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# THE OIL AND GAS LAW REVIEW

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THIRD EDITION

EDITOR  
CHRISTOPHER B STRONG

LAW BUSINESS RESEARCH

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This article was first published in The Oil and Gas Law Review - Edition 3  
(published in November 2015 – editor Christopher B Strong)

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Third Edition

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LAW BUSINESS RESEARCH LTD

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Published in the United Kingdom  
by Law Business Research Ltd, London  
87 Lancaster Road, London, W11 1QQ, UK  
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ISBN 978-1-909830-76-9

Printed in Great Britain by  
Encompass Print Solutions, Derbyshire  
Tel: 0844 2480 112

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# ACKNOWLEDGEMENTS

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The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

AB & DAVID

CGA – COUTO, GRAÇA & ASSOCIADOS

CMS

CROWLEY FLECK PLLP

CUATRECASAS, GONÇALVES PEREIRA

GORRISSEN FEDERSPIEL

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# EDITOR'S PREFACE

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What a difference a year makes.

When the second edition of *The Oil and Gas Law Review* went to press last year, oil prices were nearly US\$100 per barrel, service contractors' order books were full, and the North American shale boom was in full swing. Fast forward 12 months and the oil and gas world is vastly different. Oil companies are slashing capital expenditures and cancelling projects, contractors are laying down rigs and laying off staff, production from North American unconventional fields has dropped, and producing countries are struggling to plug budget deficits caused by the sharp decline in petroleum revenues.

A war of attrition has set in. The wealthy Gulf oil producers, led by Saudi Arabia, seem determined to defend their markets against upstart North American producers. While the Saudis, Kuwaitis, Emiratis and Qataris have the resource base and financial reserves to sustain a prolonged price war, other less-wealthy producing countries such as Iraq, Algeria and Venezuela are under severe pressure.

And even the Saudis cannot hold out forever; from September of 2014 through August of 2015 their foreign reserves declined 11.5 per cent from US\$740 billion to US\$654.5 billion as they withdrew from their savings to plug their budget gap, and it has been rumoured the government is even mulling cuts to its generous benefit programmes if low oil prices continue. And while the North American shale producers have proven to be more resilient than many expected, improving the efficiency of their operations, wringing cost reductions from suppliers, and shifting production to lower cost and more lucrative fields, doubts persist about whether many of them can remain profitable with prices at less than US\$60 per barrel. With borrowing bases under reserve-based lending facilities resetting during October 2015, a shakeout of some kind seems inevitable.

Meanwhile, the super-majors have hunkered down by reducing costs, cancelling or deferring investment projects (witness Shell's recent cancellation of its Arctic drilling programme which it had spent several years and nearly US\$7 billion pursuing), and bringing an ever sharper focus on cost control and capital allocation.

While previous editions of *The Oil and Gas Law Review* highlighted new jurisdictions opening up for investment and efforts by producing countries to tighten

fiscal terms to capture a greater portion of the benefit from high prices, I suspect that legal developments in the oil and gas sector over the next few years will reflect a different reality as producers struggle to cope with lower prices and a reluctance by international oil companies to commit to substantial investment projects. After having come to expect that high prices were here to stay, producing jurisdictions may be forced to up their games and compete for a much more limited pool of investment capital, and frontier jurisdictions such as Mozambique and Tanzania which just a year ago seemed on the brink of transformational development owing to recent major offshore gas finds may be forced to defer their dreams of petroleum-fuelled prosperity.

I would like to thank our contributing authors for their efforts in helping put together another outstanding edition of *The Oil and Gas Law Review*, and hope that our readers will find this edition to be a useful resource as they navigate the ever-changing landscape of international oil and gas law.

**Christopher B Strong**

Vinson & Elkins LLP

November 2015

## Chapter 17

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# MOZAMBIQUE

*Pedro Couto, Jorge Graça, Paulo Ferreira, Márcio Paulo and Gisela Graça<sup>1</sup>*

### 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 300,000km<sup>2</sup>, has a density of around one well per 8,000km<sup>2</sup> onshore and one well per 17,000km<sup>2</sup> offshore, while the Rovuma Basin, which is 60,000km<sup>2</sup>, has a density of one well per 17,000km<sup>2</sup> onshore and none offshore.

In 2012, Mozambique emerged as a new giant in natural gas with the discoveries of more than 100 trillion cubic feet in the Areas 1 and 4 of the offshore Rovuma Basin.

