

AUG. 22

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## NEWS

## The insurance and reinsurance activity law

After being in force for more than two decades, the Insurance Business Act (Law no. 1/00 of 3 February) fulfilled its purpose of being the main instrument for the access of private entities to insurance business in Angola. However, following the development of the country's economy and the sweeping technological and structural changes that the insurance industry has undergone, the revision of the law become imperative.

As a result, Law no. 18/22, the Insurance and Reinsurance Activity Law (*Lei da Actividade Seguradora e Resseguradora* – “LASR”)<sup>1</sup> was published on 7 July 2022. Besides cementing the previous rules, the new law has harmonised concepts and unified a set of special legislation which, until then had been considered somewhat scattered and sparse<sup>2</sup>. The LASR thus represents an important milestone in consolidating and bringing dynamism to the insurance sector in Angola.

Structured in 8 Chapters and 249 articles, the main objectives of the LASR are to reinforce the protection of policyholders, insured and beneficiaries. To do so, it defines rules to ensure prudent management of insurance and reinsurance companies, and to prevent and repress actions contrary to the law.

Broadly speaking, the LASR regulates:

- [Access to insurance and reinsurance activity](#)
- [Conditions for engaging in the activity](#)
- [Changes in insurance and reinsurance activity](#)
- [The institutionalisation of micro-insurance](#)
- [Recovery measures for insurance and reinsurance companies in poor financial condition](#)
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Joaquim Shearman  
de Macedo

Margarida Ferraz  
de Oliveira

PLMJ Advogados

Renata Valenti

Newton Agostinho

PLMJ Colab Angola  
- RVA Advogados

<sup>1</sup> The law was subject to a public consultation, in which entities such as the World Bank, the National Bank of Angola, the Capital Market Commission and the Association of Angolan Insurers, among other important stakeholders of the financial sector and, in particular, the insurance sector, took part.

<sup>2</sup> With the entry into force of the Insurance and Reinsurance Activity Act, laws such as (i) Decree no. 7/02 of 9 April (which defines the infringements of the insurance and reinsurance legislation), (ii) Executive Decree (DE) no. 6/03 of 24 January (on the regulation of financial guarantees) are repealed, (iii) DE no. 74/07 of 29 June (on the optimisation of the conditions of access and operation of insurance operators) and (iv) DE no. 464/16 of 1 December (which makes changes to the amount of the fines defined in Decree 7/02 of 9 April).

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Below we present the main changes introduced by the LASR.

**1. Access to insurance and reinsurance activity**

Access to insurance and reinsurance activity is granted to insurance and reinsurance companies based in Angola, branches of insurance and reinsurance companies based abroad, micro-insurance companies, and holding companies in the insurance sector.

Contrary to the previous law, mutuals and cooperatives will no longer have access to insurance and reinsurance business.

**1.1. Authorisation**

The role of the supervisory body for the insurance and reinsurance activity, the Angolan Agency for Regulation and Supervision of Insurance (*Agência Angolana de Regulação e Supervisão de Seguros – “ARSEG”*) - is largely reinforced. It now takes on the certain powers previously entrusted to the Ministry of Finance, especially the powers relating to the approval of acts, the granting of authorisations, and the necessary registrations provided for in the law.

In addition to authorisation for the incorporation of companies for insurance and reinsurance business in Angola, the establishment in a foreign country of branches or any other form of representation of insurance, reinsurance and micro-insurance companies having their registered office in Angola will also require prior authorisation from ARSEG.

The companies covered by the LASR may, with the consent of ARSEG, operate cumulatively in the life and non-life branches. For this purpose, they must have separate management for both activities, taking into account:

- Protecting of policyholders, insured persons and beneficiaries of the different branches;
- Ensuring that the operating profits of the branches are exclusively allocated to their beneficiaries;
- Preventing the financial guarantees required for each branch from being borne by the other activity;
- Ensuring that the accounts are organised in such a way that the results of each activity are completely separate.

