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Energy: Oil & Gas

Contributing Editor

David Asmus

Sidley Austin LLP

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Chambers Global Practice Guides

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Introduction

Contributing Editor

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Contributing Editor

David Asmus is co-chair of the Energy Practice at Sidley Austin LLP and one of the world's leading oil and gas attorneys. His practice focuses on large-scale project development, including offshore projects, LNG, petrochemicals and refining, and acquisitions and divestitures of oil and gas interests from the upstream through the downstream, as well as financing of all of the above. He has served as President of the Association of International Petroleum Negotiators, Chair of the Institute for Energy Law, and Chair of the Oil and Gas Committee of the International Bar Association.

Sidley Austin LLP's diverse client base includes companies that develop, produce, transport, process and market energy. Sidley lawyers assist with complex, multi-disciplinary legal issues, which include project development, M&A, securities, financing, litigation, international arbitration, internal and government-related investigations and compliance.

Oil and Gas Market Developments

Since the oil and gas markets bottomed out in January and February of 2016, the story has been one of a gradual stabilisation of oil prices in a range from the low USD40s through the mid-USD50s. While this range still reflects a significant percentage swing, it has been narrow enough to finally allow companies to make plans, raise funding and do deals.

Analysts have battled over the general direction of prices from here. In one camp sit those who look at global decline rates, annual consumption increases and the limits on how much additional crude oil US shale can supply and predict that sometime in 2018 - 2019 prices will start an inexorable rise reflecting years of under investment outside of US shale. In the other camp sit those who feel US shale has always delivered more than expected, global demand is peaking and will soon start a slow decline, and inventories are so large it will take an extended period to work them off, all resulting in an extended decline in oil prices back into the low USD40s, or even high USD30s. One camp will be wrong, or at least materially off in its timing; which turns out to be right will have significant consequences for the entire industry.

Regardless of price level, prices have become more volatile, driven in part by the rise of speculators and other financial players as dominant players in the oil futures markets. This has led to increased volatility as technical traders sometimes win the battle against fundamentals. Even the relevance of various fundamentals is uncertain, as focus shifts from OPEC production cuts, to inventory levels, to increases in production of US shale oil. Volatility in turn has caused an increased interest in hedging by numerous industry players.

In contrast to the recent excitement in the oil markets, gas prices have largely stayed in the doldrums. A surplus of gas in the US, and a surplus of LNG globally, has kept markets soft, with the exception of certain individual jurisdictions, such as Australia. In contrast to the Australian experience, in the US perceptions of long term oversupply have kept a lid on prices, despite the promise of a number of LNG export projects coming on stream over the next couple of years. This moderate forward pricing curve (still USD3 - USD4/MMBtu five years out) has encouraged the continued pursuit of petrochemical projects in the US, with the prospect of the US becoming a petrochemicals as well as a LNG powerhouse. Internationally, some gas producers have turned to gas-to-wire projects in which they develop power plants as a means of generating demand for their gas or LNG.

Capital budgets of most larger oil companies remain constrained, though they have moved upward. Amounts the companies have been investing have often been focused on US shale, which capital investment flexibility and lowered finding and development costs have made more attractive than many competing global opportunities. Breakthroughs in well design (such as longer laterals and more frack stages) and efficiency (such as multi-well pads) have substantially lowered the breakeven price for new wells in many US shale basins.

Thanks to political change, Argentina may finally start to realise its potential as one of the other geologically attractive shale basins in the world. Several major oil companies have announced plans to ramp up investment there.

As has been the case with shale, increased efficiencies have been realised in conventional production, such as offshore development, the industry downturn has lowered service costs, and the larger companies have started to resume work on the more attractive conventional projects in their portfolios, though break even costs for many conventional projects remain too high. The recovery remains in an earlier stage outside of North American (and perhaps Argentine) shale.

M&A trends have unsurprisingly in many cases followed trends in new development, with the US being the hot spot and the Permian Basin the hot spot within the US. The

Permian Basin, in particular, has even reached the point of being overpriced, leading purchasers to return to other less popular shale basins to seek better deals. Canada has gone through a significant round of consolidation in the oil sands projects, making it one of the better performing M&A markets. Non-North American markets have been slower to recover, but activity has begun to pick up, reflecting more broadly increased comfort with the range of oil prices. The role of private equity funds in the oil and gas M&A market has continued to increase, and the desire by private equity to purchase at the bottom of the cycle helped launch the M&A market recovery during the second half of 2016. Many medium and large-sized companies continue to exit non-core assets, further enhancing the M&A market. On the other hand, Chinese SOEs, a major factor globally before the downturn, have been much less active than in the past, thanks to anticorruption probes, budget restraints, newly imposed controls on capital leaving China, and some hard lessons learned regarding buying at a market peak.

Climate change and reductions in carbon emissions have remained critical issues for the oil industry, despite political change in the US that has reduced emphasis in this area. The direction and tenor of efforts differ significantly between the US, Europe and elsewhere, with some emphasszing the carbon reducing benefits of gas for coal (or oil) substitution while others emphasise diversification into renewable power. Activists have sought to challenge oil companies over climate change on a number of fronts, with challenges regarding disclosure of climate risks to investors being the latest.

Impact on the Legal Business

The top story in the oil and gas legal market is no doubt the return of M&A, particularly in North America. The deals have typically been mid-sized and smaller, without any of the megadeals that might have been expected based on previous downturns. Perhaps companies have pared budgets, cut back spending and increased efficiencies so much that there are few readily identifiable synergies to be wrung from large scale acquisitions.

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Many deals today have private equity or investment fund support on one or both sides, injecting a new complexity into traditional M&A deals. Private equity portfolio companies that are selling assets seek a clean break, without trailing liabilities, and those that are buying are often special purpose vehicles with no credit or credit history, complicating dealings with third parties having approval rights with respect to the transactions. Financing, and the parties providing it, play a larger role in many of today's deals.

