

Oil Regulation

Contributing editor
Bob Palmer



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Oil Regulation 2016

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Mozambique

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

The Strategy for the Concession of Areas for Petroleum Operations published on 8 June 2009 states that the sedimentary basins in Mozambique have areas with great potential for the presence of oil. The Mozambique basin, which is 300,000km², has a density of around one well per 8,000km² onshore and one well per 17,000km² offshore, while the Rovuma basin, which is 60,000km², has a density of one well per 17,000km² onshore and none offshore.

All petroleum resources located in the soil, subsoil, inland waters, territorial sea, continental shelf and in the exclusive economic zone, are the property of the state. The state controls the prospecting, exploration, production, transport, commercialisation, refining and transformation of liquid and gas hydrocarbons and their derivatives including petrochemicals and liquid natural gas (LNG) and gas for liquids (GFL) activities.

Control of the country's upstream oil industry rests with the parastatal upstream oil company Empresa Nacional de Hidrocarbonetos EP (ENH) (the National Hydrocarbon Corporation), which has exclusive rights to explore for and develop petroleum in Mozambique, and is permitted to exercise these rights in association with foreign investors.

As per the Petroleum Law, ENH is responsible for participating in all petroleum operations and the respective stages of the activities, from prospecting, exploration, production, refining, transport, storing and commercialisation of oil and gas and their derivatives, including LNG and GFL inside the country or abroad, and is also responsible for managing the oil and gas quotas destined for the development of the national market and the country's industrialisation. The Petroleum Law expressly states that any investor interested in the exploration of petroleum resources in Mozambique shall enter into a partnership with ENH.

The Petroleum Law also provides that the state shall ensure that not less than 25 per cent of petroleum produced in the country be dedicated to the national market.

The main players operating in the upstream industry in Mozambique include the South Africa-based company, Sasol Petroleum International; the American company, Anadarko; the Italian multinational, ENI; the Japanese company, Mitsui; the Portuguese energy company, Galp; PTTEP from Thailand; the Indian energy companies, BPRL and Videocon; China National Petroleum Corporation; and South Korea's KOGAS, most of which have participating interests in the prolific Rovuma Basin.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Mozambique's main source of energy is biomass-based fuel, especially charcoal and firewood, representing around 80 per cent of annual consumed energy.

Hydropower is the dominant source of electricity, accounting for 99.7 per cent of the total. However, it provides only 11 per cent of the country's total energy requirement.

At present, there is no oil refinery and, as a result, all refined products must be imported. Mozambique consumes and imports approximately 16,000 barrels per day, the bulk of which is in the form of diesel. Half of the petroleum is consumed by the transport sector.

Mozambique's great potential is still to be exploited and one of the foundations of the country's energy sector strategy is to encourage investment in projects of reconnaissance, exploration and production of hydrocarbons. This will help to continue lowering poverty levels in the country, specifically through the creation of infrastructures for the supply of energy to population centres and also by seeking to develop the country's refining industry. In this way it will be possible to avoid the high levels of fuel imports, which have a negative effect on the country's trade balance. These actions seek to diversify Mozambique's energy system and the implementation of many other strategic measures will help in meeting the objectives of the Southern African Development Community, of which it is part.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

Mozambique adopted the National Energy Strategy through Resolution 10/2009 of 4 of June, which replaced the previous energy policy of 2000. Furthermore, two other legal instruments were approved, as follows: Resolution 27/2009 of 8 June, which approves the Strategy for the Concession of Blocks for Petroleum Operations and Resolution 64/2009 of 2 November, which approves the Strategy for the Development of the Market of Natural Gas in Mozambique.

The basic legal framework for petroleum operations is composed of the Petroleum Law (approved by Law 21/2014 of 18 August), the recently enacted Petroleum Operations Regulation (approved by Decree 34/2015 of 31 December) and the Specific Regime for the Taxation and Fiscal Benefits of Petroleum Operations (approved by Law 27/2014 of 23 September).

4 Is there an official, publicly available register for licences and licenses?

The Ministry of Mineral Resources and Energy has developed the EITI-compliant Mining Cadastre Portal to improve transparency and promote investment in the Mozambican mining and oil sector (<http://portals.flexicadastre.com/mozambique/en/>). At present, all mineral tenure and state mining contracts are available for viewing. Access to this portal is not subject to the payment of any fees.

The awarding of concessions falls within the scope of the Public-Private Partnership Law, approved by Law 15/2011 of 10 August (the Mega Projects Law), which determines that a concession contract is subject to a prior inspection of the Administrative Court and specific provisions of such contracts are subject to publication in the Official Gazette.

Within this context, information regarding the licences that have been awarded (as well as the licensees) becomes public through publication in the Official Gazette and at the Mining Cadastre Portal.

5 Describe the general legal system in your country.

Mozambique has a civil legal system based on its Constitutions of 1975, 1990 and 2004. For historical reasons, Mozambique's legal framework is largely based upon Portuguese Roman law, namely, it is a civil law jurisdiction.

The legal system in Mozambique is made up of the Administrative Court, the Constitutional Council and the judicial courts. The

Administrative Court is responsible for reviewing the legality of administrative acts and public spending.

The Constitutional Council is responsible for ensuring the constitutionality of Mozambican legislation and considers the constitutionality and legality of the actions of the Mozambican Executive. The judicial courts comprise the superior courts and the lower courts. The superior courts consist of the Supreme Court and the regional appeal courts. The lower courts consist of the District Court of 1st Class, the District Court of 2nd Class and the Courts of the Province. The District Courts of 1st and 2nd Class have jurisdiction to hear both criminal and civil matters. In relation to civil matters, the size of the claim dictates which court will consider the dispute. Claims for larger amounts (ie, where the sum in dispute is greater than 100 times the minimum wage in Mozambique) will be heard in the Courts of the Province. As such, claims above approximately US\$15,000 will be usually heard in the Mozambican Courts of the Province.

