Miranda & Associados Sociedade de Advogados RL

20 November 2018

MEMORANDUM

INFORMAL COUNTRY UPDATE – ANGOLA

I. INTRODUCTION

This memorandum was requested by, and prepared for the sole benefit of International Swaps and Derivatives Association Inc. ("**ISDA**") and its members.

The purpose of this memorandum is to provide ISDA and its members with an overview for information purposes on the Angolan law treatment applicable to over-the-counter derivatives transactions ("**OTC Derivatives**"), by answering to specific queries posed by ISDA.

The analysis and conclusions set out below are limited to the matters expressly stated herein, and no opinion may be inferred or implied beyond those expressly stated.

II. QUESTIONS

The questions posed by ISDA, which are the scope of our analysis, are the following:

A. Enforceability

1. Do OTC derivatives transactions face an enforceability problem (e.g. due to anti-wagering provisions etc. under local law)?

2. Are there provisions (of a statutory, customary, common law etc. nature) in local law that provide for the enforceability of close-out netting both pre and post insolvency? Is close-out netting defined in addition to set-off under local law? Does local law allow netting in accordance with the terms of the underlying contract (e.g. the ISDA Master Agreement)? In the absence of close out provisions, are you aware of any current efforts to pass primary legislation in this regard?

B. Scope

3. If there are netting provisions under local law, do they apply to all types of counterparties, e.g. financial institutions, corporates (commodity trading firms, utilities, manufacturers etc.), SPV, public law entities (municipalities, central bank, development banks etc.)?

4. Is the scope of transactions eligible restricted in any way, e.g. to certain products (rates, currencies, equities, credit etc.). What about commodity products (gas, coal, oil, metals, agricultural etc.) and "new" products (emissions allowances, freight rates, weather variables etc.)? Is there a different

treatment for financially settled transactions as opposed to physically settled ones (i.e. where the underlying product is delivered)?

C. Foreign Law

5. Are there any issues with foreign law governed contracts (mainly English and New York law) when used for cross-border transactions into your jurisdiction? For example, some countries may restrict the use of foreign law and language documents when it comes to contracting with local public law or state entities.

6. Are financial collateral arrangements governed by foreign law recognized under local law? In particular, would title transfer and security interest arrangements (under English and New York law) be enforceable (e.g. ISDA credit support documentation)? Please also note any issues in relation to the collection of collateral and permissibility of such an arrangement in respect of derivative transactions under a standard form of ISDA credit support annex. Optional additional analysis: Would this apply to both local collateral and to "offshore" collateral? Are there any transfer restrictions of local currency or foreign (like USD) or other forms of collateral (like securities, bonds or shares) out of the country; may the counterparty hold these in an account outside of the country?

7. Is there any observation on the local regime for foreign (e.g. English, New York) judgments and foreign arbitral awards?

D. Other

8. Does local law/language standard documentation (sometimes referred to as "local ISDA agreement") exist or do market participants use bespoke documentation for domestic transactions (as opposed to cross-border transactions)? Does a local repo document or GMRA annex exist?

9. Are there any efforts underway to enact legislation on bank resolution?

10. Any other issues under local law (e.g. conflict of law rules; jurisdiction issues (e.g. arbitration recommended)?

III. ANALYSIS

1. Do OTC derivatives transactions face an enforceability problem (e.g. due to anti-wagering provisions etc. under local law)?

Under Angolan law, derivative transactions are nominated contracts (i.e. in civil law, nominate contracts are those which have a particular name to distinguish them, in this case "*Instrumentos Financeiros de Derivados"*)[1].

The Securities Code[2] ("**SC**") includes a definition of "derivatives": "assets or financial products that derive from an underlying or primary asset, in the form of a contract which value is based on the performance of the underlying financial asset" (article 2(d)). In addition, article 4(1) determines that the Securities Law provisions governing securities shall apply to derivative financial instruments. It further states that (i) futures, options and other derivatives with securities as underlying asset (article 4(3)(g)), and (ii) other derivatives, irrespective of the underlying asset (article 4(3)(g)) are subject to said statute.

