



# Oil Regulation

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into oil industry issues worldwide, including commercial, policy, regulatory, licensing and legal system overview; expropriation provisions; license revocation and amendment mechanisms; state participation; royalties, taxes and tax stabilisation; joint ventures; reservoir unitisation; guarantees and security deposits; transfer to third parties; title to facilities and equipment; decommissioning and abandonment; transportation; cost recovery; health and safety; environmental; labour; tax; commodity price controls; competition; seismic data; treaty, foreign ownership and cross-border sale considerations; and recent trends.

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## GENERAL

### Key commercial aspects

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

Mozambique has become one of the fastest-growing economies in the African continent for the last two-and-a-half decades, having outperformed both regional and global growth averages, attracting substantial investment from across the globe. Its sedimentary basins have shown great potential for the occurrence of hydrocarbons, with records suggesting the first hydrocarbon discoveries dating back to 1960's. The Mozambique Basin has an area of around 500,000 km<sup>2</sup>, with a density of around one well per 9,782 km<sup>2</sup> onshore and one well per 1,950 km<sup>2</sup> offshore, while the Rovuma Basin has an area of 60,000 km<sup>2</sup>, with a density of one well per 4,250 km<sup>2</sup> onshore and one well per 641 km<sup>2</sup> offshore. No considerable exploration activities have been registered in the remaining basins.

The country potential in hydrocarbons appears to lie in natural gas rather than oil. The past two decades have been marked by the discoveries of over 100 trillion cubic feet of natural gas reserves off the coast of northern Mozambique, more specifically in two offshore areas (Area 1 and Area 4) in the Rovuma basin. The Pande and Temane onshore gas fields located in the Inhambane Province of southern region of Mozambique have also proven to be a success, including a light oil and gas processing unit project adjacent to its existing petroleum facility valued at over US\$700 million with potential to generate over 3,000 jobs by 2024.

Although the country's potential is currently geared towards natural gas, the existing reserves may indicate the occurrence of oil. With a view to ensuring the good and efficient management of the areas and the potential resources, the Strategy for the Concession of Areas for Petroleum Operations defines action plans with a view to making the process transparent and predictable, taking into account the good practices of the petroleum industry.

In 2021, the Ministry of Mineral Resources and Energy launched the Sixth Public License Round for the Concession of 16 Areas for Exploration and Production of Hydrocarbons. After a successful bidding round, the Government of Mozambique announced the bidding winners for six areas that are now invited to initiate the negotiation of the relevant Hydrocarbons Exploration and Production Concession Contracts.

*Law stated - 09 May 2023*

### Energy mix

What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

Most of the power is currently generated from hydroelectric projects, representing 82.9 per cent of the national production. According to the National Institute of Statistics of Mozambique, power generated by natural gas only covers 15.9 per cent of the country energy needs. According to the International Trade Administration, renewable energy sources are poised to have an impact in the near future, with natural gas expected to provide 44 per cent of Mozambique total energy generation in the next decade.

Mozambique is heavily reliant on petroleum derivative imports due to a lack of domestic refining capacity. In 2021, petroleum derivatives registered an increase in import levels in all products, namely LPG 41.8 per cent, Petrol 35.4 per cent, Diesel 25.2 per cent and Jet-A1 24 per cent.

*Law stated - 09 May 2023*

## Government policy

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

Mozambique has an overarching policy regarding oil-related activities primarily established under the Petroleum Law (Law 21/2014, of 18 August 2014), as amended and the Regulations of Petroleum Operations (Decree 34/2015, of 31 December 2015), as amended. Nevertheless, general energy policies have also been passed by the government with direct and indirect impact on the petroleum sector.

As a complement to the Energy Policy approved by Resolution 5/98, of 3 March 1998, the Council of Ministers approved the National Energy Strategy through Resolution 10/2009 of 4 June, which foresees a set of strategic initiatives for different energy resources, being aimed at ensuring the availability of energy at national level for sustainable socio-economic development as well as aligning Mozambique with the best internationally accepted practices in the conscientious use of energy.

*Law stated - 09 May 2023*

## Registering a licence

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

The National Petroleum Institute (INP) is responsible for maintaining, among others, the information and technical data relating to the petroleum industry activities, the national oil reserves and the information produced, as well as managing and maintaining available the technical data on the sedimentary basins of Mozambique for the assessment of prospective areas. Access may be requested through an application filled with INP. Information on active concessions and respective concessionaires/operators may be consulted free of charge under the INP website although not regularly updated.

*Law stated - 09 May 2023*

## Legal system

Describe the general legal system in your country.

Mozambique has a civil law-based legal system with an independent judicial system and bound to the fundamental principles of rule of law.