**1.2. Criteria and conditions for granting authorisation**

The granting of authorisation by ARSEG to establish an insurance or reinsurance company with its registered office in Angola depends on the founding shareholders of the company fulfilling certain conditions and complying with certain criteria, of which we highlight the following:

- Adopt the form of a public limited company;
- Endow the company with share capital that is not less than the minimum required, to be established in a regulatory rule;

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- Have a board of directors made up of a minimum of three members with sufficient powers to determine the direction of the company's activity;
- Present a statement of financial capacity, issued by a banking institution;
- Identify all the initial shareholders, whether natural or legal persons, with a direct or indirect shareholding;
- Declare that neither the founding shareholders nor the companies or firms they control have been declared bankrupt or insolvent;
- Produce a technical, economic and financial feasibility study, forecasting the first three years of activity;
- Have adequate and appropriate human, technical and financial resources;
- Have the registered office insurance or reinsurance company located in Angola.

ARSEG must reach a decision within three months of receipt of the request for information, after which it will notify the interested parties of the decision. In the absence of such notification, a refusal is presumed.

With the necessary adaptations, the above conditions and criteria also apply to insurance and reinsurance companies with their registered office abroad. In these cases, the authorisation to establish branches in Angola will depend on the number of years they have been operating, that is, they must a minimum of five years of activity in the country of origin.

**2. Conditions for engaging in the activity**

In order to carry on their business, insurance and reinsurance companies, specifically their administrative and supervisory bodies, must ensure compliance with the legal, regulatory and administrative provisions applicable to them. To that end, it is imperative that insurance and reinsurance companies have an effective system of governance to ensure the sound and prudent management of their business, which should result in a transparent organisational structure with an effective system to communicate information.

It is also the responsibility of the management and supervisory bodies of insurance and reinsurance companies to define and implement properly documented internal policies on risk management, internal control and internal auditing, and these must be reviewed on an annual basis.

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**ANGOLA****2.1. Qualification of people in management positions**

The members of the management and supervisory bodies of insurance and reinsurance companies, including their non-executive directors, senior managers and those responsible for relevant management functions, must have (i) suitable qualifications, acquired by means of academic qualification or professional experience, (ii) recognised good repute, which may be demonstrated, fundamentally, by never having been convicted of any infringement of the rules governing the activity of insurance companies, and (iii) be available and independent, by not holding positions in other companies which might prejudice the performance of their new role or cause conflicts of interest.

**2.2. Risk management system**

Insurance and reinsurance companies must have in place an effective risk-management system comprising strategies, processes and reporting procedures to identify, measure, monitor, manage and report the risks, on an individual and aggregated basis, to which the companies and their interdependencies are or may be exposed at all times. To this end, the persons designated to carry out such risk management functions shall have full access to all information relating to the business of the insurance company.

**2.3. Internal control system**

Insurance and reinsurance companies must have an internal control system and this system must cover, at least, administrative, statistical and accounting procedures, an internal control structure, adequate procedures for the provision of information at all levels of the company and a compliance verification function. ARSEG will define by regulation the general principles and procedures to be taken into account in the implementation of such a system.

**2.4. Compliance function**

Insurance and reinsurance companies are now required to create a compliance function, which must be independent, and its purpose is to ensure compliance with their legal obligations and internal policies and guidelines. The person designated for that purpose must have sufficient and necessary powers to perform his or her duties with independence, being responsible for reporting directly to the company's management body.

**2.5. Internal and external audit function**

The internal audit function will be responsible for assessing the adequacy and effectiveness of the internal control system and other elements of the system of governance of the insurance and reinsurance company, in direct communication with the board of directors.

In turn, the external audit firm chosen by the insurance and reinsurance company will be responsible for auditing its annual accounts. The external auditors must report to ARSEG on their work and its results. Insurance and reinsurance companies must inform ARSEG of the identity of the proposed or selected external audit firm, which may not operate for a period exceeding four years, after which it may only be rehired after a similar period.

**ANGOLA****2.6. Actuarial function**

Insurance and reinsurance companies must outsource or appoint an actuary to be responsible for the actuarial function. The company's board of directors must make all information required by the person responsible for this function available promptly. That person must then submit to the board the reports established by ARSEG, and he or she must also propose the measures necessary to overcome any situations of non-compliance or inaccuracy that he or she may find in the performance of their duties.

**2.7. Technical Provisions**

Technical provisions must be set aside in a sufficient amount in order to allow the company to meet the commitments arising from the contracts entered into. Companies must keep a technical actuarial note signed by the person in charge of the function, with the necessary details on the calculation methodology used. Branches in Angolan territory of companies with registered offices abroad are also required to set up and maintain technical provisions in accordance with the LASR and related legislation.

