

Oil Regulation

Contributing editor
Bob Palmer



2017

GETTING THE
DEAL THROUGH

GETTING THE
DEAL THROUGH 

Oil Regulation 2017

Contributing editor

Bob Palmer

CMS Cameron McKenna Nabarro Olswang LLP

Publisher
Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Senior business development managers
Alan Lee
alan.lee@gettingthedealthrough.com

Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com



Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

© Law Business Research Ltd 2017
No photocopying without a CLA licence.
First published 2003
Fourteenth edition
ISSN 1742-4100

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified in June 2017. Be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

| | | | |
|--|------------|---|------------|
| Angola | 5 | Malaysia | 109 |
| Tiago Machado Graça CMS Rui Pena & Arnaut | | Christopher Lee and Loy Ee Lin Christopher & Lee Ong | |
| Filipa Tavares Lima FTL Advogados | | | |
| Argentina | 12 | Mexico | 118 |
| Hugo C Martelli and Florencia Hardoy Martelli Abogados | | Juan Carlos Serra Campillo and Jorge Eduardo Escobedo Montaña Basham, Ringe y Correa SC | |
| Brazil | 19 | Morocco | 125 |
| Giovani Loss and Felipe Feres Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados | | Marc Veuillot CMS Bureau Francis Lefebvre Maroc | |
| Croatia | 30 | Mozambique | 132 |
| Miran Maćešić, Ivana Manovelo and Anja Grbeš Maćešić & Partners | | Tiago Machado Graça CMS Rui Pena & Arnaut | |
| Denmark | 37 | Francisco Avillez, Oldivanda Bacar and Bergentino Américo ABCC Advogados | |
| Per Hemmer, Johan Weihe and Rania Kassis Bech-Bruun | | Myanmar | 139 |
| Egypt | 45 | Khin Cho Kyi and Thaw Dar Sein Myanmar Legal Services Limited | |
| Girgis Abd El-Shahid and Donia El-Mazghouny Shahid Law Firm | | Nigeria | 145 |
| Faroe Islands | 51 | Soji Awogbade, Ishaya Amaza and Otasowie Izekeor ÆLEX | |
| Per Hemmer, Johan Weihe and Rania Kassis Bech-Bruun | | Norway | 153 |
| Ghana | 58 | Yngve Bustnesli Kvale Advokatfirma DA | |
| Kimathi Kuenyehia Sr, Sarpong Odame and Akua Serwaa Asomani-Adem Kimathi & Partners, Corporate Attorneys | | Portugal | 162 |
| Greenland | 67 | Rui Pena and Mónica Carneiro Pacheco CMS Rui Pena & Arnaut | |
| Per Hemmer, Johan Weihe and Rania Kassis Bech-Bruun | | Tanzania | 172 |
| Iran | 76 | Saidi Othman Yakubu and Timothy Kyepa Yakubu and Associates Chamber | |
| Bob Palmer and Amir Kordvani CMS Cameron McKenna Nabarro Olswang LLP | | Thailand | 177 |
| Iraq | 85 | Albert T Chandler and Christopher C Kalis Chandler MHM Limited | |
| Matthew Culver and Blair Jones CMS Cameron McKenna Nabarro Olswang LLP | | United Kingdom | 184 |
| Italy | 95 | Bob Palmer CMS Cameron McKenna Nabarro Olswang LLP | |
| Pietro Cavasola and Matteo Ciminelli CMS Adonnino Ascoli & Cavasola Scamoni | | United States | 195 |
| Japan | 104 | Robert A James and Stella Pulman Pillsbury Winthrop Shaw Pittman LLP | |
| Kentaro Kubo TMI Associates | | Venezuela | 207 |
| | | Miguel Rivero and José Alberto Ramírez Hoet Pelaez Castillo & Duque | |

Mozambique

Tiago Machado Graça CMS Rui Pena & Arnaut

Francisco Avillez, Oldivanda Bacar and Bergentino Américo* ABCC Advogados

General

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

According to the Strategic Plan for the Concession of Areas for Petroleum Operations published on 8 June 2009, the sedimentary basins in Mozambique have areas with great potential for the presence of oil. The Mozambique basin, which is 300,000km², has a density of around one well per 8,000km² onshore and one well per 17,000km² offshore, while the Rovuma basin, which is 60,000km², has a density of one well per 17,000km² onshore and none offshore. According to the Petroleum Law, all petroleum resources located in the soil, subsoil, inland waters, territorial sea, continental shelf and in the exclusive economic zone are property of the state. The state controls the prospecting, exploration, production, transport, commercialisation, refining and transformation of liquid and gas hydrocarbons and their derivatives, including petrochemicals and liquid natural gas (LNG) and gas for liquids (GFL) activities.

