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The International Comparative Legal Guide to:

Oil & Gas Regulation 2018

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A practical cross-border insight into oil and gas regulation work

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Chapter 19

Mozambique

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1 Overview of Natural Gas Sector

1.1 A brief outline of your jurisdiction's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; import and export of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.

According to the Mozambican National Petroleum Institute, Mozambique has proved natural gas reserves of over 100 trillion cubic feet, which means it will continue to be, as indicated in the past few years, the third-largest proved natural gas reserve holder in Africa, after Nigeria and Algeria.

Throughout the past five years, besides the already well-established onshore fields located in Pande and Temane in the south of Mozambique (operated by Sasol, a South African energy firm which exports natural gas via a pipeline that connects the Pande and Temane fields to South Africa – after processing the gas in a central processing facility), recently all attention has been on the Rovuma Basin area, close to the border of Tanzania – more specifically Areas 1 and 4, which are both offshore. The main players in Areas 1 and 4 of the Rovuma Basin include, among others, Anadarko, ENI, Total, Mitsui, Galp Energia, Kogas, Barhat Petroleum and most recently Exxon Mobil. The allure of such large reserves has caught the interest of these multinational oil and gas companies, which have been investing in prospection and, soon hereafter, construction of platforms and drilling for natural gas in the Rovuma Basin.

Currently, no LNG facilities exist in Mozambique; however, following the execution of several important agreements during the present year between the concessionaires of Areas 1 and 4 and the Mozambican Government, all is becoming aligned for the construction of what could be the first floating LNG facility in Africa, which shall have the capacity to produce up to 20 million tonnes per year starting from 2023 (current estimate).

Transportation and distribution of natural gas is at a very early stage, with the transport network consisting of the Mozambique-South Africa pipeline and the recent distribution network (a partnership between State-owned Empresa Nacional de Hidrocarbonetos and Korean Kogas) restricted only to certain districts of the capital city, Maputo. New transport pipelines shall be developed, connecting the gas-rich north and south of Mozambique. Similarly, natural gas storage facilities shall be built only after production of offshore natural gas commences.

There are currently no secondary markets for the sale and purchase of natural gas in Mozambique.

New players in the market with large-scale projects in the pipeline include Yara, which intends to produce fertilisers, Shell, which is interested in producing liquid fuels and Baobab Resources, with the aim of producing 1.3 million tonnes of iron and steel per year.

1.2 To what extent are your jurisdiction's energy requirements met using natural gas (including LNG)?

Total primary energy consumption in Mozambique is of 0.185 quadrillion BTUs.

Despite massive potential for electricity and fuel generation, lack of socio-economic development and access to electricity and natural gas networks in Mozambique means that energy consumption remains heavily dependent on firewood and other wood fuels (such as charcoal). Renewable energies represent 79.6% of total consumption, followed by petroleum at 17%, then natural gas at 3% and coal at 0.4%. (*Source: International Energy Statistics, 2012.*) Note that wood fuels are, perhaps inaccurately, included in the "Renewables" section.

1.3 To what extent are your jurisdiction's natural gas requirements met through domestic natural gas production?

Mozambique currently fully meets its natural gas needs and, as such, does not import natural gas.

1.4 To what extent is your jurisdiction's natural gas production exported (pipeline or LNG)?

Currently, most of Mozambique's natural gas is exported to South Africa (via the Temane-Pande pipeline), corresponding to roughly 82% of total production.

2 Overview of Oil Sector

2.1 Please provide a brief outline of your jurisdiction's oil sector.

Compared to the country's burgeoning natural gas sector, the oil sector in Mozambique is relatively incipient.

Oil production was due to commence in 2015 in an oil field discovered next to the Temane natural gas field, also operated by

Sasol. Production is expected to reach 15,000 barrels per day, and shall be used for exports to South Africa.

2.2 To what extent are your jurisdiction's energy requirements met using oil?

Please *cfr*. question 1.2 above. Oil represents 17% of the energy consumed in Mozambique, its volume steadily increasing in the last few years, reflecting the country's accelerating economic growth.

2.3 To what extent are your jurisdiction's oil requirements met through domestic oil production?

We currently have no information indicating that Mozambique has already started producing crude oil (*cfr*. question 2.1 above).

2.4 To what extent is your jurisdiction's oil production exported?

We currently have no information indicating that Mozambique has already started producing crude oil (*cfr*. question 2.1 above).

3 Development of Oil and Natural Gas

3.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of oil and natural gas reserves including: principal legislation; in whom the State's mineral rights to oil and natural gas are vested; Government authority or authorities responsible for the regulation of oil and natural gas development; and current major initiatives or policies of the Government (if any) in relation to oil and natural gas development.

