
THE OIL AND GAS LAW REVIEW

SECOND EDITION

EDITOR
CHRISTOPHER B STRONG

LAW BUSINESS RESEARCH

THE OIL AND GAS LAW REVIEW

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THE OIL AND GAS LAW REVIEW

Second Edition

Editor
CHRISTOPHER B STRONG

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EDITOR'S PREFACE

It is a privilege to have been able to participate in the second edition of *The Oil and Gas Law Review*. As with all the titles in this series, this volume is intended to serve as a practical reference for attorneys working in the oil and gas field, whether they are in private practice, in-house at energy companies, in government service or in academia. I would like to thank all of the contributing authors for providing excellent articles describing the legal regime for oil and gas within their respective jurisdictions, together with updates of notable recent developments.

The Oil and Gas Law Review is divided into 29 chapters, each covering a different jurisdiction. The authors of the chapters have been chosen on the basis of their demonstrated expertise within their jurisdiction. In selecting the jurisdictions to be covered by this volume, we have tried to ensure that our coverage is as broad as possible, with representation across most of the major producing regions.

Some of the most exciting legal developments in the oil and gas space in recent years relate to jurisdictions that have newly opened up to foreign investment, whether through the discovery of new producing basins in regions that previously had no significant oil and gas activity or through legal changes in jurisdictions that had previously been closed to foreign investment. Mexico is a prime example. Although its hydrocarbon industry is well established, since the late 1930s it had been closed to foreign investment and monopolised by state-owned producer PEMEX. All of that changed with the reforms that were passed late in 2013 and implemented over the course of 2014, with a carefully crafted legal regime designed to attract foreign investment while safeguarding the interests of the people of Mexico. For those readers interested in developments in Mexico or industry regulation in general, I would highly recommend the excellent chapter contributed by Carlos Ramos Miranda and Miguel Ángel Mateo Simón.

Among the jurisdictions with newly discovered petroleum reserves, I should mention Israel and Mozambique. Hardly on the radar a few years ago, recent offshore discoveries in those jurisdictions promise to be transformational, and each of these jurisdictions continues to develop its legal regime in order to adapt to fast-moving developments. Of particular note is Mozambique's new Petroleum Law, which came

into effect shortly before publication of this volume and will no doubt be of significant interest to practitioners advising clients there.

Established jurisdictions have seen significant developments as well. For example, Norway had new tax rates come into effect, while the implementation of the recommendations of the UK's Wood Review promises to have a significant impact on operators in the UK's North Sea. On the other hand, Nigeria's long-awaited Petroleum Industry Bill still awaits passage. Perhaps it can be covered in a future edition of this volume.

Developments like those mentioned above are precisely what make international oil and gas law so challenging. We hope that by summarising developments in as many jurisdictions as possible, we can provide a useful resource for practitioners.

Christopher B Strong
Vinson & Elkins LLP
November 2014

Chapter 19

MOZAMBIQUE

Pedro Couto, Jorge Graça, Paulo Ferreira, Márcio Paulo and Gisela Graça¹

I INTRODUCTION

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, Anadarko, ENI, Petronas, Wentworth, Mitsui, Galp Energia and PTTEP. 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.

In 2012, Mozambique emerged as a new giant in natural gas with the discoveries of more than 100 trillion cubic feet mainly in the offshore Rovuma Basin.

Due to these major discoveries the two operators leading the exploration in the Rovuma Basin – Areas 1 and 4 (Anadarko and ENI) indicated that the volume of proven gas reserves justifies construction of a liquefied natural gas (LNG) facility on the northern coast of Mozambique. The two companies are already making efforts to develop an LNG project that will receive gas from the offshore fields, and pre-treat and process it in preparation for storage and export. Although it has been made public that most of the gas from the Rovuma Basin will be sold on the international market with preference given to Asian countries, the government of Mozambique is also concerned with supplying the

¹ Pedro Couto is the chairman, Jorge Graça is the managing partner and Paulo Ferreira, Márcio Paulo and Gisela Graça are senior associates at CGA – Couto, Graça & Associados.

domestic market. An example of this aim is the Natural Gas Master Plan for Mozambique (the Master Plan), commissioned by the government of Mozambique, which outlines scenarios for utilisation of the natural gas once production starts in 2018. Furthermore, the recently approved new Petroleum Law expressly provides that the government must ensure that at least 25 per cent of the oil and gas produced in the country is channelled to the domestic market for consumption (we will expand on this and other relevant matters related to the entry into force of the new Petroleum Law below).

