

## MOZAMBIQUE'S NEW LAW ON OIL AND GAS UPSTREAM ACTIVITIES – LAW NO. 21/2014

### **(I) BRIEF BACKGROUND TO THE REVIEW OF THE 2001 PETROLEUM ACTIVITIES LAW**

Following an upward review of the already large estimated reserves of the two main concessions in the Rovuma Basin, the discovery of commercial quantities of gas and plans for the construction of onshore and offshore gas liquefaction plants and for the construction of a gas pipeline for supply to South Africa, Mozambique's government has, for some years now, recognised the need to review its Oil and Gas Upstream Activities Law enacted in February 2001. The review of this legislation is now embodied in Law no. 21/2014, of 18 of August (the Oil and Gas Upstream Operations Law or "OGUOL"), which is still subject to further regulation.

The OGUOL aims to respond to basic requirements for implementation of a clear set of rules to govern rights and duties of the industry's stakeholders and to enable the stable development of such new projects in accordance with usual international standards. In addition to this, the OGUOL also represents an acknowledgement of the Mozambican peoples' increasing concerns about their lack of benefit from such projects. Until now, and since Mozambique's potential gas reserve figures have been increased and

publicised, the people have been demanding publication of the Exploration and Production concession agreements in place (and other large scale energy projects). They have also been seeking a direct positive social and economic local impact balanced with the Mozambican riches taken by international players.

Against this background, the new law contains a number of significant innovations. The State's position is strengthened with formalisation of the Institute for Petroleum's regulatory role and with an increase in its general take. This strengthening is achieved through the mandatory participation of the State-owned *Empresa Nacional de Hidrocarbonetos, E.P.* ("ENH") in all Petroleum Operations with reserved marketing and trading rights in respect of the national Petroleum take. The law also provides for a minimum 25% of the hydrocarbons production quota to be reserved to the domestic market and for the listing of Petroleum (oil and gas) companies on the Mozambican Stock Exchange.

Entities at least in 51% of whose share capital is not held by Mozambicans or which are not controlled by Mozambicans are deemed to be foreign legal entities for the purposes of the OGUOL and for assessment of applicability

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of preferential rights. Nevertheless, they must be incorporated under the legal form of a company in Mozambique and be governed by Mozambican law. Under the planned more robust sustainable development policy, the Mozambican State maintains the right to award preferential rights to Mozambican legal entities and foreign legal entities with Mozambican associates.

Another aspect of the OGUOL is the clear socio-economic concern evidenced in several provisions addressing obligations in respect of the health and safety of the population, fair compensation rights where resettlement of local communities is required and contributions to such local communities, protection of cultural heritage and ways of life. The OGUOL also provides for mandatory prior consultation of local communities before authorisation is given to begin Petroleum activities and establishes a framework with training obligations and involvement of Mozambican nationals in the management of Petroleum Operations.

Below, we move on to a summary of the procedures and requirements for access to the oil and gas sectors, taking into account the widening of the scope of the existing applicable legislation.

## **II – SCOPE, HOLDERS, ACTIVITIES AND PROCEDURES**

**Scope:** The OGUOL applies to Petroleum Operations which are defined as comprising the planning, preparation and implementation of prospection, research, development, production, storage and termination of such activities. The law also applies to the use of infrastructures, including the decommissioning, sale and delivery of Petroleum up to the determined export or supply point. In turn, such delivery point is deemed to be the point at which the Petroleum is delivered for consumption or use, or the point at which the Petroleum is loaded as goods, and also applies to liquefied natural gas (LNG).

“Petroleum” is defined as comprising crude oil, natural gas or other natural concentrations of hydrocarbons, in whatever physical state these are encountered underground, produced or capable of being produced from or in association with crude oil, natural gas, bitumen and asphalts. The concept of “Crude oil” includes mineral crude oil, asphalt, ozokerite and all other types of Petroleum or bitumen in their solid or liquid state, or obtained from natural gas by condensation or extraction, excluding coal or any substance that is possible to be extracted from coal.