The principal legislation relating to the exploration and development of the country's oil and natural gas reserves is as follows:

- Constitution of the Republic of Mozambique;
- Law no. 21/2014, August 18 (Petroleum Law);
- Decree no. 34/2015, December 31 (Petroleum Law Regulation);
- Ministerial Diploma no. 272/2009, December 30 (Licensing of Facilities and Petroleum Operations Regulation);
- Decree no. 56/2010, November 22 (Environmental Regulation of Petroleum Operations);
- Law no. 27/2014, September 23 (Petroleum Tax Law);
- Decree no. 32/2015, December 31 (Specific Regime of Taxation and Tax Benefits of the Petroleum Operations);
- Decree no. 63/2011, December 7 (Employment of Foreign Citizens in the Oil and Mining Sectors);
- Council of Ministers Resolution no. 27/2009, June 8 (Strategy for Concession of Areas for Petroleum Operations);
- Decree no. 31/2012, August 8 (Regulation on Resettlement Process Resulting from Economic Activities);
- Decree no. 56/2010, November 22 (Environmental Regulation for Petroleum Operations);
- Law no. 15/2011, August 10 (Public-Private Partnerships, Large Projects and Business Concessions, also known as the "Mega-Projects" Law);
- Decree no. 16/2012, June 4 (Regulation of the Mega-Projects Law); and
- Decree-law 2/2014, December 2 (Special Regime for the Rovuma Basin – Areas 1 and 4).

Additionally, for downstream, one should also bear in mind:

- Council of Ministers Resolution no. 63/2009, November 2 (Strategy for Development of a Natural Gas Market);
- Decree no. 45/2012, December 28 (Regulation on Import, Sale and Distribution of Petroleum Products); and
- Decree no. 9/2009, April 1 (Importation of Petroleum Products).

This legal framework is supplemented by concession contracts that specify rights and duties of the concessionaire and the Government.

The Constitution of Mozambique provides that all-natural resources, whether located on/in land, underground, inner waters, territorial sea, and the continental platform or in the Mozambican exclusive economic area are the property of the State. The Ministry of Natural Resources ("MIREME") is responsible for directing and executing the governmental natural resource policies and for the supervision of the National Petroleum Institute ("*Instituto Nacional de Petróleo*" – "INP"), created by the Council of Ministers under Decree no. 25/2004, 20 August, the INP being the regulatory authority responsible for the administration and promotion of the Petroleum Operations.

In Mozambican legislation, "Petroleum Operations" are defined as planning, preparing and performance of reconnaissance, appraisal, development, production, storage, transportation and the termination of such activities or the end of use of the infrastructure, including the implementation of decommissioning plans, sale or delivery of oil to the export point or agreed delivery point, such point being where oil is delivered for consumption or use or loaded as merchandise, including in the form of liquefied natural gas.

The High Authority of the Extractive Industry ("*Alta Autoridade da Indústria Extractiva*") was established in 2014 to supervise Petroleum Operations, but is not yet operational.

Also, the Mozambican Government has fulfilled its plan (established a few years ago) of creating an authority that is responsible for regulating, controlling and supervising the energy sector in Mozambique, i.e., the Energy Regulatory Authority ("*Autoridade Reguladora de Energia*" – "ARENE") through the approval of Law no. 11/2017, September 8 (the "Law").

Among the several powers attributed to ARENE, it is important to highlight its active role on three important fronts; namely:

(a) to instruct and process public tender procedures for the assignment of concessions for the production, transportation, distribution and sale of electric energy and distribution and sale of natural gas, to issue the respective opinion, as well as to request the transfer of concessions;

(b) to instruct and process the granting of licences for the processing, distribution and marketing of liquid fuels, and to issue opinions on applications for the transfer of licences; and

(c) to establish and approve the tariffs and prices for energy, gas and petroleum products regulated under the law and ensure its application. However, its members have not yet been appointed, and it is also awaiting the approval of its statute and the regulation of the Law (which should take place before the end of the year).

In addition to the aforementioned entities that play regulatory and supervisory roles, the State participates in Petroleum Operations through the national oil company "*Empresa Nacional de Hidrocarbonetos, E.P.*" ("ENH"), and any investor wishing to explore Mozambican oil resources must associate with ENH. ENH participates in all phases of Petroleum Operations, from research to production refinery, transportation, storage and commercialisation of oil and gas and their derivatives, including LNG and GTL, both in and out of the country.

The Petroleum Law and Regulation aim to ensure increased competitiveness and transparency in the sector, as well as to reinforce the role of the State, the protection of national interests and the involvement of Mozambican nationals. In equal circumstances, preference is given to Mozambican persons or to foreigners that associate with Mozambican persons in the granting of concession rights. Additionally, it is established that oil and gas companies should be listed on the Mozambican Stock Exchange (which is still at an incipient stage).