This context led the government of Mozambique to review the existing legislation in order to bring it more in line with international standards in the oil and gas sector.

II LEGAL AND REGULATORY FRAMEWORK

Mozambique has a codified legal system. There are two main regulatory bodies: the parliament (which corresponds to the body that approves the laws) and the Council of Ministers (which approves decrees of law).

i Domestic oil and gas legislation

The main legislation relating to the oil and gas sector in Mozambique is as follows:

- a* the Constitution of the Republic of Mozambique;
- b* Law 15/2002 of 26 June, which establishes the principles of organisation of the tax system of the Republic of Mozambique;
- c* Law 2/2006 of 22 March, which establishes the principles and general norms governing the Mozambican tax system for all national and municipal taxes;
- d* Law 32/2007 of 31 December, which establishes the Value Added Tax Code (CIVA);
- e* Law 33/2007 of 31 December, which establishes the Personal Income Tax Code (CIRPS);
- f* Law 34/2007 of 31 December, which establishes the Corporate Income Tax Code (CIRPC);
- g* Decree 7/2008 of 16 April, Regulations of the CIVA;
- h* Decree 8/2008 of 16 April, Regulations of the CIRPS;
- i* Decree 9/2008 of 16 April, Regulations of the CIRPC;
- j* Law 19/2013 of 23 September, which amends some articles of the Corporate Income Tax Code approved by Law 34/2007 of 31 December;
- k* Law 21/2014 of 18 of August, which approves the new Petroleum Law and repeals Law 3/2001 of 21 February (the old Petroleum Law);
- l* Decree 24/2004 of 20 August, which approves the Petroleum Law Regulations;
- m* Law 12/2007 of 27 June, which establishes the specific taxation regime applicable to petroleum operations (on 21 August 2014 the Mozambican parliament approved the Law approving the Specific Regime of Taxation for Petroleum Operations and repealing Law 12/2007 of 27 June, nevertheless the Specific Regime of Taxation for Petroleum Operations has not yet been published in the government's official gazette and, as a result, it is not yet in force);

- n* Law 13/2007 of 27 June, which establishes the regime of fiscal and taxation incentives for mining and petroleum operations (see (m) above, which is likely to also have impact on this legislation);
- o* Decree 4/2008 of 9 April, which approves the Regulation on petroleum production tax (royalty) (see (m) above, which is likely to also have an impact on this legislation);
- p* Law 20/97 of 1 October, which approves the Environmental Law;
- q* Decree 56/2010 of 22 of November, which approves the Environmental Regulation for Petroleum Operations;
- r* Decree 63/2011 of 7 December, which provides the legal regime and mechanisms and procedures for the employment of foreign citizens under the Petroleum Law and Mining Law;
- s* Law 11/2009 of 11 March, which approves the Foreign Exchange Law; and
- t* Decree 83/2010 of 31 December, which approves the Foreign Exchange Law Regulations;
- u* Law 15/2011 of 10 August, which establishes the legal framework of public-private partnerships, large-scale projects and business concessions.
- v* Decree 16/2012 of 4 June, which approves the Regulation of the Law of Public-Private Partnerships, Large-Scale Projects and Business Concessions; and
- w* Law 10/2013 of 11 April, which approves the Competition Law.

Moreover, there are additional codes and legislation that govern other specific areas of taxes. These include the Specific Consumption Tax Code; the General Rules on Customs Clearance; the Stamp Tax Code; the Real Property Transfer Tax Code; and the Municipal Tax Code.

ii Regulation

The oil and gas legal framework in Mozambique entails the interaction and cooperation among different governmental institutions. The following governmental bodies are relevant and have a direct bearing on the conduction of oil and gas operations in Mozambique.

The Council of Ministers is the body with competence to approve concession contracts.

The Ministry of Mineral Resources is the governmental body that directs and executes the policies within the ambit of geological investigation and exploration of the mineral resources including the coal and hydrocarbons. It also has custody over the petroleum operations and over the National Institute of Petroleum (upstream).

The National Institute of Petroleum (INP) was created to manage the petroleum resources of Mozambique and administer the related operations for the benefit of the society, and in compliance with the existing laws, government policies and contractual commitments.