Control of the country's upstream oil industry rests with the parastatal upstream oil company, Empresa Nacional de Hidrocarbonetos EP (ENH) (the National Hydrocarbon Corporation), which has exclusive rights to explore for and develop petroleum in Mozambique, and is permitted to exercise these rights in association with foreign investors. ENH is responsible for participating in all petroleum operations and the respective stages of the activities, from prospecting, exploration, production, refining, transport, storing and commercialisation of oil and gas and their derivatives, including LNG and GFL inside the country or abroad, and is also responsible for managing the oil and gas quotas destined for the development of the national market and the country's industrialisation. The Petroleum Law expressly states that any investor interested in the exploration of petroleum resources in Mozambique shall enter into a partnership with ENH. The Petroleum Law also provides that the state shall ensure that not less than 25 per cent of petroleum produced in the country be allocated to the national market.

Overall the rights to explore and produce are granted following a public tender promoted by the state. The main players operating in the upstream industry in Mozambique include, inter alia: the Norwegian company Statoil; the Malaysian company Petronas; the South Africa-based company Sasol Petroleum International; the American companies Anadarko and Exxon Mobile; the Italian multinational ENI; the Japanese company Mitsui; the Portuguese energy company Galp; PTTEP from Thailand; the Indian energy companies BPRL and Videocon; China National Petroleum Corporation; and South Korea's KOGAS. Most of these have participating interests in the prolific Rovuma basin. The downstream oil industry relies on imports, mostly from South Africa. Distribution and marketing of fuel products and lubricants is carried out by the state-owned oil company Petromoc. Other companies operating downstream include BP, Galp, Total and Engen.

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

The country's energy needs are covered 35 per cent by oil and 65 per cent from other sources. There is no production yet, therefore Mozambique imports around US\$560 million a year of crude oil.

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

The government has given the oil sector special treatment, new legislation has been implemented and there has been a new policy towards oil and gas production blocks.

4 Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

There is an official register kept by the National Petroleum Institute (INP). It is not electronic (although the intention is to have the data available on the INP website). Currently access must be requested through an application addressed to the INP, which is usually replied to within 15 days. Regarding oilfield ownership or operatorship, there is no official register at present. On the INP website, however, it is possible to find some information (not updated and non-exhaustive). This access is free of charge.

5 Describe the general legal system in your country.

Mozambique is a civil law jurisdiction relying on the Portuguese/Roman civil law tradition. The legal framework consists mainly of the Constitution (first from 1975 and later modified in 1990 and 2004), the Civil Code (which is the Portuguese Civil Code of 1966 incorporated by the Constitution of 1975 with some up-to-date alterations), the Penal Code (with a last substantial review in 2014), the Commercial Code (with a last substantial review in 2005) and several single laws.

The court system comprises the judicial jurisdiction (Supreme Court, provincial courts and district courts), the administrative jurisdiction (Administrative Court, provincial administrative courts) and the constitutional jurisdiction (Constitutional Council). The rule of law is generally upheld.

Contractual matters (when commercial) are generally referred to specialised divisions of the provincial courts, the commercial divisions, whose remit is exclusively commercial matters.

The main handicap for enforcement of contractual and property rights in Mozambique is the delay in court proceedings, which, in general, are not concluded in less than two years (for a judgment to be obtained or a decision to be enforced).

The enforcement of domestic judgments and arbitral awards is relatively less delayed, as the enforcement is requested directly from the court that made the decision (in the case of judgments) or the provincial court local to the arbitration (in the case of arbitration awards), and this latter is processed in the same way as a court judgment.

Regarding the enforcement of foreign judgments, the decision must first be confirmed by the Supreme Court under due process, before it can be submitted for enforcement to a provincial court. The role of the Supreme Court in any appeal proceeding is only to check the formal requirements of the decision and not a revision on the merits.

Regarding foreign arbitration awards, Mozambique is a signatory to the New York Convention and has made a reciprocity agreement. This means that the only awards that would be enforced in Mozambique through New York Convention proceeding are awards that have been issued in countries that are also parties to the New York Convention, which would therefore enforce Mozambique awards.

Mozambique is also a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) of 18 March 1965. Any arbitral award issued under the auspices of the ICSID Convention shall be treated as if it were awarded within Mozambique.

