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## Newsletter



# Expert Legal Assistance

## **Decree-Law no. 17/09, of 26 June 2009**

**Recruitment, integration, training and development regime of Angolan personnel and the hiring of foreign personnel for the carrying out on petroleum operations in Angola**

**An Expert Legal Assistance Publication**

## **Recruitment, integration, training and development regime of Angolan personnel and the hiring of foreign personnel for the carrying out on petroleum operations in Angola**

The new regime on the recruitment, integration, training and development of Angolan personnel and the hiring of foreign personnel for the carrying out of petroleum operations in Angola is set forth in Decree-Law 17/09, of 26 June 2009 (the “Training Decree Law”) and Executive Decrees No. 13/10, of 10 February 2010, and No. 14/10, of 11 February 2010 (jointly referred to as “Regulations), which revoked the former training statutes (notably Decree 20/82, Joint Executive Decrees 124/82 and 125/82 and Decree 116/08).

In terms of their subject matter, whereas Executive Decree 13/10 deals with recruitment, integration, training and development of Angolan personnel and the hiring of foreign personnel for the carrying out of petroleum operations in Angola, Executive Decree 14/10 addresses only matters relating, directly or indirectly, with the Fund for the Training and Development of Angolan Human Resources in the Petroleum Sector (“Fund”).

### **A) Entities subject to the Training Decree-Law and Regulations**

- 1.** The Training Decree-Law and Regulations applies to all foreign companies (i.e., companies incorporated outside Angola), and Angolan companies where a majority holding is owned by foreign individuals or entities, which:
  - (i) Are engaged in prospecting, exploration, appraisal, development and production of petroleum;  
or

- (ii) Are engaged in petroleum refining and processing, storage, transport, distribution and marketing of petroleum products in Angola; or
  - (iii) Render services to the entities listed under (i) and (ii) above on a permanent basis, i.e., for a period of 1 year or more, whether consecutive or not, irrespective of the block, concession area or field of activity in which the services are performed.
2. Companies incorporated in Angola owned in more than 50% by Angolan individuals or entities are not subject to the Training Decree-Law and the Regulations.
  3. Unlike Joint Executive Decree 124/82, the Training Decree-Law does not exempt companies that only have a financial interest in exploration or production activities (i.e., non-operators) from the hiring and training obligations set forth therein.
  4. Companies engaged in petroleum processing activities are now covered by the training requirements set forth in the new Training Decree-Law.

**B) Entities not subject to the Training Decree Law and Regulations**

5. Companies incorporated in Angola whose share capital is held in more than 50% by Angolan individuals or entities are not subject to the provisions of the Regulations.
6. The Regulations appear to depart somewhat from the subjective scope set forth in the Training Decree-Law in that certain companies are not subject thereto, namely:
  - (i) Foreign companies which supply materials, equipment and any other products to the operator companies of blocks and concession areas;

- (ii) Service providers and construction companies of structures and similar installations, which carry out the totality or the majority of their work outside Angola;
- (iii) Companies whose corporate purpose is not directly related to petroleum activities.

The Regulations seem to have adopted an operational criterion, whereby only companies directly engaged in oil operations, and with an effective presence in Angola, are subject thereto. Still, in this regard, there are a number of issues that may lend themselves to different interpretations, thus leading to some uncertainty.

7. Non-operator petroleum companies and subcontractors are only subject to the payment of contributions to the Fund, as per the Training Decree-Law, thus apparently being exempt from other obligations. Said companies seem not to be obliged to enter into program contracts with the Ministry of Petroleum (“MinPet”) or to prepare career plans, it being unclear, however, whether or not they (i) are subject to the special regime for the hiring of foreign personnel and (ii) benefit from the special visa regime for the petroleum sector.

