

## OIL AND GAS OPERATIONS REGULATIONS



**JOSINA CORREIA**  
SENIOR ASSOCIATE  
[josina.correia@tta-advogados.com](mailto:josina.correia@tta-advogados.com)



**MICHELA BAHULE**  
TRAINEE LAWYER  
[michela.bahule@tta-advogados.com](mailto:michela.bahule@tta-advogados.com)

By Decree no. 34/2015, of 31 December, the Mozambican Government approved the Oil and Gas Operations Regulations ("OGOR") and, as a consequence, Decree no. 24/2004 of 20 August was revoked.

The OGOR establishes the rules for awarding the right to carry out oil and gas operations under a concession contract. A concession contract is an administrative contract under which the State grants Mozambican or foreign entities the right to carry out oil and gas operations - as long as they are registered in the Mozambican jurisdiction.

The OGOR defines the forms, terms and conditions of the concession contracts, as well as oil and gas operation practices. It also increases the level of environmental protection.

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The OGOR clarifies and improves some important issues, including:

### **I. POWERS**

The Minister responsible for the oil and gas sector is in charge of approving reconnaissance concession contracts. The Minister is also responsible for appointing or changing the operator, authorising the burning of oil and its use as a fuel for production purposes, authorising the transfer of participating interests in concessionaire companies, actions, rights and obligations of the concessionaire in carrying out oil and gas operations, authorising the beginning of infrastructure operations and defining discovered areas.

## II. CONCESSION CONTRACTS

The ability to carry out oil and gas operations is subject to the execution of a concession contract, which can be for:

- a) Reconnaissance;
- b) Exploration and production;
- c) Construction and operation of oil and gas pipeline systems, and
- d) Construction and operation of infrastructures (i.e. liquefied natural gas or "LNG").

The concession contract shall provide for the orderly termination of operations and their demobilisation under the terms of the approved demobilisation plan. After the date of approval of any development plan, concessionaires must also be registered on the Mozambican Stock Exchange.

### ■ The processing of the application for the concession contract is subject to the payment of a fee

Concession contracts for the development of oil and gas operations result from a public tender, and the procedures for tenders must be published in the newspapers with the largest circulation in the country and made available electronically on the Government's website. The procedures to enter into the concession contract shall include: the terms and conditions pre-established in the context of the tender and the minimum periods for submitting bids. These periods must be of at least three months in the case of a reconnaissance concession contract and six months for all other concession contracts.

*After the date of approval of any development plan, concessionaires must also be registered on the Mozambican Stock Exchange.*

### ■ Granting of rights to reconnaissance, exploration and production, construction of oil and gas pipeline systems, and awarding concessions contracts to construct and operate infrastructures

Requirements are established for the preparation of the application to be addressed to the minister responsible for the oil sector. This application must be submitted at the National Petroleum Institute (*Instituto Nacional dos Petróleos - "INP"*). The application shall contain, among others: the name, address and nationality of the applicant, and, in the case of a foreign company, the identification of its legal representatives in Mozambique; the description of the nature of the applicant, including the relationship with and identification of the parent company and any other subsidiaries, place of incorporation and registration, identification of the directors of the applicant, place of residence and respective nationality; financial situation of the applicant; description of the organisation and technical resources the applicant will have available in Mozambique, and in any other locations, to carry out the activities in the areas covered by the application; environmental pre-feasibility study; drafts of the financing agreements, ownership, management and use of infrastructures, terms and conditions for the transport and access by third parties; proposed operator; and proposal for the State's participation.

### ■ Terms of contracts (reconnaissance, exploration and production, construction and operation of oil or gas pipeline systems and construction and operation of infrastructures),

Such contracts shall include, amongst others, the identification of the parties to the concession contract, the identification of the concession area, the handling of confidential information and the duration of the activities. The contracts shall also include an anti-corruption clause and, in the case of a foreign company, a statement that it has civil capacity and a registered office in Mozambique.