On the other hand, the great boom in bankruptcy and restructuring work that arrived with the downturn is tailing off. Some companies are still failing, but at a noticeably lower rate. Many smaller companies have become much more adept at using hedging and other planning techniques to avoid being caught on the wrong side of a major price shift.

Upstream development work globally has been heavily focused on North America, including successful Mexico bid rounds, but other bright spots have appeared as well, such as the significant development work being planned for discoveries offshore Senegal and Mauritania, and Mozambique, with related M&A work in both locations. Brazil, which had suffered heavily as a result of "Operation Car Wash" corruption probes, unrealistic local content requirements, and shortage of capacity at ANP and Petrobras, has begun to recover, with both M&A and development work gradually returning.

Downstream infrastructure in the US, in particular, remains a hot area, with a number of construction projects planned or underway in the US Gulf Coast. A smaller but appreciable burst of activity can also be seen around Mexico's energy opening, with a number of lawyers focused on new pipeline and other infrastructure now being implemented with private investment. For much of the world outside North America, however, work on downstream development remained depressed.

Regulatory work, particularly dealing with energy trading and anti-bribery and corruption investigations, remains active, with companies facing increasingly coordinated global enforcement efforts. Sanctions related work has been one of the limited bright spots with respect to Russian oil and gas. In the US, the new administration has sought to roll back limitations on oil and gas development, but it remains to be seen how much change will be achieved in practice.

As a whole, the outlook for legal work in the oil and gas sector is brighter than it has been the last couple of years, and trending in a positive direction. With the great uncertainties in the direction of markets, however, the one thing that can be predicted is that change will continue to characterise the oil and gas legal business, much as it characterises the industry that it serves.

MOZAMBIQUE

The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Chambers & Partners employ a large team of full-time researchers (over 140) in their London office who interview thousands of clients each year. This section is based on these interviews. The advice in this section is based on the views of clients with in-depth international experience.

Law and Practice

Contributed by Henriques, Rocha e Associados

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MOZAMBIQUE LAW AND PRACTICE

Contributed by Henriques, Rocha e Associados ***Author:*** Paula Duarte Rocha

Henriques, Rocha & Associados Sociedade de Advogados, Lda (HRA Advogados) was founded by a group of lawyers of Mozambican nationality, and is a leading law firm in Mozambique due to its dynamism, innovative capacity and the quality of service it provides. Building a legal practice capable of meeting our clients' needs in the Mozambican market and contributing to the growth and development of the legal market in Mozambique are the main goals of the HRA Advogados team. Our firm was created in the context of an association with Morais Leitão, Galvão Teles, Soares da Silva & Associados (MLGTS), a top-ranking Portuguese law firm. We work in close connection with the firm's Africa Team; always with respect for, and in strict compliance with, the cultural norms applicable in Mozambique. We are also members of the MLGTS Legal Circle, an international network created by MLGTS for a select set of jurisdictions, including Angola, Mozambique and Macau (China). The firm works very closely with the other member firms of MLGTS Legal Circle, which enables us to maximise inherent synergies.

Author

Paula Duarte Rocha is a Partner with Henriques, Rocha & Associados, Sociedade de Advogados, Lda (HRA Advogados). Paula started her career as a legal assistant in the financial development institution GAPI, and then as a legal assistant to Mrs Maria João Dionísio Santos, formerly a Partner at Pimenta, Dionísio & Associados. Later she provided multidisciplinary legal consultancy at the Tax and Legal Services Department of PricewaterhouseCoopers, co-operating with national and foreign investors. She was also an Associate Lawyer and Senior Legal Adviser at MGA – Advogados & Consultores. More recently, Paula was Managing Partner and Lawyer at Ferreira Rocha & Associados, Sociedade de Advogados. During this professional experience she has been involved in all areas of practice: advising national and foreign private companies with respect to public sector laws, public tenders and contracts, as well as advising foreign entities on compliance with all Mozambican tax, labour and commercial obligations.

1. General Structure of Petroleum Ownership and Regulation

1.1 System of petroleum ownership

As established in Article 98 of the Mozambican Constitution, all petroleum 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.

In addition, the government reserves the right to be part of the structure created to conduct the petroleum operations in which any legal entity (foreign or national) is involved, through the state-owned company Empresa Nacional de Hidrocarbonetos, EP (ENH).

The Mozambican government also assumes control over the prospection, exploration, production, transport, commercialisation, refining and transformation of liquid and gas hydrocarbons and their derivatives, including petrochemical and liquid natural gas (LNG), and gas of liquids (GFL) activities, and may also, directly or indirectly, carry out complementary activities.

1.2 Regulatory bodies

The National Petroleum Institute (INP; www.inp.gov.mz) – created through Decree 25/2004, of August 20th, with its head office in the capital of Mozambique, Maputo – is the regulatory entity responsible for the administration, promotion and supervision of petroleum activities, under the tutelage of the Ministry of Mineral Resources and Energy (MIREME; www.mireme.gov.mz), which, in turn, was created by way of Resolution 14/2015, of July 8th, and resulted from the merger of the Ministry of Energy with the Ministry of Natural Resources. MIREME is responsible for the supervision of the INP, as well as for the establishment of guidelines and the legal framework that will allow an increase in public- and private-sector participation in the prospecting and exploration of petroleum products and their derivatives.

Alongside these, a new entity is to be created, as indicated in the recently enacted Petroleum Law (approved by Law 21/2014, of August 18th), the Alta Autoridade da Indústria Extractiva. However, its composition, status, powers, skills and organisational structure have yet to be defined by the Council of Ministers. It is expected to have a mainly supervisory role over the petroleum operations carried out in Mozambique.

1.3 National oil or gas company

As referred to above, the state-owned company ENH (www.enh.co.mz/eng) is responsible for the prospection, exploration, production and commercialisation of petroleum products, representing the government in petroleum operations.

