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Energy: Oil & Gas 2021

Mozambique
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MOZAMBIQUE

Law and Practice

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CONTENTS

1. General Structure of Petroleum Ownership and Regulation	p.4
1.1 System of Petroleum Ownership	p.4
1.2 Regulatory Bodies	p.4
1.3 National Oil or Gas Company	p.4
1.4 Principal Petroleum Law(s) and Regulations	p.5
2. Private Investment in Petroleum: Upstream	p.6
2.1 Forms of Allowed Private Investment in Upstream Interests	p.6
2.2 Issuing Upstream Licences/Obtaining Petroleum Rights	p.6
2.3 Typical Fiscal Terms under Upstream Licences/Leases	p.7
2.4 Income or Profits Tax Regime Applicable to Upstream Operations	p.7
2.5 National Oil or Gas Companies	p.8
2.6 Local Content Requirements Applicable to Upstream Operations	p.9
2.7 Requirements for a Licence/Lease-Holder to Proceed to Development and Production	p.10
2.8 Other Key Terms of Each Type of Upstream Licence	p.10
2.9 Requirements for Transfers of Interest in Upstream Licences	p.11
2.10 Legal or Regulatory Restrictions on Production Rates	p.11
3. Private Investment in Petroleum: Midstream/Downstream	p.11
3.1 Forms of Allowed Private Investment in Midstream/Downstream Operations	p.11
3.2 Rights and Terms of Access to Any Downstream Operation Run by a National Monopoly	p.12
3.3 Issuing Downstream Licences	p.12
3.4 Typical Fiscal Terms and Commercial Arrangements for Midstream/Downstream Operations	p.14
3.5 Income or Profits Tax Regime Applicable to Midstream/Downstream Operations	p.14
3.6 Special Rights for National Oil or Gas Companies	p.15
3.7 Local Content Requirements Applicable to Midstream/Downstream Operations	p.15
3.8 Other Key Terms of Each Type of Downstream Licence	p.15
3.9 Condemnation/Eminent Domain Rights	p.15
3.10 Rules for Third-Party Access to Infrastructure	p.15
3.11 Restrictions on Product Sales into the Local Market	p.16
3.12 Laws and Regulations Governing Exports	p.16
3.13 Requirements for Transfers of Interest in Downstream Licences	p.16
4. Foreign Investment	p.17
4.1 Foreign Investment Rules Applicable to Investments in Petroleum	p.17
5. Environmental, Health and Safety (EHS)	p.19
5.1 Principal Environmental Laws and Environmental Regulator(s)	p.19
5.2 Environmental Obligations for a Major Petroleum Project	p.19
5.3 EHS Requirements Applicable to Offshore Development	p.20
5.4 Requirements for Decommissioning	p.20
5.5 Climate Change Laws	p.21
5.6 Local Government Limits on Oil and Gas Development	p.21

MOZAMBIQUE CONTENTS

6. Miscellaneous	p.21
6.1 Unconventional Upstream Interests	p.21
6.2 Liquefied Natural Gas (LNG) Projects	p.21
6.3 Unique or Interesting Aspects of the Petroleum Industry	p.21
6.4 Material Changes in Oil and Gas Law or Regulation	p.22

1. GENERAL STRUCTURE OF PETROLEUM OWNERSHIP AND REGULATION

1.1 System of Petroleum Ownership

The Constitution of Mozambique establishes under Article 98 that “the natural resources located in the soil, subsoil, inland waters, territorial sea and continental shelf, as well as in the exclusive economic zone, are the property of the State”, and also that the law (ordinary law) regulates the management and conservation of all assets of public domain. In other words, all oil and gas resources belong to and are managed by the state.

The oil and gas legislation regulates how private entities explore petroleum resources, noting that any operation must be previously authorised by the state, through an administrative authorisation or a licence. The government reserves the right to be part of any project implemented to conduct petroleum operations, through state-owned company Empresa Nacional de Hidrocarbonetos, EP (ENH).

1.2 Regulatory Bodies

The Council of Ministers is the highest governmental body with competence to approve primary sector legislation and grant concessions, including the approval of the respective contracts.

The Ministry of Mineral Resources and Energy (MIREME – Início) is the governmental body that steers and monitors the implementation of government policy in the geological investigation and exploitation of minerals and energy resources, including coal and hydrocarbons, and the development and expansion of electricity supply infrastructure, natural gas and petroleum products. It performs day-to-day governance and implements oil and gas sector policies,

being also responsible for the supervision of the National Institute of Petroleum (INP).

The INP, created through Decree No 25/2004, of 20 August 2004, manages and oversees Mozambique’s petroleum resources in its role as a national agency, and is the regulatory entity responsible for the administration, promotion and supervision of petroleum activities. It is responsible for the guidelines for the participation of the public and private sectors in the prospecting and exploration of petroleum products and their derivatives, and for the regulation and control of operations and tender procedures, while guaranteeing the preservation of public interest and the protection of the environment.

The High Authority for the Extraction Industry (HAEI) was created by the Petroleum Law, with the purpose of supervising petroleum activities in Mozambique. However, it has not yet become operational, given that its composition, status, powers, and organisational structure have not been defined by the Council of Ministers.

1.3 National Oil or Gas Company

The state-owned company ENH is the entity responsible for the prospecting, exploration, production and commercialisation of petroleum products, representing exclusively the Mozambican state in all petroleum operations.

ENH participates in all petroleum operations and stages, and manages 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. The Petroleum Law determines that the government ensures the financing of ENH.

1.4 Principal Petroleum Law(s) and Regulations

The principal petroleum laws and regulations in force in Mozambique are as follows.