Generally, instituting legal actions in Mozambique can be a lengthy and expensive process, including enforcement proceedings. For example, a dispute regarding a breach of contract often will require over two years before a judgment is obtained from the Mozambican courts, and the same period of time may be applicable to an enforcement proceedings, although it is mostly dependent on the existence of assets of the debtor that may be subject to seizure.

The Arbitration Law expressly provides that arbitral awards rendered in Mozambique pursuant to the Arbitration Law should be treated and enforced in the same manner as a judgment of the Mozambican courts. In cases of non-compliance of any arbitral award, enforcement proceedings must be commenced in the Mozambican courts.

Further, as Mozambique ratified the New York Convention on 11 June 1998 (subject to reciprocity), which entered into force on 9 September 1998, the Mozambican courts are prima facie required to give effect to an arbitration agreement and recognise and enforce arbitral awards made in other New York Convention states against the assets of a party located in Mozambique.

That said, the enforcement of any foreign arbitral awards in Mozambique is subject to the subsequent consideration and recognition of the Mozambican Supreme Court. This review and recognition process does not, however, entail a review of the merits of the arbitral award itself.

Mozambique has a developed judicial system, which includes modern arbitration law largely based upon the UNCITRAL Model Law. As such, foreign investors in Mozambique have access to a neutral form of in-country dispute resolution, which is likely to be speedier and less costly than litigation before the Mozambican courts and which, in most cases, can be kept confidential.

Foreign arbitral awards may be enforceable against assets in Mozambique, provided that the requisite procedure of obtaining confirmation of enforcement from the Mozambican court has been complied with. Unfortunately, decisions as to the enforcement of foreign arbitral awards in Mozambique are not regularly published. Nevertheless, those decisions that have been published to date suggest that the Mozambican Supreme Court is generally supportive of the arbitration process as a whole and of the enforcement of foreign arbitral awards. They also confirm that the review and recognition process should not entail a review of the merits of the award. However, it should be noted that the Supreme Court may be more hesitant to allow enforcement against state assets or entities on the grounds of public policy.

Investors in Mozambique should therefore give careful consideration to the structuring of their investments, in particular the seat of arbitration, when considering the enforceability of any potential arbitral awards in Mozambique.

Further, there is ongoing discussion on the entitlement of Mozambican state-owned companies to enter into arbitration agreements, since the Arbitration Law provides that the 'state and other legal persons governed by public law may enter into arbitration agreements where the agreements pertain to disputes in respect of private law or contractual relationships and also where they are so authorised by a special law'. Nevertheless, the Law on State Owned Companies stipulates that all disputes involving state-owned companies must be submitted to judicial courts, that is, excluding arbitration. Although a debate has been ongoing in this respect, the fact is that, according to our experience and to the best of our knowledge, state-owned companies have been entering into arbitration agreements.

Regarding an anti-corruption and anti-bribery regime, a Public Probity Law has been recently enacted, covering all persons vested with any kind of public powers. Under the Public Probity Law, the definition of 'civil servant'

is very broad and includes anyone who works for a public entity, as well as managers, officers and workers at private entities vested with public powers. On the other hand, holders of political office are subject to additional rules on conflicts of interest and impediments. The main effect of the Public Probity Law is that it prevents holders of political office from receiving any form of retribution from state agencies or state-owned companies. Civil servants are also subject to a number of restrictions aimed at preventing them from taking part in decision-making processes whenever their personal interests might interfere in their capacity to act in an independent and impartial manner.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The principal sector-specific legislation applicable to the oil and gas sector is the following:

- the Petroleum Law (Law 21/2014 of 18 August), which establishes the regime for the granting of rights for the conduct of petroleum operations in the Republic of Mozambique;
- the Petroleum Operations Regulation (Decree 34/2015 of 31 December), which sets the rules for the award of the right to conduct petroleum operations in order to ensure that they are performed in a systematic manner and on such terms that allow for comprehensive and coordinated supervision;
- Decree-Law 2/2014 of 2 December, which establishes a special legal and contractual regime applicable to the LNG project of blocks 1 and 4 of Rovuma Basin;
- Law 27/2014 of 23 September, which establishes the specific regime of fiscal benefits and taxation for petroleum operations;
- Decree 32/2015, of 31 December, which approves the Regulations on the specific regime of fiscal benefits and taxation for petroleum operations;
- the National Strategy for Petroleum Operations Concessions (Resolution 27/2009 of 8 June 2009), which aims to ensure the continuation of the systematic research of petroleum in the sedimentary basins of the country, stimulating the national private sector to invest in the activities of exploration and the production of petroleum and promotes foreign investment in the exploration and production in Mozambican territory, ensuring the good and efficient management of the existing areas and potential resources;
- the National Strategy for the Development of the Market of Natural Gas in Mozambique (Decree 64/2009 of 2 November 2009), aiming to maximise the benefits for the country, the reduction on importations and the conservation of the environment;
- the Environmental Regulations for Petroleum Operations (Decree 56/2010 of 22 December 2010), aiming to promote the correct and efficient environmental management of petroleum resources;
- Ministerial Diploma 272/2009 of 30 December, which approves the Regulations on the Licensing of Petroleum Installations and Facilities; and
- Decree 63/2011 of 7 December, which approves the Regulations on the Hiring of Foreign Citizens for the Mining and Petroleum Sector.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

The Petroleum Law stipulates that 'the legal safety and protection of property over assets and rights, including industrial property rights within the scope of the authorised and operated investments in the petroleum activity is guaranteed'. As a consequence, the expropriation of a licensee's interest would be conditional on public interest or on any relevant grounds and the concessionaire would be entitled to due compensation.