**Companies must keep a technical actuarial note signed by the person in charge of the function, with the necessary details on the calculation methodology used.**

The technical provisions to be established and maintained by insurance companies are as follows:

- **Provision for unearned premiums** - must be calculated contract by contract, taking into account the *pro rata temporis* method, and should not include the portion of gross premiums issued for each of the insurance contracts in force, to be imputed to one or more financial years. The reinsurance provision must be calculated by the same method, unless its nature dictates otherwise;
- **Provision for unexpired risks** - corresponds to the amount necessary to cover probable indemnities and charges to be borne after the end of the financial year and which exceed the value of premiums due in respect of contracts in force. It will be calculated on the basis of claims and administrative costs likely to occur after the end of the financial year and covered by contracts entered into before that date, provided that the estimated amount exceeds the provision for unearned premiums and premiums due in respect of those contracts.
- **Provision for claims** - corresponds to the estimated total cost that the company must bear to settle all claims that have occurred up to the end of the financial year, whether they have been reported or not, after deduction of amounts already paid. The calculations will be made claim by claim. However, for claims already reported but not yet settled, subject to prior authorisation by ARSEG, companies may use statistical methods provided that the provision made is sufficient;

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- **Provision for profit sharing** - includes amounts intended for policyholders or contract beneficiaries, in the form of profit sharing, provided the amounts have not already been distributed through inclusion in mathematical provisions;
- **Provision for life insurance and operations** - companies must also set up provisions for unearned premiums and the provision for unexpired risks, in the case of insurance and operations with coverage of less than one year;
- **Provision for aging** - must be set up for health insurance according to the life insurance technique, and the calculation is similar to that of life insurance;
- **Provision for claims-rate deviation** - its purpose is to cover exceptionally high claims rates in those lines of insurance which, by their nature, are expected to have greater oscillations. It should be set up for insurance, for example, of credit, surety, crops and atomic reinsurance accepted-risk.

Insurance companies must ensure that at all times the technical provisions are fully represented by equivalent assets, whether movable or immovable, located in Angola, except in properly substantiated cases and subject to the prior authorisation of ARSEG, to allow assets outside Angola to be considered for the purpose of representing the technical provisions.

## 2.8. Solvency margin and indebtedness

In this field, the changes introduced by the LASR are simple, but quite significant. “Solvency I” is maintained. However, to simplify it, for the purpose of calculating the solvency margin, details such as **(i)** issue premiums, **(ii)** preferential shares *and* **(iii)** subordinated loans are now considered as own funds. On the latter, some points worth highlighting are set out below:

- For loans to be considered, they must be approved in advance by ARSEG. They will only be authorised if the amounts borrowed are intended to fulfil existing contractual obligations, arising out of the taking out of insurance or reinsurance, the acquisition of real estate and equipment considered indispensable for its installation or for the fulfilment of its corporate object;
- Loans may only be contracted or issued if the total value does not exceed 25% of the equity;
- For the purposes of the LASR, bank overdrafts are considered to be loans;
- Any company which, after contracting a loan, fails to comply with any of the conditions established by the LASR must, within twelve months, execute the necessary capital increase;
- The distribution of dividends will be prohibited until all obligations resulting from the capital increase mentioned in the previous subsection are paid in full;
- Companies in a weak financial situation are not allowed to borrow until their liabilities towards specific insurance creditors have been met.

**ANGOLA****3. Changes in insurance and reinsurance activity****3.1. Transformation**

Subject to authorisation by ARSEG, insurance and reinsurance companies may transform themselves by means of merger or demerger. This authorisation is subject to **(i)** compliance with the conditions for access to and engaging in insurance or reinsurance activity and **(ii)** submission of an application containing the following documents/information:

- Corporate resolutions on merger/division;
- Draft amendment to the statutes;
- Information on future changes to the governance system;
- Feasibility study resulting from the merger/merger;
- Report on the merger/division, as defined in the Commercial Companies Law.

**Subject to authorisation by ARSEG, insurance and reinsurance companies may transform themselves by means of merger or demerger.**

**3.2. Transfer of portfolio**

The partial or full transfer of the contracts that make up the portfolio of an insurance and reinsurance company may take place with the authorisation of ARSEG. The transferee must be a company authorised to operate in Angola as an insurance and reinsurance company. It must also prove that it has the necessary solvency margin to accept the portfolio.