The INP is also the Mozambican oil and gas regulator and has the following duties and competences:

- a* regulation and control of the activity of research, exploration, production and transport of petroleum, as well as proposing policies of development and rules respecting the petroleum operations;
- b* organisation, maintenance and consolidation of the information and technical data relating to the activities of the petroleum industry, of the national petroleum reserves and the related information;
- c* conduct of the process of attribution of exploration, production, development and the transport of petroleum;
- d* normalisation, approval and homologation of the equipment to be used in the operations relating to the petroleum sector;
- e* proposal and provision of the legal diplomas necessary for the functioning of the petroleum sector and the provision of opinions on such draft laws;
- f* regulation of activities relating to petroleum operations;
- g* promotion of free competition and the prevention of abuse of dominant positions and unfair competition;
- h* preparation and launch of public tenders for concessions and the entering into other contracts;
- i* issue of opinions on the attribution, renewal and change of concessions;
- j* control of compliance by the contracting parties to the terms of the concession contracts and the law;
- k* promotion and development of the prospecting and exploration of petroleum;
- l* participation in the definition of contract areas, minimum work requirements and of expenses to be defined with the concession contracts; and
- m* supervision of prospecting and exploration and of compliance with the work programme by concessionaires.

The Ministry of Energy is the government body that has custody over the development and expansion of the distribution network of natural gas and petroleum products (downstream).

The new Petroleum Law, which entered into force on 18 August 2014, provides that a new authority – the High Authority for the Extractive Industry – will be created to oversee extracting industries, nevertheless, it 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, and to what extent its role and powers will not conflict or overlap with those of the National Petroleum Institute.

iii Treaties

The dispute resolution between the Mozambican state and foreign investors shall be conducted by arbitration according to: (1) Law 11/99 of 12 of July; (2) rules from the International Centre for Settlement of Investment Disputes between States and Nationals of Other States (ICSID); (3) Rules of the supplementary Mechanism of ICSID, when applied; or (4) rules from other international organisms in accordance with what the parties have agreed in the concession contracts.

Moreover and in addition to what was already provided under the old Petroleum Law, the new Petroleum Law now expressly provides that if no submission to arbitration

is made in the relevant concession agreement, any disputes not settled by way of negotiations shall be decided by the competent courts.

Mozambique has entered into bilateral investment treaties with the following countries: Algeria, Belgium, China, Cuba, Denmark, Egypt, Finland, France, Germany, India, Indonesia, Italy, Mauritius, Netherlands, Portugal, South Africa, Spain, Sweden, Switzerland, the United Kingdom, the United States, Vietnam and Zimbabwe.

In addition, it has double taxation treaties in place with the following countries: Botswana, India, Italy, Macau, Mauritius, Portugal, South Africa, the UAE and Vietnam.

III LICENSING

The types of concession contracts prescribed in the new Petroleum Law are the following:

- a* Reconnaissance concession contract – unlike in the old Petroleum Law, reconnaissance concession contracts entered into under the new Petroleum Law:
 - can only be entered into on a non-exclusivity basis;
 - shall be for a non-renewable two-year term;
 - may not give rise to a right of first refusal in the granting of prospection and production concession.
- b* Prospection and production concession contract – while under the old Petroleum Law prospection and production concession contract were stated only to grant exclusive rights to explore and produce petroleum and a non-exclusive right to build and operate pipelines, under the new Petroleum Law such concession contracts grant an exclusive right to conduct petroleum operations and a non-exclusive right to build and operate the infrastructures used in the production and transportation of petroleum. Also, unlike in the old Petroleum Law:
 - the approval of the government shall be required for joint-bidding or joint-operation agreements;
 - the right to carry prospection activities cannot arguably be extended beyond eight years even if necessary to complete the works;
 - there is no specified term for the extension of prospection activities in case a discovery is made; and
 - there is no specified term for the extension of the contract for the purpose of production.
- c* Oil or gas pipeline system concession contract – previously covered in similar terms under the old Petroleum Law. 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.
- d* Infrastructure concession contract – the new Petroleum Law now foresees concession contracts for the construction and operation of infrastructures. Such concessions shall grant the right to build and operate infrastructures for petroleum production, including liquefaction. Such concessions shall only be required if the

relevant infrastructure is not covered by an approved plan of development for prospection and production.

In addition to the types of concession contracts mentioned above, the new Petroleum Law also contains a new provision in respect to gas liquefaction, providing that the government may authorise concessionaires that have discovered deposits of oil and non-associated gas to develop projects for the design, construction, installation, ownership, financing, operation, maintenance, use of wells, installations and ancillary equipment, either onshore or offshore, for the production, processing, liquefaction, delivery and sale of gas in the domestic or foreign markets. It is therefore now clear that liquefaction activities, either onshore or offshore, can be undertaken under EPCCs, subject to government approval but without the need of a separate agreement.

