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Contributing editor

Bob Palmer
CMS Cameron McKenna LLP

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Rachel Nurse
Subscriptions@
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Jonathan Cowie

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Subeditors

Anna Andreoli
Caroline Rawson

Editor-in-chief

Callum Campbell

Publisher

Richard Davey

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87 Lancaster Road
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Mozambique

Pedro Couto, Taciana Peão Lopes and Paulo Ferreira

Couto, Graça & Associados

General

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

The Strategic Plan 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 occurrence 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.

The main players in the upstream industry include: Sasol Petroleum International, Hydro Statoil, Anadarko, ENI, Petronas and Artumas. BP, Elf and Western are involved in geophysical surveys of offshore areas.

The downstream oil industry relies on imports, mostly from South Africa. Distribution and marketing of fuel products and lubricants is carried out by the state-owned oil company Petromoc. Other companies include BP, Mobil, Galp, Total and Caltex.

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

- 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. It however provides only 11 per cent of the total energy requirement.

At present there is no oil refinery and, as a result, all refined products must be imported. Mozambique consumes and imports 16,000 barrels per day (bpd), the bulk of which is in the form of diesel. Half of the petroleum consumption is in 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 exploration, appraisal 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, as has been seen,

have a negative effect on the country's trade balance. Mozambique's actions seek to diversify the energy system and the implementation of many other strategic measures will help in meeting the objectives of the Southern African Development Community (SADC), of which it forms 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 24/2000 of 3 October, which replaced the previous energy policy from 1998. The basic legal framework for petroleum operations was approved by the Petroleum Law (Law No. 3/2001 of 21 February) and the Petroleum Operations Regulation (Decree 24/2004 of 20 August). In 2009, the government of Mozambique enacted the National Strategy for Petroleum Operations Concessions, mainly to define and prioritise the areas to be explored and their potential.

Regulation overview

- 4 Describe the key laws and regulations that make up the general legal framework regulating oil activities.

The following laws and regulations regulate the general legal framework in respect to oil activities in Mozambique:

- the Constitution of the Republic of Mozambique;
- the Commercial Code;
- Resolution No. 24/2000 of 3 October 2000 (National Strategy for Energy);
- Law No. 3/2001 of 21 February (Petroleum Law);
- Decree No. 24/2004 of 20 August (Regulation of Petroleum Operations);
- Decree No. 4/2008 of 9 April (Regulation on Petroleum Production Tax);
- Law No. 12/2007 of 27 June – Establishes the specific taxation regime applicable to Petroleum Operations;
- Law No. 13/2007 of 27 June – Establishes the regime of fiscal and taxation incentives to the mining and petroleum operations;
- Ministerial Diploma No. 13/2002 of 30 January (Specific Regulation for Petroleum Products Stores);
- Resolution No. 22/2009 of 8 June (National Strategy for Petroleum Operations Concessions);
- Law No. 20/97 of 1 October (Environmental Law); and
- Decree No. 56/2010 of 22 December (Environmental Regulations for Petroleum Operations);
- Resolution No. 64/2009 of 2 November, that approves the Strategy for the Development of a Natural Gas Market in Mozambique;
- Decree No. 63/2011 of 7 November, that approves the Regulation for the Employment of Foreign Citizens under the Petroleum and Mining Industry; and

- the Ministerial Diploma No. 272/2009 of 30 December, that approves the Regulation on the Licensing of Petroleum Activities and Facilities.

- 5 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil activities.

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

- 6 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 in collaboration with the National Institute of Petroleum.

Natural resources

- 7 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.

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

Under the 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 total protected areas, such as natural reserves and national parks.

Inside the so-called total and partially protected areas, authorisation in the form of a designated special licence from the competent authority will be required.

- 9 What government body regulates oil exploration and production in your country? How are rights to explore and produce granted?

The authority vested with powers to administer or regulate the exploration and development of oil and gas in accordance with the Petroleum Law is the Ministry of Mineral Resources. The National Petroleum Institute is considered to be the regulatory authority for the petroleum operations of exploration, production and transport of hydrocarbons.

The state reserves the right to participate in petroleum operations in which any legal entity is involved and is, even up to its decision to participate in a commercial discovery, exempt from payment of any costs of the said operations (carried-forward interest scheme). The decision on participation of the state in any given project may be made at any stage under the terms to be established by contract between the state and the holder of the rights.