The main players in the Areas 1 and 4 of the Rovuma Basin include, among others, Anadarko, ENI, Petronas, Wentworth, Mitsui, Galp Energia, PTTEP, Bharat Petroleum, Videocon and Kogas. Control of the country's upstream oil industry rests with the state-owned 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.

Furthermore, in 2004 Sasol Petroleum International acquired the rights to explore gas in Pande-Temane, southern Mozambique.

The project includes a pipeline which runs from the gas fields in Pande-Temane to the Secunda plant in South Africa. The gas fields presently produce 147 million gigajoules of natural gas/year, with only 3 million gigajoules being consumed by Mozambique.

---

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.

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. Anadarko, ENI and their respective partners hope to make a final investment decision by the end of 2015 on whether to proceed with the construction of the LNG facility. 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 (there have been reports of negotiations of long-term sales and purchase agreements with Anadarko/ENI and multiple customers in Asian markets), the government of Mozambique is also concerned with supplying the 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. 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).

## 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 decree-laws).

### 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 21/2014 of 18 of August, which approves the new Petroleum Law and repeals Law 3/2001 of 21 February (the old Petroleum Law);
- c* Decree 24/2004 of 20 August, which approves the Petroleum Law Regulations (the new Petroleum Law expressly provides that the government shall issue the regulations for the Petroleum Law within 60 days of its publication, however more than a year has passed and to date there are no regulations. As a consequence, it is our understanding that the Petroleum Law Regulations presently in force remains in force in all matters that do not contradict with the new Petroleum Law);
- d* Decree-Law 2/2014 of 2 December, which establishes a special legal and contractual regime applicable to the LNG Project of Areas 1 and 4 of the Rovuma Basin;
- e* Law 27/2014 of 23 September, which establishes the Specific Regime of Taxation and Fiscal Benefits for Petroleum Operations;
- f* Decree 56/2010 of 22 of November, which approves the Environmental Regulation for Petroleum Operations;

- g* 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;
- b* Ministerial Diploma 272/2009 of 30 December, which approves the Regulations on the Licensing of Petroleum Installations and Activities;
- i* Law 15/2011 of 10 August, which establishes the legal framework of public-private partnerships, large-scale projects and business concessions; and
- j* Decree 16/2012 of 4 June, which approves the Regulation of the Law of Public-Private Partnerships, Large-Scale Projects and Business Concessions.

The most important legislation is the new Petroleum Law, which was approved by the Mozambican parliament on 14 August 2014 and entered into force on the date of its publication in the government's Official Gazette (i.e., 18 August 2014).

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 chapter 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 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 and Energy 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 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. These questions will hopefully be answered upon the entry into force of the much expected regulations on the Petroleum Law.

### iii Treaties

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 prospecting and production concession.
- b* Prospecting and production concession contract – while under the old Petroleum Law prospecting 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 Law 27/2014, of 23 September, which establishes the Specific Regime of Taxation and Fiscal Benefits for Petroleum Operations and repeals Law 12/2007 of 27 June.

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 Land, Environment and Rural Development (MITADER), 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, MITADER 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 of 22 November.

## **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 were 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 in 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, on 11 May 2012 the Mozambican parliament approved 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 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 2020. 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.

As mentioned above, the concessionaires of Areas 1 and 4, respectively, of the Rovuma Basin expect to make a final investment decision by the end of 2015 on whether to proceed with the construction of the LNG facility.

To facilitate the implementation of this project, the government of Mozambique approved the Decree-Law 2/2014 of 2 December, which was passed to establish a special legal and contractual regime to be applied to any project developed in Areas 1 and 4 of

the Rovuma Basin, including the exploration, extraction and production of natural gas and associated LNG liquefaction activities (each a Rovuma Basin Project).

**ii Blocks auction**

Mozambique launched on 23 October 2014 its fifth oil and gas bidding round, with a total of 15 blocks comprising the offshore Rovuma, offshore Angoche, offshore Zambezi and onshore Pande-Temane and onshore Palmeira areas (the area on offer covered approximately 74,402km<sup>2</sup>).

At a public meeting at INP offices at 12 noon on 30 July 2015, INP announced the closure of the Mozambique fifth licensing round and anticipates that it will announce the results by the end of September 2015.

## Appendix 1

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# 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 legislation 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, and 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, infrastructure, 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 infrastructure, energy, mining and natural resources.

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