In relation to the requirements and procedures needed for the recognition and enforcement of foreign arbitration awards, the following situations must be taken into account: the award must have been issued in a country that complies with the reciprocity requirement (reserve adopted by Mozambique); and where the award is issued in a country where the reciprocity requirement is not met under the New York Convention, but was issued under ICSID, it can be enforced in accordance with the terms of the ICSID Convention.

Where the reciprocity requirement under the New York Convention is not met and the award was not issued under ICSID, then the procedure for confirmation of arbitral awards shall apply. This would fall under the regime of confirmation of foreign judicial decisions under the Civil Procedure code, as provided in article 1097 of the Civil Procedure Code. The provisions set in this code for the court decisions are applicable, *mutatis mutandis*, to arbitration awards.

Regarding the anti-corruption and anti-bribery regime, a Public Probity Law is currently in force in Mozambique governing the acts of anyone working for a public institution or for a private one with public powers. Under this law, an Ethical Commission was constituted in order to monitor and advise on all situations relating to violations of this law by the persons bound by it. Public servants are forbidden from receiving any gifts from the public and any contract with a public entity must include a mandatory anti-corruption provision.

Regulation overview

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

The principal legal framework for oil and gas activities is as follows:

- Law No. 21/2014 of 18 August (Petroleum Law) (LP);
- Law No. 15/2011 of 10 August (Mega Projects Law);
- Law No. 27/2014 of 23 September (Specific Regime of Taxation and Fiscal Benefits of Petroleum Operations);
- Decree No. 34/2015 of 31 December (Petroleum Operations Regulation);
- Decree No. 16/2012 of 4 June (Regulation of the Mega Projects Law);
- Decree No. 56/2010 of 22 November (Environmental Regulation for Petroleum Operations);
- Decree No. 45/2012 of 28 November (Regulation on the importation and marketing of petroleum products);
- Decree No. 63/2011 of 7 December (Regulations for the hiring of citizens of foreign nationality in the petroleum and mining sector);
- Decree No. 32/2015 of 3 December (Regulation of the Specific Regime of Taxation and Fiscal Benefits of Petroleum Operations);
- Decree No. 2/2014 of 2 December (special legal and contractual regime applicable to the LNG project of blocks 1 and 4 of Rovuma basin);
- Decree No. 64/2009 of 2 November (National Strategy for the Development of the Market of Natural Gas in Mozambique);
- Ministerial Diploma No. 272/2009 of 30 December (approving the Regulations on the Licensing of Petroleum Installations and Facilities);
- Resolution No. 27/2009 of 8 June (National Strategy for Petroleum Operations Concessions); and
- Resolution No. 21/2014 of 18 May (Social and Business Responsibility Policy for the Extractive Industry Sector of Mineral Resources).

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

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

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

There are three key regulatory and oversight bodies: the Ministry of Mineral Resources and Energy, the INP and the High Authority for the Extractive Industry (AAIE). Separate from the regulatory and oversight bodies there is the state oil company ENH. Note that the AAIE has not yet been established, and its role is not clear as the LP simply states that the AAIE is to deal with the control of petroleum operations. It is expected that a specific regulation will clarify exactly which powers and role the AAIE will have.

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

Statistics regarding oil production, export and import are maintained by the Ministry of Mineral Resources and Energy and the INP. Although the powers and role of the AAIE are not clear, we assume that this entity will also maintain the above-mentioned statistics as controller of petroleum operations.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

Under the Constitution of Mozambique, mineral resources found in the soil and subsoil, rivers, lakes and other interior and territorial waters, in the marine bed and subsoil of the marine bed of the territorial sea, on the continental shelf and in the exclusive economic zone of the Republic of Mozambique, are the property of the state. Under the LP, petroleum resources located in the ground and subsoil, inland waters, the territorial sea, the continental shelf and the exclusive economic zone, are the property of the state. The state simply grants rights to a concessionaire to operate the oil reservoirs for a certain period of time, and does not transfer ownership to private ownership.

When the licensee is granted a mineral right all the former private and public land rights are automatically revoked, as long as the licensee is paid fair compensation. There is no distinction between surface rights and subsurface mineral rights.

Title to extracted oil transfers to the licensee, lessee or contractor only after paying all the remuneration due to the state (eg, signature bonus, royalties, taxes) and fulfilment of all the concession conditions.