It is ENH's mission to participate in all petroleum operations in whichever stage of activity (as per the Petroleum Law), such as prospecting, exploration, production, refining, transport, storing and commercialisation of oil and gas and their derivatives, including LNG and gas to liquids (GTL) inside the country or abroad. It is also ENH'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 must enter into a partnership with ENH. The government guarantees the financing of ENH as its exclusive representative for investments in the improvement and stabilisation of the government's participation in the petroleum business.

1.4 Principal petroleum law(s) and regulations

The principal petroleum laws and regulations in Mozambique are as follows:

- The Petroleum Law (Law 21/2014, of 18 August 2014), which establishes the rules for the granting of rights to carry out petroleum operations in the Republic of Mozambique and beyond its borders, in so far as they are in accordance with international laws. The law applies to petroleum operations and to any infrastructure belonging to or held by the holder of rights or third parties and used in connection with oil operations, subject to Mozambican law and 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.
- The Petroleum Operations Regulations (Decree 34/2015, of 31 December 2015), which regulates operations under the Petroleum Law, setting out the rules for the awarding of the right to conduct such activities to ensure that petroleum operations are performed in a systematic manner and on such terms that allow for its comprehensive and co-ordinated supervision.
- The Petroleum Tax Law (Law 27/2014, of 23 September 2014), which establishes the specific tax regime for petroleum operations and applies to corporate entities incorporated and registered in Mozambican territory, as well as to national or foreign individuals who carry out petroleum operations under a concession contract.
- The Regulation of the Specific Regime of Taxation and Tax Benefits of the Petroleum Operations (Decree 32/2015, of 31 December 2015).
- The Special Regime for Natural Gas Liquefaction Projects in Areas 1 and 4 of the Rovuma Basin (Decree Law 2/2014, of 2 December 2014), which applies to concessionaires under existing exploration and production concession contracts (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, 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.
- The Rules on Import, Export, Distribution, Storage and Transport of Oil Products (Decree 45/2012, of 28 December 2012), establishing the legal framework applicable to downstream activities.
- The Regulation of Employment of Foreign Citizens in the Petroleum and Mining Sector (Decree 63/2011, of 7 December 2011), which establishes the legal regime applicable to national and foreign employers in the petroleum and mining industries, and to the foreign citizens who intend to work in these industries.
- The Environmental Regulation for Petroleum Operations (Decree 56/2010, of 22 November 2010), which establishes the requirements to be satisfied 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 27/2009, of 8 June 2009), which establishes the legal regime that will guide the concession of 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 272/2009, of 30 December 2009), which is applicable to all concessionaires, as well as any subcontracted company or natural person involved in petroleum operations.
- The Mega-Projects Law (governing PPPs, large-scale projects and business concessions; Law 15/2011, of 10 August 2011), which establishes the legal framework conducive to, on the one hand, a greater involvement of private partners and investors in pursuing investments in PPPs, large-scale projects and business concessions and, on the other hand, greater efficiency, effectiveness and quality in the operation of resources and other national property assets, as well as the efficient provision of goods and services to society.
- The Mega-Projects Law Regulation (Decree 16/2012, of 4 July 2012) establishes the applicable procedures for contracting, implementing and monitoring PPPs, large-dimension projects and business concessions ventures.
- The Small-Scale Projects Regulation (Decree 69/2013, of 20 December 2013) establishes the applicable procedures for contracting, implementing and monitoring 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 and is generally attributed by 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 when (i) no concession was granted pursuant to previous public tender, (ii) rescission, relinquishment and abandonment or (iii) the need to join adjacent areas to a concession, where justified, due to technical and economic reasons.

Concession contracts are administrative contracts, subject to the authorisation of, and supervision by, the Administrative Court, the main clauses therein being subject to publication 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.

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

MIREME has approved recently a new template EPCC, a draft of which is published on the INP website. The approval of the template follows the recent enactment of the main diplomas regulating this sector (the Petroleum Law and its Regulations).

The annexes of the template EPCC include the template Joint Operating Agreement (JOA).

2.2 Issuing upstream licences

Firstly, the INP defines which areas within the Mozambican territory are available and then promotes a public tender for those interested to submit their bids, making available to everyone interested the prerequisites, as well as the guidelines for applications and the bidding criteria, which are very comprehensive. The site where this information can be found is: http://www.inp-mz.com/documents.

Overall, the bids are evaluated on defined published criteria, which include health, safety and environmental; financial strength; technical competence/capability; and the economic terms offered to the Mozambican State.

In relation to the necessary licensing that companies carrying out petroleum operations (be it upstream or downstream) need to secure, it is important to bear in mind the following:

- 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, among others that may be required depending on the specific case.

2.3 Typical fiscal terms under upstream licences

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.

Accordingly, concessionaires are in general subject to Petroleum Production Tax (IPP), to the specific rules of Corporate Income Tax (IRPC) and the mechanisms of production-sharing, 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 operations are undertaken. The percentage payable is established by the State budget law, which takes into account the estimated petroleum production income for the relevant period.

Liability for the IPP arises 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 to 50% when the production of oil and gas is destined to be used by local industry; wherein the IPP rate will be 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

Anyone developing petroleum activities in Mozambique is generally subject to payment of IPP, to the specific rules of the IRPC and Custom Duties.

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, 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 value of sale of petroleum obtained by the taxpayer is determined on the basis of the free on board price or in accordance with equivalent conditions at the delivery point.

The value of petroleum declared on exports relates to every sale agreement and, in the case of sales to subsidiaries/affiliates, it is determined by agreement between the Ministries that oversee the petroleum and finance sectors.

The estimated value for natural gas produced from the gas fields in the contract area, in the case of sales to subsidiaries/affiliates, relates to every sale agreement and is determined by agreement between the Ministries that oversee the petroleum and finance sectors.

The tax becomes payable at the time the petroleum produced enters the measuring station as defined in the concession contract.

IPP is generally paid in cash and it may be paid partially or fully paid 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 by 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 related 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 Special rights for national oil or gas companies

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.