If ARSEG authorises the transfer of the portfolio, this information must be published on the regulator's website and in a newspaper with national circulation. The purpose of this is to allow the insured and policyholders, if they so wish, to terminate their contracts within fifteen days. Without prejudice, a different circumstance occurs when the intention is to transfer an insurance portfolio comprising life insurance contracts. In this specific case, the transfer will depend on 30% of the insured not opposing the transfer. The opposition must be expressed within 60 days of the date of publication.

**3.3. Qualified shareholdings**

With the exception of the State, as a shareholder of insurance companies, the LASR prohibits shareholders, directly or indirectly, from holding more than 10% of the voting rights or capital of an insurance company, except with the prior authorisation of ARSEG. Prior notification to ARSEG is also required when the intention of any individual or company is to increase the qualifying holding already held by them, exceeding the limits of 10%, 33% or reaching 50%. The ARSEG must notify the applicant of its decision within three months from the date on which the notification was made or, if additional information was requested, within three months of the date on which these were received.

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The acquisition or increase of qualifying holdings without prior authorisation will result in disqualification from exercising voting rights. With the necessary adaptations, the criteria presented in the previous paragraphs will apply to reductions of qualifying holdings.

**3.4. Revocation of authorisation**

Authorisation to set up an insurance or reinsurance company may be withdrawn, in whole or in part, either at the request of the company itself or, regardless of other penalties, where the financial conditions are non-existent or inadequate, in any of the following situations:

- The authorisation was obtained by making false statements or by unlawful means;
- The insurance company ceases or significantly reduces<sup>3</sup> its activity for a period exceeding six months;
- The insurance company fails to meet any of the conditions to access and engage in insurance activity in accordance with the LASR, or violates the laws or regulations governing its activity;
- There are serious irregularities in the management, accounting organisation or internal supervision of the insurance company;
- Failure to communicate or be refused the appointment<sup>4</sup> of any member of the board of directors or supervisory board;
- Permission to amend the feasibility study is not sought or not granted, or approval of the feasibility study is withdrawn;

Withdrawal of authorisation will mean the dissolution and liquidation of the company, as well as the taking of the necessary measures by ARSEG to safeguard policyholders' interests, such as closing the company's establishments and imposing restrictions on the free disposal of the company's assets.

**4. The institutionalisation of micro-insurance**

One of the main highlights of the LASR is the introduction of insurance activities aimed at protecting people and property, through insurance aimed at the low-income population, embodying the scope of financial inclusion in the insurance sector.

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<sup>3</sup> A significant reduction in business will be recognised whenever there is a decrease of at least 50% in the volume of premiums, which is neither strategically planned nor imposed by ARSEG, and which puts the interests of policyholders and third parties at risk.

<sup>4</sup> Unless, within the period stipulated by ARSEG, the company appoints and notifies another director who is accepted.



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**Insurance companies and micro-insurance companies may carry on micro-insurance business by engaging in both life and non-life branches cumulatively, always with the prior authorisation of ARSEG.**

**4.1. Access to micro-insurance**

Insurance companies already constituted under the general terms of the LASR, as well as those that may be constituted for this sole purpose, may carry on the activity of microinsurance. Micro-insurance companies will have as their exclusive corporate purpose engaging in micro-insurance business, without prejudice to related activities, such as those arising from the management of salvage, rehabilitation and repair of buildings and the application of financial resources.

**4.2. Providing micro-insurance**

Insurance companies and micro-insurance companies may carry on micro-insurance business by engaging in both life and non-life branches cumulatively, always with the prior authorisation of ARSEG.

As regards the management of their portfolio, micro-insurance companies may transfer, in whole or in part, the contracts which comprise it, subject to authorisation by ARSEG. This authorisation will only be effective when the transferee demonstrates that it has the necessary solvency margin available and is authorised to operate under the micro-insurance rules the branches of insurance included in the portfolio to be transferred.

The authorised transfer of the portfolio may be invoked against policyholders, insured persons and any other persons or entities having rights and obligations arising out of the contracts transferred. Therefore, policyholders will have 30 days - counted from the date of publication of the information on ARSEG's website - to cancel their contracts, if they so wish.