#### C) Hiring of expatriates

8. The Training Decree-Law maintains the main principles on the hiring of expatriates which were already enshrined in the former training statutes. Pursuant to said principles, companies must:
  - (i) Fill their job positions with Angolan nationals regardless of the job category or nature;
  - (ii) Provide equal treatment to foreign and Angolan employees who occupy the same job positions and have the same job descriptions, notably with regard to compensation and social benefits. Any type of discrimination is expressly prohibited.
9. Companies may only hire expatriates:

- (i) Upon obtaining confirmation that no Angolan personnel duly qualified to perform the job required is available in the local market; and
  
  - (ii) With prior authorization from the MinPet. MinPet's authorization is given for groups of expatriates or on a case-by-case basis. To that end, companies are required to submit to MinPet evidence that the national labour market has no Angolan nationals available for the relevant job position with the required qualifications and experience, notably by three cumulative means:
    - (1) Public notice of the job offer with a description of the job position or function to be performed and the qualifications and experience required. In spite of the lack of clarity of Executive Decree 13/10, it seems that the job offer should be advertised in the media and/or the Employment Centres;
    - (2) Candidates' CVs received;
    - (3) Statement issued by Employment Centres on the inexistence and/or non-availability in the national labour market of Angolan nationals with the required qualifications and experience. Executive Decree 13/10 does not provide for the period of time the job offer must be vacant as of its release to the public for the statement to be issued.
- 10.** MinPet has 60 days to notify the companies of its decision, otherwise, a tacit decision of refusal is formed.
- 11.** The Training Decree-Law provides for the creation by MinPet of a database of temporary national employees in order to allow their integration in future projects. According to Executive Decree 13/10, said database has to be set up and operational within 90 days from its gazetting. The purpose of this database is somewhat unclear, however, considering the new rules for hiring expatriate employees, it seems that the database might be used by MinPet and the Employment Centres to assess whether or not Angolan nationals are available in the labour market for a given job position.

12. Within 45 days of publication of the Training Decree-Law (i.e., by 10 August 2009), companies were required to submit to MinPet a list detailing the names, job, tasks, work place, compensation, allowances and any other social benefits awarded to expatriate employees, as well as the justification for their hiring, evidence of their professional qualifications and job description.

**D) Equality and Non-Discrimination**

13. Executive Decree 13/10 elaborates on the legal definition of the principle of equality and non-discrimination established in the Training Decree-Law, clarifying that it encompasses all work conditions, salary, allowances and social benefits, embodied in the privileges and advantages conferred by companies as additional increment to the wages, as well as to medical care, medication and others benefits.

**E) Employment Stability Agreement**

14. In case the employer provides an Angolan national employee with higher level training or technico-professional improvement, an employment stability agreement is to be executed. As per the General Labour Law, the maximum period of stability is 3 years. No definition of what constitutes “higher level” is provided, which may lead to some uncertainty as to the specific cases to which this provision applies.

**F) Program Contract**

15. Companies subject to the Training Decree-Law must enter into a “Program Contract” with MinPet. The “Program Contract” shall set out the companies’ duties in relation to the development of their human resources, including the following information:

- Organizational structure of the company and development prospects;
- Number, job description, profile and salary of the Angolan and foreign work force;

- Professional career plan;
- Targets for the process of integration of Angolan personnel;
- Period of revision of the “Program Contract”.

16. The “Program Contract” shall be entered into within the following time limits:

- (i) Oil companies engaged in exploration activities only: 30 days after the effective date of the contract entered into with the National Concessionaire (Sonangol);
- (ii) Oil companies in the production period: 60 days after the declaration of the first commercial discovery;
- (iii) Companies engaged in refining and processing of petroleum, storage, transport, distribution and marketing of petroleum products: 60 days after commencing business activities;
- (iv) Service companies (contractors): 30 days after the effective date of each service contract.

17. Companies already conducting activities in the petroleum sector are to enter into such a program contract within 90 days from the gazetting of Executive Decree 13/10.

18. While it seems to be implied that MinPet is to propose the model program contract to be executed, this is not totally clear from the Training Decree Law and the Regulations. Said model program contract was by mistake gazetted as an annex to Executive Decree 14/10.