All prospection and production concessions must be granted by way of public tender and, unlike in the old Petroleum Law, the types of concession contracts foreseen in the new Petroleum Law now include a concession for the construction and operation of infrastructure.

IV ASSIGNMENTS OF INTERESTS

Any direct transfer of rights and obligations granted under the concession contract, to an affiliate or to a third party, shall be made in accordance with Mozambican law and is subject to the government's approval. The new Petroleum Law now also expressly provides that indirect transfer of participating interests, notably by way of change of control of the Concessionaires, shall be considered as a transfer of rights and obligations under an EPCC, hence requiring government approval.

The above-mentioned assignments may also be subject to the payment of capital gains tax since, as of 1 January 2014, capital gains derived from the sale of shares of a resident company by a non-resident without a permanent establishment in Mozambique are fully taxed and the tax relief previously available depending on the holding period of the shares has been revoked, and gains resulting from a direct or indirect transfer between non-residents of capital shares or other interests and participatory rights involving assets located in Mozambique are deemed to be obtained in Mozambique, regardless of where the sale takes place and regardless of whether the transfer is gratuitous or for consideration.

V TAX

The new Petroleum Law now expressly provides that the holders shall pay, along with specific taxes on petroleum operations:

- a* income tax;
- b* value-added tax;
- c* municipal tax, when applicable; and
- d* other taxes legally established.

On 21 August 2014 the Mozambican parliament approved the Law that approves the Specific Regime of Taxation for Petroleum Operations and repeals Law 12/2007 of 27 June, nevertheless the Specific Regime of Taxation for Petroleum Operations has not yet been published in the Government's Official Gazette and therefore it is not yet in force since the Constitution of the Republic of Mozambique provides that laws from the parliament are required to be published in the government's official gazette, under penalty of legal ineffectiveness.

We expect this legislation to be published in the government's official gazette soon, however, at the time of writing we are not in the position to provide further information as we have not yet had access to the approved version.

The purpose of the Specific Regime of Taxation for Petroleum Operations is to comprise, in a single law, the specific regimes of taxation and fiscal benefits applicable to petroleum operations, and to adopt specific rules in terms of income taxes for petroleum operations, notably those referring to restrictions on the transfer of costs and income between different petroleum titles.

This legislation also includes amortisation rates applicable to assets used in this sector of activity, the regime applicable to capital gains emerging from transactions undertaken in respect to this sector of activity, the requirement to submit annual balance sheets and profit and loss accounts certified by an independent and authorised auditor and to proceed to the update of the list of goods that may be imported by petroleum undertakings, which are exempted from customs duties.

This Specific Regime of Taxation for Petroleum Operations is applicable to legal persons incorporated and registered in Mozambican territory, as well as to natural persons, national and foreign, who undertake petroleum operations under a concession contract subject to Mozambican jurisdiction, and aims to align the legislation to international practices applicable to the petroleum sector, comprising all tax matters relevant to the industry, allowing for easy consultation and interpretation of the legislation and ensuring the improvement of the business environment through the mobilisation of additional revenues.

VI ENVIRONMENTAL IMPACT AND DECOMMISSIONING

The purpose of the Environmental Law is to define the legal basis for the proper use and management of the environment and its elements in order to establish a system of sustainable development in Mozambique. This law is applicable to all public and private activities that could directly or indirectly influence the environment. Article 9 of the aforementioned Law provides that the production, deposit in the soil or subsoil, emission into water or the atmosphere of any toxic or pollution substance as well as the practice of any activities that accelerate the erosion, desertification, deforestation or any form of environmental degradation that are outside of the legally established limits is not permitted in the national territory. The Environmental Law is regulated by a range of additional instruments, both general and sector specific, that also have an impact on a company's assets and operations in Mozambique as further set out in due course below. In terms of management and supervision in the realm of environmental law, the Ministry for the Coordination of Environmental Affairs (MICOA), through its various

directorates, is the government institution responsible for ensuring the preservation and responsible use of natural resources, the coordination of environmental activities and environmental licensing. In this respect, MICOA has approved various additional regulations that variously affect a company's assets and operations in Mozambique:

