

MOZAMBIQUE LNG: THE LEGAL FRAMEWORK IS NOW COMPLETE

Exploitation of the massive Rovuma Basin gas reserves can now proceed backed by a strong and modern legal framework that offers reassurance for investors



Teresa Empis Falcão, partner, VdA Vieira de Almeida

The discovery of natural gas reserves in the Rovuma Basin since 2010, estimated at 180 trillion SCF (standard cu ft), put Mozambique on the map of potential natural gas producing countries. However, sector legislation at the time poorly catered for the operations and investments required. Indeed, the Rovuma Basin liquefied natural gas (LNG) project demanded a whole new legal framework able to regulate and boost investment in the sector so both the upstream and midstream could develop in step with industrialisation and the implementation of the required infrastructure.

After some time, the legal framework for the sector finally seems complete.

Towards a robust solution

The Petroleum Law, approved by Law 21/2014 of 18 August 2014, was well-received by the industry as a key step in the development of the natural gas sector.

It failed, however, to ensure a complete definition of the applicable legal framework for the following reasons: (i) it includes provisions which are contradictory or duplicated; (ii) it incorporates inconsistent drafting additions which ignore defined terms; (iii) it provides for political and economic considerations with no legal effects; (iv) it lacks rules regarding governmental action in terms of process and deadlines; and (v) certain of its provisions defer matters to authorities or regulations not existing at the time the law was enacted.

The Petroleum Law also determines the use of concession contracts while, when it was enacted, no standardised model for these had been approved.

Regarding the Rovuma Basin, a legal regime was created specifically applicable to the LNG project in Areas 1 and 4, aimed at addressing omissions and clarifying ambiguities arising out of the Petroleum Law, thus enabling implementation of the projects.

This special regime, approved by Decree-Law 2/2014 of 2 December 2014, governs petroleum operations and related matters such as land rights and rights over the infrastructure, foreign exchange, labour, financing

arrangements, and the rights of lenders.

Another act that shows the commitment of the government of Mozambique to harmonising the legal framework is the Regulation of Petroleum Activities, approved by Decree 34/2015 of 31 December 2015.

This is aimed at resolving doubts raised by the Petroleum Law by establishing rules for the performance of petroleum operations by means of a concession contract, ensuring operations are carried out consistently, and allowing comprehensive and co-ordinated supervision by government authorities.

The regulation also specifies procedures in environmental, safety and labour matters – a significant step towards harmonising environmental and safety rules with international standards.

To complete the legal overhaul a new model exploration and production concession contract (EPCC) was approved under Resolution 25/2016 of 3 October 2016, with a view to bringing standard industry rules and international oil and gas market practices under a single model contract.

The EPCC regime lends coherence to the sector's overhaul by transposing legislative developments in line with the provisions in the Petroleum Law.

The new model contract's innovations include: (i) the standing of the parties involved in the concession; stakeholders' association with the Empresa Nacional de Hidrocarbonetos as the sole state representative is now mandatory; priority is given to Mozambican entities – or foreign entities in association with Mozambican entities – in the award of EPCCs; (ii) concession rights and respective expiry, with a grandfather clause that protects rights in the event of approval of a new, less favourable legal regime; (iii) joint and several liability of the entities; (iv) recovery of production costs, now set at a maximum 60 per cent of recoverable costs, and other tax provisions and exemptions including a 10-year tax stability period from the day of approval; (v) transfer of participating interests, where transfers of less than 10 per cent are forbidden, with some exceptions.

From ambition to reality

So it is that Mozambique has created and consolidated a legislative framework that is modern and in line with best international practice with regard to the exploration of natural resources and environmental issues. It is also well-suited to the country's needs and its ambitious vision for the Rovuma Basin.



Avenida Engenheiro Duarte Pacheco 26 Lisbon, Portugal

Tel: +351 21 311 3400 Fax: +351 21 311 3406

E-mail: tef@vda.pt Web: www.vda.pt