19. The Training Decree-Law is silent on the duration of the “program contracts”.

#### **G) Professional Career Plan**

20. The Training Decree-Law states that a professional career plan must be part of the program contract. Pursuant to this obligation, Executive Decree 13/10 provides guidelines for the drafting of said professional career plans. Such plans, aimed at the full Angolanization of the petroleum sector must consider:
- (i) The number of Angolan employees included in the company's personnel, at the level of technicians and managers;
  - (ii) The number of foreign employees included in the company's personnel, at the level of technicians and managers, who are to be progressively replaced through training of Angolan personnel;
  - (iii) The rules, principles and directives which regulate the development of Angolan employees and their progression in the company's personnel.

#### **H) Annual Training Plan and related Progress Report**

21. By 31 October each year, companies will be required to submit a Human Resources Development Plan (hereinafter "the Development Plan") for purposes of assessing the performance of the "Program Contract". The Development Plan must include, among other information:
- Definition of petroleum technology know-how and management experience to be transferred to the Angolan employees;
  - Form and schedule for such transfer;
  - Description of the workforce projections;
  - Detail and programming of the Angolan employees' integration process;
  - Specification of the training to be provided for Angolan employees;
  - Definition of needs in terms of accommodation, transportation, meals, and other social benefits required for the integration of the Angolan employees.



22. The Development Plan is subject to MinPet's approval. MinPet has 30 days to notify the companies of its decision thereon.
23. The initial Development Plans must be submitted to MinPet within 180 days of signing of the relevant "Program Contract".
24. By 31 March each year, companies are also required to submit to MinPet a detailed report on the implementation of their development plan in the prior year.

I) **Training Levy**

25. Companies subject to the Training Decree-Law are required to allocate an annual sum for the training and development of the Angolan personnel in the petroleum sector (hereinafter "Training Levy"), which is calculated on the basis of the following criteria:
  - Companies holding a prospecting license: US\$ 100,000;
  - Companies in the exploration period: US\$ 300,000.00;
  - Companies in the production period: US\$ 0.15 per barrel produced during the year;
  - Companies engaged in refining and processing of petroleum: US\$ 0.15 per barrel of crude oil processed during the year;
  - Companies engaged in storage, transport, distribution and marketing of petroleum products: 0.5% of annual turnover;
  - Service companies: 0.5% of the value of the contract(s) performed during the year.
26. Training Levy contributions are aimed at financing the Fund for the Training and Development of the Angolan Human Resources for the Petroleum Sector. This fund will be administered by MinPet.

27. In the blocks or concession areas with more than one Associate, the Training Levy shall be paid by the Operator on behalf of the other Associates.
28. Operators and the entities engaged in refining and processing of petroleum, storage, transport, distribution and marketing of petroleum products are required to withhold from their contractors the amount of their levy and must deposit the sums so collected in the Fund for the Development of Human Resources in the Petroleum Sector, with the identity of the companies making the contributions being indicated. Operators shall collect from the companies with which they are associated the amount of their contributions.
29. Training Levy payments are due, on a quarterly basis, until the last day of the month following the relevant quarter.
30. A written declaration, with a statement account, informing the amount to be paid as contribution must be filed quarterly with MinPet's National Directorate of Human Resources no later than the 15<sup>th</sup> day of the first month after the quarter to which the payment is concerned. Once payment is made into the Fund's account (immediately after the filing of said declaration), the company must, within 8 days from the date of deposit, send to MinPet's National Directorate of Human Resources a certifying document issued by the relevant bank.
31. With respect to the quarterly payments, there seems to be some contradiction between the provisions of the Training Decree-Law and those of Executive Decree 14/10. The former refers expressly to such payment having to be made until the last day of the first month after the quarter to which it is concerned. The latter, however, refers, at one point, to the last day of the month to which the payments are concerned and, at another point, to the obligation to deposit the amounts due immediately after the 15<sup>th</sup> day of the first month after the quarter to which the contribution is concerned. Clarification with Angolan authorities in this respect is advisable.
32. Training Levy amounts are recoverable for purposes of assessing income tax.