According to the Petroleum Law, any dispute arising from a concession contract that is not settled through can be either be subject to the local courts or to arbitration, in accordance with the terms and conditions agreed in the relevant concession contract (most concession contracts chose arbitration). Pursuant to the Petroleum Law, arbitration between the state of Mozambique and foreign investors shall be conducted in accordance with:

- the law that governs arbitration, conciliation and mediation as alternative methods of conflict resolution;
- the rules of the International Centre for the Settlement of Disputes between States and Nationals of Other States, adopted in Washington on 15 March 1965, or pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States;
- the rules set out in the Additional Facility adopted on 27 September 1978 by the Administrative Council of the International Centre for Settlement of Investment Disputes between States and Nationals of Other States,



whenever the foreign entity does not meet the nationality requirements provided for in article 25 of the Convention; or

- the rules of such other international instances of recognised standing as agreed by the parties in the concession contracts, provided that the parties have expressly agreed in the contract the rules for arbitration.

Mozambique is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention). Upon the accession, Mozambique declared that it would apply the Convention to the recognition and enforcement of awards made only in the territory of another contracting state on the basis of reciprocity. Therefore, only arbitral awards made in contracting states benefit from the more favourable recognition and enforcement regime provided for in the New York Convention. Awards made in non-contracting states will have to undergo a (more burdensome) judicial process of review and confirmation before they can be enforced.

Rules on anti-bribery and anti-corruption can be found in the Mozambique Criminal Code and in the Anti-Corruption Law (Law 6/2004, of 17 June 2004), as amended.

*Law stated - 09 May 2023*

## REGULATION OVERVIEW

### Legal framework for oil regulation

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

Oil and gas activities are primarily regulated by the Petroleum Law (Law 21/2014, of 18 August 2014), as amended and the Regulations of Petroleum Operations (Decree 34/2015, of 31 December 2015), as amended.

Other key legal statutes applying to the petroleum sector:

- the Special Regime for Taxation and Fiscal Benefits for Petroleum Operations (Law 27/2014, of 23 September 2014), as amended and republished;
- the Regulations on the Specific Regime for Taxation and Tax Benefits for Petroleum Operations (Decree 32/2015, of 31 December 2015);
- the Law on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions (Law 15/2011, of 10 August 2011);
- the Regulations on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions (Decree 16/2012, of 4 June 2012);
- the Regulations for the Licensing of Petroleum Infrastructures and Operations (Decree 84/2020, of 18 September 2020);
- the Environmental Regulations for Petroleum Operations (Decree 56/2010, of 22 November 2010); and
- the Regulations on the Employment of Foreign Citizens for the Petroleum and Mining Sector (Decree 63/2011, of 7 December 2011).

*Law stated - 09 May 2023*

### Expropriation of licensee interest

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

The Constitution of the Republic of Mozambique recognises the right of ownership and expressly sets forth that expropriation may only take place for reasons of public necessity, utility, or interest, as defined in the terms of the law, and subject to payment of fair compensation. The Petroleum Law also includes a provision according to which the expropriation may only take place in exceptional cases based on public interest and is subject to payment of a fair compensation.

*Law stated - 09 May 2023*

## Revocation or amendment of licences

May the government revoke or amend a licensee's interest?

The State has the right to revoke the concession contract in certain circumstances set forth by law or contract and subject to the relevant statutory and contractual formalities and procedures (set forth under the law and/or the concession contract), eg, false or inaccurate information deliberately or grossly negligently submitted in relation to any application for the award of rights under the concession contract, permit, approval of plan, which has been determinant for the granting of the petroleum rights; deviation from the purpose of the concession contract; bankruptcy of the concessionaire; substantial or repeated breach or non-compliance with applicable law or the terms and conditions of the concession contract; failure to comply with any final Administrative Court, arbitral or independent expert decision; winding up of the concessionaire, unless the winding up is for the purpose of reorganisation and the government has been notified of the amalgamation or reorganisation, or without the approval of the government the majority of the shares in the Concessionaire are acquired by third parties other than an affiliated company; abandonment of the concession area for a period exceeding 365 days.

Rules for surrender and relinquishment of areas during the Exploration Period are also established under the Regulations of Petroleum Operations and elaborated further under exploration and production concession contracts.

*Law stated - 09 May 2023*

## Regulators

Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The key regulatory bodies responsible for regulating hydrocarbon exploration and production activities are:

- the Ministry of Mineral Resources and Energy (MIREME), a government body in charge of directing and ensuring the execution of the government's policy in geological research, the exploitation of mineral and energy resources, and the development and expansion of infrastructure related to electricity, natural gas and petroleum products;
- the INP, the regulatory institution under the tutelage of MIREME, in charge of overseeing and promoting oil and gas activity (upstream); and
- the Inspectorate-General of Mineral Resources and Energy, which is responsible for monitoring and conducting inspections of petroleum activities. Although the Petroleum Law establishes that the High Authority for the Extraction Industry should supervise petroleum activities, its legal framework still lacks definition from the government.

The National Hydrocarbon Company (ENH) is the national entity responsible for the exploration, production and marketing of petroleum products, with responsibility for participating in all petroleum operations from exploration to

the production, refinery, transportation, storage and marketing of oil and gas and their derivatives, including LNG and gas to liquids both in and out of the country. ENH represents the government and participates as a stakeholder in all petroleum operations.