- a* Decree 32/2003 of 20 August, which approved the Regulation on the Environmental Auditing Process;
- b* Decree 45/2004 of 29 September, which approved the Regulation on the Environmental Impact Assessment Process;
- c* Decree 18/2004 of 2 June, which approved the Regulation on Environmental Quality Standards and Effluent Emissions;
- d* Decree 11/2006 of 15 June, which approved the Regulation on Environmental Inspection;
- e* Decree 13/2006 of 15 June, which approved the Regulation on Waste Management;
- f* Decree 45/2006 of 30 November, which approved the Regulation for Pollution Prevention and Protection of Marine and Coastal Environment;
- g* Decree 23/2008 of 1 July, which approved the Regulation on Management of Invasive Alien Species;
- h* Decree 24/2008 of 1 July, which approved the Regulation on Management of Substances that Deplete the Ozone Layer; and
- i* Decree 6/2009 of 31 March, which approved the Regulation on Pesticides Management.

Moreover, in recognition of the specifics of the petroleum operations, special environmental regulations for petroleum operations have also been approved. The more recent revisions were introduced and approved by the Council of Ministers through Decree 56/2010.

VII FOREIGN INVESTMENT CONSIDERATIONS

i Establishment

The new Petroleum Law now requires that:

- a* any entity that directly or indirectly own or control entities with rights under concession agreements must be established in, registered in and managed from a transparent jurisdiction (i.e., a jurisdiction where the government is able to independently verify their ownership, management and control and tax status); and
- b* companies that apply for concessions deposit a document evidencing their incorporation and identifying their shareholders and providing information on their respective shareholdings.

According to the Mozambican Commercial Code, if a foreign company intends to carry out any activity in Mozambique for more than one year, it has to set up a permanent establishment in Mozambique and appoint a representative who shall be resident in the country. The foreign company will have to allocate capital for the purposes of

the implementation its activity in Mozambique, and register any resolution adopted in relation to such representation with the Legal Entities Registration Office. The representation and the foreign company's representative also have to be duly registered with the Registration Office.

Moreover, if the foreign company carries on business in Mozambique (without having incorporated a Mozambican subsidiary or established a branch), for a period of more than 180 days, the Mozambican tax authorities may consider that the foreign company has a permanent establishment in Mozambique and it shall be subject to taxation as if it was a resident entity.

Bearing in mind the above, it is advisable that a foreign company, intending to develop business activities in Mozambique, either incorporates a Mozambican subsidiary, governed by the laws of Mozambique, or establishes a branch that will develop and conduct the business of the foreign company in Mozambique.

It is recommended to incorporate a subsidiary in order to limit the liability for the subsidiary's debts to the assets of such subsidiary since, in case of a branch, the parent company will be fully liable for the debts resulting from the activity of the branch, which has no legal personality under the Mozambican legal system.

There are two main forms of companies in Mozambique: company limited by quotas (LDA) and company limited by shares (SA). The LDA is the simplest and most commonly used form of limited liability company in Mozambique, while the SA has a more sophisticated corporate governance structure than the LDA and is typically used in connection with large-scale projects.

In terms of procedures, a company incorporation procedure starts with the submission of a name reservation application, followed by the issuance of a name reservation certificate, opening of a bank account to deposit the company's share capital, signature before a public notary of the deed of incorporation, publication of the articles of association at the official gazette and application for commercial registration in the government's official gazette. This process takes on average one month.

ii Capital, labour and content restrictions

Mozambique Exchange Control Policies

A company is generally required to comply with the procedures and formalities relating to foreign exchange transactions that are or may come to be in force in the Republic of Mozambique. The Exchange Control Law provides under Article 28(f) of Law 11/2009 of 11 March 2010, which in any concession contract, the concessionaires and subcontractors shall be considered special cases, and that the decree that approves this contract shall be considered special legislation. Subject to the minimal restrictions indicated, the company is generally permitted:

- a* to open, keep and operate one or more accounts denominated in Mozambican currency with any bank in the Republic of Mozambique and to dispose freely of the sums deposited therein without restriction;
- b* to open, keep and operate one or more foreign currency accounts with any bank in the Republic of Mozambique authorised for the purpose by the Bank of Mozambique in order to freely import and deposit into such account funds required for the conduct of petroleum operations; to convert to Mozambican

- currency the foreign convertible currencies accepted by banks in the Republic of Mozambique at rates of exchange quoted by commercial banks operating in the Republic of Mozambique;
- c* upon request addressed to the Bank of Mozambique and in accordance with the procedures in force that grant the company the right to a special authorisation, to open and operate bank accounts with banks abroad that are correspondents of licensed banks in Mozambique, for purposes of depositing the proceeds of sale, other funds from any other lawful source and payments made abroad under the EPCC;
 - d* (in addition and without prejudice to the flat tax due) to freely declare and pay dividends to its shareholders and to transfer them abroad in the terms of the foreign exchange regulations in force; and
 - e* (subject to approval by the Bank of Mozambique and in the terms of the legislation in force) to contract external loans, pay interest, capital and other expenses.