The SC does not however establish a set of rules that shall govern the agreement should the parties fail to specify differently or include mandatory provisions that incorporate the fundamental principles of

[1] There are a few, unsystematic references to "derivatives" in Angolan legislation (cfr. article 3(d) of the Securities Code and BNA Notice No. 9/2016).
[2] The Securities Code was enacted by Law 22/2015, of 31 August 2015.

the legal system (and in such sense derivative agreements are not deemed "contratos típicos" for purposes of civil law).

Derivative transactions are therefore subject to the general rules of civil law, and entered into under the contractual freedom recognized by law to the parties (article 219 of the Civil Code).

Each trade is deemed a fixed-term agreement, for value, freely negotiated, not subject to a specific form[3] and random (since the amount to be paid by each (or one of) party (parties) is subject to a future and uncertain event).

Thus, we are of the opinion that provided that derivatives transactions are entered into: (a) for hedging purposes; (b) within each party's legal capacity and under their lawful activities; and (c) in connection with satisfying any other applicable legal requirements[4], the transactions shall be legally enforceable.

The use of derivatives for speculative purposes may still be deemed lawful provided entered into within the company purpose or used as portfolio investment strategy. However, this involves a specific case by case analysis and it would not likely be risk free.

Pursuant to article 1245 of the Civil Code, gaming contracts are not legally enforceable, i.e. do not create judicially enforceable civil obligations (unless the game has been licensed by a public authority) (article 402 of the Civil Code)[5].

Considering that the amount to be paid by each party (or one of the parties) is subject to a future and uncertain event, derivative transactions are deemed to be random contracts. However, in our opinion, provided that the derivative transactions are entered into (a) in the course of carrying on a lawful activity; (b) for purposes of hedging a risk arising out from the counterparty's business activity; and (c) such purposes are (i) expressly stated in the agreements evidencing such derivative transactions, and (ii) have legal support in a financing or other type of agreement or otherwise in the actual counterparty's commercial activity (e.g., cross-border purchase and sale of goods or provision of services), the risk that derivative transactions are qualified by Angolan Courts as illegal gaming contracts in our opinion is low.

The rationale for this understanding is that there are valid and reasonable grounds to sustain the purpose of such derivative transaction: the need to hedge against a material risk. In our opinion, such purpose sets the boundaries and the foundation of the derivatives transaction. This said, we cannot totally exclude the legal risk of a more restrictive position being followed by Angolan courts and it must be mentioned that the qualification of derivative transactions as gambling would make the agreements and respective transactions invalid and unenforceable in Angola.

Often the financing agreements underlying the hedging agreement are not specified in detail in the respective Confirmation. The omission of the legitimate financial purpose of the transaction in the relevant documentation may undermine the qualification, and consequently the validity, of the derivative transaction. This may be used in Court by the counterparty or, in case of insolvency, by the insolvency administrator or other creditors in the insolvency proceedings to dispute the enforceability of the transaction in question, alleging that the transaction is abstract, and should therefore be deemed an illegal gaming contract.

In order to remove or, at least, mitigate this risk, the documentation evidencing any Derivative Transaction should expressly identify and detail the risk being hedged (including a reference to the underlying financing or commercial agreements, where applicable)

[3] Article 219 of the Civil Code.

[4] E.g. In the case of the Republic of Angola derivatives to manage public debt may only be entered if specific legal requirements are met, such as parliament authorisation to enter into such type of trade, approval by the President of the Angola Republic and approval by the Audit Court.

[5] According to Law 15/16, of 17 May 2016, games whose results are contingent because they depend exclusively upon luck qualify as gaming contracts.

2. Are there provisions (of a statutory, customary, common law etc. nature) in local law that provide for the enforceability of close-out netting both pre and post insolvency? Is close-out netting defined in addition to set-off under local law? Does local law allow netting in accordance with the terms of the underlying contract (e.g. the ISDA Master Agreement)? In the absence of close out provisions, are you aware of any current efforts to pass primary legislation in this regard?

Outside of an Insolvency Scenario

As general rule, outside of an insolvency scenario, when two parties are mutually debtor and creditor, they may extinguish their obligations by means of netting and set-off (article 847 of the Civil Code). Netting may take place whenever the credit is judicially enforceable and both obligations relate to fungible asset of the same type and quality. Please note that the terms "netting" and "set-off" correspond to "*compensação*" a means by which a party may extinguish its debt (in the relevant proportion), whenever mutual obligations exist.