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

Exploration and production can be both onshore and offshore, as long as authorised by the government, which means that the concessionaire will have to submit an exploration plan for government approval, both for onshore or offshore. However, note that there are some areas that are considered off-limits to oil exploration and production, such as those located in totally protected areas, including nature reserves and national parks. Nevertheless, a special authorisation may be issued by the government for the exercise of economic activities in these areas.

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

Under the LP the rights to explore and produce are granted to the concessionaire through a concession regime (concession contract), which grants rights of: reconnaissance; exploration and production;

construction and operation of oil or gas pipeline systems; and infrastructure construction and operation.

The rights to explore and produce are granted following a public tender promoted by the state (which includes all the relevant procedures and time frames), except for:

- areas declared available as a result of having not been granted to any concessionaire on a previous public tender;
- areas declared available as a result of expiry, waiver, revocation and abandonment;
- owing to the need to join adjacent areas to an area of the concession agreement when justified for technical and economic reasons; and
- concession agreements for infrastructure and pipeline systems, not covered by an approved exploration and production development plan.

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

The state reserves the right to participate in petroleum operations in which any legal entity is involved. In this context, the LP establishes that any investor who is interested in exploration of petroleum resources in Mozambique must enter in partnership with the state oil company ENH on a free-carry basis. Note that the LP does not define the relevant type of partnership agreement; however, in practice it is usually done through incorporation of a specific company (commercial company owned by the concessionaire and ENH) or production sharing agreement. As per the Mega Projects Law the maximum participating interest is 20 per cent in the capital of the entity that has been awarded with the concession, although the government is further entitled to negotiate a free carry of its participating interest in such entities of at least 5 per cent of the share capital at any stage of the process. There is no cost-recovery mechanism established for the carry.

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

Under the law, concessionaires are subject to petroleum production tax (royalties) corresponding to 10 per cent for crude oil and 6 per cent for natural gas. Note that rates may be reduced by 50 per cent if the production contributes to the development of local industry. This does not differ between onshore and offshore production. In addition to royalties, the concessionaire is subject to:

- signature bonus;
- income tax;
- value added tax;
- municipal tax when applicable; and
- others taxes established by law.

Under the Mega Projects Law, the government is obliged to implement any necessary measures for preventing political and legislative risks that may negatively affect the sustainability of the concession, so a legislative alteration affecting the concession (eg, an alteration to the tax regime) may entitle the concessionaire to due compensation for any loss or damage incurred. On the other hand, note that such measures can be discussed and established in the concession agreement.

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

The duration depends on the type of concession agreement. As noted in question 12, there are four types of concession agreement: reconnaissance; exploration and production; construction and operation of oil or gas pipeline systems; and infrastructure construction and operation. A reconnaissance concession agreement is executed for a maximum period of two years, is non-renewable and permits the drilling of wells to a depth of 100 metres below the surface of the seabed. An exploration and production concession agreement is divided into two periods: a maximum period of eight years for exploration operations and a maximum period of 30 years for development and production operations.

In the event of a discovery, the holder of an exploration and production right may maintain the exclusive right to complete the operations initiated within a specified area, in relation to the exploration period, for completion of the work schedule and commercial value assessment or determination and to allow petroleum development and production.

A concession agreement for the construction and operation of oil or gas pipeline systems is executed for a maximum period of 30 years. The holder of an exploration and production right may maintain, in accordance with the development plan approved by the government, the exclusive right to develop and produce oil and gas in the development production area, subject to renewal for equal or shorter periods, as it is more beneficial to the national interest. The LP is silent in relation to the duration of infrastructure construction and operation concessions, so we understand that the duration of these contracts is negotiated and fixed by agreement between the parties.

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

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

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

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

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

Mozambican or foreign legal entities that are registered in Mozambique and who demonstrate that they have the technical capability and adequate financial resources for the effective conduction of petroleum operations may be holders of the right to carry out petroleum operations. Foreign legal entities who directly or indirectly hold or control legal entities that own rights under a concession contract shall be established, registered and administered under a transparent jurisdiction.

The incorporation of a subsidiary is required, which includes the incorporation agreement (signed by the shareholders and notarised on the same day by a commissioner for oaths) or public deed of incorporation if the share capital includes immoveable assets (signed by the shareholders and signed and notarised by a notary public), registration of the incorporation agreement in the commercial register (being issued the relevant registration certificate on the same day) and publication of the incorporation agreement or articles of association in the Official Gazette (the relevant Official Gazette with the articles of association will be available at least 15 days after publication).