3.2 How are the State's mineral rights to develop oil and natural gas reserves transferred to investors or companies ("participants") (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

Petroleum Operations are performed under concession agreements which are generally attributed by public tender process; however, they may 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 a previous public tender, (ii) there is rescission, relinquishment and abandonment, or (iii) there is a need to join adjacent areas to a concession, when justified for technical and economic reasons. Concession contracts are of an administrative nature.

3.3 If different authorisations are issued in respect of different stages of development (e.g., exploration appraisal or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

Private investment in upstream interests for conducting Petroleum Operations are granted through concession contracts and are 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 ("EPCC");
- pipeline construction and operation; and
- infrastructure construction and operation.

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

The MIREME has recently approved a new template EPCC, a draft of which is published in the INP website (http://www.inp.gov.mz/pt/Politicas-Regime-Legal/Modelo-de-Contratos-de-Pesquisa-e-Producao). The approval of such 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").

The Reconnaissance Concession confers a non-exclusive right to perform preliminary appraisal and evaluation of the contract area and is granted for a maximum period of two years, non-renewable, and allows drilling up to a depth of 100 metres.

The EPCC confers on its holder an exclusive right to perform Petroleum Operations, as well as a non-exclusive right to construct and operate production and transportation infrastructure. The exclusive exploration right under the EPCC shall not exceed eight years and is subject to area abandonment provisions. In the event of a discovery, the concession-holder may maintain the exclusive right to complete the work initiated within a specific area, in relation to the appraisal period, to comply with his work and appraisal obligations and to determine commercial value and allow oil development and production. The concession-holder may maintain the exclusive right, under the development plan approved by the Government, to develop and produce oil and gas in the development area, subject to renewal for equal or shorter periods, as deemed most advantageous for national interest.

The Pipeline Construction and Operation Concession allows the concession-holder to construct and explore oil or gas pipelines for the transportation of crude oil and natural gas, should such operations not be covered under the EPCC agreement. Similarly, the infrastructure construction concession agreement allows the concession-holder to construct and operate oil production infrastructure, such as processing and conversion facilities that are not covered by an approved appraisal and production plan.

In the case of the Pipeline Construction and Operation, such agreements must also be thorough and include the specification of the oil or gas pipeline and provisions regarding the rights of use of land.

3.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of oil and natural gas reserves (whether as a matter of law or policy)?

According to the Petroleum Law, the State reserves the right to participate in Petroleum Operations involving any person and may participate at any stage, according to the contractually agreed terms and conditions. Such State participation is made through ENH and any investor interested in exploring Mozambican oil resources must associate with ENH. No indication is given as to what such stake should be, but we note that in the recent 5th Licensing Round, the ENH stake was indicated as 10%.

3.5 How does the State derive value from oil and natural gas development (e.g. royalty, share of production, taxes)?

In addition to the bonus payments, training programmes, relinquishment fund and other financial obligations set out in the concession contracts, entities entitled to perform Petroleum Operations are subject to all of the following general taxes: income tax; value-added tax; municipal tax (when applicable); and also to the specific petroleum tax regime. The petroleum tax regime levies a Production Tax ("*Imposto sobre a produção do petróleo*") on oil and gas produced in each concession area.

The cost recovery and production sharing mechanisms are also regulated, drawing on the traditional concepts of cost oil, available oil, profit oil and produced oil. Costs incurred by the concessionaire on oil operations, excluding interest and other financial costs, are recovered from 60% of the annual available oil – the portion exceeding this limit is transferred to the following years. In turn, profit oil is shared between the State and the concessionaire according to a variable scale, the result of which is obtained through a mathematical formula.

The special rules foreseen to determine the Personal Income Tax ("*Imposto sobre o Rendimento das Pessoas Singulares*" – "IRPS") or Corporate Income Tax ("*Imposto sobre o Rendimento das Pessoas Colectivas*" – "IRPC") due on the income obtained from oil operations include, namely: (i) the characterisation of deductible and non-deductible costs and expenses; (ii) amortisation rules; (iii) thin capitalisation rules; (iv) registration of inventory; and (v) a withholding flat tax rate of 10% on the payment of services related to concession agreements undertaken by non-resident entities.

Transfer pricing rules are also further developed, including the application of the arm's length principle to the transfer of assets between different concession agreements held by the same concessionaire.

The tax regime also tightens the ring-fencing rules and clarifies that the IRPC of entities running 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 Tax Identification Number ("*Número Único de Identificação Tributária*" – "NUIT").

3.6 Are there any restrictions on the export of production?

In addition to the production sharing rules set out under the petroleum tax regime, the Petroleum Law also sets out that 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 to regulate the acquisition, price and other matters inherent to the use of the aforementioned oil and gas quota. We further note that the oil companies are obliged to give the State preference in the acquisition of oil produced in the concession area, according to special legislation, when required for reasons of national interest.