In an insolvency scenario

In the event of insolvency or bankruptcy of the counterparty, creditors can only exercise set off rights against a company that is in an insolvency or recovery situation if the following requirements are met: (i) if the credits were set off before the insolvency is declared, or (ii) if not, if the credit against the insolvent becomes valid and payable prior to the insolvency is declared. This means that, under Angolan law, the credit against the insolvent must become payable prior to the insolvency is declared to fall within the scope of set-off. Please note that the Angolan legal framework on insolvency and bankruptcy does not provide for specific provisions dealing with derivatives. Therefore, credits/debits arising out derivatives transactions would be subject to the "ordinary regime" on insolvency and bankruptcy.

In case of insolvency of an Angolan counterparty the relevant procedure will be judged by the Angolan Civil Courts (pursuant to article 65 of the Civil Procedure Code). Insolvency rules qualify as public policy rules, and therefore it is necessary to determine if an Angolan Court would accept as a valid event for purposes of early termination of the agreement, the insolvency event.

Pursuant to Angolan law, in the performance of its obligations, each party is subject to a good-faith duty ("bona fides") that includes ancillary obligations. Such good faith duty must be assessed taking in consideration the particulars of the specific case. Thus, the party is not only obliged to perform its part of the bargain, it must also ensure, through its conduct, compliance with ancillary duties that ensure/allow for the performance of the main obligation (as per article 762 of the Civil Code). It is certain that the commencement of an insolvency procedure puts at stake the parties' equilibrium in a business relationship that involves the performance of payment obligations of each party, at future dates. And, thus parties in agreements usually establish that insolvency is an event of the upmost gravity that grants the counterparty the right to terminate all outstanding transactions, for there is an effective loss of interest in the performance of the obligations.

However, under article 1197 of the Civil Procedure Code, the insolvency declaration does not trigger the termination of bilateral agreements of which the insolvent entity is a party. Such agreements shall or not be fulfilled according to a decision of the insolvency administrator, which shall decide in the best interest of the insolvent estate. It is therefore up to the insolvency administrator to decide if the agreement shall or shall not be terminated. If the insolvency administrator decides that the agreement should remain in place, the insolvent estate ought to fulfil the agreement. Accordingly, in the event of insolvency or bankruptcy of the counterparty, the relevant judicial administrator may or may not discharge the obligations under the transactions executed prior to the declaration of bankruptcy or liquidation. This means that such administrator would be allowed to terminate the out of-the-money transactions and comply with the in-the-money ones. We understand that the "single agreement clause" may be interpreted in order to avoid the "cherry picking". However, to the best of our knowledge, this issue has never been discussed in Angolan courts and, therefore, we cannot anticipate their view if any dispute arises on this regard. Please note that insolvency or bankruptcy procedures are deemed as mandatory rules that would apply even if the Angolan law is not the law chosen to govern the agreement.

Having said the above, in our opinion, where several transactions have been entered into, within the scope of a master agreement, the insolvency administrator may not "cherry-pick" which trades ought to be performed and which must be terminated, as the agreement shall be deemed a single one. We are of the view that a clause stating that the agreement is entered into under the condition that all transactions are part of the same agreement should be deemed valid under the freedom of contract principle.

Please note that in the case of financial institutions, pursuant to article 135 of the Financial Institutions Law[6], in a scenario where the special actions undertaken to recover such financial institution have not succeeded, the Civil Procedures Code rules shall apply – since a special legal frame on liquidation of financial institutions has not yet been enacted. The BNA will withdraw the bank's license and request the Procurador Geral da República the declaration of insolvency.

As far as we are aware there is no process under way for the enactment of netting legislation in Angola.

3. If there are netting provisions under local law, do they apply to all types of counterparties, e.g. financial institutions, corporates (commodity trading firms, utilities, manufacturers etc.), SPV, public law entities (municipalities, central bank, development banks etc.)?

The considerations made above do not apply to the Central Bank, Angolan government, national debt office, ministries or public institutions. Under Angolan law, these entities do not become insolvent or bankrupt.

Furthermore, when trading with the State or other quasi government entities, under the Civil Code, private entities may not settle their debts towards the State or other quasi government entities by resorting to netting (as per article 853 of the Civil Code).