- The Petroleum Law (Law No 21/2014, of 18 August 2014) establishes the general framework applicable to all oil and gas operations determining the rules for the granting of rights to carry out petroleum operations, applying to any infrastructure 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.
- The Petroleum Operations Regulations (Decree No 34/2015, of 31 December 2015, as amended) regulates the Petroleum Law, setting out the rules for the awarding of the rights, in order to ensure that petroleum operations are performed in a systematic manner and on such terms that allow for comprehensive and co-ordinated supervision.
- The Rovuma Basin Decree Law (Special Regime for Natural Gas Liquefaction Projects in Areas 1 and 4 of the Rovuma Basin, approved by Decree Law No 2/2014, of 2 December 2014) establishes a special legal and contractual framework that applies to concessionaires under existing exploration and production concession contracts (EPCCs) and to any special purpose vehicles (SPVs) and any persons entering into contracts with concessionaires or SPVs (contractors, financiers and employees) in connection with activities relating to the development and operation of Offshore Areas 1 or 4 that are undertaken under existing EPCCs or any other contracts with the government of Mozambique.
- The model of the Oil Exploration and Production Concession Agreement of Mozambique (EPCC) was approved by Resolution No 25/2016, of 3 October 2016. The Resolution aims to adapt the Contract Model to the current legal framework of the petroleum sector, approved by the Petroleum Law and its respective Regulations.
- The Petroleum Production Tax Law (Law No 27/2014, of 23 September 2014, amended by Law No 14/2017, of 28 December 2017) establishes the specific tax regime for petroleum operations, which applies to corporate entities incorporated and registered in Mozambican territory, and also to national or foreign individuals who carry out petroleum operations under a concession contract.
- The Petroleum Production Tax Regulation (Decree No 32/2015, of 31 December 2015) sets forth the rules that apply to the calculation and payment of Petroleum Production Tax, and special rules that apply to the calculation of Income Tax for the entities involved in petroleum operations and to benefits in connection with petroleum operations.
- The Rules on Production, Import, Receipt, Handling, Transport, Distribution, Trade, Export and Re-export of Petroleum Products and the respective sale prices in the national territory (Decree No 89/2019, of 18 November 2019) establish the legal framework applicable to downstream operations.
- The Regulation of Employment of Foreign Citizens in the Petroleum and Mining Sector (Decree No 63/2011, of 7 December 2011) establishes the legal regime applicable to the hiring of foreign citizens who intend to work in the petroleum and mining industries.
- The Environmental Regulation for Petroleum Operations (Decree No 56/2010, of 22 November 2010) sets out the requirements to be complied with in order to perform oil operations. The regulation specifies environmental impact assessment procedures and protection and control measures to prevent environmental disasters.
- The Strategy for Concession of Areas for Petroleum Operations (Resolution No

27/2009, of 8 June 2009) establishes the legal regime that will guide the concession on the appraisal and production of oil rights offshore and onshore, contributing to the development of the extractive industry in Mozambique.

- The Regulation on the Licensing of Petroleum Facilities and Activities (Ministerial Diploma No 272/2009, of 30 December 2009) applies to all concessionaires, and to any subcontracted company or natural person involved in petroleum operations.
- Regulation of the Inspection Activity of Mineral Resources and Energy (Decree No 34/2019, of 2 May 2019) establishes specific rules, principles and procedures that govern the exercise of the inspection activity of mineral resources and energy.
- The Mega-Projects Law (Law 15/2011, of 10 August 2011) governs public-private partnerships (PPPs), large-scale projects and business concessions, establishing a legal framework that is conducive to greater involvement among private partners and investors in pursuing such investments, as well as the efficient provision of goods and services to the Mozambican society.
- The Mega-Projects Law Regulation (Decree No 16/2012, of 4 July 2012) determines the applicable procedures for contracting, implementing and monitoring PPPs, large-dimension projects and business concessions ventures.
- The Small-Scale Projects Regulation (Decree No 69/2013, of 20 December 2013) sets out the applicable procedures for the contracting, implementing and monitoring of PPPs and business concessions ventures that do not exceed an investment of MZN5 million.

2. PRIVATE INVESTMENT IN PETROLEUM: UPSTREAM

2.1 Forms of Allowed Private Investment in Upstream Interests

Private investment in upstream interests for conducting petroleum operations is granted through concession contracts, which are generally attributed through a public tender process. Such rights may also be attributed by simultaneous or direct negotiations in relation to areas that had already been declared available.

Concession contracts are administrative contracts, subject to the supervision of the Administrative Court, which includes the need for its previous authorisation and the publication of its main clauses in the official gazette.

The following rights may be conferred under concession contracts:

- reconnaissance;
- exploration and production;
- pipeline construction and operation; and
- infrastructure construction and operation.

Note that the EPCC is the key contract applicable to upstream activities, as it grants an exclusive right to carry out petroleum exploration and production.

2.2 Issuing Upstream Licences/ Obtaining Petroleum Rights

As a first step, the INP defines which areas within the Mozambican territory are available, then launching a public tender for those interested to submit their bids for the exploration of such areas. A list of prerequisites is provided, as well as the guidelines for the preparation of the applications and the bidding criteria. This information can be found on the INP's website.

The bids are evaluated according to aspects relating to health, safety and environmental (HSE), financial capacity, technical competence/capability and the economic terms offered to the Mozambican state.

Companies carrying out petroleum operations (either upstream or downstream) need to obtain the relevant licence for the activity to be carried out, which may include one (or more) of the following (without prejudice to others that may be necessary and are not listed below):

- a licence to set up petroleum facilities;
- authorisation to build petroleum facilities;
- a licence to explore petroleum facilities;
- a licence to explore oil pipelines;
- a licence to explore unloading terminals;
- a production licence;
- a storage licence;
- a distribution licence;
- a retail licence; and
- a demobilisation licence.

2.3 Typical Fiscal Terms under Upstream Licences/Leases

The typical fiscal terms for upstream activities encompass a combination of Corporate Income Tax and royalty-based taxation, in addition to bonus payments, training programmes, relinquishment funds and other financial obligations set out in the concession contract.

Concessionaires are generally subject to Petroleum Production Tax (IPP) and to the specific rules of Corporate Income Tax (IRPC) and the mechanisms of production-sharing, with the latter drawing on the traditional concepts of cost petroleum, available petroleum, profit petroleum and produced petroleum.

A percentage of the income generated by petroleum operations must be allocated to the community in the area where the petroleum opera-

tions are undertaken. The percentage payable is established by the state budget law.

The IPP payment is triggered when the oil or gas is extracted, and the applicable tax rates are 10% for crude oil and 6% for natural gas. These rates are reduced by 50% when the production of oil and gas is destined to be used by the local industry (the IPP tax rate then being 5% for crude oil and 3% for natural gas).

In addition, the tax regime provides tax stability for ten years, subject to an additional payment of 2% of the IPP, effective from the 11th year of production.

2.4 Income or Profits Tax Regime Applicable to Upstream Operations

Entities that are entitled to perform petroleum operations are subject to the following general taxes:

- IRPC;
- Value-added Tax (VAT);
- Municipal Tax (when applicable); and
- custom duties (when applicable).

