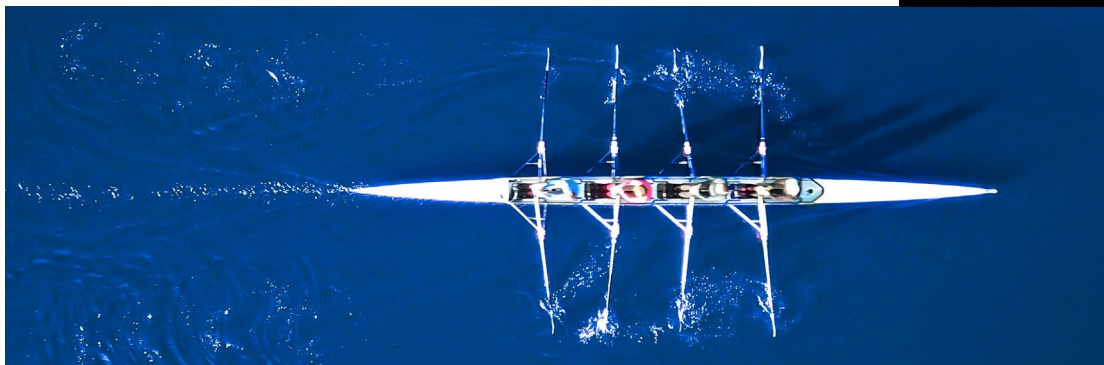


JUL. 25



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ENERGY AND NATURAL RESOURCES

Mozambique's regulation implementing the new Electricity Law

A proposed regulation was submitted to public consultation in Mozambique which aims to implement the principles and provisions established by Mozambique's new Electricity Law (Law no. 22/2022, of 11 July) on the procedures for granting, executing, modifying, and terminating concessions in the electricity sector.

This regulation clarifies the rights and obligations of the concessionaire while creating robust mechanisms to guarantee transparency, predictability, and legal certainty. The aim is to foster national and foreign investment by promoting a stable, inclusive regulatory environment conducive to the development of resilient and sustainable electricity infrastructure. Likewise, the regulation will revoke the older Decrees no. 8/2000 and no. 42/2005 (with the partial exception of Chapter VI in Decree no. 42/2005 regarding the National Electric System Manager, which remains temporarily in force).

The aim is to foster national and foreign investment by promoting a stable and inclusive regulatory environment.

Among the key new features, we highlight the following:

Broadened scope

The proposed regulation covers not only traditional electricity activities such as generation, transmission, distribution and supply but also energy storage and consumption. The introduction of energy storage represents an important positive step towards enhancing system flexibility and supporting the integration of renewable energy sources.

Concession Award Criteria

While the procedural rules for awarding concessions remain largely unchanged, they have been reinforced with clearer requirements - most notably, the mandatory inclusion of additional evaluation criteria in the final report. These criteria include project experience, cost coverage, quality and reliability of supply, and compatibility with existing or planned electricity infrastructure, thereby contributing to a more transparent and fair process.

Nuno Morgado Pereira

Mozambique Desk and Banking and Finance team

João Marques Mendes

Martinho Paour
Public Law team

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Negotiation phase

Furthermore, it is now explicitly foreseen that a negotiation phase shall take place between the evaluation committee and the winning bidder, during which the key terms of the concession contract and any related agreements will be defined. This process also involves due diligence to verify the assets, businesses, and rights that will be transferred. Crucially, the final contract must not contain conditions less favorable to the State, the national economy, or Mozambican society than those that led to the bidder's selection, and it must be concluded within ninety days from the end of the bid evaluation.

Unsolicited proposals and concessions

In a significant development, the proposed regulation introduces the possibility for unsolicited proposals aimed at developing technical studies that may serve as the basis for awarding a concession. These studies shall be authorized by the Minister responsible for Energy for up to three years – renewable for periods of up to one year – on a non-exclusive basis and will require the submission of progress reports at least every six months. If the studies are completed within the authorized period, they may result in a public tender for the relevant concession, with the proposing entity enjoying a pre-emption right in the form of a preferential evaluation margin of up to 15%.

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Concession contract

A new, a more robust contract model is required, incorporating an extensive range of clauses encompassing everything from local content obligations to environmental security provisions, anti-corruption clause and formal guidelines for performance monitoring. Notably, the new text demands explicit references to service standards, risk mitigation clauses (e.g. force majeure and extraordinary changes in circumstances), responsibilities for decommissioning plans, and periodic reporting on fiscal, accounting, and labor matters.

Local content

The proposed regulation brings local content to the forefront, requiring concession contracts to include robust measures for local involvement and development -such as job creation, professional training, technology transfer, support for local businesses and supply chains, and programs aimed at modernizing agriculture. The plan will be subject to approval and additional minimum requirements may be established by the ministries responsible for energy and labour, reflecting a shift from a minimal reference to local content to a more comprehensive and mandatory framework.

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Performance guarantees

Financial guarantees will need to be provided by applicants or concessionaires at key project stages to ensure compliance with concession terms:

- **Bidding:** 0.1% of the estimated investment, returned upon contract signing.
- **Contract signing:** 10% of the investment, valid until operations begin.
- **Start of operations:** 5% of the investment, adjusted for inflation, valid until project handover.
- **Project handover:** 5% to ensure return of assets in good condition, valid for 12 months.