Therefore, in the case of such counterparties, when possible transactions should be structured in such terms that as of ab initio it is not necessary to net, and in order to avoid the obligation of both parties to fully fulfil their obligations (with the unnecessary liquidity burden that would be involved). The alternative is for each party to fully pay the due amount under the relevant "leg" of the transaction.

Further note that capacity issues may arise and legal restrictions may apply on the scope of activity that may be carried out by each entity and therefore a case by case analysis should be carried out.

4. Is the scope of transactions eligible restricted in any way, e.g. to certain products (rates, currencies, equities, credit etc.). What about commodity products (gas, coal, oil, metals, agricultural etc.) and "new" products (emissions allowances, freight rates, weather variables etc.)? Is there a different treatment for financially settled transactions as opposed to physically settled ones (i.e. where the underlying product is delivered)?

As mentioned references to derivatives in the law are limited, and therefore a different regime is not set per type of trade.

The fact that an asset/product is physically delivered pursuant to a derivative transaction does not set aside the specific rules and legal restrictions applicable to the trading of certain products. Such rules should therefore continue to apply in a physical settlement scenario.

[6] Law 12/15, of 15 June 2015.

Please also note that Angola has in place usury rules, setting limits to the maximum rate on loans. Such provisions, in certain scenarios, may be deemed applicable to derivatives, even if governed by a foreign law, as these are deemed public policy rules.

5. Are there any issues with foreign law governed contracts (mainly English and New York law) when used for cross-border transactions into your jurisdiction? For example, some countries may restrict the use of foreign law and language documents when it comes to contracting with local public law or state entities.

Choice of Law

Article 41 of the Civil Code establishes the freedom of choice of law, provided that such choice derives from a relevant interest of the parties or is in connection with any of the usual elements of the contract under private international law. This "serious interest" of the parties means that it is entitled to legal protection, that it is reasonable (and not a mere wish of the parties). Such choice ought to be equitable, done in good faith and in accordance with "bonis mores", which is understood as a set of ethical rules, with social value, accepted by honest/good faith individuals at a given moment in time.

In the case of agreements entered into between two entities established in Angola, there is no direct connection with a foreign jurisdiction. For this reason, we cannot totally exclude the legal risk of the agreements being deemed mandatorily governed by Angolan law. This does not exclude the possibility of ISDA templates being used and/or references being made to same as integral part of Angolan law governed agreements.

However, it is undeniable that electing the laws of a jurisdiction that is well-known for its capacity to accommodate sophisticated and complex concepts and structures within the framework of its legal terminology and rules, as well as its courts' familiarity with such transactions may also qualify as a "relevant interest" of the parties capable of justifying such selection. In addition, there are certain forum, such as the English courts, that are perceived to be sophisticate, staffed by judges knowledgeable and experienced in deciding on business disputes arising from international transactions. Furthermore, these agreements are usually drafted according to the standard clauses prepared by international organisations, such as ISDA., which are used world-wide and prepared taking into account English or New York law. Therefore, out of an insolvency scenario, we are of the view that there are reasonable arguments to sustain that a clause electing English or New York law to govern the agreements should be deemed valid.

Notwithstanding the above, the law chosen by the parties will not apply if it involves the violation of Angolan public policy rules and there are certain mandatory principles of Angolan law that may apply even if a foreign governing law is validly chosen. In such a case, Angolan local statutes will prevail and govern the matters that fall under such public policy scrutiny (that is the case of insolvency rules and laws on netting).

In addition, in case of insolvency of an Angolan counterparty, the insolvency proceedings would be subject to Angolan rules on bankruptcy or resolution measures.

Language

As a general rule, agreements drafted in a language that is not the official one (Portuguese) are valid. However, Angolan Authorities, including the Angolan Central Bank (Banco Nacional de Angola – "BNA"), and Angolan courts, may request to be provided with a Portuguese translation. In addition, in case of any inconsistency between versions of an agreement drafted in different languages, the Portuguese version shall prevail.