The following documentation will be required: identification documents of the shareholders and their representatives; and, if the shareholders are companies, resolutions on the incorporation of the company in Mozambique. The costs of the incorporation of a company are attached to the notary fees and registration fees and also to the publication of the incorporation in the Official Gazette, and may vary according to the share capital of the company.

Applicants for rights regarding petroleum operations, in the form of a commercial company, shall, together with the application, deposit a document showing evidence of the incorporation of the company, including the identification of the shareholders and the value of their participation. Mozambican legal entities as well as foreign legal entities that associate with Mozambican legal entities shall have a pre-emption right in the granting of concession contracts. Technical capability and adequate financial resources for the effective conduction of petroleum operations are additional relevant criteria.

19 What is the legal regime for joint ventures?

There is no legal concept of joint ventures in Mozambique. However, the law foresees the concept of a consortium of companies, according

to which two or more persons or companies engaged in economic activities are bound to each other jointly to undertake a certain activity of common interest. The law permits certain arrangements, commonly in the form of production sharing agreements between the government, licence holders and oil companies, to undertake exploratory and production works.

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

A petroleum deposit that is located partly in a contract area and partly in another contract area shall be developed and operated jointly or in a coordinated manner pursuant to an unitisation agreement, which is subject to approval by the government. If there is enough evidence that one or more of the oil deposits covered by the commercial development of a discovery extends to neighbouring exploration and production areas, rights-holders shall, within six months after the declaration of commerciality, enter into an agreement on the most rational form of development and unified production of the oil and gas deposits.

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

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

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

Yes, as a guarantee for the fulfilment of the contractual duties arising from the concession contract, an unconditional and irrevocable guarantee from the mother company is required; the concessionaire must also present a bank guarantee in an amount equivalent to the minimum work obligations. Note that the relevant law does not clarify whether the parental guarantee must be provided by the immediate parent or the ultimate parent; nevertheless, it has been understood that any parent company, irrespective of whether immediate or ultimate, always qualifies as a parent company.

Local content requirements

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

Yes, companies operating in the oil and gas industry in Mozambique are required to give preference to local products, services and capital. The law is not clear on the penalties for breach of local content requirements; the Petroleum Operations Regulations simply state that if the INP, after discussions with the concessionaire, finds out or concludes that the tender procedures have not been complied with, it may request the concessionaire to reconsider its decision on the award of the contract. The local content issues are frequently discussed in Mozambique, and usually applied; currently the government is working on and about to approve a specific regulation on local content. The Mega Projects Law states that the investment must benefit the Mozambican economy, create jobs for Mozambicans, offer opportunities for technology transfer to locals and help build local small and medium-sized enterprises. The Public Procurement Law contains nationality criteria to favour local firms, since it requires tenders to either restrict participation based on nationality or provide a preferential margin to national bidders or nationally produced goods.

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

The Petroleum Operations Regulations state that the acquisition of goods or services by petroleum operations rights-holders, equal to or more than 40 million meticaes, must be made through public tender and this must be published in the most circulated newspapers of the country and on the web page of the respective rights-holders. The concessionaire shall ensure that natural or legal foreign entities that provide services to the petroleum operations must associate with single or collective Mozambican entities that result in a substantial contribution

to the production or creation of value of goods and services that originate in Mozambique or are generated by Mozambican people. In the evaluation of tender, the quality of the services, the price, delivery date and offered guarantees must be taken into account. Petroleum operations rights-holders must give preference to local products and services when comparable, in terms of quality, to the international materials and services that are available in the time and in the quantities required and when the price, including taxes, is not over by 10 per cent of the price of the available imported goods.

25 Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

Under the Petroleum Operations Regulations, the concessionaire must implement social investment projects according to the concession contract, which means that the specific terms of programme payment obligations are discussed and fixed in the contract. Moreover, the implementation of any social investment must be in accordance with the social and business responsibility policy for the extractive industry sector of mineral resources. As a guiding principle for socioeconomic benefit, the Mega Projects Law establishes that the concession contract must contain clauses that expressly specify the socioeconomic benefits of the project (eg, benefits related to the realisation of a programme of activities or projects of social responsibility, development and social sustainability for local communities).

Transfers to third parties

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

The regulations allow a concessionaire to transfer its interest to anyone as long as the relevant consent is obtained. A consent to transfer interest in a licence concession or production sharing agreement is required from the Minister of Mineral Resources and Energy. The same applies in the case of change of control.

There are no pre-emptive rights granted to the state oil company as to petroleum operations.

