



# MOZAMBIQUE - THE LATEST PETROLEUM OPERATIONS REGULATION: WHAT EFFECTIVELY CHANGED?

## I. PETROLEUM: BRIEF ON THE 2015 OIL AND GAS UPSTREAM OPERATIONS LAW

Mozambique's most recent Petroleum Operations Regulation was enacted by Decree no. 34/2015, of 31 December 2015 (the "New POR"). This New POR came to regulate the 2014 Oil and Gas Upstream Operations Law, enacted by Law no. 21/2014, of 18 August 2014 (the "OGUOL") and revoked the previous Petroleum Operations Regulation embodied in Decree no. 24/2004, of 20 August 2004 (the "POR"). Further to the requirements of registering petroleum E&P companies on the Mozambican Stock Exchange and socio-economic and environmental general provisions introduced by the OGUOL<sup>1</sup>, the latter also brought a broadened scope, when compared to the February 2001 Oil and Gas Upstream Activities Law, mostly aiming at clarifying the legal regime applying to (i) upstream exploration and production ("E&P") activities of non-associated natural gas and (ii) potential liquefied natural gas ("LNG") projects and petroleum activities related infrastructures, – with the creation of the figure of a separate concession contract for construction and operation of infrastructures.

The New POR was to be enacted within 60 days from the entry into force of the OGUOL – i.e., 18 August 2014 – and this long wait raised industry stakeholders' expectations as to this New POR.

<sup>1</sup> Please refer to our News Lextter of September 2014 for further details.

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The following definitions – already provided in the OGUOL are most important for the overall understanding of the New POR:

- **Petroleum Operations** – the planning, preparation and implementation of prospection, research, development, production, storage and termination of such activities, including delivery of Petroleum up to the determined export or supply point (also applying to LNG);
- **Petroleum** – crude oil<sup>2</sup>, 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;
- **Production** – activities of extraction of petroleum from underground reservoirs, including drilling for petroleum production, injection for improvement of recovery, separation and treatment (liquefaction contained herein), storage, metering, preparation for upload and transportation of petroleum in bulk, together with the operation and use of infrastructures for petroleum production. Maritime, road and pipeline transport of petroleum in bulk from production infrastructures to the determined delivery point falls within the concept of “transportation”.
- **Infrastructures** – 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.

We recall that, pursuant to the OGUOL, all petroleum activities are to be carried out under the aegis of a specific concession contract for one or more of the following: (i) prospection, (ii) research and production, (iii) construction and operation of oil and gas pipeline systems and (iv) construction and operation of infrastructures – the latter only to the extent that the envisaged construction and operation of infrastructures is not already covered by a research and production contract.

**So, what effective changes brought the New ROP when compared to the previous regime<sup>3</sup>?**

## II – THE NEW ROP AND OVERALL CONTRACTUAL NOVELTIES

Largely the New ROP mirrors the changes to the legal framework brought by the OGUOL and specifies the related procedures and requirements. Basic alterations refer to the wide-ranging use of the term “Infrastructure” which, as mentioned and further to oil and gas pipelines, now covers other types of installations, extending the reach of the 2001/2004 legal regime dealing with its oil and gas pipelines construction and operation concession contract separately.

- Additionally, if doubts arose as to the timing and requirement of the petroleum activities’ companies being registered with the Mozambican stock exchange, the New ROP sets forth that **all concessionaires shall have to register at this stock exchange** as from the date of approval of the relevant development plan.
- **All concession contracts for petroleum activities are subject to public tender** – minimum requirements of the contents of the tender documents, including the model concession agreement, except when granted by the Government through simultaneous or direct negotiation subject to (i) the respective areas having already been declared available as a result of (a) previous tender procedures which did not result in a concession or (b) termination, relinquishment, revocation or abandonment – each as described within the New ROP; or (ii) in the case of a concession contract for infrastructures or of oil and gas pipeline systems which were not covered by an approved research and production development plan.
- **Public tender procedure shall also be mandatory for acquiring goods and services** related with petroleum operations as from MZN 40 million (circa USD 591.730,00). Within the purchase of goods and services, the concessionaires are liable for guaranteeing that all foreign persons are associated with Mozambican individuals or entities, substantially contributing to the production and creation of value in goods and services of national origin.

