

## Analysis of Mozambique's New Hydrocarbons Legal Regime

This update addresses the main features of the New Hydrocarbons Law of Mozambique, which became effective on August 18, 2014.

The New Hydrocarbons Law is the greater part of a set of new laws to implement Mozambique's new hydrocarbons regime, pending further regulations that should be published in the coming months.

### Overview

The New Hydrocarbons Law (Law No. 21/2014) sets the new legal framework for all hydrocarbon-related activities in Mozambique. The law establishes the concession of rights system to perform oil and gas operations in the Republic of Mozambique (and beyond its borders); including oil activities, oil transportation and any infrastructure owned by the titleholder of concessions or third parties, such as mobile infrastructures of foreign countries with the purpose of leading and assisting the oil and gas operations. The law does not cover refining processes, industrial use, distribution and trading of oil and gas products. In essence, the law introduces relatively small changes to the old hydrocarbons law (Law No. 03/2001), maintaining all the major principles and aspects of the older legislation.

The new legal regime conserves the principle of state ownership of prospecting, research, production, transport, trading, refining and transformation of liquid and gaseous hydrocarbons and their products. The state is granted the opportunity to develop, directly or indirectly, the complementary or secondary activities involved. The National Hydrocarbons Company (*Empresa Nacional*

*de Hidrocarbonetos - ENH*), remains the state's exclusive representative to invest in the improvement and stabilization of its participation in the oil and gas businesses. The National Oil Institute (*Instituto Nacional de Petróleos – INP*) also remains responsible for the regulation and promotion of the oil and gas operations. However, the state maintains the concession regime for partnering with the private sector.

### Concession Agreements

Mozambican entities or foreign entities registered in Mozambique may be a right holder to conduct oil and gas operations, provided they prove to have expertise, technical ability and financial means adequate to conduct such operations effectively. However, foreign entities shall be established, registered and administrated from a transparent jurisdiction, which, according to the law, means a jurisdiction in which the state can verify the ownership, management and control and tax status of such foreign entities. The law also states that under the same circumstances, Mozambican entities or foreign entities associated with Mozambican entities have a pre-emption right in the signing of concession agreements. Also, any investor that has interest in oil and gas exploration in Mozambique shall make a partnership with ENH, the exclusive representative of the state.

The types of concession agreements under the law are:

- **Recognition:** grants the non-exclusive right to conduct preliminary research and assessment in the area of the concession agreement, through aerial, terrestrial and

other surveys, including geophysical, geochemical, paleontological, geological and topographical studies. It is recognized and executed throughout the maximum period of 2 (two) years and is not renewable. It grants the ability to drill to a depth of 100 (one hundred) meters below the earth's surface or seabed;

- **Research and Production:** grants the exclusive right to conduct oil and gas operations as well as the non-exclusive right to construct and operate infrastructure for the production and transportation of oil and gas through a concession agreement area. This is subject to there being no availability of access to oil or gas pipelines or other infrastructures already existing under acceptable commercial terms and conditions. The term can be no more than eight years, subject to renewal by equal or inferior periods, whichever is more beneficial to the national interest and is subject to the provisions on the abandonment of areas;
- **Construction and Operation of Oil and Gas Pipeline Systems:** grants the right to build and operate oil and gas pipeline systems for transportation of crude oil and natural gas purposes when these operations are not covered by a research and production concession agreement. It needs to be accompanied by a development plan of oil and gas pipelines; and
- **Construction and Operation of Infrastructure:** grants the right to build and operate infrastructure for oil and gas production, such as for processing and conversion, which are not covered by an approved research and production development plan.

For the investors, the concession agreements aim to guarantee security and legal protection of property rights on goods, including industrial property rights comprised in the approved investments made for oil and gas activity. Expropriation may take place only exceptionally, and with a public interest justification, but such cases are subject to the

payment of just compensation. However, all data obtained under any concession agreement shall be state property. It is also important to note that, in compliance with the terms and conditions contained in a concession agreement permit, operators must provide a financial guarantee.