Such entities are also subject to the specific petroleum tax regime, which levies the IPP on oil and gas produced in each concession area.

The IPP (which is equivalent to a royalty) is due on the value of the oil and gas produced in Mozambique at the development and production site, with the taxable base being the value of petroleum produced determined on the basis of the weighted average prices of sale by the producer and respective contractors in the month to which the tax corresponds.

The IPP becomes payable when the petroleum produced enters the measuring station, as defined in the concession contract. It is generally

paid in cash and may be paid partially or fully in kind, at the option of the government.

Specific rules relating to the IRPC cover ring-fencing, cost definition, depreciation rates, capital gains taxation and the mechanisms for production-sharing with the government.

The standard IRPC rate is 32%, applicable to companies and similar corporate entities (petroleum operators included) for income generated in Mozambique and abroad (worldwide income).

All capital gains arising from the direct or indirect transfer of petroleum rights, between non-resident entities, with or without permanent establishment in Mozambique are taxed at 32%. This Capital Gains Tax is due from the seller or transferrer, but the purchaser and the Mozambican entity holding the petroleum rights have several and joint liability for the payment of the tax. This provision mainly entails that gains resulting from the direct or indirect transfer between non-resident entities of shares or other participating interests or rights involving assets located in the Mozambican territory, whether for a consideration or not, are considered to be income obtained in Mozambique, irrespective of the place where the transfer occurs.

Exploration costs are considered to be a cost in the financial year in which they are incurred, subject to special provisions in concession contracts. Provisions created by companies involved in the petroleum-extracting industry relating to the reconstruction of wells can be deducted for tax purposes, in addition to those provisions designed for the recovery of the landscape and environment of the exploration site after the conclusion of the work being undertaken.

Exemption from custom duties for a period of five fiscal years (from the date of approval of the development plan) is provided for in the law, in

particular on the importing of capital goods to be used in petroleum operations.

Costs incurred by the concessionaire on petroleum operations, excluding interest and other financial costs, are recovered from 60% of the annual available petroleum; the portion exceeding this limit is transferred to the following years.

Profit oil is shared between the government and the concessionaire according to a variable scale, the result of which is obtained through a mathematical formula.

A withholding flat tax rate of 10% applies on the payment of services related to concession agreements undertaken by non-resident entities.

Ring-fencing rules set forth that the IRPC of entities undertaking petroleum operations under a concession agreement should, as a general rule, be calculated individually for every concession area (costs and income should also be determined separately in relation to each area), and each concession agreement area must have its own taxpayer number (NUIT).

2.5 National Oil or Gas Companies

As explained above, the government reserves the right to participate in petroleum operations through ENH, and any investor interested in exploring Mozambican oil resources must proceed in association with ENH; no indication is given in the law as to what ENH's equity stake would be in the relevant joint venture.

Under the recent licensing rounds, ENH's stake was established at 10% in the project in Area 4 of the Rovuma Basin, and at 15% in the project in Area 1 of the Rovuma Basin.

2.6 Local Content Requirements Applicable to Upstream Operations

According to the general oil and gas legal framework, holders of oil and gas titles and exploitation rights (upstream or downstream) must give preference to local products and services whenever these are comparable to foreign products and services in terms of quality standards, and whenever the local products and services offered by Mozambican individuals or entities do not exceed the price of imported goods by more than 10% (including taxes).

Also, foreign companies wishing to provide services and goods to oil and gas title holders must have an association with Mozambican natural or legal entities in order to be able to do any business.

As for the employment of foreign workers, it is important to reiterate that the basic principle is that Mozambican workers must be hired preferably, and an extensive and well-detailed training programme must be put in place by the operators to develop the local workforce.

In relation to reinsurance or captive insurance relating to petroleum operations, construction or facilities, the concessionaires shall give preference to Mozambican insurance companies, if the insurance available locally is comparable to international standards and the prices do not exceed the price of comparable insurance coverage by more than 10% from international markets, inclusive of taxes and related fees.

The government should ensure that no less than 25% of the oil and gas produced in the national territory is destined for the national market, and should regulate the acquisition, price and other matters integral to the use of the aforementioned oil and gas quota.

In relation to projects in the Rovuma Basin, following local content requirements apply:

- for the acquisition of goods and services, preference shall be given to national companies, with such companies being held by Mozambican citizens or legal entities and/or owned by Mozambican citizens or Mozambican legal entities in partnership with foreign companies, to facilitate the gradual transfer of operational capacity and empower the local economic private sector;
- the concessionaires and specific purpose entities (SPEs) shall, individually, draw up a local content plan for each Rovuma Basin Enterprise, which shall be approved by the government; and
- each local content plan shall establish the participation of Mozambican citizens/entities in the supply of goods and services and must be updated every three years to readjust to the growth of the Mozambican petroleum and gas industry.

The Local Content Plan shall be drawn up in conformity with the following principles:

- preference in the supply of goods and services to singular or legal Mozambican entities;
- preference to goods, materials, services and equipment available in the Republic of Mozambique, provided that such goods, materials, services and equipment are competitive in terms of quality and availability, and that they comply with international standards for the industry and their price does not exceed the price of such items if imported, including import duties, by more than 10%;
- in relation to goods and services requiring specialised know-how, preference to singular or legal Mozambican entities or to foreign companies associated with singular or legal Mozambican entities, including subcontracting or partnerships of an associative or non-

associative nature, independent of the level of participation of each of their Mozambican or foreign associates; and

- as regard to main contracts and/or contracts for the supply of goods or the rendering of services related to technology, patents or the provision of special requisites – including, namely, those related to the construction, operation and maintenance of the Rovuma Basin Project infrastructure – the contracting entity may freely acquire such goods or services either from foreign companies or from singular or legal Mozambican entities.

The concessionaires and SPEs may adopt different rules in connection with the acquisition of goods and services in respect of projects totally or partially financed by an agency providing credit for exports, insofar as the adoption of different rules is expressly provided for as a condition in such financing contracts.

2.7 Requirements for a Licence/Lease-Holder to Proceed to Development and Production

The operators must report all discoveries to the INP within 24 hours of their detection, and the INP must be kept informed of the test results and evaluation of the commercial discovery, based on an appraisal programme undertaken by the operator to evaluate the discovery. Within six months of completing the appraisal programme, the operator shall submit an appraisal report containing the results of the activities performed and their evaluation.