The concept of “Production” has also been broadened, currently covering the activities of extraction of Petroleum from underground Petroleum deposits, including drilling for Petroleum production, injection for improvement of recovery, separation and treatment (comprising liquefaction), storage, metering, preparation for upload and transportation of Petroleum in bulk, together with the operation and use of infrastructures for Petroleum production. The term “transportation” includes maritime, road and pipeline transport in bulk from the production infrastructures to the determined delivery point.

Access to Petroleum Operations is controlled by the State through its institutions and public law bodies, including the Institute for (“INP”) which is a dependency of the Ministry of Mineral Resources (MIREM) and is formally designated as the regulatory authority for E&P activities. The State maintains ownership

of all Petroleum resources located in the ground or underground in inland waters, territorial waters, the continental shelf and Mozambique’s exclusive economic zone.

The territorial scope of the OGUOL is expressed as applying to the Republic of Mozambique and beyond its borders to the extent permitted by international law (mobile infrastructures under foreign flags used in the conduct of or assistance in Petroleum Operations are also specifically covered, except if otherwise expressly provided by law).

**The State:** it reserves the right to participate in operations in which any legal entity is involved. The decision on participation of the State (always through ENH) in any given project may be made at any stage under the terms to be established by contract between the State and the entities carrying out the Petroleum Operations. A peculiarity of this law is that it does not specifically provide for exemption from payment of any costs of the said operations with regard to the State participation through ENH (for example, the carried forward interest scheme). However, it may be trusted that this exemption will apply, either by means of further regulation or of the concession contracts themselves.

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**Rights-holders:** any Mozambican or foreign legal entity that can demonstrate the technical competence and adequate financial resources to effectively carry out the operations - according to the requirements set out in the applicable legislation and regulations - may hold the right to carry out Petroleum Operations. Mozambican legal entities enjoy the right of preference in the allocation of Petroleum Operations' rights, as do foreign legal entities associated with Mozambican legal entities.

It should be noted that for the purposes of meeting the requirements to qualify as a Mozambican legal entity, it is not enough for a company to be incorporated under the laws of Mozambique with its operating headquarters in the country. More than 50% of its share capital or control must be held by a Mozambican national or legal entity, whether private or public.

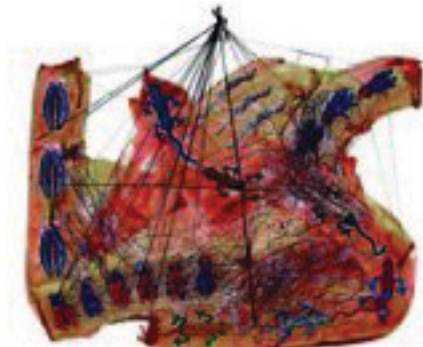
Another requirement applicable to oil and gas companies (no definition is provided in this regard) is that any such entity must be incorporated in Mozambique and listed on the Mozambican Stock Exchange, complying with the respective legal framework. Any foreign entity controlling such companies, directly or indirectly, must be incorporated in a transparent jurisdiction (in which the Mozambican Government is able to verify independently, title, management, control and tax status).

**Activities and procedures:** Petroleum operations covered by the law are subject to the prior celebration of a **concession contract** with the Mozambican State and are divided into (i) prospection, (ii) research and production, (iii) construction and operation of oil and gas pipeline systems and (iv) construction and operation of infrastructures. Concessions are awarded, as a rule, by public tender and by simultaneous or direct negotiation.