In addition, the Mega Projects Law (approved by Law 15/2011 of 10 August), which is applicable to business concessions (defined as undertakings the object of which is the reconnaissance, exploration, extraction and use of natural resources or other resources or national property assets), lays down that the contracting entity enjoys the right of redemption of the contract, on the grounds of weighty reasons of public interest duly justified under the terms of the law and the contractual provisions agreed on the matter, with the redemption, for reasons of defence of public interest, health, order and security, the causes of which are not attributable to the private partner or the contracted party, entitling such person to the right to indemnification calculated, taking into account the time remaining for

the recovery of the investments carried out and the undertaking's level of profitability, if no other criteria for the calculation thereof were contractually agreed.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The two key regulatory and oversight bodies responsible for regulating oil activities are the Ministry of Mineral Resources and Energy and the National Petroleum Institute (INP).

Moreover, the state typically participates in petroleum operations through the state-owned national oil company, ENH. ENH has as its core business, petroleum activity, notably the reconnaissance, exploration, production, transportation, transmission and commercialisation of hydrocarbons and its products, including the importation, reception, storage, handling, transit, exportation, transformation and refining of such products, and usually holds a minority stake (usually 10 to 15 per cent in oil and gas concessions). This interest is typically granted to ENH on a free carry basis.

In addition, the Petroleum Law provides that a new authority be created to oversee extracting industries (High Authority for the Extractive Industry), nevertheless the Petroleum Law is silent as to what the powers of such authority shall be. In particular, it is uncertain whether it will be a regulatory authority or just an ombudsman, as well as to what extent its role and powers will not conflict or overlap with those of INP.

9 What government body maintains oil production, export and import statistics?

Statistics related to oil production, export and import are kept by the Ministry of Mineral Resources and Energy in collaboration with the INP. As mentioned above (see question 8), it is not clear what the role of the recently created High Authority for the Extractive Industry will be; as a consequence it is likely that that this entity will also maintain statistics.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

All petroleum resources in situ as natural resources in the soil and the subsoil, in interior waters and in the territorial sea, on the continental shelf and in the exclusive economic zone, are the property of the state.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Under Mozambican law, both onshore and offshore exploration and production activities are permitted.

There are, however, some areas that are considered off-limits to exploration and production of oil, such as those located inside areas declared as totally protected areas, including natural reserves and national parks, although an authorisation in the form of a designated special licence from the competent authority may be issued for the exercise of economic activities.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The Petroleum Law provides that the government shall launch a public tender for the activities of exploration, production and exploration of oil and gas, and the Petroleum Operations Regulation came to add that the public tender procedures shall be published in the newspapers with the widest circulation in Mozambique, in addition to the government official website.

Moreover, the public tender procedures shall include, at least, the following:

- the terms and conditions;
- the minimum time limits for the submission of the applications, which shall not be less than three months in the case of reconnaissance concession contracts and six months for the remainder of the concession contracts; and
- the draft of the concession contract.

Without prejudice to the above, the concession contracts may also result from simultaneous negotiation or direct award, in relation to the following cases:

- available areas resulting from a previous public tender which was not awarded;
- available areas resulting from the termination, relinquishment, revocation and abandonment;
- a need to adjoin adjacent areas to an area under a concession contract when that is deemed justifiable because of technical or economic purposes; and
- infrastructure or pipeline concession contracts that are not covered by an exploration and production development plan.

The four types of concession contracts established under the Petroleum Law and the Petroleum Operations Regulation are the following:

- reconnaissance;
- exploration and production;
- construction and operation of oil pipeline or gas pipelines systems; and
- construction and operation of infrastructure.

A reconnaissance concession contract grants the non-exclusive right to carry out preliminary exploration work and assessment operations in the concession contract area, through airborne, terrestrial and other surveys, including geophysical, geochemical, paleontological, geological and topographical studies. A reconnaissance concession contract is executed for a maximum period of two years, is non-renewable and permits the drilling of wells to a depth of 100 meters below the surface or the sea bed.

An exploration and production concession contract grants an exclusive right to carry out petroleum exploration and production, as well as a non-exclusive right to construct and operate oil pipelines or gas pipelines systems for transportation of crude oil or natural gas or infrastructure for liquefaction of gas produced from the concession contract area, except where access to an existing oil pipeline or gas pipeline system or other existing infrastructure is available on reasonable commercial terms. The contracts entered into between legal entities with the purpose of submitting a request for rights or for carrying out petroleum operations are subject to the approval of the government. The exclusive right to petroleum exploration, under an exploration and production concession contract, will not exceed eight years and shall be subject to the provisions regarding abandonment of areas. In the event of a discovery, the holder of an exploration and production right may maintain the exclusive right to complete the operations initiated within a specified area, in relation to the exploration period, for completion of the work schedule and commercial value assessment or determination and to allow the petroleum development and production.

The holder of an exploration and production right may maintain, in accordance with the development plan approved by the government, the exclusive right to develop and produce oil and gas in the development production area, subject to renewal for equal or shorter periods, as it is more beneficial for the national interest.

An oil pipeline or a gas pipeline system concession contract grants the right to construct and operate oil pipeline or gas pipeline systems for the purpose of transporting crude oil or natural gas, in those cases that such operations are not covered by an exploration and production concession contract. An oil pipeline or a gas pipeline system concession contract shall be accompanied by the relevant development plan, which is an integral part of the concession contract.

The concession contract for the construction and operation of petroleum infrastructure grants the right to construct and operate infrastructure for petroleum operations, such as processing and conversion, which are not covered by an approved exploration and production development plan.