Without prejudice specific consequences for non-compliance established under the terms of the concession contract, breach of statutory provisions may give rise to the following pecuniary and other types of penalties established under the Regulations of Petroleum Operations:

- for non-compliance with the petroleum legislation and the terms of the concession contract, fines ranging between five million Mozambican metical and 50 million Mozambican metical; and
- for non-compliance with specific administrative orders and instructions, fines ranging between 500,000 Mozambican metical and five million Mozambican metical for each day of breach.

In addition, depending on the type and seriousness of the infraction, the follow additional penalties/measures may be applied:

- revocation of the concession contract;
- payment of indemnity for environmental damages under the applicable legislation; and
- corrective intervention (by means of orders or instructions) by the relevant authorities.

*Law stated - 09 May 2023*

## Government statistics

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

MIREME (through the respective statistical offices) is responsible for maintaining oil production, export and import statistics, in collaboration with the National Petroleum Institute.

*Law stated - 09 May 2023*

## NATURAL RESOURCES

### Title

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?

Mozambique's Constitution establishes as one of its fundamental principles – further emphasised in the Petroleum Law (Law 21/2014, of 18 August 2014) – that all mineral resources found in the soil, subsoil, interior waters, territorial water, continental shelf and economic exclusive zone are the sole property of the state. The prospecting, exploration, production, transport, marketing, refining and transformation of liquid and gaseous hydrocarbons and their derivatives, including petrochemical activities and liquefied natural gas and gas to liquids, are controlled by the state.

The concessionaire and the state individually take ownership of their relevant share of petroleum produced at the delivery point, as defined under the relevant exploration and production concession contract.

*Law stated - 09 May 2023*

## Exploration and production – general

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

The Petroleum law allows both onshore and offshore exploration and production activities, with no distinction whatsoever in terms of awarding procedures/rights.

According to the Land Law (Law 19/97, of 1 October 1997) certain areas are exclusively reserved for nature conservation and state military activities. There are other partially protected areas, namely:

- sea and river beds;
- the continental shelf;
- an area of 100 metres from the coastline or river banks, or both;
- an area of 250 metres bordering dams and man-made lakes, as well as railways and an adjacent area of 50 metres;
- highways and adjacent areas of 50 metres;
- a two- kilometre wide band along the country's borders;
- airports and an adjacent area of 100 metres; and
- military facilities and an adjacent area of 100 metres.

Although no rights may be awarded over fully or partially protected areas, specific and limited activities may be carried out subject to the issuance of special licences/authorisations.

*Law stated - 09 May 2023*

## Exploration and production – rights

How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

The petroleum operations are carried out through a concession contract following a public tender. The concession contract may also be awarded by simultaneous or direct negotiations in relation to:

- areas declared available in the case of unsuccessful bidding round;
- areas declared available following termination, relinquishment and abandonment;
- to award rights over adjacent areas to a concession due to technical and economic reasons; and
- infrastructure and pipeline construction and operation not covered by an approved exploration and production development plan.

Under the Petroleum Law, the rights to carry out petroleum operations are granted under a concession contract that may confer the following rights:

- The Reconnaissance Concession confers the non-exclusive right to carry out preliminary research and survey and appraisal work in the area of the concession contract, through aerial, terrestrial and other surveys, including geophysical, geochemical, paleontological, geological and topographic studies, allowing drilling up to a depth of 100 metres below the land surface or the seabed.

- The Exploration and Production Concession Contract (EPCC) confers an exclusive right to perform petroleum operations, as well as a non-exclusive right to construct and operate oil production and transportation infrastructure from a concession contract area, unless access to an existing oil or gas pipeline system or other infrastructure is available on acceptable commercial terms and conditions. The government approved in 2016 (Resolution 25/2016, of 3 October 2016) the Model EPCC, which sets the base for any EPCC.
- The Pipeline Construction and Operation Concession allows the concession-holder to construct and explore oil or gas pipelines for the transportation of crude oil and natural gas, should such operations not be covered under the EPCC.

The Infrastructure Construction and Operation Concession allows the concession-holder to construct and operate oil production infrastructure, such as processing and conversion facilities that are not covered by an approved appraisal and production plan.

*Law stated - 09 May 2023*

### **Government participation**

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?

Pursuant to the Petroleum Law, the state, through the National Hydrocarbon Company (ENH), reserves the right to participate in petroleum operations in which any legal entity is involved. The participation may occur in any stage of the petroleum operations on the terms and conditions established under the relevant concession contract. The EPCC usually set forth that state is to be free-carried during exploration and define the relevant terms of repayment as of the date of commencement of commercial production.

The Regulations on Public Private Partnerships, Large-Scale Projects and Enterprise Concessions (Decree 16/2012, of 4 June 2012) establish that a percentage of no less than 5 to 20 per cent must be reserved for participation of the Mozambican public and private persons.