3.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

Mozambique does not have a specific foreign exchange regime for oil and gas operations, besides the special regime approved for Areas 1 and 4 in the Rovuma Basin, which only apply to these projects. In general, such operations are subject to the general foreign exchange regime and to the terms and conditions set out in the individual concession agreements. As a result, the movement of funds in and out of Mozambique is subject to exchange controls and to the registration and approvals of the Central Bank of Mozambique.

3.8 What restrictions (if any) apply to the transfer or disposal of oil and natural gas development rights or interests?

The direct transfer of rights and duties attributed under a concession contract to a subsidiary or to a 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.

3.9 Are participants obliged to provide any security or guarantees in relation to oil and natural gas development?

The Petroleum Law also provides that operators should provide a financial guarantee to ensure performance of the terms and conditions set out in the authorisation.

3.10 Can rights to develop oil and natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

The concession contract and the rights and duties arising thereunder cannot be freely transferred and are subject to governmental approval as set out under question 3.8 above.

3.11 In addition to those rights/authorisations required to explore for and produce oil and natural gas, what other principal Government authorisations are required to develop oil and natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

An environmental impact assessment ("EIA") approved by the Ministry of Coordination of Environmental Affairs ("MICOA") must be presented with the respective development plan. Additionally, the concession right-holder must present the necessary licences for use and enjoyment of land (secured according to the land legislation) and the authorisations for performance of Petroleum Operations on land or at sea.

International standards as well as specifically legislated technical requirements and health and safety rules for employees must also be complied with.

3.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in oil and natural gas development? If so, what are the principal features/requirements of the legislation?

The Environmental Impact Study Report comprehends the decommissioning and rehabilitation plan. A detailed Decommissioning Plan shall be prepared in consultation with the INP and submitted no less than two years prior to the date on which production operations are expected to cease, for the approval of the Minister with authority over the petroleum industry.

The Decommissioning Plan shall include, among others, the following items:

(a) tail-end production schedules and the economic threshold for termination of operations;

(b) alternatives for continuing Petroleum Operations;

(c) further use or subsequent disposal of facilities;

(d) plans for plugging and abandonment of production wells;

(e) a schedule of decommissioning activities and description of equipment needed for the restoration of land sites and/or the seabed;

(f) an inventory of dangerous material and chemicals existent in the facilities and plans for their removal; and

(g) evaluation of environmental impact of termination and abandonment activities.

Activities falling in the A Category must proceed with the following stages: (i) pre-assessment of the proposed project by the relevant environmental department and provision of written response (including the indication of the number of the required copies of Terms of Reference ("ToR") and Studies on the Pre-Feasibility and Scoping Activities ("EPDA") to be submitted); (ii) appointment of a Government-registered environmental consultant; (iii) working with the environment consultant to develop an EPDA; and (iv) working with the environment 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 environment consultant undertakes the EIA based on the approved ToR.

3.13 Is there any legislation or framework relating to gas storage? If so, what are the principal features/ requirements of the legislation?

Presently, the main production of natural gas comes from the onshore Pande and Temane fields, which are connected by pipeline to South Africa. Natural gas storage facilities shall be built after production of offshore natural gas commences and no specific legislation exists beyond the current legal framework.

4 Import / Export of Natural Gas (including LNG)

4.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

No specific regulatory limitations or rules apply. The national legislation and internationally accepted rules and principles governing the transport, storage and use of hazardous material must be complied with.

5 Import / Export of Oil

5.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of oil and oil products.

The export (i.e. cross-border sale) or delivery of petroleum and petroleum products is subject to licensing.

Only entities licensed to distribute petroleum products may provide bunker services for the re-exportation of those products, provided that such activities are carried together with sales in the national market. Entities not based in the country, which seek to carry out bunker activities from Mozambique for the international shipping of products which 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 the licensed entities. In what concerns the import of refined oil and liquefied petroleum gas, IMOPETRO (at least 51% held by the State company PETROMOC, S.A., and by the authorised distributors in proportion to their market stake) has exclusivity on the import and sale of such products to retailers in Mozambique.

6 Transportation

6.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

As referred to above, an EPCC may attribute the non-exclusive right to construct and operate production and transportation infrastructure to transport the crude oil and natural gas produced in the concession area, unless such pipelines already exist and are available in commercially acceptable terms. When such rights are not granted under an EPCC, they may be attributed under a Pipeline Concession Contract.