Within one year of the submission of the appraisal report, the operator shall contact the MIREME to confirm whether the petroleum deposits covered by the discovery may be commercially developed. This notification shall include a Declaration of Commerciality, comprising a complete description of the relevant data, surveys and evaluations that led to such conclusions, which

shall constitute the basis for the government's decision as to whether it will exercise the option to participate in the development and production of the petroleum deposits.

As a next step, a development plan must be submitted to the INP within one year of the issuance of the Declaration of Commerciality. The development plan and its implementation shall be based on the rational use of petroleum reserves and existing facilities. The production of petroleum from multiple zones with reserves through a sole line of production will only be authorised if that method of production is necessary to render the production commercially profitable.

The INP shall be consulted on the scope and content of the development plan, which must consider the respective economic, technical, environmental, safety and existing resources.

The approval of a development plan for a petroleum deposit that covers more than one EPCC area will be contingent upon the execution of a unitisation contract by the respective operators.

The appeal of any decisions taken by the government may be conducted through the Administrative Courts.

2.8 Other Key Terms of Each Type of Upstream Licence

The reconnaissance concession contract grants the non-exclusive right to carry out preliminary exploration work and assessment operations in the concession contract area. This contract 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 or at the bottom of the sea.

The EPCC contract grants an exclusive right (that will not exceed eight years) to carry out petroleum exploration and production, as well as

a non-exclusive right to construct and operate oil or gas pipeline systems for the transportation of crude oil or natural gas, or infrastructure for the 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.

An extension may be granted of up to two or eight years respectively, upon discovery of resources, depending on the efforts needed to conduct an appraisal programme or a commercial evaluation of the discovery.

The oil or gas pipeline system concession contract must be accompanied by the relevant development plan and grants the right to construct and operate oil or gas pipeline systems for the purpose of transporting crude oil or natural gas in those cases where such operations are not covered by an EPCC.

The construction and operation of petroleum infrastructure grants the right to construct and operate infrastructure for petroleum operations, such as processing and conversion, which are not covered by an approved exploration and production development plan. The construction and operation of an oil or gas pipeline system, as well as the concession and operation of infrastructure, are enabled through a concession contract following a public tender.

Any concession contract may terminate following total relinquishment of the contract area, rescission or abandonment.

2.9 Requirements for Transfers of Interest in Upstream Licences

The transfer of interests in upstream licences attributed under a concession contract is subject to governmental approval and must observe Mozambican law. Such governmental approval

is also necessary for the direct or indirect transfer of the participation interest in the concession agreement, including through the assignment of shares or any other form of ownership stake of the entity holding the concession rights.

2.10 Legal or Regulatory Restrictions on Production Rates

There are currently no legal restrictions on the production of petroleum.

3. PRIVATE INVESTMENT IN PETROLEUM: MIDSTREAM/ DOWNSTREAM

3.1 Forms of Allowed Private Investment in Midstream/Downstream Operations

The activities and facilities related to the receipt and transport by pipeline of crude oil or other raw materials used in the production of petroleum products, as well as the storage and transport of crude oil, including local production, except with regard to the attribution of rights for petroleum operations under the terms of the applicable legislations in the geographical areas covered by such rights, are set out under the Rules on Import, Export, Distribution, Storage and Transport of Oil Products.

The distribution and trade of piped natural gas and the international transit service are governed by specific legislation.

Liquefied petroleum gases (LPG), car fuels, aviation and illumination fuels and fuel oils are imported by a single private entity, Importadora Moçambicana de Petróleos, Limitada (IMOPETRO), which is the designated Liquid Fuels Purchases Operator. The acquisition of fuel products using governmental credits or donations is also carried out through IMOPETRO, with certain

exceptions. The potential suppliers are chosen through international public tender.

The national retail oil company – Petróleos de Moçambique, S.A. (PETROMOC) – holds 51% of the share capital of IMOPETRO, and authorised operators hold shares in proportion to their stake in the domestic market.

IMOPETRO is supervised by the Commission for the Purchase of Liquid Fuels (CAFL), an entity established with the purpose of ensuring transparency and competitiveness in the processes of purchasing liquid fuels and any petroleum products, using government donations or credits.

IMOPETRO's functions include drawing up the purchase plans and proposals for revision, preparing tender documents, launching tender processes, evaluating proposals, proposing the selection of suppliers, and negotiating and assigning contracts for the financial intermediation of the acquisitions, among others.

IMOPETRO may charge the distributors a commission destined to cover functioning expenses and ensure the repositioning of investments that are necessary for the performance of its attributions.

IMOPETRO cannot, inter alia, pursue the activity of production, distribution or commercialisation of oil products, nor can it hold equity in any company or make financial commitments that are not directly connected to its attributions.

3.2 Rights and Terms of Access to Any Downstream Operation Run by a National Monopoly

The following rights (under a licence) may be granted to private investors:

- distribution;

- retail;
- exploration of oil pipelines; and
- exploration of unloading terminals.

The aforementioned licences are generally granted by the MIREME.

An entity may hold more than one of the aforementioned licences, as long as that does not condition the development of competitive markets for the petroleum products in accordance with the activities the entity pursues. Notwithstanding this, the holder of a distribution licence cannot hold a retail licence, except in the case of liquid gas and compressed natural gas, and except for the operation of a sole point of fuel supply for the purposes of training in each of the country's provinces.

The retail licence covers the exercise of retail activities on storage centres, the exercise of retail activities at a fuel station and the exercise of retail activities at resale stations.

3.3 Issuing Downstream Licences

Downstream licences are granted upon application to the competent authority by the interested party and include the following:

- production licence;
- storage licence in distribution terminals;
- storage licence in storage facilities;
- distribution licence;
- retail licence in storage facilities;
- retail licence in fuel stations;
- retail licence in resale facilities;
- exploration of oil pipeline licence; and
- export licence;
- exploration of unloading terminal licence.

Any application for downstream activities licences shall include the following principal documentation:

- a certified copy of the identification document and Criminal Record Certificate, in the case of individual persons;
- for foreign citizens, a residence or employment permit and proof of domicile in the national territory;
- a certificate of registration with the Legal Entities Registry, a copy of the articles of association (statutes) and proof of head office in national territory if the applicant is a corporate entity; and
- any other information relevant to the process of licensing.