The construction and operation of an oil pipeline and gas pipeline system, as well as the concession and operation of infrastructure, are enabled through a concession contract following a public tender.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The state reserves the right to participate in petroleum operations in which any legal entity is involved. The participation of the state may occur during

any phase of the petroleum operations in accordance with the terms and conditions to be established by contract.

Although the Petroleum Law does not establish a maximum participating interest, the Mega Projects Law establishes a maximum 20 per cent interest in the share capital of the entity that has been awarded with the concession. The government is further entitled to negotiate a free carry of its participating interest in such entities in at least 5 per cent of the share capital, at any stage of the process.

As mentioned above, the state typically participates in petroleum operations through the state-owned national oil company ENH and usually holds a minority stake (usually 10 to 15 per cent in oil and gas concessions), typically granted to ENH on a free carry basis.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are there any tax stabilisation measures in place?

According to the Law 27/2014 of 23 September, which establishes the specific regime of fiscal benefits and taxation for petroleum operations, holders of the exercise of petroleum operations are subject to petroleum production tax (royalties) equivalent to 10 per cent for crude oil and 6 per cent for natural gas. These rates may be reduced 50 per cent if the production is contributing to the development of the local industry.

Besides the royalties, the petroleum operations right holders are subject to the payment of the following taxes:

- income tax;
- value added tax;
- municipal tax when applicable; and
- other taxes established by law.

Regarding stabilisation measures, it should be noted that contracts entered into within the context of concession rights to conduct petroleum operations are qualified administrative contracts that may be unilaterally amended by the government. The concession contracts contain, among other aspects, provisions on the applicable tax regime with regard to the concession.

However, the Mega Projects Law contains certain provisions addressing stabilisation measures, under which the government is obliged to implement any necessary measures for preventing political and legislative risks that may negatively affect the sustainability of the concession. In this particular aspect, the event of a legislative alteration affecting the concession (ie, an alteration to the tax regime) may entitle the concessionaire to due compensation for any damages incurred.

15 What is the customary duration of oil leases, concessions or licences?

There are four types of concession contracts that may be entered into, depending on the nature of the petroleum operations:

- reconnaissance;
- exploration and production;
- construction and operation of oil pipeline or gas pipelines systems; and
- construction and operation of infrastructure.

A reconnaissance concession contract is executed for a maximum period of two years, is non-renewable and permits the drilling of wells to a depth of 100 meters below the surface or the sea bed.

The exploration and production concession contract is divided into two periods, as follows:

- exploration period, up to a maximum of eight years, divided into sub-periods as per the concession contract;
- development and production period, up to a maximum of 30 years, counted as of the day of approval of the corresponding development plan.

The oil pipeline or gas pipeline system concession contract and the infrastructure concession contract have the maximum duration of 30 years counting as of the day of approval of the development plan.

The construction and operation of infrastructure concession contract requires a licence under the applicable law.

The extension of the concession contract is made through an application addressed to the minister that oversees the petroleum industry, together with a location map with the indication of the coordinates and of the part of the concession area that is the object of the application.

The concessionaire under an exploration and production concession contract keeps the rights under the exploration and production area until the approval of the development plan, submitted to the minister that oversees the petroleum industry.

The exploration and production concession contract is extended under the following situations:

- if, at the end of exploration phase, the concessionaire is still undertaking drilling works or well tests, in that case an extension will be granted, so that such works are completed and an evaluation of the results, up to a maximum of two years; or
- if there is a discovery during the exploration and production phase, in the event the concessionaire has fulfilled all work obligations and assumed the commitment of undertaking an evaluation programme and a commercial evaluation of the discovery, an extension up to a maximum of five years shall be granted.

These extension periods shall end on the date of the first occurrence of any of the following situations:

- on the following day of the notification of the commercial discovery by the concessionaire;
- on the date in which the concessionaire voluntarily relinquishes the discovery area; or
- on the expiry of the time limit given to the concessionaire.

If, at the expiry of the exploration phase or of the extension mentioned above, the concessionaire declares a commercial discovery, it shall submit a development plan within a maximum time limit of two years, counting as of the day of declaration of commerciality.

16 For offshore production, how far seaward does the regulatory regime extend?

For the offshore production, the regulatory regime extends to inland waters, territorial waters (the territorial sea is 12 nautical miles measured from the baseline), the continental shelf and Mozambique's exclusive economic zone (which extends to a distance of 200 nautical miles).

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

The Petroleum Law defines 'petroleum' as crude oil or natural gas, or other hydrocarbons produced or capable of being produced from crude oil, natural gas, oil shales or tar sands. Apart from the different production tax applicable to crude oil and natural gas, the Law does not establish any difference of regimes for the exploration or production of different hydrocarbons.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Mozambican or foreign legal entities that are registered in Mozambique, and who demonstrate that they have the technical capability and adequate financial resources for the effective conduction of petroleum operations, may be holders of the right to carry out petroleum operations.

Foreign legal entities which directly or indirectly hold or control legal entities that own rights under a concession contract, shall be established, registered and administered under a transparent jurisdiction.

The applicants for rights regarding petroleum operations, in the form of commercial company, shall, together with the application, deposit a document showing evidence of the incorporation of the company, including the identification of the shareholders and the value of their participations.

Mozambican legal entities as well as foreign legal entities that associate with Mozambican legal entities shall have a pre-emption right in the granting of concession contracts.

The costs of the incorporation of a company are attached to the notary fees and registration fees and also to the publication of the incorporation in the Official Gazette and may vary according to the share capital of the company. The notaries and registration fees are charged under the following formula:

- if the acts that constitute the object of the public deed are up to the amount of 5,000 meticais, fees are charged at the rate of 2/1000; and
- if the acts that constitute the object of the public deed are more than the amount of 5,000 meticais, fees are charged at the rate of 0.1/1000.