## Taxation

The legal entities conducting oil and gas operations in Mozambique are subject to the payment of the following general taxes in addition to the specific taxes:

- Income tax (32% on net profits)
- Value-added tax (17% on sales, as debt rate - creditable)
- Local taxes when applied (not significant)
- Other taxes established by law

The specific taxation on oil and gas operations (Petroleum Production Tax) is established by law, currently regulated by Decree No. 04/2008, and applies to oil and gas produced in Mozambique, from the producing area. The Petroleum Production Tax is similar to a royalty and becomes chargeable from the time the oil or gas produced is extracted from an oil field/gas field and at the current rates: 10% for crude oil and 6% for natural gas. The tax base is the amount of oil or gas produced and the value is determined on the basis of the weighted average prices that were sold by the producer and its contractors in the month that corresponds to the tax payable, being referenced to international prices of major international oil and gas export centers.

## Land Issues

The right to explore oil and gas is different from the use of land rights or other rights established by law. Thus, the granting of rights for oil and gas operations shall not imply the allocation of rights for use of land. Fair indemnification will need to be paid by the concessionaires to the people or community that hold the use of land rights. In addition, the concessionaires must ensure the resettlement of populations when the

concession area is located in an area inhabited by families or communities. After the end of oil and gas exploration, the holders of previous use of land rights have preference in the reallocation of such rights.

## Environmental Issues

The areas surrounding the infrastructure of oil and gas operations in a 50 foot strip are considered zones of partial protection. If the concessionaires cause any damage to cultures, soils, constructions, equipment or improvements, they have the obligation to indemnify the owners of the mentioned goods, in compliance with the applicable laws. If the concessionaires cause damage to the environment or pollution, they are required to indemnify the affected party for the harm and damage caused, regardless of fault.

The state shall ensure the strict observance of the norms of environmental protection and rehabilitation, in accordance with the applicable laws and conventions and good international practices. The concessionaires must be responsible for the damages to infrastructure, environment, territorial waters and the public health concerning the handling, transport, research and exploration of oil and gas. The concessionaires must guarantee the coexistence with the fauna and marine and other ecosystems, especially in areas of conservation and development of fishing activities. In the cases, where explosives are to be used, techniques and measures of safety during planning, execution and monitoring must be adopted and submitted to the competent authorities for approval. The use and improvements of oil and gas resources shall observe the existing rules of protection against exposure to radioactive substances.

## Local and Social Issues

Foreign entities that provide services to oil and gas operations are required to associate themselves with Mozambican individuals or entities. The acquisition of goods or services by concessionaires, above a certain value, must be made by tender and should be published

through the media with the highest circulation or audience, including newspapers and electronic media. Preference should be given to local products and services that are available at the time of tender when comparable in terms of quality to international products and services. However, this preference is only to the extent that the price difference, including taxes, does not exceed 10% percent of the price of imported products and services available.

Beyond the resettlement and indemnity obligations imposed on the concessionaires, with the help of the state, concessionaires are required to create structures to ensure the organization and participation of the communities that are located in the concession areas. The concessionaires will also be required to ensure the harmonious environment for labor relations. The concessionaires shall guarantee the employment and technical-professional training for the Mozambicans and ensure their participation in management positions of oil and gas operations.

Concessionaires shall take the necessary measures to guarantee the health and safety of their employees under the Mozambican legislation, and under the best international practices. The recruitment of personnel by the concessionaires must be published in the newspapers or on the radio, television and internet, indicating the required conditions and the publication of results.

## Dispute Resolution

Any disputes caused by the concession agreements must be resolved firstly by negotiation. If no agreement is reached, the matter can be submitted to arbitration or to competent judicial authorities, in compliance with the terms and conditions established by the concession agreement. The arbitration between the state and foreign investors shall be in compliance with: the Mozambican law that regulates arbitration; conciliation and mediation as dispute resolution; the rules of the International Centre for Settlement of

Investment Disputes, approved in Washington on March 15, 1965, or in compliance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States; and the rules of other international bodies widely recognized in compliance with that agreed in the concession agreement.

This publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek legal advice before taking any action with respect to the matters discussed herein.

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