The generally permissible exchange control regime applicable in Mozambique is nonetheless subject to a number of obligations incumbent upon a company. These include:

- a* the obligation to report periodically on the banking transactions involving the accounts referred to above. A company is also obligated to inform its banker to provide the Bank of Mozambique with quarterly copies of extracts of such accounts, whereby the Bank of Mozambique has also the right to order audits on such accounts. Moreover, a company is also required to waive its rights to banking secrecy for the benefit of the Bank of Mozambique in relation to the accounts mentioned above so as to facilitate such audits; and
- b* the obligation to submit to the Bank of Mozambique a summary of all currency received, imported, remitted and maintained in accounts abroad during the relevant reporting period, within 30 days from the end of each quarter.

Employment of foreign citizens in the petroleum and mining industry in Mozambique

The new Petroleum Law introduces a new requirement in respect of the hiring of a work force for petroleum exploitation companies, which shall be published in newspapers with wider readership in the country, or through radio, television and the internet, indicating the place of application, conditions required and publication of results. This requirement does not seem to apply to subcontractors.

Decree 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:

- a* 5 per cent of the total number of employees, in large enterprises (an enterprise employing more than 100 employees);

- b* 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
- c* 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) that contemplate the employment of foreign citizens in a smaller or greater 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 short-term work, which is considered to be work performed by a foreign citizen that does not exceed 180 days per year, followed or interrupted. This short-term work does not require any work authorisation, it only being 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, reason for their hiring and activities that will be performed, dates when the employee will be in the country, etc.

iii Anti-corruption

Law 6/2004 of 17 June, which introduces complementary mechanisms to fight corruption, provides that within all contracts in which the state, municipalities or other public bodies are parties, it is mandatory to include an anti-corruption clause through which the parties commit to avoid offering, directly or indirectly, advantages to third parties, and not request, promise or accept offers with the purpose of obtaining a more favourable judgment on the services to be provided.

If the contract does not include the above-mentioned clause, it will be deemed null and ineffective.

Moreover, the Mozambican parliament approved on 11 May 2012 a law on ethics and conflicts of interest, presented as the Public Probity Law. This law establishes the basis and the legal regime related to public morality and respect for public assets, by public servants.

This law is applicable to all public servants, as well as to private entities circumstantially vested with public powers. A public servant is defined as a person who carries out a mandate, assignment, job or tasks in a public entity, in virtue of election, appointment, hiring or any other form of relationship, regardless of being temporary or without remuneration.

iv Forms of investment

The new Petroleum Law now expressly regulates the forms under which direct investment in petroleum activities shall take place. This is a new provision in the petroleum-specific

legislation. Similar provisions already existed in Mozambican laws relating to foreign investment but were not applicable to investments in the petroleum and gas industries. In particular, the new Petroleum Law foresees that the investment by the state can be made through the appreciation of existing resources and also through other forms of investment that shall be defined by the government.

VIII CURRENT DEVELOPMENTS

i New Petroleum Law

The Mozambican parliament approved the new Petroleum Law on 14 August 2014 and it entered into force on the date of its publication in the government's official gazette (i.e., 18 August 2014) having expressly repealed the old Petroleum Law.

The main objectives of the new Petroleum Law are as follows:

- a* The need to convert matters related with the policies and objectives of the Mozambican government, included in concession contracts, in rights and obligations regulated by law and ensure that the scope of the law covers all stages of petroleum operations, in accordance with the applicable principles of Public International Law;
- b* The need to follow up the development of legal and fiscal regimes worldwide and to follow the principles of social and economic policies, notably protection of national interest, promotion of local development, protection of environment and the rational use of petroleum resources;
- d* The need to have a more transparent and predictable legal framework for the petroleum industry and make Mozambique an attractive destination for investments in the petroleum industry; and
- d* The need to include in the legal framework certain branches of the petroleum industry (LNG), as well as certain resources (methane gas present in coal layers), avoiding the approval of contracts for these resources outside the procedures established in the relevant legislation.