27 Is government consent required for a change of operator?

The LP and its operations are silent regarding this point, but overall, we understand that any amendments to the previously approved exploration and operation plan must be communicated to the government, and its consent is required. Furthermore, note that concession contracts usually contain a clause stating that 'No change of the operator may take effect unless it has been approved in writing by the Minister of Mineral Resources and Energy'.

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

Yes. Under the Specific Regime of Taxation and Fiscal Benefits of Petroleum Operations, 32 per cent for capital gains will be charged regardless of the place where the transaction took place. The proceeds obtained from the assignment, directly or indirectly, paid or free of charge, between non-resident entities, of shares or other participating interests or rights, involving assets located in Mozambican territory, are considered to be obtained in Mozambique and hence are subject to the above tax rate.

Title to facilities and equipment

29 Who holds title to facilities and equipment used for oil exploration, development and transportation activities?

Title to facilities and equipment used for oil exploration, development and transportation activities is held by the concessionaire; however, note that the facilities and equipment used for oil exploration, development and transportation activities could be transferred to state ownership (subject to fair compensation). Facilities and equipment used for oil exploration, development and transportation activities may be re-exported from the national territory provided that it is proven that they have been rented and imported temporarily and belong to third parties.

Update and trends

The Labour Law is under review and it is expected to lead to flexibility in the labour market (including the procedure for hiring foreign employees).

Matters relating to local content and corporate social responsibility may also be more precisely regulated in the near future. An inter-ministerial group is already working on a draft for local content regulation and the final document is expected in 2017. The eventual changes will aim to improve the current situation given highly dynamic nature of the sector.

Decommissioning

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

The abandonment and decommissioning of oil and gas facilities and pipelines are governed by the LP and the Petroleum Operations Regulations, specifically by the articles 40 and 41 of the regulations. According to the Regulations on the Licensing of Petroleum Installations and Facilities a specific licence is required to proceed with the decommissioning or abandonment of petroleum facilities. A detailed decommissioning plan must be prepared by the concessionaire, in consultation with the INP, and submitted no less than two years prior to the date on which production operations are expected to cease, for the approval of the minister with authority over the petroleum industry. At the end of the period referred to above, without the concessionaire having submitted a decommissioning plan, the Minister of Mineral Resources and Energy may request an international specialist consultancy to prepare a decommissioning plan, at the concessionaire's risk and expense.

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

Before the beginning of production of petroleum or the use of infrastructure for petroleum operations, the concessionaire must open a bank account in an amount to be agreed with the INP, at a bank of its choice, approved by the Bank of Mozambique, in which it will periodically deposit funds covering the costs foreseen for decommissioning. The calculations and payments of the estimated decommissioning costs are prepared by the concessionaire and submitted to the Minister of Mineral Resources and Energy containing estimates of:

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

Transportation

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

The transportation of oil and gas is governed by the LP and the Petroleum Operations Regulations, as well as by the Regulations on the Licensing of Petroleum Installations and Facilities, which distinguish transportation by pipeline and transportation by mobile methods. The concession contract for a pipeline grants the right to build and operate pipeline systems for the transportation of crude oil or natural gas, in cases where these operations are not covered by a concession contract for exploration and production. The assignment of the right to construct and operate pipeline systems for the transportation of oil or natural gas is carried out by application addressed to the Minister of Mineral Resources and Energy. The request to carry out mobile transport activities is made through an application addressed to the President of the INP.

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

Transportation by mobile methods is carried out by entities meeting the following criteria:

- must be a legally constituted entity;
- must be a national entity with headquarters and administration in the country; and
- must contract civil liability insurance against damage to third parties and the environment, in an amount to be approved by the INP.

Cost recovery

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

Under the Specific Regime of Taxation and Fiscal Benefits of Petroleum Operations, a concessionaire recovers the costs incurred in the execution of petroleum operations by remuneration through ownership over a certain amount of oil produced. From the quantity of oil produced, the concessionaire may withdraw a portion of it to satisfy its obligation to pay the royalties and the remainder after that portion has been withdrawn is hereinafter referred to as 'available oil'. All costs incurred by the concessionaire in relation to petroleum operations are recovered from the oil available at the point of delivery defined by the government, except interest and other financial costs. In each calendar year, the total recoverable costs incurred by the concessionaire in relation to the oil operations in the area of the contract are limited to 60 per cent of the available oil. Recoverable costs exceeding the limits referred to above in a calendar year shall be transmitted for the following year or years until they are fully recovered.