*Law stated - 09 May 2023*

### **Royalties and tax stabilisation**

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 any tax stabilisation measures in place?

The Special Regime for Taxation and Fiscal Benefits for Petroleum Operations (Law 27/2014, of 23 September 2014), as amended, establish a Petroleum Production Tax (royalty) of 10 per cent for crude oil and 6 per cent for natural gas.

EPCCs usually provide for the payment of production bonuses and other bonuses and contributions (eg, social, education, etc) by the concessionaire.

The Special Regime for Taxation and Fiscal Benefits for Petroleum Operations offers tax stability for 10 years upon an aggregated investment of US\$100 million, which may be extended until the end of the initial term of the concession by payment of an additional 2 per cent of the petroleum production tax, as from the eleventh year of production.

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

The duration shall vary in accordance with the rights being conferred under the concession contract.

The reconnaissance rights are attributed for a maximum of period of two years, non-renewable.

The exploration and productions term is divided as follows:

- exploration period, up to a maximum of eight years, divided in sub-periods as established under the concession contract; and
- production period, up to a maximum of 30 years, counting from the date of approval of the development plan.

EPCCs may be extended by means of an application to the Ministry of Mineral Resources and Energy for: (1) up to two years, if at the end of exploration period, the concessionaire is carrying out drilling works or testing an exploration well, to allow the concessionaire to complete the ongoing works and evaluate the results; (2) up to five years, if a discovery is made during the exploration period and the concessionaire, having complied with its work programme obligations, undertakes to carry out an appraisal programme and a commercial assessment of the discovery.

Concession contract for construction and operation of oil and gas pipelines may be awarded for a maximum of 30 years as from the date of approval of the development plan. The Petroleum Law and the Regulations of Petroleum Operations are silent as to the duration of the infrastructure construction and operation concession and shall be subject to the rules of the relevant licence.

Law stated - 09 May 2023

**Extent of offshore regulation****For offshore production, how far seaward does the regulatory regime extend?**

The regulatory regime extends the offshore production to maritime waters in which the Mozambican state exercises jurisdiction, namely inland waters, territorial sea (which extends to 12 nautical miles measured from the baseline), the continental shelf and the exclusive economic zone (extending up to 200 nautical miles).

Law stated - 09 May 2023

**Onshore offshore regimes****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 rules set out under the Petroleum Law apply to all petroleum operations carried out either onshore or offshore. Petroleum is defined under the Petroleum Law as 'crude oil, natural gas or other naturally occurring of hydrocarbons, in the physical state in which they occur in the subsoil, produced or capable of being produced from or in association with crude oil, natural gas, bitumen and asphalts'.

Law stated - 09 May 2023

### Authorised E&P entities

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

There is no statutory determination on the type of local entity that the applicant should establish in Mozambique in order to carry out petroleum operations. Pursuant to the Petroleum Law, such right is only granted to national or foreign legal persons who prove to have the competence, technical capacity and adequate financial means to conduct petroleum operations. Foreign legal entities that directly or indirectly hold or control legal entities that own rights under a concession contract must be established, registered and administered under a transparent jurisdiction.

The incorporation costs of a subsidiary vary in light of the amount of the share capital and the number of pages of the by-laws (re publication costs) and the process may take between one to two months. The overall incorporation costs should be around the equivalent in Meticaís to US\$1,500 and US\$2,000. The registration of a branch should cost around the equivalent in Meticaís to US\$800 and is proven to be more time consuming, ranging from two to four months.

*Law stated - 09 May 2023*

### Regulatory powers over operators

What controls does the regulatory body have over operators? Can operatorship be revoked?

The National Petroleum Institute is responsible for regulating and supervising the activities carried out by the concessionaires and the operators as well as their compliance with the terms and obligations arising from the concession contracts.

Removal of the operator may occur under the terms and conditions set out in the relevant Joint Operating Agreement, which is enclosed to the EPCC as an Annex and subject to governmental approval.

*Law stated - 09 May 2023*

### Joint ventures

What is the legal regime for joint ventures?

There is no specific legal regime for joint ventures. Each member of the joint venture shall set-up its concessionaire (subsidiary/branch) in Mozambique to hold its participating interest in the EPCC.

*Law stated - 09 May 2023*

### Reservoir unitisation

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

According to the Petroleum Law, a petroleum deposit that is located partly in one concession area and partly in another concession area shall be developed and operated jointly or in a coordinated manner under a unitisation agreement subject to the approval of the Government. There are no express rules governing cross-border reservoirs.

*Law stated - 09 May 2023*

## Licensee liability

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

There is a strict liability principle under the Petroleum Law pursuant to which operators shall be liable for damage to infrastructure, the environment, territorial waters and public health in the managing of transportation, exploration and exploitation of oil and gas. Further rules on liability are established in the concession contract.