- (i) Prospection: the prospection contract grants the non-exclusive right to carry out preliminary prospection and appraisal work in the area covered by the contract, through aero, land and other surveys - including geophysical, geochemical, paleontological, geological and topographic studies. This contract is made for a maximum period of **two years** and allows drilling up to 100 metres below the surface or the sea bed. In a change from the previous legislation, no preference right is specifically provided to the prospection rights titleholder as regards the grant of the research and production contract for a part of this prospection area.
- (ii) Research and production: this contract awards the exclusive right to Petroleum research (i.e., research and other Petroleum Operations and use of infrastructures for the discovery of Petroleum and appraisal of the discovery,

including drilling) and production to conduct Petroleum Operations. The OGUOL maintains this contract's unusual characteristic of also including the non-exclusive right to build and operate oil and gas pipeline systems for the purposes of transporting Petroleum produced in the area of the contract, except when access to an already existing system is available under commercially acceptable terms and conditions. The right is awarded for a period of up to **8 years** and is subject to the provisions on the abandonment of areas (which are not set out in the OGUOL). Where a discovery is made, the awardee may retain the exclusive right to complete the work initiated within a specific area and as regards the research period, including for the purpose of appraisal and determination of the commercial value to allow the development and production of Petroleum. The development and production right is subject to the approval of a development plan by the Government, which may see its period extended, although it is subject to the consideration of the national interest, as applicable.

- (iii) Construction and operation of oil and gas pipeline systems: this contract grants the right to construct and operate oil and gas pipelines for the purpose of transporting crude oil or natural gas when these operations are not covered by a research



JORGE DIAS  
Detail

*Trabalhos Antigos, Novos Projectos, 2004*

*Aguarela, insectos em arame, linhas e colagem sobre papel*  
(3) 90 x 120 cm

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and production contract. The contract must be accompanied by the respective development plan which is an integral part of the same. The maximum period for which this contract may be awarded is not defined.

(iv) Construction and operation of infrastructures: this contract awards the right to build and operate infrastructures for the production of Petroleum, such as processing and conversion infrastructures which are not covered by the research and production approved development plan (under the research and production contract). Infrastructures are defined as installations, including platforms, liquefaction installations, plants, boats and other equipment destined to carry out Petroleum Operations, excluding vessels for supply and support and bulk Petroleum transport vessels and vehicles. Except if expressly defined, cables and oil and gas pipelines also qualify as infrastructure.

The OGUOL further provides the Government with the general right to authorise the concessionaires to develop projects for the conception, construction, installation, ownership, financing, operation, maintenance, well use, installations and ancillary equipment, whether onshore or offshore – where oil or non-associated gas reservoirs are discovered, for the production, processing, liquefaction, delivery and sale in the domestic market or for export.

**Assignment of rights**: any transfer of the rights and obligations of the holder, even if indirect or only partial, including the transfer of participations in the titleholder of the rights – including to affiliates – must be authorised in advance by the Government.

**Guarantee**: a financial performance guarantee must be provided by the operators in terms yet to be established by regulation.

**Right to use and benefit from land and establishment of easements**: the holder must request a right to use and benefit from the land to carry out the Petroleum Operations for a period compatible with the one established in the respective contract.

Relevance is given to issues of environmental protection and health and safety in Petroleum Operations which follow strict parameters, and flaring is only permitted in cases where there is no other safe or environmentally acceptable alternative.

Arbitration is accepted as a mean to resolve disputes arising from contracts executed pursuant to the OGUOL, according with the terms expressly agreed between the parties within the concession contracts. In case an arbitration clause is not included in said contracts, any dispute will be submitted and resolved by the Mozambican judicial courts. However, Mozambique being a signatory of Washington Convention 1965, if the relevant investor comes from a country with which Mozambique signed and ratified a Bilateral Investment Treaty (BIT) international arbitration is available in certain cases.<sup>1</sup>

<sup>1</sup> An Arbitration NL is available with more detailed information.

A stabilisation provision explicitly maintains the validity of rights acquired under existing contracts (including concession contracts) executed under the aegis of the now revoked 2001 Petroleum Activities Law. However, the new law provides that, upon termination of the respective period, any new contracts and concessions must be executed pursuant to the terms of the OGUOL.

The OGUOL does not provide much more detail on the contracts and conduct of operations and is subject to further regulation by the Government within 60 days of its publication. Such regulation is undoubtedly necessary considering the broad, principle-based wording of the new law.

The OGUOL entered into force on 18 August 2014, the date of its publication.

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