**J) List of Service Providers**

33. During the last month of each quarter, oil operators are required to submit to MinPet a list of all contracts signed with contractors cooperating with them on a permanent basis, duly certified by the National Concessionaire. Additional elements may be required by MinPet. Non-submission or incomplete submission thereof is an offence punishable with a fine.

**K) Training Plans and Training Costs**

34. As referred above, companies are to draw up annual development and training plans, in line with program contracts entered into, aiming at providing Angolan workers with required scientific and technical-professional skills. Said plans are to be sent yearly to the MinPet's National Directorate of Human Resources until October 31, with information on the financial allowance necessary for their implementation, based on a statement account of the costs. After submission by the National Directorate of Human Resources, the Minister of Petroleum will decide within 30 days from receipt of said plans, as per the Training Decree-Law. Companies will be served notice of that decision with indication of the financial allowance allocated, which must be managed according to the principle of quarterly periodicity.
35. The annual costs of development and training plans may not exceed the amount of the contributions to be paid by companies for the years in question. Such costs, actually incurred under approved training plans, may be deducted from the amounts to be paid into the Fund as contributions, as per the Training Decree-Law and Executive Decree 14/10. Any amounts deducted, but not made use of in the preceding quarterly period must be accounted for, as increment, in the written declaration to be filed with the MinPet's National Directorate of Human Resources informing the amount of contribution to be paid as regards the previous quarter.

**L) MinPet Audits**

**36.** In order to check compliance with its requirements, MinPet may audit the companies subject to the Training Decree-Law. MinPet bodies with jurisdiction to carry out regular audits are the National Directorate for Human Resources and the Inspection Office. No guidelines are provided on the terms under which such audits will be conducted and the periodicity thereof.

**M) Penalties**

**37.** Failure to comply with the Training Decree-Law mandatory provisions triggers the assessment of fines ranging from 2.5% to 50% of the annual Training Levy (“ATC”), as follows:

- (i) Offenses subject to a fine equivalent to 50% of the relevant ATC:
  - Failure to provide MinPet with a list of the expatriate employees already hired by the company within 45 days of publication of the Training Decree-Law.
- (ii) Offenses subject to a fine equivalent to 25% of the relevant ATC:
  - Failure to enter into the “Program Contract” with MinPet;
  - Failure to implement the Human Resources Development Plans approved by MinPet, as well as make any amendments thereto without due authorization;
  - The hiring of expatriates without MinPet’s authorization.
- (iii) Offenses subject to a fine equivalent to 20% of the relevant ATC:
  - Failure to submit to MinPet the Human Resources Development Plans on a yearly basis.
- (iv) Offenses subject to a fine equivalent to 10% of the relevant ATC:
  - Failure to submit to MinPet the implementation report regarding the Human Resources Development Plans;
  - Failure by the operators to submit to MinPet the list of all contracts executed with their contractors or incomplete submittal thereof (this specific offense is also punishable with the

immediate repatriation of the unduly hired workers and the obligation to terminate their employment contracts);

- Failure to pay the Training Levy on a timely basis;
- Failure to submit to MinPet the statement containing the assessment and computation of the amounts on account of Training Levy on a timely basis.

(v) Offenses subject to a fine equivalent to 2.5% of the relevant ATC:

- Failure to provide Angolan employees with the same conditions as those enjoyed by expatriates (this specific offense is also punishable by the immediate repatriation of the unduly hired workers and the obligation to terminate their employment contracts).

**38.** Companies which are assessed any of the above fines (save for failure to pay the Training Levy on a timely basis and to provide MinPet with a list of the foreign employees already hired by the company) will also be prevented from entering into any new petroleum-related contracts until they secure full compliance with the relevant Training Decree-Law provisions.

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