For large-scale projects (12.5 billion meticaïs or approximately 200 million US dollars) the aforementioned guarantees are capped at 2.5% of the investment. These guarantees may take the form of bank or parent company guarantees or other reliable financial instruments and their execution will not preclude additional legal penalties.

Rights and obligations of concessionaires

A clear effort has been made to consolidate and clarify the rights and duties of concessionaires, which were previously dispersed across Decree no. 8/2000, of 20 April and Decree no. 42/2005, of 29 November. While the proposed regulation organizes these provisions into a more coherent framework – explicitly detailing specific rights such as access to facilities for inspection and maintenance, and responsibilities including operational, financial, safety, and environmental obligations – it does not introduce any fundamental changes. Rather, it reflects and codifies those existing legal rules, principles, and standard industry practices, ensuring greater transparency and ease of reference for all types of concessionaires without altering the established balance of rights and responsibilities.

Energy surplus and net billing

A key innovation is the possibility of self-consumers to sell surplus energy to the National Electrical System (“NES”) Operator or the relevant network concessionaire, with predefined limits on the amount of energy that can be exported. To do so, the self-producer must be licensed and connected to the electricity grid, and a suitable metering system must be installed. Technical and safety requirements include protective devices and remote operability for grid-synchronized operation. Crucially, transactions are governed by commercial terms negotiated between the parties, subject to approval by ARENE. Equally importantly, net billing arrangements will be enabled through bidirectional metering, ensuring accurate accounting of both imported and exported electricity flows.

Spinning reserve

Energy generation concessionaires will be required to maintain a significant spinning reserve during commercial operation whenever requested by the NES Operator.

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Total and partial protection zones

The proposed regulation introduces specific rules for the automatic creation of partial protection zones and administrative easements for electricity supply projects, including overhead, underground, and subsea lines. It establishes different clearance requirements based on voltage levels and mandates the registration of the corresponding easement with the land registry and property records. In cases where such constraints affect property rights, the regulation foresees the payment of compensation.

Safety zones

Clear rules are introduced for the creation and demarcation of safety zones within administrative easement areas, expressly prohibiting construction, excavation, use of dangerous substances, and the installation of pipelines or cabling that could endanger electrical infrastructure. Moreover, it provides that the exact width of these security zones is determined on a case-by-case basis, without exceeding 50 meters on each side of the facility or electrical installation.

Investment regime

Electricity supply projects are now explicitly eligible for investment and tax benefit regimes under applicable legislation, with qualifying assets including both physical and virtual infrastructures such as systems, equipment, and software essential to energy access. Concessionaires seeking to access these incentives must present their concession contract, thereby promoting legal certainty for new investments in the energy sector.

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Concession extension

The proposed regulation sets a clear process for concession extensions, giving investors greater certainty and protecting long-term investments. Concessionaires must submit a request at least 24 months before expiry, demonstrating compliance with obligations and including updated technical and economic studies, a feasibility assessment, and a budgeted implementation plan. Proof of tax and social security compliance and payment of regulatory fees are also required. Failure to meet these conditions voids the request. ARENE will review the submission and issue a technical opinion before a final decision is made by the competent authority. This framework enhances legal certainty and transparency while safeguarding both public oversight and private sector interests.

Exit of projects

Although the transfer of concessions was already provided by law, the proposed regulation now sets out a more comprehensive procedure for such operations, requiring clear evidence of the transferee's legal, technical, and economic capacity, along with proof of both parties' tax compliance. Relevantly, however, prior approval is waived for transfers arising from a financing agreement authorized by the Minister responsible for energy, where a financial institution has the right to "step in" and operate the concession project.

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In the event of concession extinction and reversion to the State, the proposed bill ensures fair indemnification for the concessionaire. This protects investments made throughout the project.

Concession termination

The proposed regulation, building on the Electricity Law, strengthens investor protection by granting concessionaires the right to unilaterally terminate the contract in cases of material breach by the awarding authority that prevent project execution or reliable electricity supply. The concessionaire must give 24 months' notice, with the authority having 60 days to remedy or justify the breach before termination takes effect.

Concession Extinction and State Reversion Indemnity

In the event of concession extinction and reversion to the State, the proposed bill ensures fair indemnification for the concessionaire through an independent evaluation commission. This protects investments made throughout the project by transparently assessing necessary rehabilitation and guaranteeing appropriate compensation.

Demobilization Plan

Concessionaires will have to develop and submit a demobilization plan at least 24 months before the end of the concession agreement. This plan - drafted in coordination with energy and environmental authorities - must address the disposal, removal, or reuse of electrical facilities and related assets, taking into account any rehabilitation and restoration work needed. A dedicated Demobilization Fund, continually updated and verified by the relevant authorities, covers the associated costs. This will require investors to engage in strategic planning to cover demobilization costs and avoid unforeseen liabilities.

Energy Regulatory Authority

ARENE maintains its broad powers, including conducting inspections and tests, requesting relevant documents and data, freely accessing concessionaires' facilities, and issuing operational orders. Notably, it will now assume a key role in dispute resolution between concessionaires, and between concessionaires and consumers, covering tariffs, prices, compensation, technical or financial matters and any other topic and the Electricity Law. If an agreement cannot be reached, conflicts may be submitted to arbitration or the courts. In certain cases, an independent expert - appointed by ARENE if necessary - makes a final, binding determination. ■