Where the concession contract has more than one concessionaire, the rules of joint and severable liability will apply. Without prejudice to the joint and severable liability principle and the relevant provisions of the Joint Operating Agreement, according to the Regulations of Petroleum Operations each concessionaire shall be individually liable and responsible for:

- paying corporate income tax or any other tax levied on profits or net income;
- complying with confidential matters established in the concession contract, except in relation to their application to all acts performed or to be performed by the operator in the exercise of its functions; and
- complying with foreign exchange rules, except for their application to all acts performed or to be performed by the operator in the exercise of his or her functions.

*Law stated - 09 May 2023*

## Guarantees and security deposits

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

Pursuant to the Regulations of Petroleum Operations, in order to ensure compliance with the obligations arising from the concession contract, the following guarantees must be provided by the concessionaires (for which models are usually provided under the concession contract):

- a bank guarantee equivalent to the minimum work obligations stipulated in a concession contract; and
- an unconditional and irrevocable parent company guarantee from an entity acceptable to the government in respect of the overall obligations of the concessionaire or operator of a concession contract in favour of the government, in respect of non-contractual obligations, in addition to the obligations covered by the bank guarantee indicated above. The parent company guarantee may be granted by the parent company or a subsidiary company controlled by the parent company of the respective concessionaire.

The Petroleum Law further states that the operators are required to provide a financial guarantee in terms to be regulated (not yet regulated).

*Law stated - 09 May 2023*

## LOCAL CONTENT REQUIREMENTS

### Minimum requirements

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



The Petroleum Law and Regulations of Petroleum Operations provide certain local content requirements applicable to foreign investors carrying out upstream operations. In summary:

- There is a requirement to launch tenders for the supply or provision of goods and services in an amount equal or higher than 80,000,000 Mozambican metical.
- In the acquisition of goods and services, the concessionaire/operator must guarantee that foreigners are associated with a Mozambican individual or a Mozambican legal entity. For the purposes of the Petroleum Law, the concept of 'Mozambican Individual' means an individual holding Mozambican nationality, whereas 'Mozambican Legal Entity' means (1) a legal entity incorporated and registered under the laws of Mozambique, (2) with registered office and effective management in Mozambique and (3) in which at least of 51 per cent of the share capital is held by Mozambican individuals or legal entities;
- The acquisition of goods and services by oil companies must result in a substantial contribution to the production or creation of value in Mozambique, by acquiring goods and services deriving from Mozambique or generated by Mozambican Individuals and/or Mozambican Legal Entities; and
- Preference shall be given to goods and services produced and/or available in Mozambique, provided that such goods and services are competitive in terms of quality when compared to goods and services provided by foreign contractors, and their price does not exceed the price of the relevant imported items, including tax, by more than 10 per cent.

Neither the Petroleum Law or the Regulations of Petroleum Operations determine how these requirements shall be measured in practice, nor establish specific penalties or consequences for breach of local content requirements. It is only established that in case the National Petroleum Institute concludes that the procurement procedures were breached, it may request the Operator to reconsider its award decision. Nevertheless, the Exploration and Production Concession Contract may establish certain penalties (disqualification of costs for recoverability and tax deduction purposes).

*Law stated - 09 May 2023*

## **Social programmes**

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

According to the Regulations of Petroleum Operations, the concessionaire must implement social investment projects under the terms of the concession contract. These usually contain specific obligations and requirements in relation to the social investments which the concessionaire should implement when carrying out petroleum operations. Although there is no statutory threshold for social investments, concessionaires are usually called to make payments related to minimum social commitments.

The implementation of any social investment must be in accordance with the Guide on the Implementation of the Corporate Social Responsibility Policy for the Extractive Mineral Resources Industry (Ministerial Order 8/2017, of 16 January 2017), a statute that is aimed to establish social responsibility initiatives to help promote the social, economic and environmental welfare of communities affected by petroleum and mining projects.

*Law stated - 09 May 2023*

## TRANSFERS TO THIRD PARTIES

### Approval to transfer interests

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?

According to the Petroleum Law, any direct or indirect transfer of rights and duties attributed under a concession contract both to an affiliate or a third party is subject to governmental approval (Ministry of Mineral Resources and Energy (MIREME)) and must observe Mozambican law, including through the assignment of shares or any other form of ownership stake of the entity holding the concession rights (change of control operations). The law is silent in respect to pre-emptive rights and timeframes to obtain the required approval for the transactions mentioned above.

Further rules on assignments and pre-emptive rights are usually established under the relevant Joint Operating Agreement.

*Law stated - 09 May 2023*

### Approval to change operator

Is government consent required for a change of operator?

The change of operator is subject to the approval of MIREME.

*Law stated - 09 May 2023*

### Transfer fees

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

The Regulations of Petroleum Operations are silent on any fees applicable to a transfer or a change of control.

According to the Special Regime for Taxation and Fiscal Benefits for Petroleum Operations (Law 27/2014, of 23 September 2014), as amended and republished, all capital gains arising from the direct or indirect transfer of petroleum rights located in the Mozambican territory, either onerous or free of charge, are subject to a 32 per cent capital gains tax.

