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## IP GUIDE TO MARKET ACCESS TO ANGOLA: THE MANUFACTURING SECTOR



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**GHANA EN**



## 1. INTRODUCTION

During the opening ceremony of the 5th Edition of the Industrial Fair, which took place in March 2023, João Lourenço, President of the Republic of Angola, stated that the real Gross Domestic Product (GDP) growth rate of the Angolan manufacturing industry registered a cumulative 7.7 %<sup>1</sup> in the period from 2018 to 2022.

Angola's main industries are oil, gas and diamonds. The country also produces gold, granite, gypsum, marble and salt, and has numerous undeveloped minerals with potential for extraction, including beryllium, clay, copper, iron ore, lead, lignite, manganese, mica, nickel, peat, phosphate rock, quartz, silver, tungsten, uranium, vanadium and zinc.

However, the agricultural sector is underdeveloped and not very productive. Less than half of Angola's total land area is devoted to agriculture, and most food is currently imported. Reversing this situation is a top priority for the Angolan government, considering that the country has a climate favourable to a wide variety of tropical and semi-tropical crops and extensive grazing lands situated in the southwestern highlands. The agricultural sector has historically demonstrated its ability to produce sugar, cotton, rubber, coffee, sisal, corn, peanuts, potatoes, cassava, beans, fruit and horticulture. Due to this situation, food goods are among the top five products imported into Angola.

Angola also imports machinery, mechanical and electrical appliances, fuel, chemical products, construction materials, vehicles and textiles and clothing.

Because of Angola's import figures, foreign investors see the country as a land of opportunity, which creates a real necessity to seek protection for intellectual property. To safeguard intellectual property rights in general, and within the manufacturing industry sector in particular, Angola has developed and is implementing relevant IP laws in line with international best practices. The aim is to facilitate the acquisition and enforcement of IP rights within its jurisdiction in the interest of businesses and foreign direct investors.

Businesses in Angola often face problems in enforcing IPRs, including counterfeiting, bad faith filing of competitors' unregistered trade marks, copying of competitors' designs and copyrighted labels, importation of competitors' products for sale in the Angolan market, and administrative deficiencies and delays in registering IPRs in Angola.

## 2. PROTECTION OF IPRS AND THE IP LEGAL FRAMEWORK IN ANGOLA

### 2.1 IP LAWS OF ANGOLA

<sup>1</sup> <https://www.angop.ao/en/noticias/politica/industria-transformadora-angolana-registou-crescimento-do-pib-real/>

Angola has been a member of the Paris Convention for the Protection of Industrial Property since 2007, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS/WTO) since 1996, and the Patent Cooperation Treaty (PCT) since 2007.

Apart from these, Angola is not a member of the Madrid System or of any regional agreement in Africa, such as ARIPO or OAPI.

The main IP laws relating to the protection of IP rights in Angola are Law No 3/92 of 28 February 1992, on Industrial Property, and Law No 15/14 of 31 July 2014, on Copyright and Related Rights. In addition to these main IP Laws, Angolan law also provides for the enforcement of IP and related laws through Law No 6/99 of 3 September 1999, on Crimes against the Economy.

The Angolan Industrial Property Law expressly states that the provisions of international conventions on intellectual property and industrial property, particularly those to which Angola is a contracting party, will prevail in the event of a conflict with the provisions of national law.

### 2.2 MANUFACTURING RELATED IPRS

#### 2.2.1 TRADEMARKS

In Angola, trade marks are used to distinguish the goods and services of one company from those of another.

The trade mark may consist of a sign or a series of signs, which may be nominative, figurative or a combination of both, and which make it possible to distinguish the products or services of one company from those of other companies which are identical or similar. The following may be regarded as production, trade or service marks: patronymics, geographical names, arbitrary or fanciful names, monograms, emblems, figures, ciphers, labels, combinations or arrangements of colours, designs, photographs, seals, or any other material sign used to distinguish the products or services of any company.

The Angolan IP Law provides for the protection of trade marks for goods, services and collective marks, and the following are excluded from protection<sup>2</sup>:

- a) False indications or indications liable to mislead the public as to the nature, characteristics or usefulness of the goods or services using the mark.
- b) False indications concerning geographical origin, manufacture, ownership, workshop, or establishment.
- c) Symbols such as insignia, flags, coats of arms or official signs adopted by the State, commissions, international organisations or any other public entity, whether Angolan or foreign, without due authorisation from these bodies.

<sup>2</sup> Article 35 from No. 3/92 of February 28, 1992, on Industrial Property.

