

NATIONAL ASSEMBLY

LAW NO. 2/12

OF 13 JANUARY

Whereas owing to the nature and characteristics of petroleum operations, in particular the large volumes of investment involved, there are valid reasons for their execution to be processed under different foreign exchange regulations from those in force for other economic activities;

Taking account of the fact that a multiplicity of foreign exchange regulations apply to the petroleum sector and it is necessary to achieve uniformity in order to establish a system of equitable treatment of investor entities;

Further considering the provisions of the foreign exchange legislation in force and bearing in mind the policy of the Executive of ensuring financial intermediation by banking financial institutions domiciled in the country of the petroleum operations;

It being necessary to introduce measures to normalise the situation and strike a balance between the interests of the State, foreign investors, domestic investors and banking financial institutions domiciled in the Country;

The National Assembly approves, by a mandate from the people, in accordance with the combined provisions of Article 161(b) and Article 166.2(d), both of the Constitution of the Republic of Angola, the following:

LAW ON FOREIGN EXCHANGE REGULATIONS APPLICABLE TO THE PETROLEUM SECTOR

CHAPTER I

General Provisions

ARTICLE 1

(Object)

The object of this law is to lay down foreign exchange regulations for the settlement of transactions of goods, invisibles* and capital, arising from the activities of prospecting, exploration, appraisal, development and production of crude petroleum and natural gas.

ARTICLE 2

(Scope)

This law applies to the National Concessionaire and to its Associates, both domestic and foreign, in the settlement of foreign exchange transactions in the petroleum sector.

ARTICLE 3

(Definitions)

For the purpose of this law, the words and expressions used herein shall have the following meanings, unless indicated otherwise in the text hereof, and definitions in the singular shall apply equally in the plural, and vice versa:

- a) *Banco Nacional de Angola* [National Bank of Angola] – the foreign exchange authority of the Republic of Angola;
- b) *National Concessionaire* – the entity to which the State grants mineral rights;
- c) *Mineral rights* – the set of powers awarded to the National Concessionaire for the purpose of carrying out petroleum operations in the area of a particular petroleum concession;
- d) *Tax charges* – all charges in respect of taxation provided by law and due on the performance of any activity of an economic nature;
- e) *Escrow account* – guarantee accounts for foreign financing;
- f) *Natural gas* – a mixture consisting essentially of methane and other hydrocarbons which is found in the gaseous state in a petroleum deposit or turns into this state when produced in normal conditions of pressure and temperature;
- g) *Banking financial institutions* – these are banks, companies whose main activity consists of receiving deposits or other repayable funds from the public in order to apply them for their own account, by granting credit, in accordance with Article 4 of the Financial Institutions Law;
- h) *Foreign currency* – banknotes and coin which are legal tender in the countries of issue and any other means of payment drawn abroad expressed in currency or units of account used in international settlements or payments;
- i) *Tax liabilities* – liabilities in respect of taxation arising from Law 13/04 of 24 December (Law on Taxation of Petroleum Activities), due for the performance of the activities of prospecting, exploration, development, production of crude petroleum

and natural gas, and also naphtha, ozokerite, sulphur, helium, carbon dioxide and saline substances, when arising from petroleum operations;

j) *Petroleum operations* – the activities of prospecting, exploration, appraisal, development and production of petroleum and natural gas performed under the Petroleum Activities Law;

k) *Operator* – the entity which executes, in a particular petroleum concession, petroleum operations under the Petroleum Activities Law;

l) *Petroleum* – crude petroleum, natural gas and all other hydrocarbon substances which can be found and extracted or otherwise obtained and collected from the area of a petroleum concession;

m) *Crude petroleum* - a mixture of liquid hydrocarbons originating from any petroleum concession which is in the liquid state at the wellhead or in the separator in normal conditions of pressure and temperature, including distillates and condensates, and also liquids extracted from natural gas;

n) *Investor companies* – companies which, under Article 14.2 and 14.3 of the Petroleum Activities Law, have a contractual relationship with the National Concessionaire.