The National Hydrocarbon Corporation (ENH) is the state oil company. It is charged with the mission to develop into a competent company with a profitable portfolio of business activities covering oil and gas E&P, gas transmission, distribution and gas utilisation, and to optimise the value that can be generated for Mozambique through commercial participation in exploration and production as well as in the total petroleum value chain. Currently, ENH participates in

exploration, with carried interest, in association with oil companies and is currently a stakeholder in the natural gas project.

Petroleum operations covered by the law are subject to a prior concession contract with the Mozambican state and are divided into exploration; appraisal and production; and oil and gas pipelines. The concession is awarded, as a rule, through public tender and by simultaneous or direct negotiation, in certain cases exclusively provided for in the Petroleum Operations Regulation.

- 10 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production?

According to the Petroleum Law, holders of the exercise of petroleum operations are subject to petroleum production tax (royalty), equivalent to 10 per cent for crude oil and 6 per cent for natural gas.

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

Under a contract of exploration, the exploration period may be granted for a period of two years. The exploration contract grants the right to carry out preliminary exploration and appraisal work in the area covered by the contract through air and space, land and other surveys including geophysical, geochemical, paleontological, geological and topographic studies.

Under the contract of appraisal and production, which awards the exclusive right to petroleum appraisal and production of crude oil, natural gas and other hydrocarbons produced or capable of being produced from them or from bituminous clay and sand, the award period is eight years, except when an application for an extension is made to the minister of mineral resources to be presented to the National Petroleum Institute indicating the area that is subject to extension.

- 12 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).

- 13 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore 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 on the exploration or production of different hydrocarbons.

- 14 Who may perform exploration and production activities? What criteria and procedures apply in selecting such entities?

Any Mozambican or foreign legal entity that can demonstrate that it has the technical competency and adequate financial resources to effectively carry out the operations, according to the requirements set out in the applicable legislation and regulations, may hold the right to carry out petroleum operations.

It should be noted that for the purposes of meeting the requirements to qualify as a Mozambican legal entity, it is not enough for a company to be incorporated under the laws of Mozambique with its operating headquarters in the country. More than 50 per cent of its share capital must also be held by a Mozambican legal entity.

15 What is the legal regime for joint ventures?

In Mozambique there is no legal concept for joint ventures. However, the law foresees the concept of the 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 do exploratory and production works.

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

A petroleum deposit which is located partly in one contract area and partly in another contract area shall be developed and operated jointly pursuant to a unitisation agreement, which shall be submitted for approval by the competent entity (in this case the National Petroleum Institute).

The activity of storage of petroleum products is performed by obtaining a storage permit. The storage of petroleum products will only be allowed on an appropriate oil facility and in accordance with current legislation.

Transfers to third parties**17** 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?

The Petroleum Operation Regulations provide that:

an assignment, to an affiliate or to a third party, of all or of an undivided part of the rights and duties of the holder of rights to conduct petroleum operations, shall be governed by the contractual provisions of the concession contract and subject to the prior approval of the minister with authority over the petroleum industry.

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, including, inter alia, 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, as per the provisions of the petroleum legislation.

Although the petroleum legislation is silent in respect of a change in control, from our experience any direct disposition of greater than 50 per cent of the legal or beneficial ownership of voting securities of a concessionaire by way of a sale, voting trust or otherwise, resulting in a transfer of the effective control of the concessionaire in question would be deemed a transfer and, thus, require the prior approval from the minister of mineral resources.

The law is silent in respect to time frames to obtain the required approval for the transactions mentioned above, nevertheless, our experience has shown that the approval process tends to be quite simple and rapid, as long as all requirements are fulfilled (eg, evidence of the technical and financial capacity of the transferee).

Decommissioning**18** What laws or regulations govern 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?

The Ministerial Diploma No. 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 of petroleum facilities.

The general principle contained in the Regulation above and in the Petroleum Operations Regulation is that a detailed decommissioning plan shall be prepared by the concession holder, in consultation with the National Petroleum Institute, 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 existent in the facilities and plans for their removal; and
- an evaluation of the environmental impact of termination and abandonment activities.

Transportation**19** 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. The Ministry of Mineral Resources in coordination with the National Petroleum Institute authorises the construction of 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, and any point on the territory of the other party, and in transit through the territory of one of the parties shall require from the competent authority of the territory in which the vehicle is registered, a licence in accordance with the prescribed 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). For the transport of goods the following is necessary: 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).

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 its natural condition or obtained from condensation or extraction of the 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, are also applicable.