The SC also states that all documents that may influence the decision to "invest in derivatives" (article 6) must be made available in Portuguese or translated to Portuguese (being the translation duly legalized). The wording of the law, implies an "investment" and not trades aimed at managing risk. Thus, it seems more likely to apply to complex financial products that incorporate a derivative. However, there is a risk that Angolan authorities would follow a more demanding approach, understanding that in all cases where a bank (or another financial intermediary) is offering to deal in derivatives with an Angolan resident that the relevant documentation and all information exchanged in connection with the deal must be made available in Portuguese.

To address this risk the agreements that are signed should be in both Portuguese and English languages, but the Portuguese version shall prevail in case of any inconsistency. The Portuguese version should include all relevant terms and conditions – to the maximum extent possible, and the corresponding terms in English may be included within brackets to facilitate their interpretation.

It should be noted that, in an enforcement scenario, a translation of such agreements may in any case have to be submitted before the local Courts (article 140 of the Civil Code), and that foreign exchange controls usually impose language requirements – should the BNA deem transactions to fall within a category subject to the said rules.

In case of public entities, there is no specific legal rule requiring the agreements to be written in Portuguese. It may nevertheless be argued that public entities have sovereign powers and therefore the official version of all agreements entered into with such entities ought to be written in Portuguese. In practice, the Portuguese version is usually required. Also, the Audit Court and other authorities typically require to be provided with a Portuguese version. To our knowledge this is not usually the case of BNA or the Ministry of Finance ("**MOF**").

We further note that Angola is not party to the Hague Convention. Therefore, if executed outside Angola, the Angolan Authorities, including local courts, may request to be provided with legalised transaction documents. Therefore, the transaction documents if signed by any of the parties abroad must be notarised, translated into Portuguese language and consularised at the Angolan Embassy in the country of execution in order to be entirely enforceable before Angolan courts and other Angolan public authorities. Legalisation is typically a post-closing condition. Based on our experience, BNA and MOF do not typically ask to be provided with legalised or translated documents. We further note that in order to be legalised at a later stage the relevant documents signed abroad must be notarised at signing.

6. Are financial collateral arrangements governed by foreign law recognized under local law? In particular, would title transfer and security interest arrangements (under English and New York law) be enforceable (e.g. ISDA credit support documentation)? Please also note any issues in relation to the collection of collateral and permissibility of such an arrangement in respect of derivative transactions under a standard form of ISDA credit support annex.

Would this apply to both local collateral and to "offshore" collateral? Are there any transfer restrictions of local currency or foreign (like USD) or other forms of collateral (like securities, bonds or shares) out of the country; may the counterparty hold these in an account outside of the country?

Under Angolan rules of private international law, the relevant law governing proprietary aspects of a transfer of a movable asset or right and the creation of security is the law of the place of its location (lex situs) (as per article 46 of the Civil Code).

Thus, if the relevant assets/rights are located or deemed located in Angola the execution formalities and perfection requirements will be governed by the laws of the Angola jurisdiction.

Angolan Law sets a closed list of security arrangements.

Therefore, the arrangements established under ISDA credit support documentation if relating to assets located in Angola would qualify as contractual arrangements that do not constitute a security interest of a kind specifically enumerated in Angolan Law, and thus may not operate in-rem or benefit from the right of pursuit or preference and are instead liable to be treated in insolvency as would any other contractual arrangement, for instance, by being challenged, disclaimed or even terminated by the insolvency administrator.

Under the ISDA documentation transfers made under the credit support arrangements are an additional transaction, and any due amounts should be considered for purposes of determining the final close-out amount. One could argue that such provisions should be sufficient to grant protection to the non-defaulting party in what concerns the amounts/assets posted as margin. However, such a legal construction can be viewed as fragile. Rules on creation of security are matters of public order, aiming to ensure protection of all creditors of the insolvent estate. Therefore, there is a material risk that a local court would not follow such an approach.

Assets off-shore

If the assets are located off-shore, Angola Law will recognise the law of the place of the assets as the relevant law to govern the collateral arrangement.

Exchange Control Rules

The foreign exchange rules currently in force in Angola are contained in the Foreign Exchange Law (FEL) and ancillary regulations, including a number of instructions and orders of BNA. The specific foreign exchange rules applicable to currency transfers between resident and non-resident entities are subject to cumbersome and time-consuming procedures, which may vary depending on the type of transactions represented to the Angolan authorities.

