

## LEGAL NEWS - ANGOLA

### READJUSTMENT MODEL FOR THE ORGANIZATION OF THE PETROLEUM SECTOR

There are at least two factors one should take into account when assessing a prospective investment in an oil and gas producing country; geology and political stability. In the African continent, Angola is a living example that one cannot go without the other. Earlier in 2016 Angola overcame Nigeria as Africa's top oil producer. While the latter has been struggling with armed militant attacks and political unrest, Angola has managed to increase its oil output by 40,000 bpd (delivering approximately 1.8 million bpd, and thus surpassing Nigeria)<sup>1</sup>. Notwithstanding its current position in the continent, Angola still has its own struggles. Framed by low oil prices, high offshore production costs and lack of foreign currency, the country has been actively engaged in revamping its oil sector. Some examples of such engagement is the recently incentive for the development of marginal fields, approved by Presidential Legislative Decree n.º 2/16, of 13 June and, particularly, the enactment of the readjustment model for the organization of the petroleum sector (hereinafter the "the Model"), by Presidential Decree n.º 109/16, of 26 May.

The Model is guided by the principles of *(i) stability*, as it does not affect any existing petroleum

arrangements entered with the National Concessionaire or any other State-owned company, *(ii) transparency*, since it aims at preventing conflict of interests and establishes a proper allocation of responsibilities within State-owned entities, and *(iii) efficiency*, as it intends to implement a tighter management control over State-owned institutions.

Even though it is very notorious, it is worth pointing out that Angola's current petroleum sector is overwhelmingly controlled by the National Concessionaire – Sonangol E.P.. Through its subsidiaries, Sonangol E.P. develops upstream, midstream and downstream activities, and controls or is involved, directly or indirectly, in almost all petroleum activities in the country. Targeting transparency, the Model recognises the multiple roles of Sonangol E.P. and the fact that these may jeopardise the focus of the company in monitoring the petroleum agreements entered for exploration and production activities.

Following the above mentioned principles and the concerns over the National Concessionaire, the Model restructures the Angolan petroleum sector by:

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<sup>1</sup> According to the International Energy Agency's April Monthly Oil Report

- (i) Creating an agency for the Petroleum Sector ("Agency"),
- (ii) Maintaining Sonangol E.P.'s role as National Concessionaire,
- (iii) Creating a high council for monitoring the petroleum sector ("Council"), and,
- (iv) Maintaining oversight over the petroleum matters with the Ministry of Petroleum and other sectorial matters with the relevant Ministries.

#### A. Restructuring of the oil sector

As expected, Sonangol E.P. remains the National Concessionaire with responsibility for the management and monitoring of petroleum agreements. In order to keep the focus and efficiency in its main activity, the Model suggests the transfer of some of the functions that Sonangol E.P. has had in several petroleum related activities to other public entities. The National Concessionaire shall therefore refrain from involvement in other activities such as exploration, development and production of oil blocks. It is clear that such restructuring aims for transparency in the Angolan petroleum sector and will undoubtedly bring efficiency to a currently overloaded Sonangol E.P.. Despite the initial troubled waters that may arise from this shift of functions, the Model reveals the drive of the Executive in keeping Angola attractive for investments and a reference in the African continent. This restructuring will not just avoid conflict of interests within the National Concessionaire's activities but, most likely, will

allow a fairer tendering process for oil related services<sup>2</sup>.

As to the Agency, it shall be the public entity responsible for the coordination, regulation and assessment of the performance of Angola's oil sector. It shall also have an important role in regards to the concession of petroleum blocks (via licensing rounds) since it will be in charge of the preparation, negotiation and awarding of blocks.

It is worth noting that the role of the Agency needs to be carefully drafted by the Angolan Executive since it entails future changes to the current functions of each Ministry involved in the oil sector (to highlight the Ministry of Petroleum, responsible for coordinating and supervising petroleum matters). Finally, the Agency shall be responsible for resolving conflicts, by administrative means, between the supervising Ministries and the different stakeholders involved in the petroleum sector.

As the name suggest, the Council's main activity will be of guidance and counselling to the Angolan Executive in petroleum related matters. It shall oversee and give advice in regards to investment plans with a high value and strategic importance, monitoring such plans and provide opinions on multiannual plans for the oil sector. Following Sonangol E.P.'s restructuring process, the Council

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<sup>2</sup> It should be noted that in the same day of publication of the Model, the Angolan Executive published an amendment to Sonangol E.P. by-laws, aligning the management board of the National Concessionaire with the new strategic restructuring of the sector.

shall be responsible for assisting the Executive in the management of the equity interests the Angolan Government holds in the value chain previously detained by Sonangol E.P.

Lastly, the Model reinforces the cooperation between the several Ministries involved in the petroleum sector (Ministry of Petroleum, Finance, Environment, Labour and State Administration). It suggests changes in each Ministry's functions as to accommodate the creation of the Agency.

### B. Implementation

The Model is expected to be implemented in four (4) stages, which can be cumulatively applied:

1. *Incorporation*: Setting up of the key new entities: the Agency and the Council.
2. *Reorganization*: Spin-off of Sonangol E.P. affiliates and subsidiaries.
3. *Operationalization*: Operation of the new entities under the new organization model.
4. *Optimization of Operations*: Increase of efficiency in each entity in the petroleum sector.

It is important to highlight that the current organization model for the Angolan petroleum industry is still in force until the approval and publication of all legal framework necessary for the implementation of the (new) Model.

### C. Conclusion

As a way of preparing for the future in a time of low oil prices, the Angolan Government recently set the bases for the restructuring of its oil and gas sector. The Model aims at improving efficiency in the management of the country's hydrocarbon resources and cash-flow arising from oil related activities. It restructures Sonangol E.P. and adds two new public players to the sector; the Agency and the Council. While the Agency will act mostly as a regulator, actively responsible for the negotiation and management of oil blocks, the Council will provide guidance and monitoring to the Angolan Executive.

It is fair to say that the Model comes as no surprise, particularly if one has in mind the maturity of Angola and the experience of Sonangol E.P. in the petroleum industry. The splitting of powers between Sonangol E.P. and the Agency will bring more transparency to the market and, without a doubt, attract more foreign and local investment to Angola, ensuring as well the development of the national economy. Angola is keen in maintain the number one position among Africa's oil producing countries, revealing that stability and a will to improve transparency and efficiency is key for success.