The holders of pipeline rights – whether under the EPCC or the Pipeline Concession Contract – are obliged to transport third-party oil on a non-discriminatory and commercially acceptable basis provided (i) there is available pipeline capacity, and (ii) there are no unsurpassable technical issues that would exclude the pipeline from satisfying such third-party requests. The holders of pipeline rights may be obliged to increase the pipeline capacity to allow the above as long as (i) such increase does not cause an adverse effect on the pipeline's technical integrity or safety, and (ii) third parties have sufficient funds to bear the cost of increase in pipeline capacity.

6.2 What governmental authorisations (including any applicable environmental authorisations) are required to construct and operate oil and natural gas transportation pipelines and associated infrastructure?

Upstream pipeline construction rights may be attributed under an EPCC or under a Pipeline Concession Contract and in either case an EIA approved by the MICOA must be presented with the respective development plan. Additionally, the concession right-holder must present the necessary licences for use and enjoyment of land (secured according to the land legislation) and the authorisations for performance of Petroleum Operations on land or at sea.

6.3 In general, how does an entity obtain the necessary land (or other) rights to construct oil and natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

According to the Mozambique legal regime, land is owned by the State and cannot be sold, disposed of or pledged. However, a lesser right can be granted that allows the use and enjoyment of land ("*Direito de Uso e Aproveitamento de Terra*" – "DUAT"). The grant of a concession entitles the holder to apply for a licence of use and enjoyment of land under the general land legislation (Law no. 19/97, October 1) and to require that rights of way be granted. Fair indemnification will need to be paid to any holders of DUAT and the resettlement of the population must be ensured.

6.4 How is access to oil and natural gas transportation pipelines and associated infrastructure organised?

Please see question 6.6 below.

6.5 To what degree are oil and natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

There are presently no oil pipelines. The current natural gas transportation and distribution network consists of the Mozambique-South Africa pipeline and a recent distribution network limited to certain districts of the capital city, Maputo. Reports indicate that a new pipeline is under construction further north, connecting to the Mozambique-South Africa pipeline.

6.6 Outline any third-party access regime/rights in respect of oil and natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport oil or natural gas compel or require the operator/owner of an oil or natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

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:

(a) there is available space at the petroleum facility in question; and

(b) there are no insurmountable technical problems which impede the use of the petroleum facility to meet 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:

(a) such modification does not have an adverse effect on the technical integrity or the safe operation of the petroleum facility; and

(b) 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 a period of six months after 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 which ensure the access sought, the matter, depending on the terms of the contract, may be submitted for resolution:

(a) to an independent commission;

(b) to arbitration proceedings; or

(c) 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 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.

6.7 Are parties free to agree the terms upon which oil or natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

Tariffs for third-party access to pipelines are not regulated and should be established in commercially reasonable terms and on a non-discriminatory basis, according to the standards that apply in the petroleum industry, and negotiations be conducted in good faith.

If six months after submitting the respective request, the parties have not reached an agreement on the commercial or operational terms for access, the matter may be submitted to resolution by an independent committee, arbitration or the competent courts of law.

7 Gas Transmission / Distribution

7.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

As mentioned above, the transport and distribution of natural gas is at a very early stage with the transport network consisting of the Mozambique-South Africa pipeline and the recent distribution network restricted only to certain districts of the capital city, Maputo. However, new transport pipelines are expected to be developed, connecting the gas-rich north and south of Mozambique.

Decree no. 44/2005, November 29, establishes the Regulation for Distribution and Commercialisation of Natural Gas, pursuant to which these rights are attributed by means of concession agreements resulting from a public tender process. The attribution of rights through direct negotiations is only envisaged when the public tender process had no bidders or in areas that have not been designated as "Concession Areas" for a distribution network or independent local networks by the MIREME. The concessionaire must be a commercial company, necessarily held by the successful tenderer(s), with the registered office and administration in Mozambique.

The concessionaire may be given exclusive distribution and commercialisation rights in the whole or part of a concession area for a certain period; however, once such exclusivity has ended, consumers are entitled to acquire natural gas from third parties.

The concession period for natural gas distribution and commercialisation networks is granted for a maximum of 25 years, and the concession for exploration of independent local networks shall have a maximum duration of 10 years.

7.2 What governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

The concessionaire must obtain a licence for use of the land necessary for the construction, installation and exploration of the concession infrastructure and pay the related taxes and compensations.

Construction may only commence after the necessary environmental licence has been obtained from the Ministry of the Environment and all studies and the MIREME must approve detailed engineering projects relating to the distribution network. Furthermore, the construction of natural gas infrastructure must necessarily involve a licensed assembly and installation company.

7.3 How is access to the natural gas distribution network organised?

The MIREME establishes the rules of negotiated access to the distribution network and the concessionaires should negotiate access rights with transparency, being barred from imposing any discriminatory conditions. The concessionaire should publish its main commercial terms of use within the two years following the end of its exclusivity, should such exclusivity have been initially granted.