For the publication of the public deed of incorporation in the Government Gazette, the competent entities charge approximately 250 meticaís per page.

19 What is the legal regime for joint ventures?

There is no legal concept of joint ventures in Mozambique. However, the law foresees the concept of a consortium of companies, according to which two or more persons or companies engaged in economic activities are bound to each other jointly to undertake a certain activity of common interest parties.

The law permits certain arrangements, commonly in the form of production sharing agreements among the government, the licence holders and the oil companies, to undertake exploratory and production works.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

A petroleum deposit which is located partly in a contract area and partly in another contract area shall be developed and operated jointly or in a coordinated manner pursuant to a unitisation agreement, which is subject to approval by the government.

21 Is there any limit on a party's liability under a licence, contract or concession?

There are no limits on a party's liability. The Petroleum Operations Regulations prescribe that the operator is joint and severally liable with the concessionaire for the ordinary management of petroleum operations and is responsible, inter alia, for:

- establishing safety objectives and acceptable criteria for risk assessment;
- informing INP on the status of scheduled activities;
- involving its personnel in the development and update of the management system;
- paying compensation for damages, servitudes and expropriation of rights;
- complying with applicable regulations to petroleum operations; and
- paying the deposit set by INP.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

Parental guarantees are common practice. The Petroleum Law provides that 'in order to ensure compliance with the terms and conditions of the petroleum exploration authorisations, the operators must present financial guarantee in terms to be regulated', while the Petroleum Operations Regulation stipulates that the holder of rights to conduct petroleum operations shall provide a bank guarantee or letter of guarantee from its parent company in an amount equivalent to minimum work obligations, as a guarantee for the fulfilment of the contractual duties arising from the concession contract. The law does not clarify whether the parental guarantee must be provided by the immediate parent or the ultimate parent, nevertheless, it has been understood that any parent company, irrespective of being the immediate or the ultimate, is always qualified as a parent company.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

The Petroleum Law states that the acquisition of goods or services by the petroleum operations right holders, above a set amount, must be made through public tender and this must be published in the most circulated newspapers of the country and on the internet page of the respective rightholders. Natural or legal foreign entities that provide services to the petroleum operations must associate with single or collective Mozambican entities. In the evaluation of tender, the quality of the services, the price, delivery date and offered guarantees must be taken into account. The petroleum operations right holders must give preference to local products and services when comparable, in terms of quality, to the international materials and services that are available in the time and in the quantities required and when the price, including taxes, is not over by 10 per cent of the price of the available imported goods.

Furthermore, the Petroleum Operations Regulation establishes that the acquisition of goods and services for the undertaking of petroleum operations in a value equal or higher than 40 million meticaís requires the launching of a public tender.

This came to clarify what was somehow considered to be a grey area since the Petroleum Law merely provides that the acquisition of goods or services by the petroleum operations right holders, above a set amount, must be made through public tender; however, it did not indicate what the amount was.

The following general principles shall apply to the public tender:

- a reasonable time limit must be established for the preparation of the bidders;
- all selected suppliers shall receive the same specifications;
- the specifications and the public tender and delivery time limits shall be established in a way so that competitive suppliers are not unduly excluded;
- a copy of the selected pre-qualified bidders must be sent to the National Institute of Petroleum; and
- prior to the award of the contract, the National Institute of Petroleum must be informed of the decisions made by the operator.

If the National Institute of Petroleum, after discussion with the operator, reaches the conclusion that the public tender procedures were not followed, it is entitled to request to the operator to reconsider its decision on the award of the contract, although it is not clear whether this is a binding request or not.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

Examples of other local content provisions can also be found in the Mega Projects Law, which stipulates that investments must benefit the Mozambican economy, create jobs for Mozambicans, offer opportunities for technology transfer to locals and help build local small and medium enterprises.

The Public Procurement Law contains nationality criteria to favour local firms since it requires tenders to either restrict participation based on nationality or provide a preferential margin to national bidders or nationally produced goods.

As mentioned above, ENH is responsible for participating in all petroleum operations and the respective stages of the activities, from prospecting, exploration, production, refining, transport, storing and commercialisation of oil and gas and their derivatives, including LNG and GFL inside the country or abroad, and is also responsible for managing the oil and gas quotas destined for the development of the national market and the country's industrialisation, with the Petroleum Law expressly stating that any investor interested in the exploration of petroleum resources in Mozambique shall enter into a partnership with ENH. This can also be seen as part of a local content policy.

Another example also comes from the Petroleum Law when it provides that the government must create mechanisms and outline the conditions for the involvement of the national entrepreneurship in the oil and gas enterprises, and when it states that the oil and gas companies must be registered in Mozambique's stock exchange, in accordance with the applicable Mozambican legislation.

Furthermore, Decree 63/2011 of 7 December, which approves the Regulations on the Hiring of Foreign Citizens for the Mining and Petroleum Sector, contains a quota regime for the hiring of foreign citizens, in favour of Mozambican employees. This was also reinforced by the Petroleum Operations Regulation that contains a provision stating that during the petroleum activities, each concessionaire shall employ Mozambican nationals that possess proper qualifications, and promote amongst subcontractors the employment of Mozambican nationals.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

The Petroleum Law now clearly states that any change of control of a concession holder also requires the government's prior consent. In the context of a project financing, the lenders may wish to have the government agree

in a direct agreement to certain objective criteria relating to the identity of a transferee which, if satisfied, would constitute consent of the government. Such objective criteria could relate to technical competence, financial capability, upstream, LNG ownership and operations.

