

5 September 2014

mozambique@vda.pt

Mozambique: new Mining Law and Petroleum Law

Law nr. 20/2014 (“Mining Law”) and Law nr. 21/2014 (“Petroleum Law”) were published in the Official Gazette on 18 August, revoking, respectively, Law nr. 14/2002, of 26 June, and Law nr. 3/2001, of 21 February, and all other contravening legislation. Both diplomas entered in force on the date of their publication.

In the context of significant discoveries of mineral resources and hydrocarbon reserves, these long-awaited pieces of legislation are expected to provide a comprehensive and updated legal framework for the mining and petroleum activities, even though regulation is still required – in 90 days, for the Mining Law, and in 60 days, for the Petroleum Law.

The Mining Law seeks to ensure “fair” earnings for Mozambique and increase the control over mining activities. Any transfer of control – whether direct or indirect – in mining holding permits is now subject to the consent of the Mozambican Government. In addition, it is created the *Instituto Nacional de Minas* (National Mining Institute), a regulatory body under the Ministry of Mineral Resources, which will be responsible for overseeing the mining activity.

The Petroleum Law is focused on reinforcing the role of the State – and of the State owned company ENH, E.P. – in all petroleum activities. Also, a 25% share of the production obtained in Mozambican territory shall be reserved to the domestic market.

A general concern with local communities may be easily spotted in both diplomas: namely, not only a percentage of the earnings resulting from mining and petroleum production shall be allocated to the development of the affected local communities, but also it is required that a memorandum of understanding is executed with the local communities as a condition for obtaining any mining or petroleum exploration rights. Local content and environmental concerns have also been addressed.

Below are some highlights on the Mining Law and the Petroleum Law. Given the importance of these diplomas, we also provide you with a copy of the publication in the Official Gazette and the respective translation, for information purposes.

Mining Law	Petroleum Law
Mining Law	Petroleum Law
Mining Law translation	Petroleum Law translation

Mining permits

- > The Recognition Licence is removed and absorbed by the Prospecting and Research Licence
- > The Prospecting and Research Licence is now subject to different deadlines: 2 years, for mineral resources for building materials (renewable once for the same period of time), 5 years, for other mineral resources, including mineral water (renewable once, for three years)
- > The following permits are created: Mining Treatment Licence, Mining Processing Licence and Licence for the Commercialisation of Mining Products

Mining contract

The content of the mining contract – to be executed with the holder of a Prospecting and Research Licence – is amended as follows:

- > It is no longer executed on an “exceptional”, and depending on the “dimension of the project”; it is simply established that the Government “may” execute the mining contract
- > The mining contract must contain rules concerning the participation of the State in the mining venture, local content and protection of local communities
- > The mining contract shall be published in the Official Gazette, preceded by the Administrative Court’s prior approval. Also, without prejudice of its main terms having to be published in newspapers and internet sites, mining contracts shall be sent, for cognizance, to the Parliament

Regulation

- > The *Alta Autoridade da Indústria Extractiva* (High Authority for the Extractive Industry) is created and its statutes shall be approved by the Council of Ministers within 12 months
- > In addition, it is created the *Instituto Nacional de Minas* (National Mining Institute), a regulatory body working under the supervision of the Ministry of Mineral Resources, that shall be responsible for defining the guidelines for the participation of the public and private sectors in exploration, processing, import and export of mining products and their derivatives and, in general, overseeing the mining activity. Its statutes shall be approved by the Government

Taxes

The following taxes are applicable to the mining activity:

- > Income tax
- > Value added tax
- > Production tax

- > Surface tax
- > Municipal taxes, when applicable
- > Other taxes established by law

Transfer

- > The transfer of rights and obligations conferred under mining holding permits and/or mining rights to an affiliate or a third party, including direct and indirect transfers of participation interests, permits and/or mining rights, transfer of shares or other forms of participation, must be made in accordance with the Mozambican law and is subject to approval by the Government
- > The transfer may occur after two years from the beginning of the activity for which the mining holder was authorized and the approval request must enclose the activity report as well as tax discharge certificate issued by the tax administration

Local content and local communities

- > The mining contract must contain rules concerning the participation of the State in the mining venture, local content minimum standards, employment and training of Mozambicans and a memorandum of understanding between the Government, the relevant company and the local communities
- > Single or collective foreign legal persons providing services to mining operations shall be associated to Mozambican single or collective legal persons, in terms to be set forth in the regulation
- > The mining holder shall give preference to local products and services, and ensure the employment and professional training of Mozambican workers according to the applicable legislation
- > The Government must create mechanisms in order to allow the engagement of national entrepreneurship in mining projects, as well as promote the entry of mining companies into the Stock Exchange of Mozambique
- > The State must intensify, progressively, its participation level in mining projects
- > A percentage of State revenues generated by mining activities is allocated to the development of the communities established in the areas where mining activities take place
- > The execution of a memorandum of understanding between the Government, the company and the community constitutes a condition precedent to obtaining mining rights

Rights granted under existing agreements

- > The rights acquired under mining contracts and/or agreements with the Government and mining concessions issued before the entry into force of the Mining Law will remain in force, its holders being granted with the option of being fully governed by the provisions of the Mining Law (to be exercised within 12 months)
- > The renewal of those mining contracts and/or agreements will be subject to the Mining Law