20 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, on its natural conditions or obtained from condensation or extraction of the 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), requires approval from the National Director of Road Transport.

Health, safety and environment

21 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 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 to control and reduce the effects of the operational and accidental discharges, or of the waste handling, and of the 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.

It is also an obligation of the operator to prevent accidents and material or threat of damages resulting from the activities and from the working of the facilities to the personnel or goods of a third party, animals, vegetation, marine life, or the pollution of the sea air. They must also report the quantities of operational and accidental discharges of escapes and waste, and such information should be made known to the National Institute of Petroleum.

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.

22 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 the 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

23 What government standards apply to oil industry labour? How is foreign labour regulated? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Decree No. 63/2011, of 7 December, provides the legal regime and mechanisms and procedures for the employment of foreign citizens under the Petroleum Law and Mining Law. This legal regime is applicable to all employers, domestic and foreign, and all foreign employees working in these sectors, and provides a regime of quotas for the employment of foreign citizens, where 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, in the period of 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, addressed to 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), which contemplate the employment of foreign citizens in a greater or smaller percentage than 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.

Finally, the law also provides for the 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.

Update and trends

There have been some reports that the government is planning to review the Petroleum Law and related legislation, in particular with reference to its fiscal regime. This review will be complementary to the recent PPP and Megaprojects Law.

It has been reported that one of the aims of the revised law is to create a faster licensing procedure and a simplification of the requirements for petroleum companies to operate in Mozambique. In addition, the review of the current Petroleum Law also aims to give companies more clarity with regard to other related laws of Mozambique and ensure that these are applied consistently across all companies.

As far as CGA is aware, the review of the Petroleum Law and related legislation in Mozambique is still under discussion. The current procedure for reviewing laws in Mozambique starts with a broad consultation with all relevant stakeholders. After this consultation

phase, draft legislation is prepared, submitted to Parliament and, if approved, the revised law enters into force. We are not aware of any official time frame for approval of the revised law.

Please note that, in accordance with the Mozambican legal system, any new law will not apply retrospectively, nevertheless, article 37 of Law No. 15/2011 of 10 August (PPP and Megaprojects Law) provides that projects already being executed at the date of entry into force of this law may be subject to amendments and renegotiations, by mutual agreement of the parties, to adjust it to the provisions of this law.

Furthermore, the chairman of the INP has been recently quoted as saying that Mozambique may open the next round of the Rovuma Basin licensing at the end of 2012 or the start of 2013, although it was not clear if it relates to the offshore Rovuma or to its onshore area.

This short-term work does not require any work authorisation, 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 the identity of the employee, qualifications, a reason for hiring them, the activities that will be performed, and dates when he or she will be in the country, among other aspects.

Taxation

24 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 individual and collective persons who are holders of a right to conduct petroleum operations are subject to the payment of the following fiscal impositions:

- the taxes provided for in the Income Tax Code;
- royalty payments;
- value added tax and the tax on specific consumption owed on the operations conducted;
- property contribution and the property transfer tax (SISA) as established in accordance with the law;
- customs duties established in the customs duty schedule;
- 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 set forth in Law No. 12/2007 of 27 June are as follows:

- 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.

Commodity price controls

25 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?

The matter of fixing the sale price of petroleum products is regulated by the Regulation of Petroleum Operations. However, this does not establish the penalties applicable to non-compliance.



COUTO · GRAÇA & ASSOCIADOS
S O C I E D A D E D E A D V O G A D O S

Pedro Couto
Taciana Peão Lopes
Paulo Ferreira

pcouto@cga.co.mz
tplopes@cga.co.mz
pferreira@cga.co.mz

Avenue Kim Il Sung 961
Maputo
Mozambique

Tel: +258 21 486 438 / 45
Fax: +258 21 486 441
www.cga.co.mz

Competition, trade and merger control

- 26** What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

There are no anti-competition laws in place to prevent or punish anti-competitive practices specifically and exclusively in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products. However, a general anti-competition law is in the process of being approved by the council of the minister.

- 27** What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

There are no anti-competition laws in Mozambique, see question 26.

International

- 28** 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.

- 29** Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals?

Yes, under the Petroleum Law, Mozambican juristic persons have a preferential right in the granting of blocks; foreign juristic persons who associate with Mozambican juristic persons shall also enjoy the preferential right.

- 30** 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 produce crude oil as yet and there are no cross-border supplies of the product.

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