**4.3. Intermediation**

The intermediation in the sale of micro-insurance may be carried out by insurance brokers and agents authorised to carry on business in Angola, as well as by specific intermediaries, that is, other persons and entities not subject to licensing as insurance intermediaries. These include banks, non-governmental organisations and micro-finance institutions, among others. Specific intermediaries may be required by the micro-insurance operator to present a bank guarantee or a valid civil liability insurance policy. Nevertheless, any micro-insurance operator who appoints such intermediaries will be subject to civil liability for the acts done by them within the scope of their function, without prejudice to the exercise of the right of recourse.

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**5. Recovery measures for insurance and reinsurance companies in poor financial condition**

The LASR requires insurance and reinsurance companies to have, within their structure, the necessary mechanisms to identify the insufficiency or risk of financial insufficiency, in a timely manner<sup>5</sup>.

**ARSEG may implement reorganisation and recovery measures for insurance and reinsurance companies in financial distress.**

The management or supervisory bodies and their members or holders of qualifying holdings must notify ARSEG whenever it emerges that the financial position of the insurance and reinsurance company is unsatisfactory or at risk of being so, or of any serious irregularity likely to place the company in an unsatisfactory financial situation. This duty of notification will continue after the termination of the functions or ownership of the qualifying holding.

ARSEG may implement - separately or jointly, and for a maximum period of two years - the following reorganisation and recovery measures for insurance and reinsurance companies in financial distress:

- Rectification of technical provisions or submission of a recovery or financing plan;
- Restrictions on the marketing of new insurance products or operations;
- An audit of all or part of the company's activity will be carried out by an independent entity, appointed by ARSEG, at the company's expense;
- Imposition of suspension or removal from office of company officers;
- Closing and sealing of establishments;
- Change in the management strategy of the insurance and reinsurance company;
- Disposal of assets;
- Increase or reduction of share capital;
- Partial portfolio transfer;
- Appointment of provisional directors and a supervisory committee.

If it is found that it is not possible to recover the company with the reorganisation and recovery measures, ARSEG may revoke the authorisation to conduct business.

<sup>5</sup> An insurance or reinsurance undertaking will be considered to be in a state of financial insufficiency if, under the terms of the LASR and other legislation and regulations, it does not provide sufficient financial guarantees to carry on its business.

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## 6. Winding-up of insurance and reinsurance companies

The voluntary winding up, and any judicial or out-of-court liquidation of the insurance or reinsurance company depends on the prior authorisation of ARSEG, which also has the legal standing to apply for judicial liquidation on behalf of the members.

The decision to open winding-up proceedings - to be published by ARSEG on the official website, in the Official Gazette and in two widely circulated newspapers - will result in the revocation of the authorisation for the insurance and reinsurance company to conduct business. The revocation will not prevent the application of the sanctions provided for in the LASR and other applicable legislation, in the event of a breach.

The LASR also stipulates absolute preference, with the exception of credits for expenses of the liquidation itself, insurance claims<sup>6</sup> on the insurance company, on the assets representing technical provisions and other corporate assets (except workers' claims arising from the employment relationship and, in the non-life branch, claims relating to assets encumbered with real rights) necessary to make up the amount owed to it.

## 7. Supervisory and regulatory regime

The LASR has strengthened the supervisory and regulatory power of ARSEG, which now regulates the insurance market autonomously.

### 7.1. Scope of supervision and regulation

As the supervisory and regulatory body of the insurance market, ARSEG has, among others, the powers to:

- Oversee the compliance of technical provisions, capital requirements, valuation of assets and liabilities, investment rules, own funds with legal, regulatory and administrative provisions;
- Supervise compliance with the accounting system, as well as the inherent duties in terms of reporting and publication of documents of this nature;
- Oversee the requirements relating to the system of governance of the supervised entities;
- Supervise insurance and reinsurance companies in their relations with policyholders, insured persons, beneficiaries and injured third parties;
- Supervise the actions of insurance and reinsurance companies to ensure the prevention and repression of acts of money laundering and terrorist financing;
- Issue regulatory standards and instructions that bind insurance and reinsurance companies.