*Law stated - 09 May 2023*

## TITLE TO FACILITIES AND EQUIPMENT

### Title holder

Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

Concessionaires are called to finance the cost of all infrastructure and equipment used in petroleum operations and are entitled to use such infrastructure and equipment during the term of the Exploration and Production Concession Contract (EPCC). However, upon termination of the EPCC, title to petroleum infrastructure and equipment may be transferred to the state without additional compensation (at the option of the government).

## DECOMMISSIONING AND ABANDONMENT

### Laws and regulation

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 rules on abandonment and decommissioning of petroleum infrastructures are governed by the Regulations of Petroleum Operations and the Regulations for the Licensing of Petroleum Infrastructures and Operations (Decree 84/2020, of 18 September 2020).

The concessionaire should prepare a detailed decommissioning plan, in consultation with INP and submit to the Ministry of Mineral Resources and Energy (MIREME), no less than two years prior to the date on which production operations are expected to terminate. The decommissioning plan must be prepared in compliance with the applicable laws and ensure that the cessation of petroleum operations and the decommissioning of infrastructures are conducted prudently and in accordance with good oilfield practices.

The parent company guarantee that the concessionaire is required to provide to ensure compliance with the obligations arising from the concession contract shall only be released upon completion of decommissioning and fulfilment of all the concessionaires' obligations under the concession contract.

Decommission of petroleum infrastructures is also subject to the obtainment of a decommissioning licence pursuant to the rules established under the Regulations for the Licensing of Petroleum Infrastructures and Operations.

Law stated - 09 May 2023

### Security deposits for decommissioning

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

Pursuant to the Regulations of Petroleum Operations, the concessionaire shall, until the date of commencement of petroleum production or use of infrastructures for petroleum operations, open a bearing interest account in a currency agreed with the National Petroleum Institute, known as the 'Decommissioning Fund', in a bank of its choice and approved by Bank of Mozambique, where funds to cover the estimated costs of decommissioning shall be deposited periodically. Decommissioning cost calculations and payments estimates should be prepared by the concessionaire and submitted to the Minister of MIREME.

Law stated - 09 May 2023

## TRANSPORTATION

### Regulation

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?

Exploration and Production Concession Contracts (EPCC) grant a non-exclusive right to construct and operate oil or

gas pipelines systems for the transportation of crude oil, natural gas or infrastructure for liquefaction of gas produced from the concession contract area, except where access to an existing oil pipeline or gas pipeline system or other existing infrastructure is available on reasonable commercial terms. In cases where such right is not covered under an EPCC, a separate concession for gas and oil pipelines and infrastructure may be granted to conduct such operations.

The transportation of petroleum (in liquid or gaseous form) by road, sea, river or railway is subject to mandatory licensing with the National Petroleum Institute (INP), pursuant to the rules established under the Regulations for the Licensing of Petroleum Infrastructures and Operations. Moreover, the means of transport by sea, road and rail used for transporting oil are subject to registration with the INP, preceded by a prior multi-sector inspection and a favourable opinion from the entities overseeing the areas of activity in which the means of transport to be used are involved, with a view to verifying the technical and safety conditions under the terms of the applicable legislation depending on the means of transport.

*Law stated - 09 May 2023*

## **COST RECOVERY**

### **Determining recoverable costs**

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.

The Special Regime for Taxation and Fiscal Benefits for Petroleum Operations (Law 27/2014, of 23 September 2014), as amended, sets out the rules relating to cost recovery and production sharing mechanisms.

All costs incurred by the concessionaire in respect of petroleum operations are recovered from the 'available petroleum' (ie, petroleum resulting from the total quantity of oil produced minus petroleum production tax) at the point of delivery defined by the government. In each calendar year, the total recoverable costs are capped to 60 per cent of the available petroleum.

The Accounting and Financial Procedure, which is an integral part of the Exploration and Production Concession Contract, usually set forth the non-recoverable costs, which include, among others, oil marketing or oil transportation costs of beyond the delivery point and interests as well as other financial costs.

*Law stated - 09 May 2023*

## **HEALTH, SAFETY AND ENVIRONMENT**

### **Requirements**

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

The holder of rights to carry out petroleum operations shall act in a safe and effective manner to ensure that such operations are carried out within the parameters of safety, health, well-being and protection of the environment, taking into account good oil-field practice and applicable legislation.

The concessionaires and operators must establish safety and working environment requirements for the petroleum operations being carried out, in order to minimise any risks for the personnel, environment and infrastructure involved.

The Inspectorate-General of Mineral Resources and Energy, in coordination with the Ministry of Labour Ministry of Land

and Environment and the National Petroleum Institute, is responsible for supervising and conducting inspections to ensure that the technical safety, hygiene, health and environmental standards are compliant with the applicable law, international conventions and good practices concerning the mineral resources and energy sector.

Penalties for non-compliance can be assessed and vary depending on the type of offence committed.

