

GETTING THE DEAL THROUGH

Oil Regulation

in 33 jurisdictions worldwide

2014

Contributing editor: Bob Palmer



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Getting the Deal Through is delighted to publish the fully revised and updated eleventh edition of *Oil Regulation*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 33 jurisdictions featured. New jurisdictions this year include Croatia, Ecuador, Egypt, India, Indonesia and Morocco.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. *Getting the Deal Through* would also like to extend special thanks to contributing editor Bob Palmer of CMS Cameron McKenna for his invaluable assistance with this volume.

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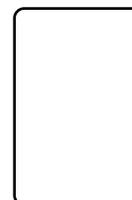
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Mozambique

Taciana Peão Lopes, Paulo Ferreira, Márcio Paulo and Gisela Graça

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- 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 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.

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 (the National Hydrocarbon Corporation – 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. 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 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 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 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 24/2000 of 3 October, which replaced the previous energy policy of 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.

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

The Ministry of Mineral Resources has developed an 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 PPP 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 are comprised of 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 (with the exception of certain Investment Treaty Awards, as noted above). 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 3/2001 of 21 February 2001), which establishes the regime for the granting of rights for the conduct of petroleum operations in the Republic of Mozambique;
- the Petroleum Operations Regulations (Decree 24/2004 of 20 August 2004), which set 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;
- 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 Natural Gas Market 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 Petroleum Tax Law (Law 12/2007 of 27 June 2007), which updated the tax legislation in respect of the oil industry;
- the Petroleum Tax Regulations (Decree 4/2008 of 9 April 2008), which governs the specific tax on petroleum activity;
- the Mining and Oil and Gas Tax Incentives Law (Law 13/2007 of 27 June 2007), which approves the fiscal benefits applicable to the mining and oil industry; and
- 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.

It should be noted that, in respect of the Petroleum Law, a draft revised Petroleum Law was approved by the Council of Ministers in April 2013, mainly to create the legal framework for the LNG facilities to be built in the Rovuma Basin. The said draft now must be remitted to Parliament for ratification and it is expected that within the present year of 2014 it will enter into force.

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

This would be conditional on public interest or on any relevant grounds. However, the concessionaire is entitled to due compensation.

- 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 the National Institute of Petroleum (INP).

Moreover, the state typically participates in petroleum operations through the state-owned national oil company Empresa Nacional de Hidrocarbonetos EP (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 10-15 per cent in oil and gas concessions). This interest is typically granted to ENH on a free carry basis.

- 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 in collaboration with the INP.

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.

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

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

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 INP 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 the 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 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 exploration and production, 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. At present, ENH participates in exploration, with carried interest, in association with oil companies, and is a stakeholder in the natural gas project.

Petroleum operations covered by the law are subject to a prior concession contract with the 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.

Concession contracts for petroleum operations are awarded through a public tender process, pursuant to which applications for concession rights must be addressed to the Ministry of Mineral Resources and filed at the INP, however, the government can negotiate the grant of such concession contracts directly with interested parties:

- if a public tender process has been unsuccessful;
- to find a replacement concession holder in the case of early termination of a petroleum concession contract; or
- if it is necessary to connect two adjacent concession areas for technical or economic reasons.

Applications must contain the following information:

- the name, address and nationality of the applicant. In the event the applicant is a foreign entity, the identification of its representative in Mozambique will be required;
- a description of the applicant's nature, including identification of and the relationship with any parent company or other affiliates, location of incorporation and registration, identification of the members of the applicant's board of directors, and the location of their residence and respective citizenship;
- the relevant experience of the applicant in the oil and gas industry and, in particular, in the areas of drilling, production and transportation of oil and gas in similar circumstances to those in which the applicant intends to undertake its activity in the applied-for area, as well as its experience in oil and gas production, refinery and trading activities;
- a description of the applicant's technical and operational capacity, including its abilities for research and development;
- a description of the organisation and the technical resources that the applicant will have available in Mozambique or in any other location for performing the activities; and
- the financial situation of the applicant, including its share capital, shareholding structure and financial documentation (including the applicant's last three annual financial reports and accounts, as well as those of the parent company, if applicable).

One of the government's strategic objectives is to encourage the involvement of Mozambican private enterprises in petroleum operations. As part of this policy, the government will give preference to Mozambican legal persons (being Mozambican registered companies whose capital is more than 50 per cent owned by Mozambican persons) and to foreign legal persons associated with Mozambican legal persons.

The law is silent in respect of the time frames for the application.

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?

Under article 8 of the Petroleum Law, the government is entitled to participate in any petroleum operations, and at any stage of such operations, and also in the construction of oil and gas pipelines.

Although the Petroleum Law does not establish a maximum participating interest, the PPP 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 Petroleum Law, 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. Besides the royalties, no additional payments are due to the government.

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 PPP Law contains 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 three types of concession contracts that may be entered into, depending on the nature of the petroleum operations:

- reconnaissance contracts;
- exploration and production contracts; and
- pipeline contracts.

Reconnaissance contracts grant their holders the exclusive right to conduct geological surveys (including drilling up to 100 metres) over areas defined in the contract. They have a term of up to two years.

Holders of these contracts have a preferential right to request the grant of exploration and production contracts over the areas where the reconnaissance works are being performed.

Activities under reconnaissance contracts must be conducted in accordance with an activities plan developed in consultation with the INP. The activities plan will form part of the reconnaissance contract and will detail (among other things) the type of geological surveys to be conducted, the time frames thereof and the minimum scope of work to be performed.