*Concession agreements to carry on oil operations result from a public tender and the procedures for tenders must be published in the newspapers with the largest circulation in the country and made available electronically on the Government website.*

As to the provision of security, levies and timeframes, to guarantee compliance with the obligations arising from the concession contract, amongst other requirements, the concessionaire shall submit a guarantee corresponding to the amount of the minimum work obligations provided for under the provisions of the concession contract. In the event of any failure to comply with such obligations, the INP will enforce the guarantee in respect to the same period of exploration. In its annex, the OGOR stipulates the levies that have to be paid by the concessionaire.

When it comes to the timeframes, the concession contract for exploration and production is split in two terms. The exploration phase, of up to 8 years and the production phase of up to a maximum of 30 years from the date of approval of the relevant development plan, as well as for the concession contract for oil or gas pipeline systems. However, the infrastructures construction and operation contract requires a specific licence.

It is important to note that concession contracts can be extended.

However, the renewal can only be granted in exceptional cases, as long as the economic terms offered by the concessionaire are favourable to the national interest.

As to the ways in which the concession contract can be terminated, the following forms of termination are established: the expiry of its term, renunciation of rights under the concession contracts (up to three months before expiry of its term) and revocation. In these cases, the rights over the area and the assets installed on-site revert to the State free of charge, except if otherwise provided for in the contract.

In case of interest in revocation of a concession contract, it must be preceded by 90 days' notice, detailing the alleged breach. The concessionaire will have 30 days from receipt of the notification to remedy any breach it may have committed.

As to the right of use of areas to carry out oil and gas operations, the concessionaire shall comply with the applicable legislation in respect to the award of the right of use and development of land and maritime areas covered by the concession in order to carry out the operations. The concessionaire may also hold the right of use and development of by submitting a plan to the Government, for purposes of construction of and operation of infrastructures.

The Law makes reference to the requirements imposed on the operator and most importantly are the skills and experience in oil and gas operations and proven experience in project management in relevant operations.

### III. PROGRAMMES, PLANS AND ASSESSMENTS

As oil operations must be subject to careful and systematic planning, the concessionaire must present programmes and plans to the minister responsible for the oil and gas sector. Those include the exploration plan, the development and production plan, the oil or gas pipeline systems development plan, the infrastructures development plan and the demobilisation plan.

Each phase of the activity must be subject to plans prepared through consultation with the INP, in accordance with the terms and conditions of the concession contract. Each plan or programme must be submitted at least five months before the planned commencement date of the operations.

As regards the oil deposit evaluation, the concessionaire shall notify the INP, within 24 hours of any discovery, and keep it informed of the results of the tests carried out and their assessment. Within two months of the date of notification, the concessionaire shall submit the assessment programme to the INP, with the definition of the expiry date, not exceeding two years, for the evaluation of the discovery which includes drilling activities.

The new regulations also set out the terms and conditions for the assessment programme and commercial evaluation of the production and sale of non-associated natural gas.

The regulations also mention the issuance of a declaration of commerciality. In other words, the concessionaire shall pursue with the necessary technical and commercial assessments in order to determine whether the discovery can be developed in commercial terms, either individually or jointly with other oil deposits within the concession area. Within 180 days of the date of presentation of the report, the concessionaire shall notify the INP of whether the oil deposits covered by the discovery can be developed commercially. The concessionaire shall also submit the **declaration of commerciality** which includes a complete description of the necessary data, explorations and evaluations that led to those conclusions.

One new feature in the OGOR is the **Demobilisation Plan**. The concessionaire must submit the demobilisation plan to the minister responsible for the oil and gas sector, with a copy to the INP. The plan shall be submitted at least two years before the date planned for the closure of the oil and gas operations, re-use or removal and collection of the infrastructures, and it must be drafted in liaison with the INP and contain the requirements provided for under the OGOR.