*Law stated - 09 May 2023*

## LABOUR

### Local and foreign workers

Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Concessionaires are required to guarantee the employment and technical-professional training of Mozambicans, ensure their participation in petroleum management and operations and implement training programmes under the terms and conditions established in the concession contract.

The employment of foreign personnel is subject to special (labour and migration) rules, mostly set out in the Regulations on the Hiring of Expatriates for the Petroleum and Mining Sectors (Decree 63/2011, of 7 December 2011) and the Legal Regime of Foreign Citizens, establishing the Rules for Entry, Stay and Exit from the Country (Decree 108/2014 of 31 December), as amended. In order to lawfully work/carry out a business or technical activity in Mozambique and depending on the regime to which the foreign employee will be employed and the activities to be rendered, these may either secure a (1) work visa, (2) business visa or (3) investment visa. Migration offences may result in the application of a fine, without prejudice to the application of administrative expulsion measures and criminal liability of the offender.

*Law stated - 09 May 2023*

## TAXATION

### Tax regimes

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

Entities entitled to perform petroleum operations are subject to the general taxes: income tax; value-added tax; municipal tax (when applicable); other taxes and fees established under the law.

In addition to the above, pursuant to the Special Regime for Taxation and Fiscal Benefits for Petroleum Operations, concessionaires are also subject to petroleum production tax (PPT), which levies on oil and gas produced in each concession area (10 per cent for crude oil and 6 per cent for natural gas) and special income tax assessment rules (eg, cost deductibility, amortisation, etc).

The Tax Authority of Mozambique (through the Directorate-General for Taxation) is the governmental body responsible for the management of activities related to the determination, collection and control of public revenues.

*Law stated - 09 May 2023*

## COMMODITY PRICE CONTROLS



## Crude oil mining

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 mandatory price-setting regime for crude oil.

As for crude oil products such as LPG, automotive petrol, lamp oil and diesel, a price-setting regime is established under the Regulations of Petroleum Products (Decree 89/2019, of 18 November 2019).

*Law stated - 09 May 2023*

## COMPETITION

### Competition enforcers

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?

The Competition Law (Law 10/2013, of 11 April 2013) created the Competition Regulatory Authority (CRA), a government body responsible for the enforcement of anticompetitive or manipulative practices in the exercise of economic activities, with supervision, regulatory and sanctioning powers.

According to the Competition Law, the CRA should collaborate with the relevant sectorial regulatory authorities in the enforcement of legislation, under the terms foreseen in the Competition Law, in this case the Ministry of Mineral Resources and Energy.

*Law stated - 09 May 2023*

### Obtaining clearance

What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

The Competition Law establishes that the CRA shall control concentrations between undertakings consisting, in particular, of the acquisition of:

- all or part of the share capital;
- ownership or the right to use all or part of the assets of a company; and
- rights or contracts conferring a preponderant influence on the composition or decisions of the organs of an enterprise.

The CRA must be notified of mergers that meet the following annual turnover and/or market share thresholds:

- a share equal or over 50 per cent is acquired, created or strengthened in the national market of a certain good or service, or in a substantial part thereof;
- as a result of its implementation, a share equal to or greater than 30 per cent and below 50 per cent is acquired, created or reinforced in the national market of a certain good or service, or in a substantial part thereof, provided

that the turnover made individually in Mozambique, in the last financial year, by at least two of the undertakings participating in the concentration is greater than 105 million Mozambican metical, net of taxes directly related thereto;

- all the undertakings participating in the concentration have achieved in Mozambique, in the last financial year, a turnover of greater than 925 million Mozambican metical, net of taxes directly related thereto, as long as the turnover in Mozambique of at least two of the companies that participate in the concentration is superior to 105 million Meticaais, net of taxes directly related thereto.

The notification shall be made through a dully filled form (which model is approved by the CRA) and must be submitted within seven working days after conclusion of the agreement or its project, and cannot be implemented until a non-opposition decision has been taken by the CRA. The overall procedure to obtain approval or disapproval from the CRA may take approximately two months. Violation of the duties to notify concentrations within the statutory period and to cooperate with the CRA may result in the assessment of fines of up to 1 per cent of annual turnover among other penalties.

*Law stated - 09 May 2023*

## DATA

### Seismic data

Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

According to the Petroleum Law, any data obtained during a concession contract is property of the state.

Exploration and Production Concession Contracts (EPCC) usually contain specific provisions on confidentiality and data ownership according to which the data relating to petroleum operations conducted thereunder shall be confidential and shall not be disclosed to any third party without the prior written consent of all parties to the EPCC.

*Law stated - 09 May 2023*

## INTERNATIONAL

### Treaties

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

The country's commitments under international treaties and other adhered multinational agreements play a role in Mozambican regulatory policy, which is approved or amended to give effect to such treaties or agreements.

Furthermore, the Petroleum Law enshrines the principle according to which when carrying out petroleum operations, concessionaires must consider and abide by the internationally accepted standards and good oilfield practices.