7.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

One of the general duties of the concessionaire is to supply natural gas in the best manner to serve consumer needs and interests and to contribute to the country's economic and social development. For such purpose, the concessionaire must, in the terms set out in the concession contract, supply all consumers who are in a condition to pay for such supply and comply with any other conditions necessary for such purpose.

7.5 What fees are charged for accessing the distribution network, and are these fees regulated?

As mentioned in question 7.3 above, the MIREME establishes the rules for negotiated access to the distribution network and the concessionaires should negotiate access rights with transparency, being barred from imposing any discriminatory conditions. We further note that the MIREME regulates a maximum price for natural gas supplied to final consumers (Ministerial Decree no. 210/2012, September 12).

7.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

The concessionaire owns the distribution network and the installations and equipment necessary for its operation until the end of the concession period and is barred from burdening or disposing in any manner, whether fully or partially, the fixed assets effected to the concession without obtaining the prior approval of the MIREME. The assignment of the concession contract is subject to the prior approval of the granting authority.

8 Natural Gas Trading

8.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

The State reserves the right to control the trading of liquefied hydrocarbons and gas, including LNG.

The State, its institutions and other public law entities have a determining role in promoting the realisation of the existing natural resources potential so as to provide access to the benefits of petroleum production and contribute to the social and economic development of the country.

The existing Petroleum Regulation aims to bring the legal framework of the oil business to the current economic order in the country, the developments in the oil sector, ensure competitiveness and transparency, and safeguard national interests.

8.2 What range of natural gas commodities can be traded? For example, can only "bundled" products (i.e., the natural gas commodity and the distribution thereof) be traded?

The Petroleum Law provides that a trading licence is required for the trading of gas, and defines gas as "*oil that under normal atmospheric conditions is in the gaseous state*", as well as unconventional gas, including methane gas associated with coal and bituminous shale gas.

9 Liquefied Natural Gas

9.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

The current available general legal framework is silent in respect of the specific regulation of LNG facilities. Only Mozambique's Special Regime for Natural Gas Liquefaction Projects in Areas 1 and 4 of the Rovuma Basin (Decree-law 2/2014, December 2) – which applies to concessionaires under existing EPCCs – regulates any special purpose vehicles ("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 which 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.

9.2 What governmental authorisations are required to construct and operate LNG facilities?

In Areas 1 and 4 of the Rovuma Basin, the Government shall approve the Development Plan submitted by the concessionaires prior to any construction of LNG facilities. Also, when applicable, a master depletion plan may be approved for the management of the tanks.

9.3 Is there any regulation of the price or terms of service in the LNG sector?

Currently, no LNG facilities exist in Mozambique. The future LNG facilities planned by Anadarko and ENI are expected to commence production only in 2023.

9.4 Outline any third-party access regime/rights in respect of LNG facilities.

The Petroleum Law (covering LNG processing) provides that the Mozambican Government may authorise concessionaires that have discovered oil and non-associated gas deposits to develop projects for the design, construction, installation, ownership, financing, operation, maintenance, use of wells, installations and ancillary equipment, either onshore or offshore, for the production processing, liquefaction, delivery and sale of gas in the domestic or foreign markets.

Petroleum production, including LNG production activities, may be undertaken and authorised by the Government under an EPCC without the need for further licensing or concession.

10 Downstream Oil

10.1 Outline broadly the regulatory framework in relation to the downstream oil sector.

Decree no. 45/2012, December 28, defines the regime for production, importation, receipt, storage, handling, distribution, trade, transport, exportation and re-exportation of petroleum products and the respective sale prices in the national territory. This Decree provides for the following licences:

(a) Production Licence;
(b) Storage Licence;
(c) Distribution Licence;
(d) Retail Licence;
(e) Exploration of Oil Pipeline Licence; and
(f) Exploration of Unloading Terminal Licence.

The aforementioned licences are generally granted by the 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 the 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 production 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.

10.2 Outline broadly the ownership, organisation and regulatory framework in relation to oil trading.

There are no specific requirements relating to the trade in oil as a commodity in Mozambique.

11 Competition

11.1 Which governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the oil and natural gas sector?

The publication of Law no. 10/2013 (the "Competition Law") on April 11 established the legal framework for competition in Mozambique and created the Competition Regulatory Authority ("CRA") to enforce it. The Competition Law is not specific for the oil and natural gas sector and comes as a result of the efforts made in recent years by the Mozambican Government to streamline economic initiatives and liberalise some key sectors, such as communications, ports, railways and financial services.

A step further was taken recently with the publication of the Statute of the CRA on August 1, 2014.