ARTICLE 4

(Foreign exchange transactions)

For the purpose of this law, the following are considered to be foreign exchange transactions:

a) The acquisition or disposal of foreign currency;

b) The opening and operation in the country of accounts in foreign currency by residents or by non-residents;

c) The opening and operation in the country of accounts in national currency by non-residents;

d) The settlement of any transactions of goods, invisibles or capital.

ARTICLE 5

(Compulsory intermediation)

Without prejudice to the provisions of Article 6 of this law, the National Concessionaire and investor companies, both domestic and foreign, must perform

settlements of foreign exchange transactions through a banking financial institution domiciled in the country and authorised to perform foreign exchange trade under current legislation.

CHAPTER II

Foreign Exchange Transactions

ARTICLE 6

(Settlement of foreign exchange transactions)

1. The settlement of transactions of goods, invisibles and capital, to which the National Concessionaire and its Associates, both domestic and foreign, are liable, must comply with the applicable legislation, and also with the rules laid down in the following items.
2. For the purpose of the provisions of the previous item, the National Concessionaire and investor companies, both domestic and foreign, must open accounts in foreign currency at banking financial institutions domiciled in the country, where they must deposit the necessary sums for the payment of tax charges and other tax liabilities to the State, and also for the settlement of goods and services supplied by residents and non-residents for foreign exchange purposes, in a phased form, according to a calendar to be defined by Banco Nacional de Angola.
3. The National Concessionaire and the investor companies, both domestic and foreign, after the sale to Banco Nacional de Angola of the foreign currency for the payment of tax liabilities to the State, must use the balances of the accounts held at banking financial institutions domiciled in the country, referred to in item 2 of this article, giving priority to the payment of current expenses (cash calls), in particular the settlement of imports of goods and services supplied by non-resident entities.
4. The National Concessionaire and investor companies, both domestic and foreign, must open and operate accounts in national currency at banking financial institutions domiciled in the country, for the purpose of the settlement of goods and services supplied by resident entities.
5. The excess balance resulting from the payment of current expenses in the accounts of foreign investor companies, referred to in item 3 of this article, may be applied in either the internal market or the external market.
6. Domestic investor companies are authorised to transfer periodically, in accordance with their articles of association, profit or dividends in favour of their non-resident members or shareholders.

ARTICLE 7

(Drawing of funds)

1. Foreign investor companies of the National Concessionaire are granted the right to hold and draw at banking financial institutions domiciled outside the country, sums relating to profit or dividends, incentives and other remuneration of capital and the value of repayments of the investment.
2. The National Concessionaire and domestic investor companies are granted the right to hold and draw, in foreign currency, at banking financial institutions domiciled in the country, sums relating to profit or dividends, incentives and other remunerations of capital and the amount of repayments of investment.

ARTICLE 8

(Purchase and sale of foreign currency)

1. The National Concessionaire and domestic and foreign investor companies must sell to Banco Nacional de Angola the foreign currency necessary for the payment of tax charges and other tax liabilities to the State.
2. For the purpose of the payment of tax liabilities and other tax charges to the State, the exchange rate to be applied by Banco Nacional de Angola in transactions of purchase and sale of foreign currency shall be the reference rate in the formal market current on the day of the transaction.
3. The foreign currency which the National Concessionaire and the investor companies, both domestic and foreign, have to sell to Banco Nacional de Angola must correspond to freely and internationally convertible currencies and accepted as such by the latter.

ARTICLE 9

(Authorisation)

1. The National Concessionaire and the investor companies, both domestic and foreign, may perform the foreign exchange transactions referred to in Articles 6, 7 and 10 of this law, without prior authorisation from Banco Nacional de Angola.
2. Transactions performed in accordance with the provisions of item 1 of this article must subsequently be registered on terms to be regulated by Banco Nacional de Angola.
3. Capital operations destined for making foreign investment by the National Concessionaire and domestic investor companies are exempt from the provisions of item 1.