<sup>2</sup> Including 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 possible to be extracted from coal.

<sup>3</sup> Under the February 2001 Oil and Gas Upstream Activities Law and its ROP.

■ **As regards each type of concession contract** and respective petroleum operations activities, below you will find a summary comparative analysis on procedures and requirements, evidencing differences to be noted when with reference to the 2001/2004 legal regime.

- Further to the identification of the parties' and their obligations, area of the contract, duration, and litigation resolution mechanisms, common newly specified minimum contents of all concession contracts consist of:
  - The obligation of foreign concessionaires having legal capacity and a registered office in Mozambique with a capable organizational structure;
  - Treatment to be given to confidential information;
  - Possibility of revocation of the concession in case of – among others – abandonment of the concession area for over 365 days<sup>4</sup>;
  - Provisions on activities and Governmental rights which were formerly included in most of the E&P Concession Contracts and the Joint Operating Agreements on mandatory transfer of participating interest subject to Governmental decision, where there is a serious breach of the concession contract;
  - Obligations to seal or close all wells and adopt human life, assets and environment accident precautionary measures all within 90 days from the termination of a concession contract; and
  - An anti-corruption clause.

■ **With the exception of concession agreements for prospection activities, all concession contracts shall also include at least:**

- State participation (through the national oil company, Empresa Nacional de Hidrocarbonetos, E.P. (“ENH”);
- Treatment on the use and development of land and ancillary rights thereto;
- Third party access to oil and gas pipeline systems or infrastructures, as applicable;
- Specific environmental requirements;
- Identification of the operator – which may now clearly be an entity other than the concessionaire(s) subject to the fulfilment of the usual additional requirements, although the concessionaires shall always be jointly and severally liable with the operator;
- Coordination of the different development plans submitted, as the case may be, specifying material adverse effects in the relevant concession area(s) under development and proposal of technical and other measures; and
- Local content plan (further to the national technicians of the governmental institutions involved in the petroleum operations training plan).

■ **Specificities on contractual types**

- Prospection rights' grant – further to the information already identified as necessary to be submitted within the respective grant application by the interested parties under the former legal framework, the following is now itemised as required within such application: (i) description of the nature of the applicant, including its relationship with the parent company and other subsidiaries, place of incorporation and registry, identification of members of its board of directors, their place of residence and nationality; (ii) demonstration of technical and financial capacities and experience to carry out or manage petroleum operations; (iii) identification of the area of interest, including geographical coordinates and map(s); (iv) description of the objective, nature and forecasted period of activities; (v) technical description of the equipment to be used and methods applied, vehicles, vessels and aircrafts; and (vi) proposal of plan of activities. Where the application is submitted by more than one legal entity, the application information shall refer to all applicants.

The changes particularity brought by the New ROP regarding the contents of the prospection concession agreement refer to the contract having to include information on the nature and conditions of the concessionaires' form of association, if any. When compared to the former legal framework, the scope of the contract may now specifically include aeromagnetic surveys (in addition to the magnetic surveys) and other prospection ancillary activities than the listed above.

- Research and Production rights' grant – the only new items to be included in the application for the concession contract are that (i) if the applicant consists in an association of legal entities or individuals, it shall include the nature and conditions of such an association and (ii) the need to submit proposals for each of the model concession contract's identified negotiable terms.

<sup>4</sup> The former regime set out a 3 months period, although the New ROP maintains that an area is deemed abandoned when no operations are carried out in the contract area for at least 90 days without a justifiable reason.