From our experience, normally concession contracts contain a clause stipulating that every person who constitutes the concessionaire may assign to another person its rights and obligations or an undivided proportionate part, including direct and indirect transfers of interest or participation under a concession contract, such as assignment of shareholdings or any legal instrument that provides or may provide decisive control over a person constituting the concessionaire or its participating interest under a concession contract.

Such assignment shall require the prior written consent of the Minister of Mineral Resources and Energy, as per the provisions of the petroleum legislation.

Furthermore, the Petroleum Operations Regulation came to add that all persons that constitute the concessionaire may assign to a third party their rights subject to the approval of the minister that oversees the petroleum industry, as follows:

- rights and obligations or undivided proportional part under a concession contract;
- other direct or indirect participating interest under the concession contract, including among others the transfer of shares or any legal instrument that concedes or may concede decisive control over the person that constitutes the concessionaire or participations under a concession contract; and
- possession of the right of use of infrastructure.

No consent shall be required from the minister that oversees the petroleum industry in the case of a transferee that is not in material breach of the terms and conditions of the concession contract, with reference to a transfer that is:

- a result of the notification of the concessionaire, that is in breach, of a joint operation under the terms of the concession contract; or
- requested to become valid the processes of breach of contract under the terms of a joint operation contract related to petroleum operations.

Each transfer shall be made by a written instrument, under conditions accepted by the transferee and subject to a statement agreeing to be a person constituting the concessionaire and becoming bound to the terms and conditions of the concession contract, including all documents required by an administrative decision or the applicable law.

26 Is government consent required for a change of operator?

The law is silent with regard to this matter; however, and according to our experience, concession contracts usually contain a clause stating that 'No change of the operator may take effect unless it has been approved in writing by the Ministry of Mineral Resources and Energy'.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

Yes; according to the Corporate Income Tax Code, the sales of Mozambican assets held by non-resident entities will be taxed at 32 per cent without consideration for the period they were held (this provision is also reflected in the Law 27/2014 of 23 September, which establishes the specific regime of fiscal benefits and taxation for petroleum operations).

This provides that, regardless of the place where the transaction took place, the proceeds obtained from the assignment, directly or indirectly, paid or free of charge, between non-resident entities, of shares or other participating interests or rights, involving assets located in Mozambican territory, are considered to be obtained in Mozambique and, hence, are subject to the above-mentioned tax rate.

Decommissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

Ministerial Diploma 272/2009 of 30 December approved the Regulation on the Licensing of Petroleum Activities and Facilities stipulating the need to

obtain a licence to proceed with the decommissioning or abandonment of petroleum facilities.

The general principle contained in the Regulation on the Licensing of Petroleum Activities and Facilities and in the Petroleum Operations Regulation is that a detailed decommissioning plan shall be prepared by the concession holder, in consultation with the INP, and submitted no less than two years prior to the date on which production operations are expected to cease, for the approval of the minister with authority over the petroleum industry.

The decommissioning plan shall include, among others, the following items:

- tail-end production schedules and the economic threshold for termination of operations;
- alternatives for continuing petroleum operations;
- information on the further use or subsequent disposal of facilities;
- plans for plugging and abandonment of production wells;
- a schedule for decommissioning activities and a description of the equipment needed for the restoration of land sites or the seabed;
- an inventory of dangerous material and chemicals present in the facilities and plans for their removal; and
- an evaluation of the environmental impact of termination and abandonment activities.

In addition, the Petroleum Operations Regulation stipulates that the concession contract shall include provisions on the decommissioning, under an approved decommissioning plan.

The Petroleum Operations Regulation now requires the concessionaire to open, until the date of commencement of the petroleum production, a bank account that earns interests at a bank of its choice and approved by the Mozambican Central Bank, in a currency to be agreed with the National Institute of Petroleum, that will be named 'Decommissioning Fund', in which funds will be periodically deposited to cover the costs foreseen for the decommissioning.

The calculations and the payments of the decommissioning estimated costs are prepared by the concessionaire and submitted to the minister that oversees the petroleum industry, containing the following estimates:

- initial recoverable reserves and the projected production calendar;
- total of tariffs and fees generated in relation to the infrastructure; and
- total costs of decommissioning for the proposed decommissioning solution, as well as alternative and reasonable decommissioning solutions.

The concessionaire is required to update the decommissioning costs estimate on a yearly basis.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

The Regulations on the Petroleum Law do not specifically refer to securities in respect of future decommissioning liabilities, but rather to a security for the obligations arising out of the concession contract. This payment is due one year after the conclusion of the production operations of the concession.

The Regulations on the Mega Projects Law provide for the hand back of the concession, which must be secured by a guarantee in an amount corresponding to 5 per cent of the total investment. This guarantee must remain valid for up to 12 months after the signature of the hand-back term.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The transportation of crude oil and crude oil products is regulated by the Petroleum Law and can be carried out using oil or gas pipelines.

Resolution 14/98, Bilateral Agreement on Carriage of Goods by Road Between Republic of Mozambique and Republic of South Africa, BR No. 17, I Serie, 8 Supplement, 6 May 1998, applies to transporters that wish to undertake the transport by road of goods between any points of the territory of the parties, to any point on the territory of the other party and in transit through the territory of one of the parties; such transporters require a licence from the competent authority of the territory in which the vehicle

Update and trends

The Petroleum Operations Regulation and the Regulations on the specific regime of fiscal benefits and taxation for petroleum operations have entered into force very recently, following the revision of the Petroleum Law, while the special legal and contractual regime applicable to the LNG project of blocks 1 and 4 of Rovuma Basin and the specific regime of fiscal benefits and taxation for petroleum operations, respectively, were also enacted relatively recently, hence there is no expectation of having substantial novelties in terms of the petroleum legal framework in the near future.