ARTICLE 10

(Operator's accounts)

1. The operator must, on terms to be regulated, hold in its own name and for account of the entities that bear the expenses inherent in the petroleum operations, one or more accounts in foreign currency, at banking financial institutions domiciled in the country, intended for the settlement of imports of goods and services connected with petroleum operations in compliance with the provisions of current foreign exchange legislation and the following item.
2. The accounts referred to in the previous item must be credited by advances from entities that bear the expenses inherent in the petroleum operations, for interest or other remuneration of the respective balances, and debited by the settlement of imports of goods and services.
3. The operator must open and operate accounts in national currency at banking financial institutions domiciled in the country, for the purpose of the settlement of goods and services supplied by resident entities.
4. The excess balance resulting from the payment of current expenses in the operator's account referred to in item 1 of this article may be applied in either the internal or the external market.

ARTICLE 11

(Financing of investment)

1. In preparing its strategy for financing investment projects, the National Concessionaire and domestic investor companies must give priority to external and/or internal credit with deferred payment conditions in all imports of capital goods, in particular capital equipment and construction services.
2. Foreign investor companies of the National Concessionaire must finance wholly in foreign currency their share of the investment necessary for the performance of the petroleum operations, and this financing will be exclusively their responsibility.
3. Banking financial institutions domiciled in the country are prohibited from granting credit, in either national or foreign currency, to foreign investor companies of the National Concessionaire, its subsidiaries or associates, without prior authorisation from Banco Nacional de Angola.
4. Financing of foreign investor companies guaranteed by securities held by these in the Angolan market is exempt from the provisions of items 2 and 3 above.

ARTICLE 12

(Escrow accounts)

1. The National Concessionaire and domestic investor companies are granted the foreign exchange prerogative of being able to hold, in guarantee accounts, of the 'escrow account' type, previously authorised by Banco Nacional de Angola, at banking financial institutions domiciled in the country or abroad, the foreign currency necessary for the repayment of foreign debt servicing.
2. The credit and debit movements in the accounts referred to in this article must comply with the terms and conditions of the respective financing contracts.
3. The amounts of the balances of the aforesaid accounts which exceed the value of debt servicing must be repatriated within a maximum time of eight days.

ARTICLE 13

(Settlement of production requisitioned by the Executive)

1. Settlement of production requisitioned by the Executive from the National Concessionaire or domestic investor companies must be performed in foreign currency at banking financial institutions domiciled in the country.
2. Settlement of production requisitioned by the Executive from foreign investor companies must be performed in internationally convertible foreign currency and accepted as such by the requested entity, and it may be effected in accounts at banking financial institutions domiciled in the country.
3. The right is recognised of foreign investor companies to draw on and transfer abroad their share of the amounts resulting from payments for production requisitioned by the Executive, after making the payment of tax liabilities and other tax charges to the State.

ARTICLE 14

(No offsetting)

The total or partial regularisation of transactions of goods, invisibles and capital by means of offsetting against credits or debits arising from transactions of an identical or different nature will require special authorisation from Banco Nacional de Angola.

ARTICLE 15

(No retention)

1. The National Concessionaire and domestic investor companies are not allowed to retain outside the country negotiable instruments arising from the settlement of

exports, receipt of invisibles and importation of capital, including negotiable instruments resulting from the execution of guarantees and active sureties and insurance settlements.

2. Foreign investor companies are not allowed to retain outside the Country, the negotiable instruments necessary for the settlement of goods and services supplied by non-resident entities, and also foreign currency for the settlement in national currency of goods and services supplied by resident entities.

3. Also foreign investor companies are not allowed to retain outside the Country, beyond the maximum time set out in the Law on the Taxation of Petroleum Activities, foreign currency for the settlement in national currency of tax liabilities and other tax charges to the State.

4. The disbursement of finance which establishes direct payment to the supplier at the time of use of the credit, in particular the various forms of export credit and others of the capital market according to international practice, are exempt from item 1 of this article.