Pursuant to the Petroleum Law, the government should promote, in a progressive manner, the increase of its participation in oil and gas companies (however, no indication is given as to what amount that stake should be).

The government is to guarantee that ENH, the government's representative in the oil and gas business, takes the lead in the marketing and commercialisation of the referred products.

Under the 'recent' fifth licensing round, the ENH stake was established at 10%.

2.6 Local content requirements applicable to upstream operations

Regarding local content requirements applicable to upstream operations and as an example, attention should be drawn to the following:

- The Petroleum Law establishes the principle that petroleum exploration companies must ensure the employment and the technical-professional training of Mozambican nationals (preferably to those who live in the concession area), as well as their participation in management and petroleum operations.
- The recently enacted Petroleum Regulations establish that the operator must also have a director or appointed representative from the operator whose details must be submitted to MIREME, in case the person in that position changes.
- As for the employment of foreign workers, it is important to reiterate that the basic principle is that Mozambican workers must preferably be hired and extensive and very detailed training programmes must be put in place by the operators in order to develop the local workforce.
- With respect to insurances, except in relation to reinsurance or captive insurance relating to petroleum operations, construction or to 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.
- Besides promoting the Mozambican business community in the oil and gas sector, 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.
- Foreign entities that provide services to petroleum operations must collaborate with Mozambican individuals or corporate entities and should give preference to goods and services purchased or obtained from them. This preference requirement is to apply if the prices offered by Mozambican individuals or entities do not exceed 10% of the cost of importing such goods and/or services.

2.7 Requirements of licence 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 with regard to the test results and evaluation of the commercial discovery, based on an appraisal programme by the operator to evaluate the discovery. Within six months after completion of the appraisal programme, the operator must 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 will contact MIREME to confirm whether the petroleum deposits covered by the discovery may be commercially developed and this notification is to include a declaration of commerciality comprising a complete description of the relevant data, surveys and evaluations that led to such conclusions – the Declaration of Commerciality – which will 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 date of the Declaration of Commerciality. This development plan and its implementation is to 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.

In order to ensure that the government's and operator's objectives are compatible, the INP will be consulted on the scope and content of the development plan, which must take into account the respective economic, technical, environmental, safety and existing resources features of the development.

In the event that the development includes an oil or gas pipeline system, the requirements of a pipeline development plan will also be applicable.

Approval of a development plan for a petroleum deposit that covers more than one EPCC area will be contingent upon the signing of a unitisation contract amongst the respective operators.

2.8 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, through airborne, terrestrial and other surveys, including geophysical, geo-chemical, paleontological, geological and topographical studies. This contract is executed for a maximum period of two years, non-renewable, and permits the drilling of wells to a depth of 100 metres below the surface or at the bottom of the sea.

Secondly, 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 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 the event of a discovery of crude oil or a discovery of non-associated natural gas, an extension may be granted of up to two or eight years respectively, depending on the efforts needed to conduct an appraisal programme or a commercial evaluation of the discovery.

Thirdly, an oil pipeline or a gas pipeline system concession contract 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. An oil or gas pipeline system concession contract is to be accompanied by the relevant development plan, which is an integral part of the concession contract.

Fourthly, the concession contract for 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.

Note that concession contracts may terminate under the following circumstances: total relinquishment of the contract area, rescission and abandonment.

Concession holders are obliged to constitute a fund for the abandonment and decommissioning of infrastructures and, according to the current Petroleum Law Regulation, the decommissioning plan should be submitted for MIREME approval at least two years prior to the end of the petroleum operations and should contain the following information:

- final production plans and economic limit for the end of operations;
- alternatives for the continuation of petroleum operations;
- subsequent use or disposal of the premises;
- sealing and abandonment of production wells;
- chronogram of decommissioning activities and equipment necessary to restore the land and/or the sea bed;
- an inventory of equipment and dangerous chemicals on the premises and plans for removal; and
- an environmental impact assessment of the decommissioning and abandonment activities.

2.9 Requirements for transfers of interest in upstream licences

The direct transfer of rights and duties attributed under a concession contact to a subsidiary or third party 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.

In order to ensure compliance with the terms and conditions of the petroleum exploration authorisations, operators must present financial guarantees in terms to be regulated.

3. Private Investment in Petroleum - Downstream

3.1 Forms of allowed private investment

The licensing and supervision of activities and facilities related to the receipt and transport of crude oil by pipeline 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.

For purposes of this legal diploma, the term 'distribution'is defined as the integrated exercise of the importation and receipt of liquid fuels or their acquisition from a producer or distributor and storage, cumulatively with one or more of the following activities related to liquid fuels: mixing, transport and sale.

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

In order to obtain economies of scale, liquefied petroleum gases (GPL), car fuels, aviation and illumination fuels, and fuel oils are imported by a single private entity, Importadora Moçambicana de Petróleos, Limitada (IMOPETRO), called the Liquid Fuels Purchases Operator, with the national retail oil company Petróleos de Moçambique SA (PETROMOC) holding 51% and participation by all authorised operators in proportion to their stake in the domestic market.

The acquisition of fuel products using governmental credits or donations is also carried out through IMOPETRO, with some exceptions. The potential suppliers are chosen through international public tender.

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

IMOPETRO attributions include:

- drawing up the purchase plans and its proposals for revision;
- mobilising the funds necessary to comply with the acquisition programmes;
- preparing tender documents, launching tender processes, evaluating proposals, proposing the selection of suppliers, negotiating and assigning the contracts for the financial intermediation of the acquisitions;
- negotiating the terms of use of foreign currency funds for the payment of importations, credit cards, bank guarantees and other bank operations necessary for importation;
- negotiating and hiring the services of agents, transport operators and petroleum product handlers, insurers, inspectors and brokers, and any other entities whose participation may be necessary;
- confirming the shipments and supervising all the actions and follow-up actions, from the point of origin to the delivery of the products to the warehouse, including any notifications, warnings and claims that may be necessary in each case; and
- co-ordinating the distributors and (i) financial institutions for the purposes of payments due for importations; (ii) customs for all procedures related to the dispatch of products and payment of any customs' levies due; and (iii) any other entities involved in the processes of acquisition to co-ordinate the respective actions and essential payments.