At the beginning of this year, the Italian energy company ENI announced the approval, by the Mozambican Council of Ministers, of the Development Plan for the Coral discovery, in offshore Mozambique (an FLNG project).

Furthermore, also early this year, ENI and Anadarko announced that, following the signing of the Unitization and Unit Operating Agreement (UUOA) and in full agreement with all the concessionaries of the projects, a unitisation was set out for the development of natural gas reservoirs straddling areas 4 and 1 in the Rovuma Basin, offshore Mozambique (area 4 is operated by ENI East Africa, while area 1 is operated by Anadarko Mozambique Area 1 Ltd).

In October 2015, the National Institute of Petroleum announced the results of the Fifth Licensing Round. The fifth round commenced on 23 October 2015, and companies had nine months to evaluate the available technical data and formulate their applications. The round followed

a competitive bid process that evaluated the bids on defined published criteria, which included health, safety and environmental; financial strength; technical competence and capability; and the economic terms offered to the Mozambican state. A total of 15 areas were included from within offshore Rovuma, offshore Angoche, offshore Zambezi, onshore Pande-Temane and onshore Palmeira covering approximately 74,259 square kilometres. Bids were received from potential operators for eight of the 15 areas on offer.

After evaluation of the bids, the following operator lead groups have been invited to commence negotiations for an exploration production concession contract:

- Angoche Area A5-A eni Mozambico SpA;
- Angoche Area A5-B ExxonMobil E&P Mozambique Offshore Ltd;
- Zambezi Area A5-C ExxonMobil E&P Mozambique Offshore Ltd;
- Zambezi Area A5-D ExxonMobil E&P Mozambique Offshore Ltd;
- Pande/Temane Area PT5-C Sasol Petroleum Mozambique Exploration Ltd; and
- Palmeira Area P5-A Delonex Energy Ltd.

Lastly, in terms of expectations, we would highlight the long-awaited final investment decision from ENI and Anadarko, respectively, in relation to their blocks at the Rovuma Basin, which is not expected to take place until the end of 2016, as one of the most anticipated moments with respect to the petroleum industry in Mozambique.

is registered in accordance with the prescribed rules outlined in Annex A of the Agreement. A competent authority is defined as the National Director of Road Transport (Mozambique) and the National Commission of Transports (South Africa) (article 4). The following are necessary for the transport of goods: a vehicle list of goods as defined in Annex D; customs papers specified by the parties; a load and boarding certificate; and a list of spare parts (article 5).

Also applicable are the rules regarding transportation and supply of crude oils (mineral unrefined petroleum, asphalt and all kinds of hydrocarbons and bitumen, whether solid or liquid, in the natural condition or obtained from condensation or extraction of natural gas, excluding coal or any other substance extracted from coal), by-products (petroleum derivative products) and residues may be classified as transport of liquids in bulk (cistern wagons and cistern trucks) and transport of packed goods (wagons and motor vehicles) under Decree 36,270, Safety Rules for Warehousing and Industrial Treatment of Crude Oils By-products and Residues, BO No. 8, I Serie, 9 May 1947.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

The rights to construct and operate an oil or gas pipeline are granted upon an application addressed to the minister with authority over the petroleum industry.

The transportation of crude oils (mineral unrefined petroleum, asphalt and all kinds of hydrocarbons and bitumen, whether solid or liquid, in the natural condition or obtained from condensation or extraction of natural gas, excluding coal or any other substance extracted from coal), by-products (petroleum derivative products) and residues may be classified as the transport of liquids in bulk (cistern wagons and cistern trucks) and the transport of packed goods (wagons and motor vehicles), and will require approval from the National Director of Road Transport.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

There is a general statutory obligation with respect to the undertaking of petroleum operations that it must be carried out in a prudent manner according to internationally accepted technical and economic practices, health and safety rules, environmental and facilities protection, and rational utilisation of petroleum resources and existing facilities.

With the aim of controlling and reducing the effects of operational and accidental discharges, or of waste handling, and of emissions of pollution

to the air, sea, lakes, rivers and earth, it is a duty of the operator to undertake the following actions:

- environmental impact assessments, including actions for minimising the impact on all areas affected by the petroleum operations;
- a record of the environmental aspects influenced by the petroleum operations in all the phases; and
- a system of safety agents and a commission for the working environment should exist in each facility.

The operator is also obliged to prevent accidents and material damages or the threat of damages resulting from its activities and from the working of its facilities to the personnel or goods of a third party; animals; vegetation; marine life; and the sea or air. Operators must also report the quantities of operational and accidental discharges of escapes and waste, and such information should be made known to the INP.

The government body responsible for this is the Ministry of Environment and, in certain aspects, the Ministry of Labour. The Ministry of Environment ensures compliance with all environmental and licensing requirements. The Ministry of Labour undertakes inspections to ensure health and safety measures to protect workers are in place.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

Standards on health, safety and environment for the oil industry are regulated by specific legislation for each area. Notwithstanding this, there are several health, safety and environment requirements applicable to oil and oil product composition, such as:

- environmental impact assessments, including impact reduction measures, shall be carried out in all areas that may be affected by petroleum operations;
- registration of all environmental aspects influenced by the petroleum operations shall be created and maintained for all phases; and
- the operator shall prevent:
 - accidents and material damage resultant from its activities and from the facilities' operation;
 - damage or risk of damage to third parties' personnel and assets;
 - damage to animals, vegetation, marine life and monuments;
 - sea pollution and pollution of water fountains discovered in the course of petroleum operations;
 - air pollution; and
 - damage to petroleum reservoirs.