The CRA was conferred broad supervisory and sanctioning powers with regard to restrictive competition practices (such as cartel agreements and abuses of dominant position), and charged with clearing or prohibiting concentrations between undertakings that are subject to mandatory notification in Mozambique. The CRA's decisions may be appealed in court, namely to the Judicial Court of the City of Maputo, in the case of procedures leading to the application of fines and other sanctions, and to the Administrative Court, with regard to merger control procedures and requests for exemptions relating to restrictive agreements. The Statute also establishes a duty of co-operation on the part of undertakings and other entities subject to the activities of the CRA, in order to ensure the adequate performance of the authority's duties.

11.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

The new Competition Law has a wide scope, as it applies to both private companies and State-owned companies, and covers all economic activities with effects in Mozambican territory (with a number of exceptions).

It prohibits agreements and practices which restrict competition, both between competitors ("horizontal" practices), and between companies and their suppliers or customers ("vertical" practices), as well as abusive practices by dominant undertakings (including, among others, the refusal to grant access to essential infrastructure, unjustified termination of a business relationship) and abuse of the economic dependence of suppliers or customers.

However, prohibited practices may be justified and exceptionally allowed if they lead to economic efficiencies, as well as if they promote the competitiveness of small and medium enterprises and the consolidation of the national economy (as long as such practices do not eliminate competition and are indispensable for the objective to be achieved).

The new law introduces merger control and all concentrations which meet the market share or annual turnover criteria, to be determined by the Council of Ministers, will be subject to mandatory notification to the CRA, within seven working days after conclusion of the agreement or its project, and cannot be implemented before clearance.

Violation of the prohibitions contained in the new law subjects infringing firms to fines up to 5% of the turnover of each company in the previous year. In addition, the breach of the duties to notify concentrations within the statutory period and to co-operate with the CRA is punishable with fines up to 1% of annual turnover.

The law also provides for penalty payments, where appropriate, as well as potentially serious ancillary sanctions, not only because the offender may find itself excluded from participating in tenders for five years, but because it can even find itself confronted with the possible break-up of the offending undertaking. Finally, agreements and practices concluded in breach of the law are null and void.

Recently, a proposal for a regulation implementing the Competition Law was made public, which, among other topics, further defines the subjective and material scope of the prohibitions under the Competition Law and determines the legal criteria for mandatory notification of concentrations to the CRA, with regard to the market shares and turnover of the parties. Specifically, pursuant to the referred proposal, notification is mandatory on undertakings having a market share equal or superior to 20% and an annual turnover above 100 million meticais (approximately EUR 2.5 million and USD 3.3 million).

Even though the application of the rules on merger control is dependent on the approval of the new regulation, when the new CRA starts functioning, the provisions on prohibited practices restrictive of competition shall be fully applicable, and the violation of such rules subjects the undertakings concerned to fines of up to 5% of the turnover of the preceding year, as well as other negative procedural consequences.

11.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

The CRA has broad supervisory, regulatory, investigatory and sanctioning powers, pursuant to which it will be able to inquire relevant persons, request documents and conduct searches and seizures and the sealing of the premises. The CRA will co-ordinate closely with the other sectorial regulatory authorities.

The CRA may assign different priorities to certain practices or sectors (under the designated "principle of opportunity") and in the last quarter of each year should publish its enforcement priorities for the following year.

The practical application of the law will depend largely on the organisation and functioning of the CRA, and the priorities it will set for the enforcement of competition law. Please refer to question 11.2 above for measures and sanctions that may be applied to anti-competitive practices.

11.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the oil and natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

The Competition Law should, in principal, apply to this sector. However, there is one exception to its scope which relates to cases of a specific need for protection of a sector of the economy, in the benefit of the national interest or consumers' interest.

As the Competition Law is not yet being enforced, it is not possible to comment on timings.

12 Foreign Investment and International Obligations

12.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

In order for foreign legal entities to be holders of the right to carry out Petroleum Operations, they must be registered in Mozambique and demonstrate that they have the technical capability and adequate financial resources for the effective conduction of Petroleum Operations.

Additionally, foreign legal entities which directly or indirectly hold or control legal entities that own rights under a concession contract shall be established, registered and administered under a transparent jurisdiction. This is understood as jurisdictions whereby the Government, in an independent manner, may verify the ownership, management and control, and fiscal situation of a foreign legal person who wishes to participate or participates in Petroleum Operations. Foreign legal entities that associate with Mozambican legal entities shall have a pre-emption right in the granting of concession contracts.

In the context of the acquisition of goods or services by Petroleum Operations right-holders, single or collective foreign entities that provide services to the Petroleum Operations must associate with single or collective Mozambican entities.

12.2 To what extent is regulatory policy in respect of the oil and natural gas sector influenced or affected by international treaties or other multinational arrangements?

While defining its scope, the Law states that it establishes the rules for the granting of rights to carry out Petroleum Operations in the Republic of Mozambique and beyond its borders insofar as it is in accordance with international laws.