- Oil and gas pipelines systems construction rights' grant – the new items to be included in the respective concession contract application are that (i) if the applicant consists in an association of legal entities or individuals, it shall include the nature and conditions of such an association; (ii) the need to submit (a) the feasibility study to be implemented pursuant to the concession contract to be formalised, (b) the environmental pre-feasibility study and the program for execution of the respective feasibility study, and (c) a proposal for financing agreements, attribution of participation, management and use of the pipeline; and (iii) identification of any other terms and conditions relevant for concession contract purposes.

Further to the new items to all concession contracts described above, the only novelties brought by the New ROP with regard to the concession contract are that it shall include the route of the oil or gas pipeline at stake and that the construction of an oil or gas pipeline under a research and production contract shall be part of the related approved development plan.

- Construction and Operation of infrastructures rights' grant – The application for these activities shall include (i) where the applicant consists in an association of legal entities or individuals, details on the nature and conditions of such an association; (ii) the experience of the applicant and of the proposed designated operator within the petroleum industry, namely as regards petroleum operations and activities related with the application at stake in similar circumstances as those it wishes to apply to the construction or operation of infrastructures, liquefaction, storage and supply of petroleum, including information on the marketing activities of the applicant or its affiliates and other market conditions; (iii) demonstration of technical and operational capacities of the applicant and of the proposed operator; and (iv) the need to submit (a) the environmental pre-feasibility study and the program for execution of the respective feasibility study, and (b) a proposal for financing agreements, attribution of participation, management and use of the infrastructure.

This type of concession agreement was not provided in the 2001/2004 legal framework. It shall account, within its mandatory minimum provisions, for all the common provisions detailed above jointly with the (i) terms and conditions associated to the infrastructure construction and operation rights; (ii) participation of the concessionaires; (iii) property over the infrastructures; (iv) economic conditions and other charges; (v) acquisition of goods and services; and on (vi) compensation, liability and insurances. The construction and operation of infrastructures requires obtaining other licences as per applicable legislation considering the type of infrastructure at stake.



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**JORGE DIAS**  
Sinais, 2012 (detail)  
*Tinta acrílica, stencil e MDF sobre  
contraplacado. Dimensões variáveis*  
From the Collection of the  
PLMJ Foundation

#### ■ Additional Considerations

- additions to the regime of the decommissioning plan and related activities evidence the **preoccupation to preserve and prevent from harming human life, assets and the environment, complying with best industry practices and international oil industry standards**. In this sense, **gas flaring is now subject to authorisation** or to be notified to the National Petroleum Institute within **24 hours** when for testing or in case of emergency.
- the relevant Minister holds the right **to contract specialised consultancy to draw up a decommissioning plan** if the concessionaires fail to submit one up to two years prior to the termination of the petroleum operations.
- still as regards decommissioning, each concessionaire within a production or a use of infrastructures for petroleum operations contract shall **open a bank account as decommissioning fund** to periodically deposit amounts covering such costs as per the estimates submitted and annually updated by the concessionaires;
- **domestic market obligation framework** provides that the natural gas so delivered to the Government is to be sold to domestic buyers, for domestic industrial or other use through ENH's assistance and **the purchase prices are supposed to follow the open market prices set out in the national gas plan as complemented or amended**;
- the aim to assure the **joint dedicated marketing** of the natural gas per concession area being brought to evidence; and
- **protection and safety areas may now go up to 500 m** around petroleum infrastructures<sup>5</sup>, including offshore if the pipeline is considered part of an infrastructure.

<sup>5</sup> Instead of the former 200 m.

This newsletter was prepared by a multidisciplinary team made up of lawyers from TTA and PLMJ. This team was brought together under an agreement for international cooperation and membership of PLMJ International Legal Network, in strict compliance with applicable rules of professional ethics. This Newsletter is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Newsletter may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please send an email to [tta.geral@tta-advogados.com](mailto:tta.geral@tta-advogados.com) or [energy@plmj.pt](mailto:energy@plmj.pt).