IMOPETRO is also responsible for:

- systematically researching the national and international markets to maintain complete and up-to-date data on international prices and other items related to the supply of petroleum products, in current and future terms and on all potential suppliers;
- periodically obtaining the necessary data from distributors to compare their market shares and any possible additional requirements; and
- regularly collecting, compiling and divulging specific statistical data on purchases and trade by each distributor and on international prices.

IMOPETRO also co-ordinates the purchases of amounts in foreign currency that the distributors may need for the payment of relevant import invoices, together with the bank or banks selected to carry out the financial intermediation of the importation of liquid fuels, or together with the operator of the respective syndicate of banks.

Distributors are responsible for the payment, in the proportion of the quantity of the products effectively received, of the costs of the products and other expenses regarding the acquisition, including those that have occurred since disembarkation at the point of entry of the products into storage and custom duties.

IMOPETRO may charge the distributors a commission destined to cover functioning expenses and ensure the reposition of investments made 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 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:

- production;
- storage;
- distribution;
- retail;
- exploration of oil pipelines; and
- exploration of unloading terminals.

The aforementioned licences are generally granted by MIREME; however, licences for retail activities in a petrol station are granted by the Provincial Directorates (*Direcções Provinciais*) responsible for energy (except for storage or supply of compressed natural gas or when located within national roads' protection areas, which are within the authority of MIREME) and licences for retail activities in resale stations are granted by the municipality or district government in the respective areas of jurisdiction.

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. However, the holder of a distribution licence cannot hold a retail licence except (i) in the case of liquid gas and compressed natural gas, and (ii) for the operation of a sole point of fuel supply for the purposes of training in each of the country's provinces.

In exceptional cases, the Minister responsible for the energy sector may authorise the distributor to operate more than one point of supply per province.

The production licence comprises the categories of large-scale and small-scale production. The retail licence covers the operation of retail activities at fuel supply points and the operation of retail activities at points of resale.

3.3 Issuing downstream licences

The following comprises the principal documentation instructing any application for downstream activities licences:

- a certified copy of the identification document and Criminal Record Certificate, in the case of an individual; in the case of foreign citizens, a residence or employment permit and proof of domicile in the national territory;
- a certificate of registration with the Legal Entities Registry and a copy of the articles of association (statutes) in the case where the applicant is a corporate entity; and
- a taxpayer number.

An application for a storage licence is, in particular, to 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. This access to third parties is subject to a payment, based on the industry standards. The transfer of oil products between facilities, including by tank vehicles, is to take place in strict compliance with the applicable health, safety and environmental rules.

An application for a distribution licence must also include:

- a list of the storage facilities to be used by the applicant for each product, including those facilities being shared with other distributors (and with detailed information on the location, capacity, ownership and identification of other distributors sharing the same facilities and plan of investments to be made on storage infrastructures for a period of at least five years counting from the date of application for the licence);
- proof of ownership and registration of the storage facility for the various products being distributed and, for purposes of creating permanent reserves in the national territory the storage facility is required to have a minimum capacity of 10,000 cubic metres and must be located at an oceanic terminal; and
- a storage contract entered into with the tanks' owner or with the storage facility's owner (when not owned by the applicant) valid for at least 24 months and for a guaranteed capacity of at least 10,000 cubic metres, and linked to at least one oceanic terminal, except where the licence is for GPL distribution, in which case a guaranteed capacity of 100 cubic metres is required.

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 or 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.

The loading of petroleum products on to any means of transport for which a valid registration document or certificate for petroleum equipment has not been presented is prohibited.

In exceptional cases, the Minister who is responsible for the energy sector may authorise the sale of petroleum products by the distributors to any retailer who holds a licence for retail at points of resale.

Distributors are specifically required to keep in storage in national territory, specifically at an ocean facility in each region in which they operate, a permanent reserve for each of the following petroleum products: (i) no less than 6% of the quantities to be extracted acquired for trade and own consumption in the previous twelve months, in the case of motor fuel, aviation gasoline, aviation fuel, illumination oil, diesel fuel and fuel oils; and (ii) no less than 3% of the quantities to be extracted acquired for trade and own consumption in the previous twelve months, in the case of LPG.

Applications for a production licence must include (i) a description of the production process, (ii) the products' names and their respective capacities, and (iii) a rough outline of the location.

Applications for a retail licence at a fuel supply point must include the following: (i) the address of the location of the fuel supply point, (ii) a copy of the registration of the facility and (iii) a copy of the contract for the supply of petroleum products with a licensed distributor.

The holder of a licence for retail at a fuel supply point must only sell the petroleum products mentioned in the respective licence to end users and to retailers who are holders of a licence for retail at a point of resale, or to holders of a registration document for consumer facilities, in the case of quantities greater than 110 kg of LPG or 100 litres of illumination fuel, per delivery or recipient, in the terms defined in the Regulations for Construction, Exploitation and Security of Liquid Fuel Supply Points. LPG recipients with an individual capacity of less than 3 kg, the maximum quantity for which is 50 kg, are excluded from these requirements.

The retailer must only acquire petroleum products from a licensed distributor with which it has entered into a supply contract. Furthermore, a retailer holding a licence for the operation of small-scale activities at points of resale must only acquire the product from a licensed retailer. For these purposes, sales of up to 10,000 kg of LPG and 3,000 litres of illumination fuel per month at petroleum facilities are classified as small-scale activities, in the terms defined in the

Regulations for Construction, Exploitation and Security of Liquid Fuel Supply Points.