Basically, agreements and the transfer of funds thereunder between resident (such as the Angolan counterparty) and non-resident entities can be subject to different foreign exchange licensing requirements depending on the nature of the underlying transaction, which may be the following: (i) importation of goods; (ii) “invisible items of trade”; and (iii) capital operations.

Although the applicable regulations are not totally clear, derivative transactions, the investment in securities and any transfer of funds thereunder qualify as capital operation and as such are subject to BNA's prior approval irrespectively of their value. As far as we have been able to determine, this is also the position that has been followed by BNA. The repatriation of any local investment or profits is also subject to BNA’s prior approval. The physical settlement of any derivative transaction may also trigger foreign exchange licensing requirements.

Additionally, it should be noted that, as a rule, a resident corporation is not allowed to open and operate offshore bank accounts, unless granted a special authorization from BNA.

The regular trading of foreign exchange operations (either on its own account or on behalf of third parties) is expressly deemed subject to prior authorization by the BNA (article 10 of the FEL).[7]

Any agreements between resident and non-resident entities that provide for set-off of debts and credits as a payment mechanism are subject to prior authorization of the BNA (article 8 of the FEL).

Agreements and the respective payments between resident entities must be made in local currency and are not subject to foreign exchange licensing requirements.

7. Is there any observation on the local regime for foreign (e.g. English, New York) judgments and foreign arbitral awards?

Jurisdiction

Under the Angolan Procedural Code, a foreign jurisdiction may be chosen for international transactions (literally, “international economic contracts”) by the parties if the law elected is the law of any of the parties or if an “international court” is elected (and such election must also be supported by

[7] When entering into Transactions with oil companies, specific legislation apply, namely Law 2/12 of 13 January (notwithstanding, for the purposes of our analysis herein these specific requirements do not affect our conclusions).

a bona fide interest of the parties). There is no definition of the expression “international court”. Our best interpretation of the law is that it may include English courts, which are commonly chosen for international transactions. That said, we cannot exclude the possibility of a more restrictive interpretation of the law being followed by Angolan courts.

Under the Angolan Procedural Code, Angolan courts would only be competent under the following circumstances:

i. the action should be brought in Angola, according to the rules of territorial jurisdiction established by the Angolan laws (principle of coincidence of international jurisdiction to territorial jurisdiction). According to this criterion, there is international jurisdiction of the Angolan courts where the action can be brought in Angola under specific rules of territorial jurisdiction established in Angolan law. If the cause of action under the Agreement arises from contractual liability, the relevant jurisdiction would be the "court of the place where, by law or written agreement, the obligation should be fulfilled"; or

ii. the fact grounding the cause of action has taken place in Angolan territory (principle of causality); or

iii. when the defendant is a foreigner and the plaintiff is an Angolan, provided that in the reverse situation, the Angolan national could be summoned and stand in the courts of the State of the defendant (principle of reciprocity); or

iv. the right cannot become effective except by the proposed action in the Angolan courts, since between the action and Angolan territory there is no weighted element of connection, neither personal nor real (principle of need); or

v. the action relates to immovable property located in the Republic of Angola.

In case of a derivative agreement entered into between Angolan entities and/or in case of a derivative agreement entered into with an Angolan entity if the payment obligations are to be performed in Angola, the Angolan courts will be deemed competent.

<u>Recognition of foreign judgements</u>

Angola is not part of any international convention for the recognition of foreign court judgments that would ensure the speedy and efficient recognition of a decision by an English/NY court.

Any judgment or arbitral award obtained in England would be recognised and enforced by an Angolan court without re-litigation and re-examination of the merits of such judgment/award, provided that (a) the party who wishes to have the award recognised and confirmed in Angola submits a request with the Supreme Court for such purpose; (b) the court serves notice of the statement of claim to the other party and grants the same a 10-day period to oppose to the confirmation request (such party may only oppose the confirmation request on the grounds listed in (i) to (vii) below; and (c) the Supreme Court does not withhold recognition, and therefore, enforceability, of the judgment on any of the following grounds:

i. the judgment is forged or illegible;

ii. the judgment would not be enforceable in the country where it was handed down;

iii. the court is not competent on the subject matter in accordance with the Angolan provisions on conflict of laws;

iv. minimum due process was not observed in the foreign court proceedings;

v. prior judgment on the same dispute has been passed by another court (foreign or Angolan);

vi. concurrent proceedings are pending in an Angolan court; or

vii. the judgement is contrary to Angolan public law principles.