Mozambique is party to several bilateral investment treaties, which are aimed to promote and protect investments made by nationals of each of the respective states Parties in the territory of the other state party.

Mozambique is also a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention), having acceded under the Resolution 22/98, of 2 June, as well as the ICSID Convention.

*Law stated - 09 May 2023*

## Foreign ownership

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?

No special requirements or limitations apply to foreign companies acquiring oil-related interests. This notwithstanding, it is worth noting that:

- Foreign legal entities are required to incorporate a local subsidiary or register a local branch prior to the carrying-out of any petroleum/business activities in the country.
- Foreign legal entities that directly or indirectly hold or control legal entities that own rights under a EPCC must be established, registered and administered under a transparent jurisdiction.
- Mozambican entities or foreign entities in association with Mozambican entities shall, under equal circumstances, have a preferential right in the award of an exploration and production concession contract.
- The state reserves the right to participate, through the National Oil Company, in petroleum upstream operations on terms and conditions established in the EPCC.
- State participation may be imposed for any upstream or downstream concession subject to the Regulations on Public Private Partnerships, Large-Scale Projects and Enterprise Concessions, which set forth that a percentage of no less than 5 to 20 per cent of the share capital of the concessionaire must be reserved for participation of the Mozambican public and private persons.

*Law stated - 09 May 2023*

## Cross-border sales

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?

Although no specific rules apply to cross-border sales or deliveries of crude oil, consideration must be given to the legal framework governing the activities relating to the transportation, storage and handling of hazardous substances, as well as the applicable foreign exchange rules established under the Foreign Exchange Law and Regulations (Law 28/2022, of 29 December 2022 and Order 20/GBM/2017, of 27 December 2017) and the special foreign exchange framework applicable to the petroleum sector (Order 7/GBM/2018, of 19 September 2018).

In what concerns the supply obligation for local market, the Petroleum Law establishes a general principle according to which the Government shall ensure that not less than 25 per cent of the oil and gas produced within the national territory is dedicated to the domestic market. The Regulations of Petroleum Operations further state that the domestic market supply targets are determined by reference to the total production from national fields.

*Law stated - 09 May 2023*

## UPDATE AND TRENDS

### Current trends

What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?



For all the growth that Mozambique is likely to experience as a result of its hydrocarbon wealth, it remains a developing economy, with the oil and gas market undergoing a rapid transformation over the recent past years. Domestic and foreign companies planning to expand their operations in the industry will witness new opportunities, with particular focus to the Rovuma basin projects.

The National Petroleum Institute announced the winners of its Sixth Licensing Round for Hydrocarbon Exploration and Production in December 2022, resulting in the award of six blocks in the areas of Angoche and Save. This pipeline of projects positions Mozambique as a desirable destination for investment in hydrocarbon prospecting, bringing hopes of possible availability of hydrocarbons such as petroleum.

The government launched the Economic Acceleration Measures Programme (EAP) on 9 August 2022, a programme comprising a package of 20 reform measures aimed at resuming economic growth, further to being affected by unprecedented internal and external obstacles conditioning its growth rate. Among the readjustments and incentives brought by the EAP, legislative changes were introduced particularly in the tax sector to ensure the stability and the sustainability of the fiscal system in the mid and long term. Also, as a result of the implementation of the EAP, the Petroleum Law was amended to include a provision expressly mandating the allocation of 10 per cent of the Petroleum Production Tax revenues to the development of the province, district and local communities where the projects are developed. Such measure aims to ensure that extracted resources have a direct connection with the improvement of the livelihood of the communities based in the areas of projects connected with the extractive industry.

Government policies and support related to the exploration and production of hydrocarbons also play a major role in encouraging companies to boost Mozambique oil and gas investments. Current and upcoming projects can offer a great way for international suppliers to make contacts and expand their networks into a region and country that is likely to see a lot of activity in the coming decades, providing several opportunities for professional training, employment, and contracts for the supply of goods and services.

*Law stated - 09 May 2023*

## Jurisdictions

	<b>Angola</b>	Vieira de Almeida & Associados
	<b>Argentina</b>	Martelli Abogados
	<b>Brazil</b>	Campos Mello Advogados
	<b>Denmark</b>	Bech-Bruun
	<b>East Timor</b>	Vieira de Almeida & Associados
	<b>Ecuador</b>	Robalino
	<b>Egypt</b>	Soliman, Hashish & Partners
	<b>Faroe Islands</b>	Bech-Bruun
	<b>Ghana</b>	Kimathi & Partners Corporate Attorneys
	<b>Greenland</b>	Bech-Bruun
	<b>Italy</b>	CMS Italy
	<b>Mozambique</b>	Vieira de Almeida & Associados
	<b>Nigeria</b>	ENR Advisory
	<b>Norway</b>	Kvale Advokatfirma
	<b>Peru</b>	CMS Peru
	<b>Thailand</b>	Chandler MHM Limited
	<b>United Arab Emirates</b>	Devine & Severova FZ LLC
	<b>United Kingdom</b>	Mayer Brown