Special requirements and terms of service will depend on the operation to be licensed.

The production licence application must include the following:

- a description of the production process;
- the designation of the products and respective capacities;
- a map of the location.

The application for a storage licence in distribution terminals, in storage facilities and exploration of unloading terminal licence must include a description of the prices and tariffs for each service being rendered at the relevant facilities. Entities holding storage licences have an obligation to receive, dispatch, handle, store, mix or conduct – without discrimination and in acceptable commercial terms – a third party's fuel-related products in their facilities, as long as they have enough technical capacity, and provided that the products are technically compatible.

Any holder of a distribution licence must only sell the petroleum products mentioned in the respective licence to holders of a supply point retail licence, to holders of retail licence in central storage facilities and to holders of a registration document for consumer facilities. These

are banned in quantities of less than 400 litres of liquid fuels and 110 kg of LPG per delivery or capacity of recipient.

Distributors are specifically required to keep a permanent reserve for petroleum products in storage in national territory, specifically at an ocean facility in each region in which they operate.

The holder of a licence for retail at a fuel station must only sell the petroleum products mentioned in the respective licence to end users, and must only acquire petroleum products from a licensed distributor with which it has entered into a supply contract.

The construction of any petroleum facility is subject to authorisation, which must be made in co-ordination with the entity responsible for the registration of the facility.

The MIREME is responsible for overseeing the processes for special importation authorisation and grant special importation authorisation to entities.

Charges for licensing vary between MZN1 million and MZN900 million. In addition to the licensing charges, applicants for licences are liable for a payment of a geographic incentive fee of MZN6 million, charged on the basis of location and the number of any installations and equipment.

Before beginning the exploitation of any petroleum facility and/or equipment, the owner must request an inspection of the facilities and/or equipment for the purposes of registering with the competent entity.

The owner of a facility must communicate in writing to the licensing entity, within a period of 15 working days, the occurrence of any event

that leads to any amendment of the registered information relating to the facilities.

3.4 Typical Fiscal Terms and Commercial Arrangements for Midstream/Downstream Operations

Maximum sale prices for petroleum products for consumption on the national market are established in the national currency per standard parameter of unit measure, as per the following sequence:

- bulk cost of imported product, stored in the warehouses at the distribution terminals (base cost);
- bulk sale price set by the distributors (distributors' sale price – DSP);
- price of sale to the public (PSP); and
- base cost.

The base cost for each product is the cost of the imported product at the distribution terminals, located at the port of Maputo (Lingamo-Matola) for LPG and at the ports of Maputo (Lingamo-Matola), Beira or Nacala for the remaining products.

The base price for each petroleum product is the carriage and insurance paid (CIP) price at the distribution terminals, which includes port or docking expenses related to the product or tanker, demurrages, commissioning, unloading losses and other related expenses, whenever they are not included in the calculation of the importation-related costs component.

The importation-related costs component represents the value for covering the losses related to the acquisition, disembarkation, handling, transport and reception of the petroleum products, at the distribution terminals.

The DSP for each product is the maximum price of bulk sale to the distribution terminals' address

used by the distributors, and is obtained by the sum of the base cost, the distributor's margin, and the fiscal charges in force.

When supply to the distributors is not carried out in bulk (considered a quantity of product that is greater than or equal to 400 litres per delivery, item of packaging or container), packaging costs may be added to the DSP.

The price of sale to the public (PSP) for each petroleum product is the maximum price to be employed at points of sale and points of storage of liquid fuels, located in the municipalities of cities with distribution terminals.

Prices of any petroleum product shall be revised monthly, and updated and communicated to the duly licensed distributors on the third Wednesday of each month (or, if that is a bank holiday, on the working day immediately following it), wherever the respective base cost has a variation greater than 3% compared to the in-force base cost on the date of the calculation, or there is an alteration in the applicable fiscal charges.

It is up to the Ministers responsible for the energy and finance sectors to proceed with the alteration of the prices of petroleum products, provided that the price of sale to the public of any product does not vary by more than 20% compared to the in-force price. The Council of Ministers is responsible for the alteration of the prices of petroleum products wherever the variation in the price of sale to the public of any product is greater than 20% compared to the in-force price.

3.5 Income or Profits Tax Regime Applicable to Midstream/Downstream Operations

Please refer to **2.4 Income or Profits Tax Regime Applicable to Upstream Operations**.

3.6 Special Rights for National Oil or Gas Companies

Please refer to **3.1 Forms of Allowed Private Investment in Midstream/Downstream Operations** and **3.2 Rights and Terms of Access to Any Downstream Operation Run by a National Monopoly**.

3.7 Local Content Requirements Applicable to Midstream/Downstream Operations

Please refer to the requirements listed under **2.6 Local Content Requirements Applicable to Upstream Operations**.

3.8 Other Key Terms of Each Type of Downstream Licence

Please refer to **3.3 Issuing Downstream Licences**.

3.9 Condemnation/Eminent Domain Rights

Pursuant to the Mozambican Constitution and the fundamental principle of Mozambican law, all land belongs to the state. Therefore, an entity (whether Mozambican or foreign) cannot be the owner of the land where any infrastructure is implemented but may be granted the right of use and enjoyment of the land (DUAT) for a 50-year renewable period.

The holder of the DUAT becomes the owner of any infrastructure built on the land to which the DUAT relates and may sell the immovable property built on the land by means of a public deed. With the sale of the immovable property, the DUAT is automatically transferred to the acquirer of the property.

3.10 Rules for Third-Party Access to Infrastructure

The holders of distribution, landing terminals, storage or oil pipeline licences are obliged to receive, issue, handle, store, mix or manage

third-party petroleum products at their petroleum storage facilities, landing terminals or oil pipelines, without discrimination and in non-discriminatory commercial terms, provided that there is available space at the petroleum facility concerned and there are no insurmountable technical problems that impede the use of the petroleum facility to meet the requirements of third parties.

If the available capacity of the petroleum facility concerned or the dimensions or route of pipelines is insufficient to meet the requirements of third parties, the licence holder is obliged to make a modification to the facility so that third-party requests can be met in commercially acceptable terms, provided that such modification does not have an adverse effect on the technical integrity or safe operation of the petroleum facility. The requesting third parties must ensure sufficient funds to support the costs of the required modification.

The MIREME may waive compliance with the obligation described above if reasonable efforts have been made to meet the requirements of third parties and to prove that it is not possible to receive, send, handle, store, mix or manage the third-party petroleum products or carry out the requested modification of the petroleum facility.