- d) The use of a business name, company name or emblem which does not belong to the applicant or which the applicant is not entitled to use.
- e) The reproduction or imitation, in whole or in part, of a mark previously registered by another person for the same or similar goods or services, which could be misleading or cause confusion in the market.
- f) Expressions or drawings contrary to morality or that contravene the law or public policy.
- g) Individual names or likenesses without the proper authorisation of the persons to whom they relate

Businesses use trade marks to distinguish their manufacturing products from those of other companies. Some of the trade marks are suggestive marks, which are usually strong trade marks. Companies build strong brands around the trade marks so that the registered trade marks also become well-known marks and acquire a higher level of protection by virtue of the well-known status within the geographical area of Angola.

For an EU SME operating in the manufacturing industry in Angola, trade marks are an important source identifier that can be built upon as a strong brand to ensure protection of the company's trade marks.

## 2.2.2 COPYRIGHT

Works protected by copyright in Angola include literary, artistic, musical, photographic, audio-visual works and computer programs<sup>3</sup>, provided that they are original, authentic, and in some way externalised.

In accordance with the Angolan Copyright Law, original works include, but are not limited to, the following:

- Books, journals, and magazines.
  - Conferences and other oral presentations.
  - Dramatical and musical-dramatical works.
  - Choreographic works.
  - Cinematographic, television, phonographic, videographic and radio works.
  - Journalistic works, such as opinion articles, chronicles, analyses, comments, essays, investigative reports, and interviews.
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- Drawing, painting, sculpture and engraving works.
  - Photographic works.
  - Computer programs.

Some businesses can copyright the design of their product labels. Together with a registered trademark, patent or design, copyright provides stronger protection for the company's products. It is common for a competing product to bear a different trade mark but to copy the trade dress of

<sup>3</sup> Article 4 of Law No. 15/14 of July 31, 2014, on Copyright and Related Rights



the company's product, including the product label. A registered artwork provides a presumption of ownership and makes a civil or criminal action for infringement less severe and easier to prosecute.

It is highly recommended that EU SMEs register all their copyrightable works with the Angolan Copyright Office to facilitate the enforcement of their rights.

## 2.2.3 INDUSTRIAL DESIGNS

In Angola, any plastic form, whether or not combined with a line or colours, which may be used as a type in the manufacture of an industrial or handicraft product, is considered to be an industrial design. Moreover, any new arrangement or set of lines or colours which may be used, for an industrial or commercial purpose, in the ornamentation of a product by any manual, mechanical or chemical process, whether alone or in combination, will be regarded as an industrial design.

Only new models or industrial designs and those which, although composed of known elements, result in original combinations which give their respective subject-matter an overall appearance with its own characteristics, may be registered.

Industrial designs in Angola must be new. For this reason, industrial designs in Angola are new if they have not been disclosed by appropriate means in Angola or abroad in such a way that they can be exploited by a person skilled in the art. An industrial design is not deemed new if it has already been the subject of a deposit in Angola or abroad, even if the deposit is null and void or has lapsed, or if it has been in common use or has in any way entered the public domain.

For an EU SME operating in the manufacturing industry in Angola, designs can be crucial as they are an important source identifier that can be built upon as a strong asset to secure protection of the company's designs.

## 2.2.4 PATENTS

Patents are the legal right granted to protect an invention and give its owner the exclusive right to exploit it. An invention is an inventor's idea which makes it possible in practice to solve a particular technological problem relating to either a product or to a process.

An invention is patentable if it meets the following requirements (cumulative):

1. it must be new,
2. involves an inventive step and,
3. is capable of being applied industrially.

**Novelty:** an invention that is not included in prior art will be regarded as new. Prior art includes everything that has been made available to the public, inside or outside the country, before the date of deposit or before the priority date of the patent application, by means of oral or written description or by any other means deemed appropriate for this purpose. Public disclosure will not be taken into consideration if it took place during the six months preceding the date of deposit or, where applicable, the date of priority of the patent application, or if it relates directly or indirectly

to acts carried out by the applicant or his legal predecessor.

**Inventive step:** An invention will be deemed to involve an inventive step if, to a person having ordinary skill in the art, it is not obvious from the prior art.

**Industrial applicability:** An invention is industrially applicable if the subject matter of the invention can be used in any kind of industry, including agriculture, fishing and handicrafts.

The following shall not be patentable:

- a) Discoveries whose use would be contrary to public policy or morality, public health, or public safety.
- b) Designs that have no practical utility or that cannot be industrialised by mechanical or physical methods, or by scientific principles or discoveries.  
It is highly recommended that EU SMEs protect their inventions at the Angolan Patent Office to facilitate the enforcement of their rights.

### 2.2.5. INDICATIONS OF ORIGIN

An indication of origin is a term or sign used to indicate that a product comes from a given country, region or geographical place known as a centre for the extraction, production or manufacture of such goods or products. For the purposes of the Angolan IP Law, the use of a geographical name which has become common to designate the nature, kind or type of a good or product will not be regarded as an indication of origin.