5. The provisions of item 4 apply to foreign investor companies, also including financing of the parent company.

CHAPTER III

Registration of Foreign Exchange Transactions

ARTICLE 16

(Contracts for the purchase of goods and services)

1. The operator, on behalf of the entities that bear the expenses inherent in the petroleum operations, must present quarterly to Banco Nacional de Angola, for the purpose of registration, a detailed list of all contracts signed with non-resident entities supplying goods and services.

2. Banco Nacional de Angola may, whenever it deems necessary, require that a copy be presented of any contract referred to in the previous item.

ARTICLE 17

(Registration of foreign exchange transactions)

The National Concessionaire and domestic and foreign investor companies are required to register in accordance with current legislation all their foreign exchange transactions, in particular of importation, exportation and re-exportation of goods,

the receipt and payment of invisibles and the importation and exportation of capital, including the opening of accounts outside the country.

ARTICLE 18

(Balance of payments statistics)

Banco Nacional de Angola must, in a Notice, issue specific instructions on the type, manner and frequency of presentation of the items of information necessary for the registration and recording on the balance of payments, and also establish penalties, according to current legislation, in the event of non-compliance.

CHAPTER IV

Foreign Exchange Budget Forecast

ARTICLE 19

(Annual budget forecast)

1. With a view to the execution of foreign exchange transactions arising from the regulations defined in this statute, the National Concessionaire and the investor companies, both domestic and foreign, must present individually to Banco Nacional de Angola, by the thirtieth of November each year, the annual budget forecast, with a monthly breakdown.
2. The data required to appear in the budget forecast referred to in the previous item must be defined in a Notice of Banco Nacional de Angola.
3. The annual budget forecast referred to in the previous item must be updated quarterly by the National Concessionaire and the domestic and foreign investor companies.

CHAPTER V

Supervision

ARTICLE 20

(Duty of information)

For the purpose of supervision of the foreign exchange transactions provided in this law, the National Concessionaire, investor companies, both domestic and foreign, and banking financial institutions are required to provide to Banco Nacional de Angola all the information, and also other items or clarifications they consider to be relevant to the verification of compliance with and observance of the provisions of this law.

CHAPTER VI

Penalties

ARTICLE 21

(Offences and penalties)

Non-compliance with the provisions of this law shall constitute an offence punishable under the Foreign Exchange Law.

CHAPTER VII

Final Provisions

ARTICLE 22

(Regulation)

1. It is incumbent upon Banco Nacional de Angola to define, in a phased way, within a time not greater than twenty-four months, the procedures and mechanisms to be adopted in the foreign exchange transactions provided in this statute, and also to publish or transmit technical and other instructions necessary for the satisfactory execution of the legal regime of these.

2. For the purpose of the provisions of Article 6.2, Banco Nacional de Angola must define a calendar for gradual implementation.

ARTICLE 23

(Subsidiary application)

In all matters not provided for in this statute, the general foreign exchange regulations in force will apply subsidiarily.

ARTICLE 24

(Application of the law)

The National Concessionaire and also domestic investor companies which currently benefit from special foreign exchange regulations or other foreign exchange prerogatives must now obey the foreign exchange regulations provided in this statute.

ARTICLE 25

(Queries and lacunae)

Any queries and lacunae resulting from the interpretation and application of this statute will be resolved by the National Assembly.

ARTICLE 26

(Repeal)

All legislation contrary to this law is repealed.

ARTICLE 27

(Entry into force)

This statute will come into force one hundred and twenty days from its publication date.

Heard and passed by the National Assembly, at Luanda on 29 November 2011.

The Prime Minister, *António Paulo Kassoma*.

Promulgated on 6 January 2012.

To be published.

The President of the Republic, JOSÉ EDUARDO DOS SANTOS.

*Translation note: Portuguese term of "invisíveis correntes" has been translated as "invisibles" in the context of this document throughout. It could also be rendered as 'invisible trade'. The term means transactions relating to services, insurance, travel etc.