The holders of licences or the operators of the petroleum facilities must make available, in non-discriminatory terms, the relevant records on the petroleum facility in question to third parties who request it, in order to facilitate the negotiation of acceptable commercial terms.

If the parties have not reached an agreement on the commercial or operational terms that ensures the access sought within six months of the notification of the request for access to the petroleum facility or to increase its respective capacity, depending on the terms of the con-

tract, the matter may be submitted for resolution to an independent commission, to arbitration proceedings, or to the competent judicial authorities.

In addition to its needs for supply to the national market, the entity in possession of storage infrastructure in the ocean terminals must reserve at least 15% of its capacity for third-party access to products for the national market.

3.11 Restrictions on Product Sales into the Local Market

The local petroleum products market must primarily be supplied with products from local production, as long as:

- they are in compliance with the characteristics established in the applicable specifications;
- they are locally available; and
- their prices are established to be freely competitive with the prices of equivalent products obtained on the international market, but there must be a mechanism in place ensuring the continuity of local production in cases in which they are not competitive.

The import of petroleum products can only occur whenever the options referred to in the previous paragraph is exhausted.

Any written or tacit agreement between market participants for the supply of petroleum products for national consumption or for the use of a dominant market position to obtain operational margins above those that would result from a competitive market situation, or that results in the prevention or reduction of competitiveness in processes related to the purchase of petroleum products, is prohibited and should be penalised under the terms of the applicable legislation.

3.12 Laws and Regulations Governing Exports

As indicated above, the Petroleum Law determines that the government shall make sure that 25% of the oil and gas produced in Mozambique is allocated to the national market, upon the regulation of the acquisition, price and matters inherent to the use of that quota. Also, oil companies are obliged to give the state preference in the acquisition of the oil produced, whenever national interests are raised.

That said, the exportation of petroleum products is subject to licensing. Entities wishing to distribute petroleum products may provide bunker services for the re-exportation of those products, as long as such activities are accompanied by a sale in the national market too.

In turn, foreign entities based abroad that wish to conduct such activities from Mozambique, for the international shipping of products coming from Mozambique, or that wish to transport such products within the neighbouring countries, must request a specific licence.

For further information, please refer to **3.3 Issuing Downstream Licences**.

3.13 Requirements for Transfers of Interest in Downstream Licences

All downstream licences are transferable, subject to written authorisation from the licensing entity, with the exception of distribution licences.

The transfer of the property of petroleum facilities that may result from their sale or disposal, or from the exercise of any commercial agreements, mergers or any other transactions between two or more entities, requires authorisation from the MIREME. Such authorisation shall be granted if, having considered the participation of the parties involved in the petroleum products market and the share of that market associated with the

facilities and equipment in question, it is verified that none of the parties involved is obtaining or may obtain more than a 30% share of the national market for petroleum products as a direct result of the respective transfer, or is increasing or may increase its share of the national market for petroleum products if it already has more than 30%.

The MIREME may authorise the transfer of a petroleum facility property that exceeds the limits imposed in the previous paragraph if the beneficiary of the transfer is duly licensed to operate in the national petroleum product market and is at least 51% owned by the Mozambican state.

4. FOREIGN INVESTMENT

4.1 Foreign Investment Rules

Applicable to Investments in Petroleum

Foreign investment is regulated by the Investment Law, the Regulation of the Investment Law and the Code of Fiscal Benefits. Foreign investors – individuals or corporate entities bringing their own capital and resources to Mozambique from abroad, on their own account and at their own risk – may be granted a specific (free) exchange control regime, provided that some conditions are met. They may be eligible for tax incentives, such as deductions from taxable income, deductions from the amount of tax assessed, accelerated depreciation, tax credits, exemption from tax and a reduction of the rate of taxes and other fiscal payments, the deferment of the payment of taxes and other special fiscal measures.

Foreign direct investment in petroleum, both national and from abroad, may, solely or jointly, be made as follows if quantifiable in pecuniary terms:

- value paid in money freely convertible by total or partial acquisition of shares in a company incorporated in Mozambique or the authorisation for petroleum activity, in the cases of partial or total transfer, as long as the value is paid into a bank registered in Mozambique or into an external authorised account in the terms of the foreign exchange law;
- equipment and respective accessories, materials and other imported goods;
- in the case of national direct investments, infrastructure, facilities and transfer of rights related to the use of land, concessions, licences and other economic, commercial or technological nature rights;
- transfer, in specific cases and in the terms agreed upon, and sanctioned by the relevant entities of the rights of use of patented technology and registered trade marks, in terms to be regulated; and
- value spent in geological studies or other activities in the scope of the obligations under the Petroleum Law.

The government will grant the guarantees described below to investors that have obtained an investment project authorisation, in accordance with the foreign investment legislation:

- security and legal protection on property rights and other rights in connection with investments made;
- freedom to import equity capital or loans to carry out investments;
- full remittance abroad of
 - (a) exportable profits resulting from investments eligible for export of profits,
 - (b) royalties and other payments for remuneration of indirect investments associated with the granting and transfer of technology,
 - (c) amortisation of loans and payment of interest on loans contracted in the international financial market and applied in

- investment projects in the country,
- (d) proceeds of any compensation paid, and
- (e) invested and re-exportable foreign capital, independent of the eligibility (or ineligibility) of the investment project to export profits;
- repatriation of capital invested upon liquidation;
- total or partial sale of the undertaking; and
- fair and equitable compensation, in the event of expropriation based on absolutely necessary and weighty reasons of public and national interest, health and public order.

The Petroleum Law specifically provides for 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.

In addition, expropriation may only occur exceptionally and when substantiated with regard to public interest, and is subject to the payment of fair compensation. All rights obtained under concession agreements relating to petroleum operations entered into under the previous Petroleum Law are to remain valid and unaffected by the Petroleum Law currently in force. Upon termination of these agreements, the new contracts and concessions are to be executed under the terms of the present law.