The right to use an indication of origin belongs not only to the manufacturers and producers, but also to the purchasers of these products.

Although the Angolan IP Law provides for these rights within national legislation, the Angolan Industrial Property Office is currently not processing them, pending the enactment of the new IP Law.

## 2.3 REGISTRATION OF MANUFACTURING RELATED IPRS IN ANGOLA

### 2.3.1 INDUSTRIAL PROPERTY RIGHTS

The management and defence of the rights provided for in the Angolan IP Law are entrusted to the body responsible for the granting, registration and protection of industrial property rights, under the supervision of the Ministry of Industry and Commerce.

The body must produce, periodically, a bulletin in which it will publish the following:

- a) Reproductions of the marks registered.
- b) The names of the owners of the patents granted, with a brief description of the inventions with priority.



- c) A descriptive summary of the other acts provided for in this instrument.

The Angolan Industrial Property Office (IAPI – Instituto Angolano da Propriedade Industrial), under the supervision of the Ministry of Industry and Commerce, is the body responsible for the registration of all industrial property rights in Angola. The office currently registers patents, trade marks, industrial designs and indications of origin.

In Angola, industrial property rights require registration to be enforceable, unlike copyright, which is only encouraged to be registered. Unregistered IP rights have limited protection in Angola and therefore, registration of an IP right is the only way to obtain enforceability.

### 2.3.1.2 To register patents:

An application for a patent for an invention must be made in Portuguese and must contain the following:

- a) The name, business name or company name of the owner of the invention.
- b) The nationality of the applicant, the inventor and, where applicable, the representative, together with any other relevant information.
- c) The title of the invention.
- d) The inventor's claims as to novelty.
- e) A copy of the patent application or other IP right that filed in another country relating to the same invention.
- f) A clear, full description of the subject matter of the invention such that it may be carried out by a person having ordinary skill in the art.
- g) The designs, if necessary for understanding the invention, with reference to the description or the claims.
- h) A summary, designed essentially for the purpose of technical information.
- i) A power of attorney notarised and legalised by the Angolan Consulate.
- j) A Deed of Assignment notarised and legalised at an Angolan Consulate, in which the inventor declares to assign the invention to the applicant, who will have the right to file the application on their behalf.

Patents are valid for a period of 15 years from the filing date and the payment of annual fees is required to maintain the patent in force.

The time limit to enter the national phase of a PCT in Angola is 30 months.

### 2.3.2. To register trademarks:

An application for the registration of a trade mark must be made in Portuguese and must contain the following information:

- a) The name, business name or company name of the owner of the mark, their nationality and profession, and their domicile or the place of establishment.
- b) The products or services for which the mark is intended.

- c) The number of the registration and the number of any award referred to on the mark.
- d) The country in which the first registration of the mark was applied for, and the date of such application.
- e) In the case of a collective mark, the legal or statutory provisions governing its regime and use.

**The request must be accompanied by the following:**

- a) A reproduction of the mark for which registration is sought.
- b) Authorisation from the owner of the foreign mark whom the applicant represents in Angola (a notarised and legalised power of attorney from an Angolan Consulate).
- c) A certified copy of the Certificate of Incorporation of the applicant (if a company), duly translated into Portuguese and legalised by an Angolan Consulate.

Trademarks are published in the IP Bulletin for opposition purposes. Any third party who considers themselves to be adversely affected by the registration of a trade mark has 60 days from the publication date to file an opposition. This period can be extended by 30 days.

Trade marks are valid for 10 years from the filing date and may be renewed for the same period, provided that the prescribed fees are paid.

In Angola, trade marks are subject to cancellation for non-use. If the trade mark is not used continuously for 2 consecutive years, it may be subject to cancellation. Any third party interested in the cancellation of the mark may file a request for cancellation with the Angolan Industrial Property Office, which is the competent body to decide on the cancellation action.

### 2.3.3 Copyright and related rights

The Copyright Office of Angola (SENADIAC - Serviço Nacional de Direitos de Autor e Conexos), under the supervision of the Ministry of Culture and Tourism, is responsible for the registration and administration of copyright and related rights in Angola.

In Angola, registration of copyrightable works is not mandatory, however it is highly recommended as it facilitates the enforcement of rights.

**To register a copyrightable work, the following is required:**

- a) Name and address of the author.
- b) Copy of the passport (or national identity card).
- c) If the applicant is not the author, proof of ownership is required.
- d) If the applicant is a company, the company statutes are required.
- e) Notarised power of attorney.

**The requirements for the copyrighted works to be registered vary according to the typology. In general, the following is required:**



- a) Title of the copyright work.
- b) Short description of the work.
- c) Typology (book, choreography, maps, software, etc.)
- d) Copy of the work.

All the above requirements, including the work itself, must be translated into Portuguese.