Authorisation for the construction of any petroleum facility must be made in co-ordination with the entity responsible for registration of the facility. The relevant application must contain the following information and/or documentation:

- a site plan provided by the entity with jurisdiction over the area in which the petroleum facility is to be installed and the respective authorisation for its construction;
- a certified copy of the DUAT (land use and development right) or any other title arising from the law or from a contract conferring legitimacy to proceed with the construction;
- a design of the petroleum facility with the pieces designed to an appropriate scale; and
- an environmental licence for the implementation of the project issued by the competent entity, the Ministry for Land, Environment and Rural Development.

Special importation authorisations may be granted for the importation of aviation gasoline and asphalt, and other bituminous products. It is up to the Minister responsible for the energy sector to oversee the processes for special importation authorisation.

The licensing entity must consider the licence application within a maximum period of 30 days from the date of submission.

Charges for licensing vary between MZN1,000 and MZN1,000,000. In addition to the licensing charges, applicants for licences are liable for a payment of a geographic incentive fee of MZN1,500,000, charged on the basis of location and 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. Once the inspection has been completed and compliance with the applicable technical regulations has been verified, the competent body in the energy sector should carry out the registration of the facilities by means of the presentation of proof of payment of the registration fee.

The following must be registered: the exploitation of the petroleum facility, storage for own use, tank vehicles, point of supply, production facility, storage facility, discharge terminal and oil pipeline, except in cases in which the total capacities of the products stored on the premises are less than 400 litres for liquid fuels and 110 kg for gaseous fuels.

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 items, namely: the transfer of property, for any reason; the change of the operating entity and of the respective technician responsible; any amendment to the type of petroleum or petroleum products authorised by the respective registration; and any substantial change to the facility (change of capacity and any change that, in any way, may affect the conditions of the running or operation of the facility, including the replacement or repair of pipework, tanks, pumps or structural elements).

3.4 Income or profits tax regime applicable to 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 (distributor's sale price);
- price of sale to the public; 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) in the case of LPG and at the ports of Maputo (Lingamo-Matola), Beira or Nacala for the remaining products.

The base cost is obtained from the following components: (i) the base price, (ii) correction of the base price and (iii) costs with importation.

The base price, for each petroleum product, is the carriage and insurance paid (CIP) price at the distribution terminals that shall include 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, which shall include bank, port, administrative and unloading losses, and the commission for the services of IMOPETRO, as long as they are not considered in other components of the price structure, excluding the CIP price.

The distributor's sale price (DSP) for each product is the maximum price of bulk sale to the distribution terminals' address employed by the distributors and is obtained by the sum of the following components: (i) the base cost, (ii) the distributor's margin and (iii) the fiscal charges in force.

When supply to the distributors is not carried out in bulk – considered a quantity of product 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. The PSP shall be obtained by the sum of the following components:

- the distributor's sale price;
- the transport differential;
- the retailer's margin; and
- the fiscal charges in force.

The prices of sales to the public may also include: (i) compensation for transport, (ii) items in addition to the operators' margins and (iii) packaging costs.

It is the responsibility of the Ministers responsible for the energy and finance sectors to establish the mechanisms for calculating the PSPs of the mixture of biodiesel with fuel oil and of ethanol with petrol, by means of Joint Ministerial Statute.

For sales made outside the territorial municipalities of cities with distribution terminals, the distributor's sale price may be added to the transport costs in force on the market for cabotage, train and/or road transport.

For bulk sales carried out at the client's address in cities or towns where there are central storage facilities, the distributor's sale price may be added to the transport differential. The purpose of the transport differential is to charge the operating costs and to achieve an adequate return on investment, for the bulk transport of products between the central storage facility and the supply or resale point or the consumer's premises, situated within the same location.

The retailer's margin represents the maximum limit of the profit margin to be employed by the retailers, to cover operating costs, in addition to an adequate return on the investment and working capital necessary for the retail of the respective product.

Prices of any petroleum product shall be revised monthly and shall be updated and communicated to the duly licensed distributors on the third Wednesday of each month, or, if it is a bank holiday, on the working day immediately following it, wherever: (i) the respective base cost has a variation greater than 3% compared to the in-force base cost on the date of the calculation, or (ii) 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 Special rights for national oil or gas companies

See **3.1 Forms of allowed private investment** and **3.2 Rights and terms of access to any downstream operation run by a national monopoly**.

3.6 Other key terms of each type of downstream licence

See also **3.3 Issuing downstream licences**.

Any entity licensed to exercise the distribution of petroleum products may provide bunker services for the re-exportation of those products, as long as it carries out the activities together with sales in the national market.

Entities not based in the country that seek to carry out bunker activities from Mozambique for the international shipping of products that are located in the country or purchased in a foreign currency exclusively for that purpose and activities for transporting those products to and from neighbouring countries must do so through licensed entities.

The re-exportation of petroleum products is not permitted whenever such activity jeopardises the upkeep of the country's permanent reserves, with the exception of bunkers.

Platforms, vessels and other equipment for the exploration, research and exploitation of natural resources, in terms of activity within national territory, must only consume petroleum products provided by distributors licensed in Mozambique.

3.7 Condemnation/eminent domain rights

The Mozambican Constitution and Mozambican law contain the fundamental principle that all land belongs to the State, which means that an entity (either Mozambican or foreigner) cannot be the owner of the land where buildings/property are implemented. That entity may, however, be

granted the right of use and enjoyment of the land (DUAT) for a 50-year renewable period.

Note, however, that the holder of the DUAT becomes the owner of any buildings, premises or other immoveable assets built on the land to which the DUAT relates. The land belongs to the State, but the buildings/property erected on such land belong to the entity that holds the DUAT.

The holder of a DUAT may sell the immoveable property built on the land by means of a public deed. With the sale of the immoveable property, the DUAT relating to the land on which said property is implemented is automatically transferred to the acquirer of the property.

The transfer of immoveable property does not transfer the right to exploit a petroleum facility to the beneficiary that is within the limits of the respective property and that requires an exploitation registration, except if an exploitation registration has been validly transferred by annotation.