Mozambique is a signatory to ICSID and the Washington Convention of 15 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, and is a member of the ICC and a signatory to the Additional Facility Rules of ICSID approved on 27 September 1978. Mozambique also became a signatory to the New York Convention on the Recognition and Execution of Foreign Arbitral Decisions on 10 July 1998, which is fully applicable in the national territory. However, as permitted by Article I (3) of the New York Convention,

when it acceded thereto, 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. In accordance, the Petroleum Law specifically provides for arbitration between the state of Mozambique and foreign investors to be conducted in accordance with:

- Mozambican arbitration law;
- the rules of ICSID, 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 ICSID's Additional Facility adopted on 27 September 1978 by the Administrative Council of ICSID 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; and
- the rules of such other international instances of recognised standing as agreed by the parties in the concession agreements, provided that the parties have expressly defined the conditions for implementation in the agreement, including the method for the designation of the arbitrators and the time limit within which the decision must be made.

Furthermore, Mozambique is party to several bilateral investment treaties (BITs) with key nations, generally to promote and strengthen investment relations between Mozambique and other countries. All these BITs aim to foster foreign direct investment into Mozambique, providing investors with guarantees and protection measures (security and protection of property rights, access to foreign loans and loan repayment, remittance of dividends, arbitration by the ICC or ICSID for dispute resolution, liberalised banking rates), but do not overcome or provide protection from foreign ownership restrictions imposed under sector-specific legislation.

5. ENVIRONMENTAL, HEALTH AND SAFETY (EHS)

5.1 Principal Environmental Laws and Environmental Regulator(s)

The Constitution of the Republic of Mozambique specifically addresses matters relating to the environment and quality of life, and grants the people of Mozambique the right to live in a balanced environment. It commits the state and local authorities, in collaboration with other appropriate partners, to adopt policies for the protection of the environment and to care for the rational utilisation of natural resources.

The principal environmental laws governing upstream and downstream operations are as follows:

- the Environment Law (Law No 20/97, of 7 October, as amended by Law No 16/2014, of 20 June) establishes the basic legal framework for the correct use and management of the environment, creating environmental protected zones subject to special licences;
- the Environmental Impact Evaluation Regulation (Decree No 54/2015, of 31 December) regulates environmental licensing procedures;
- the Environmental Regulations for Petroleum Operations (Decree No 56/2010, of 22 November) establishes the requirements applicable to oil operations, specifying the environment impact procedures, as well as the protection and control measures to prevent environmental disasters;
- the Petroleum Law (Law No 21/2014, of 18 August);
- the Petroleum Operations Regulations (Decree No 34/2015, of 31 December as amended by Decree No 34/2019, of 2 May and Decree No 48/2018, of 6 August);
- the Regulation on the Environmental Quality and Effluents Release Standards (Decree No

18/2004, of 2 June, as amended by Decree 67/2010, of 31 December) aims to establish the standards for environmental quality and effluents release; and

- the Regulation on the Licensing of Petroleum Installations and Activities (Ministerial Diploma No 272/2009, of 30 December).

In accordance with the nature, size and geographical location of the petroleum operation to be carried out, the MIREME may create an inter-institutional group.

The Ministry of Land, Environment and Rural Development, established by Presidential Decree No 13/2015, of 16 March, is in charge of supervising the environmental sector and compliance.

5.2 Environmental Obligations for a Major Petroleum Project

Environmental impact assessments, including impact reduction measures, shall be carried out in all areas that may be affected before commencing a major petroleum project. In addition, all environmental aspects influenced by the petroleum operations shall be recorded in a registry to be maintained during all phases.

For purposes of the categorisation of petroleum operations, activities are usually classified as follows:

- Category A+ – activities subject to an environmental impact study (EIS) and supervision by independent expert reviewers with proven experience, including underground and surface storage facilities for combustible gases;
- Category A – activities subject to an environmental impact study (EIS), including oil, gas or mineral pipelines and submarine and terrestrial fibre optic cables more than 5 km long.

There are two other categories (B and C), but which do not include petroleum operations.

As a rule, any activity that may affect the environment is subject to evaluation of the potential impact, through an EIS, to determine its environmental feasibility, and concludes with the issuance of an environmental licence.

Activities in areas and ecosystems meriting special protection under national or international law, such as coral reefs, are specifically classified as Category A+ activities under the environmental legislation, and therefore require a full EIS and the issuance of an environmental licence as a prerequisite for the issuance of any other licence or permit that may be legally required.

The EIS initiates with the submission of an application to the Ministry for Co-ordination of Environmental Affairs (or the Provincial Delegation) and follows various stages, including a pre-assessment, drafting of terms of reference, a public consultation process and an environmental impact report.

In accordance with maritime legislation, the MIREME may introduce other requirements related to the performance of petroleum activities by floating facilities or by vessels, independent of whether they are registered in Mozambique or in a foreign state.

The holder of rights under the Petroleum Law shall act in petroleum operations in a safe and efficient manner, with the aim of ensuring that the polluted waters and waste materials are disposed of in accordance with approved methods, and ensuring the safe closure and decommissioning of all holes and wells before abandonment.

5.3 EHS Requirements Applicable to Offshore Development

There are no specific rules that apply to offshore development.

In accordance with Mozambican legislation and internationally accepted marine standards, as a general rule, floating or fixed facilities used offshore shall be designed and equipped in such a manner as to ensure the stability or foundation necessary for their safe operation and the capacity to withstand the projected loads.

The docking gear, anchorage system and dynamic positioning system for ships or floating facilities used offshore shall be sized and operated in accordance with Mozambican legislation in force and with good oil field practices and internationally accepted marine standards.

5.4 Requirements for Decommissioning

The EIS Report shall also take the decommissioning and rehabilitation plan into consideration.

A specific fund must be constituted by the concession holders for the abandonment and decommissioning of infrastructure. Accordingly, pursuant to the Petroleum Law Regulation, a detailed decommissioning plan shall be prepared in consultation with the INP and submitted for the MIREME's approval at least two years prior to the date on which production operations are expected to cease.

The decommissioning plan shall include the following information:

- final production plans and economic thresholds for the limit for termination of the operations;
- alternatives for continuing the petroleum operations;

- details of subsequent use or disposal of the premises;
- plans for the plugging and abandonment of production wells;
- a schedule of the decommissioning activities and a description of the equipment necessary for the restoration of the land sites and/or the seabed;
- inventory of dangerous equipment and chemicals existent on the facilities and plans for removal; and
- an environmental impact assessment of the decommissioning and abandonment activities.

In parallel, and 120 days before the decommissioning activities begin, a licence must be obtained from INP and it shall be valid for the duration of the decommissioning plan. The decommissioning activities are also subject to the INP's supervision, which includes assessing if any environmental damages have been duly repaired.