Copyright in Angola is valid during the life of the author, more than 70 years after his death. In the case of co-authorship, the aforementioned periods are counted from the death of the last author to die.

### 3. PRACTICAL IPR REGISTRATION CHALLENGES BUSINESSES SHOULD LOOK OUT FOR

Registration of both industrial property rights and copyrights is not always smooth sailing, so EU SMEs should be aware of the following:

- Delays at the Angolan Industrial Property Office and the Angolan Copyright Office when registering patents, trade marks, designs, geographical indications and copyrights.
  - Significant delays in the trade mark opposition process.
  - Manual application process for all IP rights.
  - Inadequate publication of approved trademarks to facilitate a timely opposition process as a means of administrative enforcement of trade marks.
  - Requirement for legalisation of documents submitted in support of applications, which can further delay the registration process.
  - Lack of online databases of published IP rights to facilitate searches by interested parties.
2. Rights conferred through registration and enforcement of IP rights in Angola Registration of IP rights, especially industrial property rights, confers legal rights, including the following:
- Exclusive rights: a person other than a registered owner of an IPR (which may be registered or unregistered in the case of copyright) must not use the IPR without the owner's consent.
  - The registered owner can take legal action against anyone who infringes a registered IPR.

If a business fails to register its IPRs, enforcement through administrative, border, civil and criminal measures can be extremely cumbersome and right holders may be at the mercy of the discretion of judges and relevant officials.

**Violation of rights conferred by a patent:**

**A person is liable for prosecution if:**

- a) without authorisation from the patent owner, they manufacture the goods or products covered by the subject matter of the patent.
- b) without due authorisation, they use the methods or processes that are the subject matter of the patent.
- c) they import, sell, export for sale or conceal for the purpose of sale, a product manufactured in violation of an invention patent.

#### Violation of a right safeguarded by industrial design:

**Any person who commits any of the following offences will be liable to a fine:**

- a) The exploitation, manufacture or production of deposited utility models without the authorisation of their owner.
- b) Importing, selling, offering for sale or concealing, for the purpose of sale, products obtained in violation of a deposited utility model.
- c) The full or partial reproduction or exploitation of an industrial design without the authorisation of its owner.
- d) The importation, sale, offering for sale or concealment for the purpose of sale, of objects which are copies or imitations of a prior industrial design.
- e) The fraudulent exploitation of a registered industrial design which belongs to another person.

#### Illegal use of a mark

**Any person who commits any of the following offences will be liable to a fine, which may be accompanied by a prison sentence of up to 3 months:**

- a) Using any means to imitate or produce, in whole or in part, a protected mark, without the authorisation of its owner.
- b) Use of a counterfeit or imitated mark.
- c) Fraudulent use of a collective mark under conditions other than those provided for in the relevant regulations.
- d) The use of a mark with a false indication of the origin of the products and the sale or offering for sale of products bearing such a mark.
- e) Use of a mark under the conditions described for marks that are excluded from protection.

#### Unfair competition

In addition to the above, acts of unfair competition may also be considered unlawful. The use of fraudulent means to attract the clients of another, whether for one's own benefit or for that of others, the improper disclosure, use or appropriation of the industrial or trade secrets of another, and false indications as to the origin, nature or quality of products or services are considered acts of unfair competition and any person who commits them may be fined.

## 4. COMMERCIALISATION OF IPRS IN ANGOLA

#### Ways of entering the Angolan market:

- An EU SME may enter the Angolan market as an external company, i.e. as a branch of the foreign parent company.
- An agency/distribution agreement can be established with a local entity.

The business strategy for the mode of entry into the Angolan market will affect the business IP strategy for the market.



## 4.1 LICENSING AGREEMENTS

Licensing IPRs with local distributors may be a solution for entering the Angolan market. It is extremely important to first register the IPRs with the Angolan authorities to ensure that no third party or even the licensee registers the IPRs under their own name. In fact, some agents and distributors tend to register their principals' IPRs in their own names, especially trade marks, instead of registering the principal as the right holder and the agent as the registered user.

For this reason, a proper guidance from an Angolan IP agent will help EU SMEs to first obtain the registration of IPRs and then draft licence agreements that are then registered with the Angolan Industrial Property Office, otherwise, the licence will not be enforceable.

## 4.2 NON-DISCLOSURE AGREEMENTS (NDAS)

Another strategy that EU SMEs may choose to enter the Angolan market to protect their IPR is to sign NDAs with local producers/distributors, in particular to defend trade secrets that are the property of the parties involved. For this reason, the drafting of an NDA should be precise and avoid ambiguities to ensure that the legal instrument is enforceable if necessary.

## 5. RECOMMENDATION

EU businesses should always seek legal guidance from practising and experienced IP lawyers in Angola, from the registration of their business IP rights through to commercialisation agreements and appropriate enforcement measures.

#### Contact us:

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