**The LASR has strengthened the supervisory and regulatory power of ARSEG, which now regulates the insurance market autonomously.**

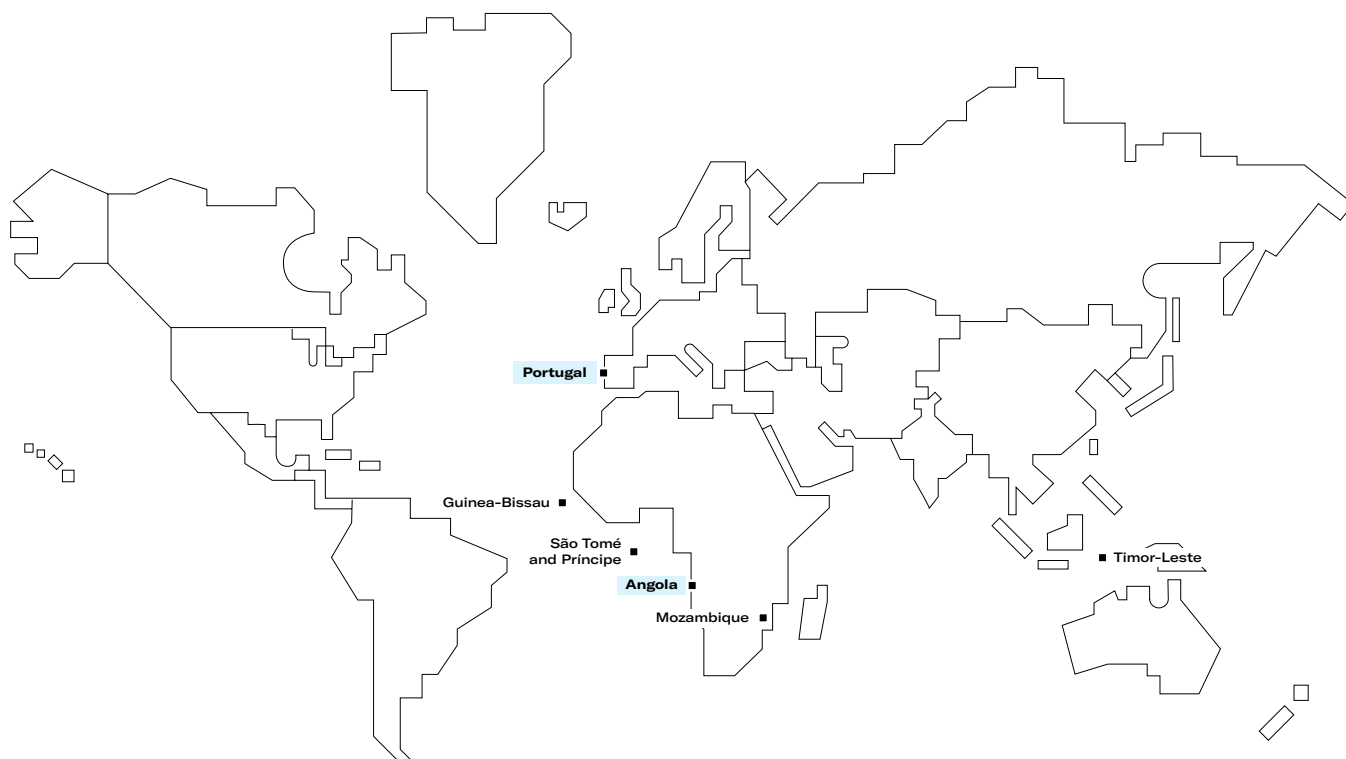
<sup>6</sup> Any sums which are owed by an insurance undertaking to policyholders, insured persons, beneficiaries or to any injured third party having a direct right of action against the insurance undertaking.

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To perform its tasks, the ARSEG may carry out inspections at the establishments of the entities subject to its supervision. It may also examine whatever it considers necessary to comply with the legal and regulatory provisions relating to insurance and reinsurance business. The entities subject to the supervision of ARSEG are obliged to give ARSEG free access to their files and systems, including computer systems.

**8. Substantive penalty arrangements**

The LASR introduced specific penalty arrangements for the insurance industry and this is divided into two pillars: criminal offences and transgressions. The first relates to unlawfully engaging in the activity and the failure to comply with any orders issued by ARSEG. These both constitute crimes punishable with imprisonment or fines, as well as ancillary sanctions. Offences result from the violation of the remaining LASR rules, and are divided into very serious, serious and simple offences. These are punishable with fines and ancillary penalties (for example, the loss, in favour of the State, of the object or economic benefit obtained with the offence). ■



**PLMJ COLAB** ANGOLA – GUINEA-BISSAU – MOZAMBIQUE – PORTUGAL – SÃO TOMÉ AND PRÍNCIPE – TIMOR-LESTE

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