5.5 Climate Change Laws

There is no specific legislation regulating climate change. For legislation on environmental protection, please refer to **5.1 Principal Environmental Laws and Environmental Regulator(s)**.

5.6 Local Government Limits on Oil and Gas Development

The Mozambican state has the right of expropriation of the concessions due to national interest, and the investors would be entitled to fair compensation, to be determined on a case-by-case basis.

When it comes to environmental protection, the investor also has the obligation of complying with the mandatory environmental protection rules. Upon its breach, the Mozambican government may impose fines and ultimately revoke the rights attributed to the investors.

6. MISCELLANEOUS

6.1 Unconventional Upstream Interests

There is no specific legislation regulating unconventional upstream interests.

6.2 Liquefied Natural Gas (LNG) Projects

Mozambique's Special Regime for Natural Gas Liquefaction Projects in Areas 1 and 4 of the Rovuma Basin (Decree Law No 2/2014, of 2 December) applies to concessionaires under existing EPCCs, any SPVs established by such concessionaires and any persons entering into contracts with concessionaires or SPVs (contractors, financiers and employees), as well as their subcontractors, and in connection with activities relating to the development and operation of Offshore Areas 1 or 4 and that are undertaken under existing EPCCs or any other contracts with the government of Mozambique.

Any SPVs established by concessionaires must be incorporated in Mozambique, although SPVs for the purposes of raising finance or undertaking sales and shipping activities may be incorporated in any "transparent" jurisdiction where the government of the jurisdiction can verify the ownership, management, control and fiscal situation of the investor (subject to Mozambican government consent). While this transparent jurisdiction standard is equivalent to the standard imposed on new concessionaires under the Petroleum Law, unlike the requirements of the Petroleum Law, neither the existing concessionaires of Areas 1 and 4 nor their SPVs are required to be listed on the Mozambican Stock Exchange.

6.3 Unique or Interesting Aspects of the Petroleum Industry

Mozambique's petroleum industry is set to develop exponentially in the coming years due to the discovery of huge natural gas deposits in

the north of the country, in the province of Cabo Delgado in Area 1 and Area 4.

Area 1 is being developed by a Total-led consortium and follows a final investment decision of USD25 billion taken in 2019, for the construction and operation of a 12.88 million tonnes per annum (Mtpa) onshore liquefied natural gas facility. In April 2021, Total and its partners declared a force majeure situation, due to the security situation, caused by insurgency attacks in Afungi, northern Cabo Delgado Province, and have suspended their activities in the region with no indication of when these shall resume.

Under the second area, Area 4, there are currently two main projects, Coral South FLNG and Rovuma Liquefied Natural Gas (Rovuma LNG). The first is located offshore and is the first FLNG project in Africa, developed and operated by ENI, which started construction in September 2018, and is estimated to reach a production of 3.4 million tonnes (Mt) of LNG a year, starting from mid-2022.

The second project, Rovuma LNG, is being developed by Mozambique Rovuma Ventures (MRV), a joint venture between ENI, ExxonMobil and CNPC, and consists of a 15.2 Mtpa LNG export facility planned to be developed to liquefy and market gas resources from three reservoirs in the Area 4 block of the Rovuma Basin, offshore Mozambique.

The final investment decision for the Rovuma LNG project (estimated in USD billion) was expected in the first half of 2020 (followed by construction works), but no such decision has occurred yet.

Both projects will boost the development of infrastructure in the province of Cabo Delgado and the exploration of gas. The government is engaged in promoting the exploration of these resources and has designated it as one of the top priorities as sectors to look at to allow for the development of the Mozambican economy.

Besides the two projects identified above, Sasol continues to develop other fields in the south of Mozambique (Pande and Temane), exporting it through a gas pipeline to South Africa.

6.4 Material Changes in Oil and Gas Law or Regulation

There has not been any material change in the oil and gas legal framework in Mozambique over the past year.

HRA Advogados is composed of a team of lawyers registered with the Mozambique Bar Association, recognised for their work in strategic sectors such as banking and financial services, energy and natural resources, and domestic and foreign private investment. The firm's clients can always rely on a balanced combination of knowledge of the Mozambican legal landscape with experience and participation in complex international transactions. HRA Advogados provides a global service, responding to the needs of domestic and international

clients, both in terms of day-to-day support and in strategic project assistance. Its lawyers have highly relevant experience in foreign investment, banking and finance, regulation, business and corporate and project finance support. Now that Mozambique is experiencing rapid and permanent growth, HRA Advogados stands out in the Mozambican market as a touchstone for legal services provision, dedication to client demands and articulation with international networks.

AUTHORS



Paula Duarte Rocha is a partner with HRA Advogados and is highly experienced in the Mozambican market, having intervened in all areas of practice, advising both national and foreign investors, as well as national and foreign private companies. She has a notable track record in banking and project finance transactions. Experienced in cross-border transactions and regulatory issues, Paula has developed know-how in advising economic operators and contracting authorities in public procurement and public-private partnerships. She is a registered arbitrator with the Mozambican Centre for Arbitration, Conciliation and Mediation (since 2002), with relevant experience in commercial arbitration, as a nominated arbitrator by the parties and as Chairman of the Arbitral Tribunal, and was the IBA Tax Reporter for Mozambique (2012–14). Paula was President of the Training and Bar Access Examination Committee of the Mozambique Bar Association (2014–16) and is a member of the National Council of the Mozambique Bar Association (since 2016).



Tiago Arouca Mendes joined HRA Advogados in 2014 and became a partner in 2021. He is enrolled in both the Mozambican and Portuguese Bar Associations, is a registered arbitrator with the Centre for Arbitration, Conciliation and Mediation of Mozambique and is a member of the Association of International Petroleum Negotiators (AIPN). He has been advising clients, mainly foreign, on restructuring processes, mergers, demergers, acquisition of interests or financing operations in Mozambique. He assists the clients throughout the complete business life cycle, from the approval of foreign investment projects, to corporate and winding-up and/or insolvency procedures, among others. Tiago has advised across different sectors, including banking, energy (renewable and non-renewable), extractive industry, insurance, real estate, construction and retail. He regularly participates in several articles for international publications (namely on oil and gas, mining, infrastructures/PPP and foreign investment) and also as a speaker in his areas of activity. Tiago is currently the managing partner of the firm.

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