The new Petroleum Law expressly provides that the rights arising under concession agreements entered under the old Petroleum Law are qualified as 'acquired rights' and as such shall remain valid and unaffected by the new Petroleum Law, and it also expressly provides that the government shall issue the regulations for the new Petroleum Law within 60 days of its publication. Until such time as new regulations are issued, we are of the opinion that the Petroleum Operations Regulations remain in force in all matters that do not contradict the new Petroleum Law.

In terms of most relevant novelties of the new Petroleum Law, in addition to those already advanced throughout the article above, we would like to highlight the following:

- a* Unlike in the old Petroleum Law, the scope of application of the new Petroleum Law expressly extends to infrastructures owned by concessionaires or third parties that are used in petroleum operations, including moveable infrastructures with foreign flags used in petroleum operations. As was the case under the old Petroleum Law, the new Petroleum Law expressly excludes refining activities, industrial utilisation, distribution and retail sale of petroleum products.

- b* The new Petroleum Law now provides that the government must promote the involvement in oil and gas ventures of the Mozambican business community. Furthermore, it also provides that oil and gas companies are registered in the Mozambican Stock Exchange. It is unclear if this provision has a wider reach and how it will be implemented. Consultation with the Mozambican authorities would be advisable in order to obtain further guidance on the scope of application of this provision.
- c* The old Petroleum Law provided generally that preference should be given to the purchase of goods and services from Mozambican individuals or entities. Such requirement continues to exist in the new Petroleum Law. However, the new Petroleum Law further specifies the terms in which such preference should be given. In particular, the preference requirement shall apply if the prices offered by Mozambican individuals or entities do not exceed in 10 per cent the prices for the import of the relevant goods and services. It should be noted that the Petroleum Operations Regulations contained a similar provision but that such provision related only to purchases by the operator. Under the new Petroleum Law, the relevant provision applies to holders of rights to conduct petroleum operations (i.e., the concessionaires). In addition to what was already provided, the new Petroleum Law now requires:
- that goods or services which value exceeds an amount to be determined must be purchased following a public tender; presumably, the relevant amount shall be the subject of regulation by the government;
 - that the making of a public tenders be published in widely read newspapers and on the concessionaires' web pages; and
 - that foreign suppliers associate themselves with Mozambican persons; however, the terms and conditions in which they shall associate in order to fulfil this requirement remain unclear.
- d* Unlike in the old Petroleum Law, it is now expressly foreseen in the new Petroleum Law that investors in onshore petroleum undertakings must pay for the costs of the resettlement of affected populations, in a way that ensures they enjoy good and also improved life conditions.
- e* The new Petroleum Law now expressly provides for the protection of investments. This is a new provision in the petroleum specific legislation. Similar provisions already existed in Mozambican laws relating to foreign investment but were not applicable to investments in the petroleum and gas industries.
- f* Unlike in the old Petroleum Law, under the new Petroleum Law it is now expressly required that the operators provide a performance bond. The terms of such performance bond shall be the subject to regulation by the government.
- g* Under the new Petroleum Law it is now expressly provided that petroleum exploitation companies are required to publish their results, the amounts paid to the state, as well as the costs incurred for corporate and social responsibility subject to supervision.
- h* Unlike in the OPL, the third-party access provisions of the new Petroleum Law now entail:
- that access must be given not only to pipelines but also to other infrastructure;

- that expansion of capacity for the purpose of granting third-party access shall only be mandatory if the relevant third party is able to demonstrate the need for such expansion, evidenced by appropriate evidence of reserves in accordance with good petroleum industry practices; and
 - that instead of by way of arbitration or court rulings, any disputes shall be settled by an independent regulator specifically created by way of regulations by the government for this purpose; presumably the decisions of this regulator shall then be capable of being disputed but in the absence of the relevant regulations, it is too early to ascertain whether disputes over the regulator's decisions may themselves be settled by way of arbitration.
- i* Operators may now arguably be held liable for any damages caused to infrastructure, the environment, territorial waters or public health as a result of petroleum operations which they carry out, regardless of whether they acted lawfully or unlawfully, or with negligence or wilful misconduct.

ii LNG project

A project for the construction of LNG facilities in the northern Mozambican province of Cabo Delgado is currently being discussed, which, if implemented, in principle will allow the first exports of LNG to take place in 2018. The LNG project will require an investment of between US\$25 billion and US\$30 billion, which represents by far the largest investment made in Mozambique. It is expected that the onshore processing units of the LNG project will produce between 3,000 and 5,000 barrels of LNG per day, during the projected 30-year life span of the project.