Health, safety and environment

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

There is a general statutory obligation with respect to the undertaking of petroleum operations that it must be carried out in a prudent manner according to internationally accepted technical and economic practices, health and safety rules, environmental and facilities protection, and rational utilisation of petroleum resources and existing facilities. With the aim of controlling and reducing the effects of operational and accidental discharges, or of waste handling, and of emissions of pollution to the air, sea, lakes, rivers and earth, it is the duty of the operator to undertake the following actions:

- environmental impact assessments, including actions for minimising the impact on all areas affected by the petroleum operations;
- a record of the environmental aspects influenced by the petroleum operations in all the phases; and
- a system of safety agents and a commission for the working environment should exist in each facility. The operator is also obliged to prevent accidents and material damage or the threat of damage resulting from its activities and from the working of its facilities to: the personnel or goods of a third party; animals; vegetation; marine life; and the sea or air. Operators must also report the quantities of operational and accidental discharges of escapes and waste, and such information should be made known to the INP. The operator is also obliged to contract civil liability insurance for damage to the environment and for work accidents.

The government bodies responsible for this are the Ministry of Land, Environment and Rural Development and the Ministry of Labour. The Ministry of Land, Environment and Rural Development ensures compliance with all environmental and licensing requirements. The Ministry of Labour undertakes inspections to ensure health and safety measures to protect workers are in place. Environmental liability is assessed according to the seriousness of the infraction; however, there are general sanctions such as:

- warning;
- fines up to 5 million meticaïs; and
- seizure of the instruments of the offence in favour of the state.

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

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

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

Labour

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

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

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

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

C/M/S'

Law . Tax

Tiago Machado Graça

tiago.graca@cms-rpa.com

Rua Sousa Martins 10
1050-218 Lisbon
Portugal

Tel: +351 21 095 81 00
Fax: +351 21 095 81 55
www.cms.law

ABCC |  **ALN**
AVILLEZ BACAR CENTEIO & CAMBULE

Francisco Avillez
Oldivanda Bacar
Bergentino Américo

favillez@abcc.co.mz
obacar@abcc.co.mz
bamerico@abcc.co.mz

Avenida Kenneth Kaunda 660
Maputo
Mozambique

Tel: +258 21 491 580/87/88
www.abcc.co.mz

Centre) that contemplate the employment of foreign citizens in a greater or smaller percentage than those foreseen above, work permits shall not be required, and it shall be sufficient for notice to be given to the Ministry of Labour within 15 days after the foreign citizen has entered Mozambique.

The law also provides for short-term work, which is considered to be work performed by a foreign citizen that does not exceed 180 days a year, continuous or interrupted. Short-term work does not require any work authorisation, it being only necessary to remit, within 15 days following the arrival of the foreign citizen in the country, a communication to the Ministry of Labour mentioning, inter alia, the identity of the employee, his or her qualifications, a reason for hiring him or her, the activities that will be performed and dates when he or she will be in the country.

In summary, the quota regime establishes limitations for the hiring of foreign citizens in favour of the local workforce. The failure to observe this quota regime is punishable by suspension of the foreign employee and a fine equivalent to five to 10 times the monthly wage of the employee.

A mandatory training fund for the local workforce is not required.

Taxation

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

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

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

Petroleum production tax shall be charged on petroleum produced in Mozambican territory, from the development and production area. Petroleum production tax is chargeable from the moment at which the petroleum produced is extracted from a petroleum reservoir.

The petroleum production tax rates are 10 per cent for crude oil and 6 per cent for natural gas. The determination of the petroleum production tax shall be made by the holders of the right to engage in petroleum operations that produce petroleum.

Tax must be paid using a payment order form, by the taxpayer, at the directorates of the tax areas or at any other entity authorised by law, in the same period of tax determination. The government body responsible for tax collection is the Mozambique Tax Authority.

Commodity price controls

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

There is no any mandatory price-setting regime. Price-setting is negotiated theoretically for each concession agreement between the licensee and the potential buyer. The price of the crude oil or crude oil products for the international market will depend on the situation of the international market. In the domestic market also the price is not uniform, depending on the purpose of the project. In conclusion, there are no fixed prices. The price will depend on the relevant market but the government always has the prerogative to correct the price proposed by the company in a specific project.

Competition, trade and merger control

40 What government bodies have the authority to prevent or punish anticompetitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

There is no specific competition law in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products.

The current Competition Law (Law No. 10/2013 of 11 April) and its Regulations (Decree No. 97/2014 of 31 December) regulate matters related to competition under the exercise of economic activities. Under this legal framework the Competition Regulatory Authority (CRA) has the powers and competences of supervision, regulation and sanction, regulated by the Competition Law and its own CRA articles. The prohibition of anticompetitive practices and merger control is exercised by the CRA. Note that in practice the CRA has yet to come into effect.