Arbitral Tribunal

In view of the above it may be efficient to include an arbitral clause, submitting to an arbitral court for any litigation between the parties.

Since Angola recently became the 157th party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 1958 “New York Convention”), should the parties decide to submit the litigation to a foreign arbitral, a more swift process for recognition is now in place[8]. However, since this is still very recent, it is likely that the Angolan courts will still need some time in order to adapt to this new reality. Moreover, it is likely that the Angolan domestic laws (in particular the Code of Civil Procedure and the Angolan Arbitration Law) may be amended in order to reflect the accession to the convention.

Should the parties decide to submit the dispute to arbitration in Angola, the arbitral tribunal should be set according to the legislation of Angola, namely the Arbitration Law (Law 16/03, dated 25 July 2003).

Both collective entities and the Republic of Angola (in this later case, when the dispute relates to private law) may resort to arbitration (article 1 of the Arbitration Law).

In a scenario where the counterparty does not abide by the arbitral tribunal decision, it is possible to demand the enforcement of the decision before the local court (Tribunal Provincial) 30 days after the decision of the arbitral court has been notified to the parties. At this stage there is not a review of the merits of the case (Articles 37 and 38 of the Arbitration Law).

8. Does local law/language standard documentation (sometimes referred to as “local ISDA agreement”) exist or do market participants use bespoke documentation for domestic transactions (as opposed to cross-border transactions)? Does a local repo document or GMRA annex exist?

There is no standard local documentation available.

9. Are there any efforts underway to enact legislation on bank resolution?

As far as we are aware there is no process under way for the enactment of new legislation on bank resolution in Angola.

10. Any other observation specific to the local regime that should be added?

Financial licensing requirements

Finally, it should be noted that only financial institutions which are duly licensed in Angola may carry out banking and financial activities in the country. Accordingly, non-Angolan financial institutions cannot offer/propose financial services and/or products from their home country to Angolan companies (including “state entities”, such as governmental departments, quasi-governmental entities and companies that are wholly or partially state-owned) or individuals without being duly licensed in Angola. To that end, a foreign financial institution would be required to set-up a local branch or incorporate a subsidiary in Angola. This means that a foreign bank, which has no license or permit in Angola, may not solicit clients or provide services to clients from onshore or offshore Angola in

[8] Angola has ratified the Convention via resolution n.º 38/2016 adopted by the National Assembly on 16 June 2016. The resolution was published in the Official Gazette of the State on 12 August 2016 date from which it became effective. The Republic of Angola made a reservation under the principle of reciprocity set forth in Article I.(3) of the New York Convention pursuant to which the Convention will only apply to the recognition and enforcement of awards issued in the territory of other contracting States.

connection with banking, financial products, financial services and the sales of securities, including derivatives. The key issue here is to determine whether the relevant activities would fall within the concept of conducting financial activities within the Angolan territory and, consequently, be deemed subject to Angolan laws, regulations and licensing requirements. To the best of our knowledge, there is no objective test or criteria, nor any official guidance texts, resolutions or decisions in this regard. Accordingly, this is an issue that must be assessed on a case-by-case basis. In our view, a foreign financial institution offering derivative products in the Angola territory and entering into multiple transactions with local entities on a regular or permanent basis may be found to be engaging in financial activity in Angola.

As regards financial services provided outside Angola to Angolan resident entities under agreements entered into outside Angola (at least by the foreign financial institution) on an occasional basis, we are of the opinion that such activity does not attract the application of Angolan laws and financial licensing requirements, provided that the services/ activities are rendered/ carried out outside Angola upon client's solicitation.

Currently, there are several foreign financial institutions entering into unsolicited financial transactions, on an occasional basis, with Angolan counterparties from their home country. This type of approach is very common in Angola and, to the best of our knowledge no financial licensing requirement issues have been raised by the supervisory authorities. Differently, foreign financial institutions wiling to engage activities within Angola territory on a regular basis are applying for licenses with BNA or the Securities Market Commission, as applicable.

Best regards,

Fátima Freitas Advogados in association with Miranda & Associados – Sociedade de Advogados RL

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