The definition of "good petroleum industry practice" refers to all those practices and procedures that are generally employed in the international petroleum industry and aimed at the prudent management of petroleum resources, including the conservation of pressure, ensuring the regularity of Petroleum Operations and observing safety aspects, environment preservation, technical and economic efficiency.

The Government ensures the rigorous observation of the protection and rehabilitation of environmental norms, in the terms of the law and the conventions and good international practices.

Furthermore, the holders of petroleum operation concession rights shall perform them in accordance with the environmental legislation and other legislation applicable and adopt measures for the protection of the environment which are in accordance with internationally accepted standards. Petroleum Operations right-holders have an obligation to promote public safety and adopt the required measures to ensure the safety and hygiene of their workers in accordance with the national and international regulations applicable in the Republic of Mozambique.

13 Dispute Resolution

13.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the oil and natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to oil and natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; downstream oil infrastructure owners or users; and distribution network owners or users in relation to the distribution/transmission of natural gas.

Disputes in the oil and natural gas sector, even when one of the parties is a Government authority/regulator, can be subject either to arbitration or to the judicial authorities. Law no. 7/2014, February 28 ("*Lei sobre o processo administrativo contencioso*"), regulates the judicial procedures between the administration and any individual or company. This law includes a chapter on arbitration, stating that an arbitral tribunal may solve any dispute concerning (i) administrative contracts, and (ii) non-contractual civil liability of the administration arising from public management acts. Specifically concerning the oil and natural gas sector, one of the specific legal guarantees attributed to Petroleum Operations right-holders under the Petroleum Law is the possibility to resort to international arbitration for the resolution of disputes when all alternative resolutions means are extinguished. The Law establishes that when a dispute arising from a concession contract is not solved by negotiation, it can either be subject to the local courts or to arbitration, according to the terms and conditions agreed in the concession contract.

Arbitration between the State of Mozambique and foreign investors shall be conducted in accordance with:

(a) the law that governs arbitration, conciliation and mediation as alternative methods of conflict resolution;

(b) the rules of the International Centre for the Settlement of Disputes between States and Nationals of Other States ("ICSID"), adopted in Washington on March 15, 1965, or pursuant to the Convention on the Settlement of Disputes between States and Nationals of Other States;

(c) the rules set out in the ICSID's Additional Facility adopted on September 27, 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

(d) the rules of such other international instances of recognised standing as agreed by the parties in the concession contracts referred to in this Law, provided that the parties have expressly defined in the contract the conditions for implementation including the method for the designation of the arbitrators and the time limit within which the decision must be made.

13.2 Is your jurisdiction a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID")?

Mozambique is a signatory to and has ratified both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID").

13.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

In Mozambique, the Government or any Government authority is subject to the law and the judicial authorities. As mentioned above, Law no. 7/2014, February 28, regulates the judicial processes between the administration and any individual or company and establishes that in cases where the enforcement of a judgment (i) is absolutely and definitely impossible, or (ii) causes serious damage to the public interest, there is a legitimate cause for the non-enforcement of that judgment. Additionally, the Civil Procedure Code establishes that the State's assets that are used for public utility cannot be attached in the enforcement of a judgment, unless when the enforcement pursues the rendering of that same asset or the payment of a debt secured by collateral.

13.4 Have there been instances in the oil and natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

There have been no such instances that we are aware of.

14 Updates

14.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Oil and Gas Regulation Law in your jurisdiction.

This is answered in the questions above, as the law we have commented upon is quite recent.

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Paula Duarte Rocha is a registered arbitrator with the Mozambican Centre for Arbitration, Conciliation and Mediation (since 2002), and was the IBA Tax Reporter for Mozambique (2012–2014). In January 2014, Paula started her collaboration with Morais Leitão, Galvão Teles, Soares da Silva, a Portuguese law firm, as a consultant in all matters pertaining to Mozambique. Paula Duarte Rocha is also a member of the National Council of the Bar Association (since 2016).

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Tiago Arouca Mendes joined Henriques, Rocha & Associados, Sociedade de Advogados, Lda. in 2014. He has been advising clients, mainly foreign, on mergers, demergers, acquisition of interests in Mozambique or financing local operations. In that scope, Tiago has been counselling clients from foreign investment project structuring to corporate and exchange control, labour and tenancy law, including the regulatory framework applicable to each specific sector and ancillary areas (such as banking, energy, mining, insurance, real estate, retail, construction, environment, amongst others). Tiago Arouca Mendes was admitted in 2016 to the Mozambique Bar Association and in 2017 to the Portuguese Bar Association.

HENRIQUES, ROCHA
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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 the MLGTS Legal Circle, which enables us to maximise inherent synergies.

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