The US company Anadarko heads the consortium that has discovered large quantities of gas in Area 1 of the Rovuma Basin, off the Cabo Delgado coast. Similar discoveries have been made in the adjacent Area 4 by a consortium headed by the Italian energy company ENI. Anadarko and ENI are working together to develop the processing facilities, and eventually to export the gas. The main markets are expected to be Japan and other consumers in the Far East.

Production wells must be drilled, and pipelines laid on the seabed to carry the gas to land. In addition to the treatment and liquefaction plant, a port must be built for use by the cryogenic vessels that will move the LNG to the export markets. An airport and housing for the workforce are also among the infrastructures that are to be built.

The Anadarko/ENI plans will turn Mozambique into one of the world's main producers of LNG. The 30-year life span of the project is said to be a conservative estimate, and the discovery of further reserves could extend it.

The Mozambican parliament very recently approved the Enabling Law with respect to the Special Regime regarding the LNG Projects of Blocks 1 and 4 of the Rovuma Basin, which authorises the Mozambican government to establish a special legal regime for the concessionaires operating within the Blocks 1 and 4 of the Rovuma Basin.

Unfortunately this legislation has not yet been published at the government's official gazette and is not yet in force and, as such, we are not in conditions to provide further and accurate information as we have not yet had access to its approved and yet to be published version.

However, it is expected that by the end of 2014, the Mozambican government will approve a decree-law establishing a special legal regime for the concessionaires operating within Blocks 1 and 4 of the Rovuma Basin.

iii Blocks auction

Mozambique is set to launch anytime soon its fifth oil and gas bidding round, which will mostly consist of offshore blocks, according to the announcement of government officials. It appears the government is waiting for the parliament to approve the new Petroleum Law.

Appendix 1

ABOUT THE AUTHORS

PEDRO COUTO

CGA – Couto, Graça & Associados

With 18 years of experience providing legal and regulatory advice to private companies, government agencies and state-owned corporations throughout Mozambique, Pedro Couto is involved in initiatives such as BOT, BOOT, corporate restructuring, foreign investment, project financing, privatisation, and public tenders in areas of transport, mining, aviation, energy, oil and gas, port, rail and commercial infrastructure. He has a solid understanding of financial, exchange control and tax legislation in Mozambique and has worked both at the municipal and national levels providing input into legislations and regulatory frameworks.

He has further worked for several governmental agencies, including: the Ministry of Environmental Affairs assisting with the establishment of toxic waste sites; the Ministry of Tourism for the preparation of the concession tender process of the National Park of Limpopo; the National Roads Administration in its major public works contracts.

In the private sector, Pedro Couto has been involved in the negotiations of several PPPs, namely with the concession of the Port of Maputo; the Concession of the Railway and the Port of the Nacala Corridor; Concession for the Ressano Garcia Power Project.

JORGE GRAÇA

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Jorge Graça has 37 years of experience in the law in Mozambique. He started his career as a legal adviser to the government of Mozambique, where he held positions such as national director of public service organisations, secretary of the council of ministers; adviser to the President of the Republic in government and local government matters; deputy director of the local government elections office; and inspector to public administrations. He was also a member of the Assembly of the Republic. In 1996 he founded the firm and since then has been advising on matters such as public and private corporate legal

matters; concessions, PPP, project finance and relevant contracts; legal due diligences to companies and public institutions in various sectors; business licensing of companies in various sectors; incorporation, mergers and acquisitions and conversions of companies; foreign investment applications; international and national funding agreements and related securities; legalisation of corporations assets; legal matters at the Assembly of Republic, review of law projects and its elaboration; public sector reform strategies and its legal instruments; and public regulation and procurement.

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Paulo Ferreira has six years of litigation experience in civil, commercial, labour, administrative and arbitration fields. He joined the energy, natural resources and infrastructure department in June 2011 and has been active in the areas of oil and gas, energy, infrastructures, mines and natural resources.

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Márcio Paulo has six years of experience in the corporate and banking practice. He joined the energy, natural resources and infrastructure department in December 2011 and has been active in the areas of oil and gas, energy, infrastructures, mines and natural resources.

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Gisela Graça has some years of experience in civil, commercial, labour, administrative matters, and academic research. She joined the energy, natural resources and infrastructure practice in August 2013 and has been advising in the areas of infrastructures, energy, mining and natural resources.

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