of a detailed programme on training, transfer of know-how, technology and development of the Angolan labour force is now required.

The Decree also introduces obligations regarding the preparation of information and documentation to be presented to meet the new requirements of the Decree, namely:

- Annual local content plan;
- Annual human resource development plan, which must be sent in by 31 October;
- Annual review of the human resources development plan, which must be sent in by 31 March;

ANGOLA

- Programme Contract, which must be concluded according to the respective research and production phase or service provision contract;
- Investment plan;
- List of contracts planned for each quarter (only for E&Ps).

Another significant change is the one to the rules on violations. Any violation of the rules set out in the Decree may lead to fines ranging from USD 50,000 to USD 300,000. In addition, ancillary penalties of 1 to 2 years of prohibition, suspension of operating the establishment or prohibition on entering into new contracts may also be applied.

The Decree entered into force on 20 October 2020. ■