3.8 Rules for third party access to infrastructure

Any holder of a licence for distribution, landing terminals, storage or oil pipelines is obliged to receive, issue, handle, store, mix, or manage, without discrimination and in non-discriminatory commercial terms, third-party petroleum products at their petroleum storage facilities, landing terminals or oil pipelines, provided that there is available space at the petroleum facility in question 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 in question, or the dimensions or route of pipelines, is insufficient to meet the requirements of third parties, the licence holder shall be obliged to make a modification to the facility so that, in commercially acceptable terms, third-party requests can be met, provided that such modification does not have an adverse effect on the technical integrity or the safe operation of the petroleum facility and third parties have sufficient funds to support the costs of the required modification.

The Minister responsible for the energy sector may waive compliance with the obligation provided above, on behalf of the holder of the licence for distribution, a landing terminal, storage or oil pipelines, as applicable, 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 operators of the petroleum facilities must act with transparency in the negotiation of access to their facilities and they may not impose discriminatory conditions.

The holders of licences for distribution, loading terminals, storage or oil pipelines 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 within six months of the notification of the request for access to the petroleum facility or to increase its respective capacity the parties have not reached an agreement on the commercial or operational terms that ensure the access sought, the matter, depending on the terms of the contract, may be submitted for resolution (i) to an independent commission, (ii) to arbitration proceedings, or (iii) to the competent judicial authorities.

It is up to the Minister responsible for the energy sector to establish the methodology for third-party access to the petroleum facilities.

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

3.9 Restrictions on product sales into the local market

The supply of petroleum products to the national market must be carried out primarily 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.

Only after the option referred to in the previous paragraph is exhausted must imported petroleum products be resorted to.

The re-exportation of petroleum products shall be authorised having met the needs of the national market.

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 this Decree and other applicable legislation.

3.10 Requirements for transfers of interest in downstream licences

All licences, with the exception of licences for distribution, are transferable by means of written authorisation from the licensing entity.

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 Minister responsible for the energy sector; such authorisation being 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, as a direct result of the respective transfer, none of the parties involved is obtaining or may obtain more than a 30% share of the national market for petroleum products, or is increasing or may increase its share of the national market for petroleum products, in the event that it already has more than 30%.

The Minister responsible for the energy sector may authorise the transfer of a petroleum facility property that exceeds the limits imposed in the previous paragraph, as long as 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.

Distributors of petroleum products licensed to operate in the national market may invest in new petroleum facilities and equipment, and in the expansion and repair of existing ones, which they own, even if they thus obtain a share of the national market greater than 30%.

4. Foreign Investment

4.1 Foreign investment rules applicable to investments in petroleum

The legal framework regulating foreign investments to be carried out in Mozambique (which indicates the applicable guarantees and incentives to these) comprises the Investment Law, the Regulation of the Investment Law and the Code of Fiscal Benefits. Accordingly, foreign investors – individuals or corporate entities bringing to Mozambique from abroad, on their own account and at their own risk, their own capital and resources – may be granted a specific (free) exchange control regime, provided that some conditions are met.

In addition to a favourable exchange control regime, foreign investors may be eligible for tax incentives in Mozambique, 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, as provided for under the diplomas referred to above, which are a set of rules designed mainly to attract foreign investment into the country.

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 trademarks, 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 value of direct investment covers, duly accounted and confirmed by an audit company of recognised independence, the expenses incurred in operations of prospecting and exploration, treatment, development, processing and other petroleum operations related to exploration and petroleum production.

The government's investment is covered through the valuation of the existing resources and other ways that are to be defined by the government.

The government of Mozambique will guarantee the following to investors with approved investment projects carried out in accordance with the Investment Law and Regulation:

- 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 (i) exportable profits resulting from investments eligible for export of profits, (ii) royalties and other payments for remuneration of indirect investments associated with the granting and transfer of technology, (iii) amortisation of loans and payment of interest on loans contracted in the international financial market and applied in investment projects in the country, (iv) proceeds of any compensation paid, and (v) invested and re-exportable foreign capital, independently 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.

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 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 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; 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 in the agreement the conditions for implementation, including the method for the designation of the arbitrators and the time limit within which the decision must be made.

Mozambique is a signatory to the Washington Convention of 15 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, and ICSID, and is a signatory to the Additional Facility Rules of ICSID approved on 27 September 1978 and a member of the ICC.

Mozambique is also a signatory to the New York Convention on the recognition and execution of foreign arbitral decisions since 10 July 1998, which is fully applicable in 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.

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. As a common characteristic, all these BITs aim at fostering 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)

Under the Petroleum Law, the Government shall promote the rigorous observation of the protection and rehabilitation environmental norms, in the terms of the law and conventions, and good international practices.

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 care for the rational utilisation of all natural resources.

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

- The Environment Law (Law 20/97, of October 7th) establishes the basic legal framework for the correct use and management of the environment and its components to ensure a balanced development. The law foresees the creation of environmental protected zones where any activity seen as having a negative impact on the environment must be subject to special licences.

- The Environmental Impact Evaluation Regulation (Decree 45/2004, of September 29th, as amended by Decree 42/2008, of November 4th) provides a classification of the activities subject to an environmental impact assessment and the related specific requirements. It also regulates environmental licensing procedures and creates a registry for environmental consultants.
- The Environmental Regulations for Petroleum Operations (Decree 56/2010, of November 22nd) establishes the requirements to be satisfied in order to perform oil operation. The Regulation in particular specifies environment impact assessment procedures, protection and control measures in order to prevent environmental disasters.
- The Petroleum Law (Law 21/2014, of August 18th).
- The Petroleum Operations Regulations (Decree 34/2015, of 31 December 2015).
- The Regulation on the Environmental Quality and Effluents Release Standards (Decree 18/2004, of June 2nd, as amended by Decree 67/2010, of December 31st) aims to establish the standards for environmental quality and for effluents release in order to ensure the effective control and maintenance of the admissible standards for the concentration of polluting substances on the environmental components.
- The Regulation on the Licensing of Petroleum Installations and Activities (Ministerial Diploma 272/2009, of December 30th).