Labour**34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?**

Decree 63/2011 of 7 December, provides the legal regime and the mechanisms and procedures for the employment of foreign citizens under the Petroleum Law and Mining Law. This legal regime is applicable to all domestic and foreign employers, and all foreign employees working in these sectors, and provides a regime of quotas for the employment of foreign citizens under which employers may employ foreign citizens by simply giving notice of the employment to the Ministry of Labour, or an entity to whom the minister has delegated this competency, within 15 days after the admission of the employee, subject to the following quotas:

- 5 per cent of the total number of employees in large enterprises (an enterprise employing more than 100 employees);
- 8 per cent of the total number of employees in medium-sized enterprises (an enterprise employing more than 10 but not more than 100 employees); and
- 10 per cent of the total number of employees in small enterprises (an enterprise employing up to 10 employees).

If the enterprise has already fulfilled the quotas, it is possible to employ foreign citizens by means of requesting a work authorisation from the Ministry of Labour. In these cases, the admission of the foreign citizen shall only proceed if the employee has the required academic and professional qualifications, and it is proved that there are no nationals with such qualifications.

In petroleum or mining investment projects approved by the government (through the Investment Promotion Centre) that contemplate the employment of foreign citizens in a greater or smaller percentage than those foreseen above, work permits shall not be required, and it shall be sufficient for notice to be given to the Ministry of Labour within 15 days after the foreign citizen enters into Mozambique.

The law also provides for short-term work, which is considered to be work performed by a foreign citizen that does not exceed 180 days a year, continuous or interrupted.

Short-term work does not require any work authorisation, it being only necessary to remit, within 15 days following the arrival of the foreign citizen to the country, a communication to the Ministry of Labour mentioning, inter alia, the identity of the employee, his or her qualifications, a reason for hiring him or her, the activities that will be performed and dates when he or she will be in the country.

In summary, the quota regime establishes limitations for the hiring of foreign citizens in favour of the local workforce. The failure to observe this quota regime is punishable by suspension of the foreign employee and a fine equivalent to five to ten times the monthly wage of the employee.

Finally, unlike other jurisdictions, the Mozambican legal system does not require a mandatory training fund for the local workforce.

Taxation**35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?**

Under the Petroleum Law, natural and legal persons who are holders of a right to conduct petroleum operations are subject to the payment of the following fiscal impositions, apart from petroleum specific taxes:

- the taxes provided for in the Income Tax Code;
- value added tax and the tax on specific consumption owed on the operations conducted;
- municipal taxes due; and
- other taxes and fees established by law.

Petroleum production tax shall be charged on petroleum produced in Mozambican territory, from the development and production area.

Petroleum production tax is chargeable from the moment at which the petroleum produced is extracted from a petroleum reservoir.

The petroleum production tax rates are 10 per cent for crude oil and 6 per cent for natural gas.

The determination of the petroleum production tax shall be made by the holders of the right to engage in petroleum operations that produce petroleum.

Tax shall be paid using a payment order form, by the taxpayer, at the directorates of the tax areas or at any other entity authorised by law, in the same period of tax determination.

The government body responsible for collection of the taxes is the Tax Authority.

Commodity price controls**36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?**

No, the price-setting is subject to negotiation.

Competition, trade and merger control**37 What government bodies have the authority to prevent or punish anticompetitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?**

The Competition Law regulates matters related with competition under the exercise of economic activities.

Such regime is applicable to all economic activities performed or producing effect in Mozambican territory, as well as to private and public enterprises.

The Competition Law is not applicable, however, to the following:

- collective agreements established or to be established with employees' organisations under the Labour Law;
- practices without a commercial purpose;



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- agreements from which international obligations arise without prejudicing the Mozambican economy; and
- situations of necessity for specific protection of an economic sector, benefitting national interests or consumer interest.

The Competition Regulatory Authority (CRA) has the powers and competences of supervision, regulation and sanction, regulated by the Competition Law, as well as on its own CRA's articles.

The prohibition of anticompetition practices as well as the control of concentration of enterprises transactions is exercised by the CRA.

38 What is the process for procuring a government determination that a proposed action does not violate any anticompetitive standards? How long does the process generally take?

The law provides a process for granting exemptions to the application of the Anti-competition Law to some agreements, decisions or concerted practices, but since the Competition Regulatory Authority has not yet been created this process is still not applicable.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Mozambique is a signatory to several international treaties related to the oil industry, and under the Constitution of the Republic of Mozambique, all treaties duly signed and ratified by the country are treated as domestic laws.

Mozambique is also a member of some international organisations related to the oil industry, such as the World Petroleum Council, which aims to promote, for the benefit of the public, the sustainable supply and efficient use of oil, gas and other energy resources and the Association for the Extractive Industries Transparency Initiative, which is an international standard for openness around the management of revenues from natural resources.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

Mozambican or foreign legal entities that are registered in Mozambique, and who demonstrate that they have the technical capability and adequate financial resources for the effective conduction of petroleum operations may be holders of the right to carry out petroleum operations.

Foreign legal entities that directly or indirectly hold or control legal entities that own rights under a concession contract, shall be established, registered and administered under a transparent jurisdiction.

The applicants for rights regarding petroleum operations, in the form of commercial company, shall, together with the application, deposit a document showing evidence of the incorporation of the company, including the identification of the shareholders and the value of their participations.

Mozambican legal entities, as well as foreign legal entities that associate with Mozambican legal entities, shall have a pre-emption right in the granting of concession contracts.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

There are no special rules in this regard. Mozambique does not as yet produce crude oil and there are no cross-border supplies of the product.

Getting the Deal Through

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Insurance Litigation
Intellectual Property & Antitrust
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Islamic Finance & Markets
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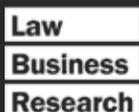
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