The exploration and production concession contract grants its holder:

- with the exclusive right to conduct exploration and production activities over areas defined in the contract;
- in the event of a discovery and subject to the approval of a development plan, the right to develop the relevant petroleum resources and produce oil or gas, or both, from them; and
- the non-exclusive right to develop and operate pipelines to transport petroleum produced under the contract.

The exclusive right to conduct exploration activities can be granted for a period of up to eight years (subject to extension in certain circumstances). Exploration activities are to be conducted in accordance with an exploration plan developed in consultation with the INP.

The initial eight-year period can be extended by:

- up to one year if the holder requires additional time to complete drilling or testing, or both, of any wells in its contract area; or
- up to eight years if the holder has made a discovery of crude oil or non-associated natural gas during the initial term and requires additional time to assess the technical and commercial feasibility of the discovery.

Pipeline contracts grant their holders the right to develop and operate oil or gas pipelines to the extent that the development of the same is not covered by the exploration and production contract relating to the relevant petroleum resources.

A development plan for the pipeline assets is required to be submitted to the Council of Ministers for approval. The approval of the development plan is a condition precedent to the grant of the pipeline contract. The development plan will set out (among other things) the scope of work to be performed, the financial assumptions and projections for the project and details of the operational procedures for the project.

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?

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 and

have its operating headquarters in the country. More than 50 per cent of its share capital must also be held by a Mozambican legal entity.

The Mozambican entities that may perform exploration and production activities must be duly formed in Mozambique, with the majority of the share capital being held by Mozambican nationals, and it must have its registered offices located in Mozambique. The formation of such Mozambican entities is subject to registration at the Companies Registration Offices of Mozambique.

In the event that the entity is foreign, and, thus, has been formed and registered in accordance with foreign laws, such a foreign entity is not required to incorporate a subsidiary or register a branch.

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 Government Gazette and may vary according with 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 meticaís, 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 meticaís, 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 that 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 INP).

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 present legislation.

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 the National Petroleum Institute 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 National Petroleum Institute.

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 Operations Regulations 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 companies must 'give preference to Mozambican products and services whenever they are competitive in terms of price and comparable in terms of quality and supply'. While the Petroleum Operations Regulations provides that:

the procurement of goods and services is made by means of public tender [and] the operator shall give preferential treatment to the purchase of local goods and services when such goods and services are internationally comparable in terms of quality, availability, quantity required, and are offered at prices inclusive of taxes not higher than ten per cent of the available imported goods.

Examples of local content provisions can also be found in the Mega Projects legislation, which stipulates that the PPP investment 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 can be seen, the applicable legislation is somewhat vague and, in general, only contains general principles on local content. Notwithstanding this, we may advance that, based on our experience and to the best of our knowledge, the government's stance has been to promote and encourage the involvement of Mozambican companies in these projects (notably local suppliers) and, for this purpose, it has been understood that a Mozambican company is the one that has the majority of its shareholding structure owned by Mozambican natural and legal persons.

Transfers to third parties

24 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 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, 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, 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, that results in a transfer of the effective control of the concessionaire in question, would be deemed a transfer, and, thus, would require the prior approval of the Minister of Mineral Resources.

The law is silent with respect to time frames to obtain the required approval for the above-mentioned transactions; nevertheless, in our experience 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).

There are no costs for the process of approval of these transfers, and no pre-emptive rights are reserved for the government.

25 Is government consent required for a change of operator?

Yes; under article 91 of the Regulations on the Petroleum Law, a transfer of rights that may result in a change of operator is subject to obtaining a prior authorisation from the Minister of Finance.

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

Yes; the Mozambican Parliament recently passed an amendment to the Corporate Income Tax Code, stipulating that 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 amendment 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 tax rate above mentioned.

Decommissioning

27 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.

28 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 becomes due one year after the conclusion of the production operations of the concession.

The Regulations on the PPP 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

29 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 INP, 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, 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 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.

30 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

31 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.

32 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

33 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.

Finally, 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

34 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 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 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

35 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.

Update and trends

The bill revising the present Petroleum Law was approved by the government in April 2013 and has been submitted to the Mozambique Parliament. It is expected that the Parliament will give its approval during the course of the present parliamentary session, which is due to take place until July 2014, hence, it is possible that the new Petroleum Law may enter into force this year. This is expected to be followed by a revision of the fiscal regime applicable to the oil industry, since the intention of the government is to compile, in a single document, as much as possible, the main fiscal terms for use in future oil projects, notably, regarding matters such as royalties and corporate income tax.

Further, the National Institute of Petroleum announced that, in principle, it will launch its fifth oil and gas bidding round in 2014, which will mostly consist of offshore blocks. INP is only waiting for the approval by the Parliament of the new Petroleum Law and its subsequent entry into force, in order to proceed with the above bidding round.

Competition, trade and merger control

36 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?

The Competition Law came into force on 10 July 2013. It applies to most economic activities in or having an effect in Mozambique. The Competition Regulatory Authority (CRA) will enforce the Competition Law. The CRA has powers of supervision, regulation and sanction. It should be noted that this authority has not yet been created since the Council of Ministers is yet to approve its statutes. There is a sectorial regulation authority, the National Petroleum Institute (INP), which has the aim of promoting free competition and preventing and taking the necessary actions against anti-competitive practices and the abuse of dominant position.

37 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?

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.



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International

38 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 with 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.

39 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)?

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 this preferential right.

40 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.

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