In accordance with the nature, size and geographical location of the petroleum operation to be carried out, the Ministry that oversees the Petroleum sector may create an Inter-institutional Group.

The Ministry of Land, Environment and Rural Development, established by Presidential decree 14/2015, of March 16th, has responsibility for 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 by petroleum operations. Registration of all environmental aspects influenced by the petroleum operations shall be created and maintained for all phases.

For purposes of the categorisation of the petroleum operations, activities are classified in:

- Category A – activities subject to an environmental impact study (EIS);
- Category B – activities subject to a simplified environmental study (SES); and
- Category C – activities subject to compliance with the standards of good environmental management.

Oil, gas or mineral pipelines and submarine cables more than 5 km long are included under Category A activities. As a rule, any activity that may affect the environment is subject to evaluation of the potential impact, 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 – those activities that may have a significant impact on the environment – under the environmental legislation, therefore requiring 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.

The Minister with authority over the petroleum industry may, in accordance with maritime legislation, 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, as well as the safe closure and decommission 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. Generally, in accordance with Mozambican legislation and internationally accepted marine standards, floating or fixed facilities used offshore shall be designed and equipped in such a manner capable of ensuring 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 considers the decommissioning and rehabilitation plan. A detailed decommissioning plan shall be

prepared in consultation with the INP and submitted for the approval of the Minister with authority over the petroleum industry no less than two years prior to the date on which production operations are expected to cease.

The decommissioning plan shall include the following items:

- tail-end production schedules and the economic threshold for termination of operations;
- alternatives for continuing petroleum operations;
- further use or subsequent disposal of facilities;
- plans for the plugging and abandonment of production wells;
- a schedule of decommissioning activities and description of equipment needed for the restoration of land sites and/or the seabed;
- an inventory of dangerous material and chemicals existent in the facilities and plans for their removal; and
- an evaluation of environmental impact of termination and abandonment activities.

Category A activities must proceed with the following stages:

- pre-assessment of the proposed project by the relevant environmental department and provision of a written response (including an indication of the required number of copies of the Terms of Reference (ToR) and Studies on the Pre-feasibility and Scoping Activities (EPDA) to be submitted);
- appointment of a government-registered environmental consultant;
- working with the environmental consultant to develop an EPDA; and
- working with the environmental consultant to develop the ToR. Subsequently, it will be required to submit the number of copies of the EPDA and ToR defined in the written response to the pre-assessment to the relevant environmental department.

Having received these documents, the relevant environmental government department has 30 working days to respond to the applicant, either approving the EPDA and ToR or requesting alterations and re-submission. If the application is successful, the contracted government-registered environmental consultant undertakes the EIA based on the approved ToR.

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6. Miscellaneous

6.1 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 2/2014, of December 2nd) 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.

Accordingly, 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.

6.2 Material changes in oil and gas law or regulation

Other than the recently approved model EPCC (2016), there has not been any material change in the oil and gas legal framework over the past year; all the main diplomas regulating this sector are recent, dating from 2014 and 2015.

News in the press indicates that the government has approved changes to the LNG contracts with Anadarko and Eni to allow the two companies to sell the government's share of gas from projects in the Rovuma Basin. Further details have not yet been made public.

Doing Business in Mozambique

Country Profile
The Republic of Mozambique has experienced civil war, economic mismanagement, poverty, drought and famine since gaining independence from Portugal in 1976. Although a 1992 peace deal ended the civil war between the Marxist FRELIMO (The Front for the Liberation of Mozambique) and the anti-Communist RENAMO (Mozambique National Resistance), economic challenges and political tensions continue to plague the country.

Mozambique suffers from post-colonial neglect, high foreign debt levels and an over-dependence upon subsistence agriculture. It is still highly reliant upon foreign aid and over 50% of the population live below the poverty line. The agriculture sector, which employs over 80% of the workforce, is vulnerable to drought and flood damage. The most popular agricultural exports include seafood, timber and cotton. Mozambique has significant mineral deposits of marble, coal, gold and bauxite, although exploration has been limited by poor infrastructure and a lack of investment. Exports of coal and natural gas are forecast to increase significantly. As a result of safety and security issues for travellers, the tourism sector is also currently under-developed.

Business Culture
Mozambique's economy is classified as 'low-income' by the World Bank and it is ranked 137th of 190 countries in its Ease of Doing Business Rankings 2017. In the Heritage Foundation's Index of Economic Freedom 2017 Mozambique ranks 158th of 180 countries, placing it in the 'repressed' category. Institutional problems, inefficient regulation and a weak legal system continue to limit long-term economic development. State-sanctioned monopolies and poor public services also present significant challenges. The judiciary is known to be subject to political influence and there is a backlog of cases in the courts.

Developing business relationships and conducting meetings in person are vital when entering the Mozambican market for the first time. As a Lusophone nation, business is often conducted in Portuguese, although this is a second language to many natives, and a local partner may be useful for negotiations. The Investment Promotion Centre ("CPI") aims to be a one-stop shop for those investing in Mozambique and is a useful resource for new market entrants. Many sources suggest that corruption is also a factor to be aware of in business dealings.

Legal Market
Mozambique's legal market is made up of well-respected local players, some of which are part of pan-African legal networks, and offices of Portuguese firms. Domestic participants have *"fallen under the wing of the Portuguese entrants,"* remarks one local player. Such firms often have offices in Maputo, the capital, and Pemba. Despite an increasing South African interest in the market generally, South African law firms are yet to find a firm foothold in the market.

Fees and Billing Methods
Billing methods vary in Mozambique, with big ticket oil and gas or mining work seeing the highest rates. Headline rates for an associate reportedly fall between USD100 and USD250, while partners charge USD300–600. Blended billing is also a feature of the market. Sources warn that there is no uniform method of charging across the country's legal market, intimating that it is heavily firm-specific.