Scope

- > The Petroleum Law applies to petroleum and to any infrastructure, belonging to or held by the holder of rights or third parties, used in connection with oil operations, subject to Mozambican law, including mobile infrastructure under a foreign flag located in Mozambique with the purpose of conducting or assisting in petroleum operations in a concession contract area, unless otherwise established by law
- > This law also applies to the use and consumption of petroleum, when such use is necessary or forms an integral part of the operations of production or transportation of petroleum
- > It is excluded from the scope of this Law petroleum refining and its industrial use, distribution and commercialization of petroleum products

Since specific guidelines will be applicable to the projects of Natural Gas Liquefaction of Rovuma's Basin Areas 1 and 4 - to be approved by decree-law pursuant to legislative authorization recently approved by the Mozambican Parliament - the scope of the Petroleum Law may in practice be reduced (depending on the exceptions that such decree-law will bring to the Petroleum Law)

Types of contracts

The conduct of Petroleum operations is subject to prior execution of a concession contract or other form of contract which grants rights of:

- > Reconnaissance
- > Exploration and production
- > Construction and operation of oil pipeline or gas pipelines systems
- > Construction and operations of infrastructure

Without prejudice to the confidentiality of the commercial, strategic and competitive information of petroleum operations, the concession contract is subject to the supervision and visa by the competent legal authority, as well as to the publication of the main clauses of the concession contract

Role of the State

- > The State controls the prospection, exploration, production, transport, commercialization, refining and transformation of liquid and gas hydrocarbons and their derivatives
- > The State may also participate in petroleum operations and may progressively intensify its participation

Role of the Empresa Nacional de Hidrocarbonetos – ENH, E.P. (National Petroleum Company)

- > The ENH, E.P., is the national entity responsible for the prospecting, exploration, production and commercialization of petroleum products and represents the State in petroleum operations
- > The Government guarantees the financing of the ENH, E.P., its exclusive representative for the investment in the improvement and stabilization of its participation in the gas and oil business
- > It is ENH, E.P.'s responsibility to participate 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 LGN and GTL inside the country or abroad
- > It is also ENH, E.P.'s responsibility to manage the oil and gas quotas destined for the development of the national market and the country's industrialisation
- > Any investor interested in the exploration of petroleum resources in Mozambique shall enter into a partnership with ENH, E.P., as the exclusive State representative

Regulation

- > The *Alta Autoridade da Indústria Extractiva* (National Authority for the Extraction Industry) operates in the controlling of Petroleum activities which statutes, in accordance with the Mining Law, shall be approved by the Council of Ministers within 12 months
- > The *Instituto Nacional de Petróleos* (National Petroleum Institute) remains as the regulatory entity responsible for the administration and promotion of petroleum activities

Taxes

It is generally established that the right holders of petroleum operations are subject to the payment, besides specific taxes, of the following:

- > Income tax
- > Value added tax
- > Municipal tax when applicable
- > Other taxes established by law

Transfer

Any direct or indirect transfer of rights and obligations granted under the concession contract, to and affiliate or to a third party shall be made in accordance with Mozambican Law and is subject to the Government's approval. This rule shall also apply to other direct or indirect transfers of interests in the concession contracts, quotas or other forms of participation of the right holders under the concession contract

Local content and local communities

- > The Government shall guarantee that a quota of no less than 25% of the oil and gas produced in national territory is dedicated to the national market
- > The Government shall create mechanisms and outline conditions for the involvement of the national entrepreneurship in the oil and gas enterprises
- > For the purposes of the public tender for the acquisition of goods and services by the holders of rights for the conduction of oil operations – procedure applicable for acquisitions above a set amount – single or collective foreign entities must associate to single or collective Mozambican entities
- > The holders of rights for the conduction of oil operations must give preference to local products and services when comparable, in terms of quality, to the international materials and services that are available in time and in the quantities required and when the price, including taxes, is not over by 10% to the price of the available imported goods
- > The oil and gas companies must be registered in the Mozambique's Stock Exchange
- > A percentage of the revenue generated by the petroleum activities is channeled in the State Budget to the development of the communities of the areas where the respective oil and gas enterprises are located
- > The execution of a memorandum of understanding between the Government, the company and the community constitutes a requisite for the granting of the right of oil and gas exploration

Rights granted under existing agreements

- > The rights acquired under the contracts and the concession contracts under execution, entered into under Law 3/2001, of 21 February, relating to petroleum operations, continue to be valid
- > Upon termination of the contracts foreseen in the previous paragraph, the new contracts and concessions are executed under the terms of the Petroleum Law

In line with what was mentioned above, the practical reach of this provision will not be known until the specific guidelines which will be applicable to the projects of Natural Gas Liquefaction of Rovuma's Basin Areas 1 and 4 – are approved by decree-law (pursuant to legislative authorization recently approved by the Mozambican Parliament)

LISBOA

Av. Duarte Pacheco, 26
1070-110 Lisboa Portugal
lisboa@vda.pt

PORTO

Av. da Boavista, 3433 - 8º
4100-138 Porto Portugal
porto@vda.pt

TIMOR-LESTE

Timor Plaza - Rua Presidente Nicolau Lobato
Unidade 433, Comoro, Dili - Timor-Leste
timorleste@vda.pt

ANGOLA

angola@vda.pt

MOZAMBIQUE

mozambique@vda.pt

Esta informação é de distribuição reservada, destinando-se exclusivamente aos clientes Vieira de Almeida & Associados / SCAN Advogados e Consultores, e não deve ser entendida como qualquer forma de publicidade, pelo que se encontra vedada a sua cópia ou circulação. A informação proporcionada e as opiniões expressas são de caráter geral, não substituindo o recurso a aconselhamento jurídico adequado para a resolução dos casos concretos.