In relation to the demobilisation, the OGOR also establishes that the concessionaire must open an interest bearing bank account, in a currency agreed with the INP, at a bank of its own choice, approved by the Bank of Mozambique. This account will be recorded as the "Demobilisation Fund" and it will be used to periodically deposit amounts which aim is to cover the expected costs of the demobilisation.



JORGE DIAS (detail)  
Trabalhos Antigos, Novos Projectos, 2004  
Aquarela, insectos em arame, linhas e colagem sobre papel (3) 90 x 120 cm  
From the collection of the PLMJ Foundation

#### IV. MANAGEMENT OF THE OIL AND GAS OPERATIONS

The concessionaire shall ensure that the operator or any person that carries out oil and gas operations pursues them in accordance with the provisions of the concession contract and any other documents related to oil and gas rights, and they shall also act prudently and in line with the environmental standards and within the scope of the plans for oil operations approved by the Government.

The concessionaire is required to appoint a general director resident in Mozambique to represent it and provide details of his or her identity to the minister responsible for the oil and gas sector.

This means the concessionaire must, within 30 days of the effective date of the concession contract, implement and maintain an organisational structure with powers to manage the operations. While the oil and gas operations are being carried out, the concessionaire and the operator must develop and implement policies and strategies, and prepare assessments, plans and technical solutions.

**As to the training of personnel**, the concessionaire must contribute to the training of Mozambican technicians in compliance with the provisions of the concession contract. A concessionaire is required to employ Mozambican citizens who have suitable qualifications, at all levels of its organisation, and ensure subcontractors employ Mozambican citizens.

**In relation to the acquisition of goods and services**, the OGOR provides that the acquisition of goods and services by holders of oil and gas rights, where value of such acquisition is of at least MZN 40,000,000 (forty million meticaís) must be done by public tender.

#### V. REQUIREMENTS OF THE OPERATIONS

The concessionaire shall adopt safety measures and establish overall objectives for health and safety at work. Environmental impact assessments shall be conducted in all areas that could be affected by oil and gas operations authorised under the concession contract.

The concern for the environment is considerable, thus, the concessionaire or operator shall take all steps necessary to avoid accidents, pollution, damage or risk to personnel, among others. This is due to the fact that, whenever the Government considers that a operation, infrastructure or activity under a concession contract, places a risk on life of people and animals, or property, it will notify the concessionaire of corrective measures to be taken under the applicable law.

#### VI. INSPECTIONS AND SANCTIONS

The inspectorate-general of the Ministry of Mineral Resources and Energy is responsible for inspecting sites, buildings and infrastructures where oil and gas operations take place, to ensure a rational and sustainable use and exploitation of oil and gas. To carry out this role, upon prior notice to the operator, the inspectorate-general has the right to monitor the performance of the oil and gas operations and to inspect all assets, registrations and documentation in the possession of the operator and of the concessionaire.

*The above fines are ranked in accordance with the severity of the breach.*

Lack of compliance with the petroleum legislation and with the terms of the concession contract is subject to a fine of between MZN 5,000,000 (five million meticaís) and MZN 50,000,000 (fifty million meticaís). Any failure to comply with specific administrative orders and instructions is subject to a fine of between MZN 500,000 (five hundred thousand meticaís) and MZN 5,000,000 (five million meticaís).

The above fines are ranked in accordance with the severity of the breach.

With this new legislation, the Government has sought to increase the level of commitment of foreign companies involved in oil and gas operations in Mozambique and to emphasise environmental issues in every phase of the oil and gas operations.

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Edifício Millennium Park, Torre A, Avenida Vladimir Lenine, n. 174, 6º Dtº, Maputo, Moçambique  
T. (+258) 84 3014479 . F. (+258) 21 303723 . E. [tta.geral@tta-advogados.com](mailto:tta.geral@tta-advogados.com) . [www.tta-advogados.com](http://www.tta-advogados.com)