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

According to the Competition Law Regulations, a decision of the competition bodies may be challenged before the deciding body and later before the judicial courts. However, to date, there are no functioning competition bodies in Mozambique and consequently there is no basis for determining how long this process would take.

International

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

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

Regarding foreign arbitration awards, Mozambique is a signatory to the New York Convention and has made a reciprocity agreement (see question 5). Mozambique is also a signatory to the ICSID Convention. Any arbitral award issued under the auspices of the ICSID shall be treated as if they were awarded in Mozambique. Note that under the Constitution of the Republic of Mozambique all treaties duly signed and ratified by the country are treated as domestic laws.

43 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence?

Only Mozambican or foreign legal entities that are registered in Mozambique, and who demonstrate that they have the technical capability and adequate financial resources for the effective conduction of petroleum operations, may be holders of the right to carry out petroleum operations. Foreign legal entities that directly or indirectly hold or control legal entities that own rights under a concession contract shall be established, registered and administered under a transparent jurisdiction. Applicants for rights regarding petroleum operations in the form of commercial company, shall, together with the application, deposit a document showing evidence of the incorporation of the company, including the identification of the shareholders and the value of their participation. Mozambican legal entities, as well as foreign legal entities that associate with Mozambican legal entities, shall have a pre-emption right in the granting of concession contracts.

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

There are no special rules with regard to cross-border supplies of oil products. The LP states that the government shall ensure that a quota not less than 25 per cent of the oil and gas produced in the national territory is dedicated to the national market. The terms and conditions of sale of natural gas in the domestic market, including volumes and indicative prices, shall be established by the Ministry of Mineral Resources and Energy in contracts entered into with ENH and concessionaires.

* The authors would like to thank Gil Cambule and Alvaro Duarte for their assistance with this chapter.

Getting the Deal Through

| | | |
|----------------------------------|--|-------------------------------------|
| Acquisition Finance | Equity Derivatives | Pharmaceutical Antitrust |
| Advertising & Marketing | Executive Compensation & Employee Benefits | Ports & Terminals |
| Agribusiness | Financial Services Litigation | Private Antitrust Litigation |
| Air Transport | Fintech | Private Banking & Wealth Management |
| Anti-Corruption Regulation | Foreign Investment Review | Private Client |
| Anti-Money Laundering | Franchise | Private Equity |
| Arbitration | Fund Management | Product Liability |
| Asset Recovery | Gas Regulation | Product Recall |
| Automotive | Government Investigations | Project Finance |
| Aviation Finance & Leasing | Healthcare Enforcement & Litigation | Public-Private Partnerships |
| Banking Regulation | High-Yield Debt | Public Procurement |
| Cartel Regulation | Initial Public Offerings | Real Estate |
| Class Actions | Insurance & Reinsurance | Restructuring & Insolvency |
| Commercial Contracts | Insurance Litigation | Right of Publicity |
| Construction | Intellectual Property & Antitrust | Securities Finance |
| Copyright | Investment Treaty Arbitration | Securities Litigation |
| Corporate Governance | Islamic Finance & Markets | Shareholder Activism & Engagement |
| Corporate Immigration | Labour & Employment | Ship Finance |
| Cybersecurity | Legal Privilege & Professional Secrecy | Shipbuilding |
| Data Protection & Privacy | Licensing | Shipping |
| Debt Capital Markets | Life Sciences | State Aid |
| Dispute Resolution | Loans & Secured Financing | Structured Finance & Securitisation |
| Distribution & Agency | Mediation | Tax Controversy |
| Domains & Domain Names | Merger Control | Tax on Inbound Investment |
| Dominance | Mergers & Acquisitions | Telecoms & Media |
| e-Commerce | Mining | Trade & Customs |
| Electricity Regulation | Oil Regulation | Trademarks |
| Energy Disputes | Outsourcing | Transfer Pricing |
| Enforcement of Foreign Judgments | Patents | Vertical Agreements |
| Environment & Climate Regulation | Pensions & Retirement Plans | |

Also available digitally



Online

www.gettingthedealthrough.com



Oil Regulation
ISSN 1742-4100



THE QUEEN'S AWARDS
FOR ENTERPRISE:
2012



Official Partner of the Latin American
Corporate Counsel Association



Strategic Research Sponsor of the
ABA Section of International Law