MOZAMBIQUE
A New Era with New Challenges for the Coal, Oil & Gas Sectors

INTRODUCTION
Mozambique – A major NG player

- Gas discoveries since 1961
- Resources: 20+ Tcf
- Estimated reserves: 5+ Tcf

- Quantity of World-Class gas
- Gas discoveries since 2010
- Resources: 150+ Tcf

SOURCE: ENH presentation on Mozambique Gas Summit, March 2013

SOURCE: www.cia.com
SOURCE: www.inp.com
Petroleum Concessions

**SOURCE:** ENH presentation on Mozambique Gas Summit - March 2013

* 20% Indirect participation interest of China National Petroleum Corporation

Overview of Current Coal Mining Activities in Mozambique

**Source:** Investment Promotion Centre (CPI) presentation on Strategies for investing in Mozambique's coal - September 2012
Overview of Current Coal Mining Activities in Mozambique

- In recent years Mozambique has registered a major trend in the search for areas for investment in the mining sector.
- In particular in respect of coal, several companies are doing exploration in the central province of Tete and Niasa. From these explorations, the following prospects are already exporting:
  - Moatize – Vale Moçambique
  - Benga – Rio Tinto
  - Apart from Moatize and Benga, there are also explorations in: Changara, Mocanhacuze, Cahora Bassa and Mutarara (in Tete).

Business linkages

- Ports and railways
- Infrastructure development to support the export of the mining output (v.g., the Nacala corridor Railway)
- Supply and maintenance of mining equipment
- Energy generation
- Supply of food and beverages
- Waste management
- Telecommunications
- Transport
MOZAMBIQUE’S COAL, OIL AND GAS LEGAL FRAMEWORK

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OIL & GAS

- Petroleum Law (Law 3/2001, of 21 February 2001) – reform is currently in progress
- Regulations on Distribution of Natural Gas (Decree 44/2005, of 29 November 2005)
- Petroleum Production Tax (Royalty) Regulations (Decree 4/2008, of 9 April 2008)
- Gas Master Plan
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MINING

- Mining Law (Law 14/2002, of 26 June 2002)
- Mining Regulations (Decree 62/2006, of 26 December 2006)
- Regulation on Trade of Mineral Products (Decree 20/2011, of 1 June 2011)

OTHER RELEVANT STATUTES

- Petroleum and Mining Fiscal Incentives Law (Law 13/2007, of 27 June 2007)
- Mega-projects Law (Law 15/2011, of 10 August 2011) and Mega-projects Regulations (Decree 16/2002, of 4 June 2012)
- Land Law (Law 19/97, of 1 October 1997)
- Labor Law (Law 23/2007, of 1 August 2007) and Expatriate Hiring Regulations for Petroleum and Mining Sectors (Decree 63/2011, of 7 December 2011)
RECENT LEGISLATIVE TRENDS

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PETROLEUM

- A new Petroleum Law has been approved by the Council of Ministers and sent to the Parliament for final approval and enactment.

- A new Petroleum Operations Regulations (dealing with the technical aspects of petroleum operations) shall also be enacted within 6 months after the publication of the New Petroleum Law.

- The new Petroleum Law has 3 main objectives:
  - Create a regime and contractual model for LNG activities
  - Set out the basis for the “Mozambicanization” of services to the industry
  - Provide the Government with full control over assignments of participating interests, thereby facilitating the respective taxation
    - Direct or indirect transfers of participating interests in concession contracts, including the transfer of shares, quotas, or any other types of interest, in the entity holding rights under the concession contract will now be subject to the Government’s approval.
MINING

- A new Mining Law, new Mining Regulations and a new Law on the Taxation of Mining operations are currently being discussed and expected to come into force later in the year.

- The main objectives of the new status are:
  - Set out the basis for a local content policy on the services side - it is expected that service providers to the mining industry will be required to associate with Mozambican companies in terms not yet fully known.
  - Provide the Government with full control over the assignments of participating interests, thereby facilitating the respective taxation; it is expected that both direct and indirect (e.g., in the form of a sale of shares) taxation will now be subject to the prior authorization of the Ministry of Mineral Resources and subject to capital gains taxes, regardless of the jurisdiction where the transaction takes place.

CURRENTLY IN THE OIL & GAS AND MINING SECTORS:

- Transfer of concessions is subject to Ministry of Mineral Resources’s prior authorization.

- The direct assignment of an interest in the contract is subject to the prior authorization of the Government.

- Transfer of equity is subject to certain rules provided for in the concession contract.

- There is no need for engaging the State or a domestic partner, nonetheless the law on PPPs sets forth that participation right in the relevant venture shall be reserved to the State and/or national entities.
MEGA PROJECTS LAW

- New Law on Public Private Partnerships ("PPPs"), Large Scale Projects and Enterprise Concessions came into force in August 2011

- Set forth the rules applicable to government participated projects, especially the:
  - Typical contract models available
  - Relevant institutional framework in terms of tender preparation, contracting, control, local content, monitoring and supervision
  - The State participation

- Special concerns:
  - How the State Participation (which will range between 5% and 20%) will in practice be put in place
  - Application to the Oil & Gas Sector

ROLE AND POWERS OF ENTITIES
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OIL & GAS SECTOR

▪ **State**
  - Right to participate in Petroleum Operations
  - Has the property of all petroleum resources *in situ* as natural resources in the soil and the subsoil, in interior waters and in the territorial sea, on the continental shelf, and in the exclusive economic zone

▪ **Ministry of Mineral Resources** ("MMR") vested with powers to administer or regulate the exploration and production of Oil & Gas

▪ **National Petroleum Institute** ("INP") regulatory authority responsible for:
  - Petroleum operations of exploration, production and transport of hydrocarbons
  - Promotion and negotiation of any Petroleum Concession Contracts on behalf of the Government
  - Organization of tenders for the award of E&P concessions
  - Adopt model EPC

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NATIONAL HYDROCARBON CORPORATION ("ENH")

▪ **State Oil Company**

▪ **Participates in exploration, with carried interest, in association with oil companies**

▪ **Stakeholder in the natural gas project**
MINING SECTOR

• **State**
  - Private prospection, exploration and mining of mineral resources can only be carried out under mining licenses granted by the government
  - Has the property of all mineral resources in the soil, subsoil, and in interior waters and in the territorial sea, on the continental shelf, and in the exclusive economic zone

• **MMR** which is essentially responsible for awarding mining rights

• **National Directorate for Mining ("NDM"):** an administrative entity within the MMR that oversees all administrative procedures associated with mining activities

• **Empresa Moçambicana de Exploração Mineira ("EMEM"):** joint stock company 100% owned by the State – future stakeholder in mining projects?

PETROLEUM OPERATIONS
PETROLEUM OPERATIONS

- Petroleum exploration, development and production activities shall be carried out under a concession that results from a public tender.

- 3 types of concession contracts:
  - **Survey Concession Contract** is entered into, on an exclusive basis, for a maximum period of 2 years (right to carry out preliminary exploration and appraisal work in the area covered including geophysical, geochemical, paleontological, geological and topographic studies).
  - **Exploration** rights are granted on an exclusive basis for a maximum period of 8 years (except when an application for an extension is made to the MMR to be presented to the INP); the maximum development and production period is 30 years, commencing on the approval date of the corresponding Development Plan.
  - **Pipeline Contract**

EPC - GENERAL OVERVIEW

- Between the Government and the international oil companies in respect of any given block.
- Approved by the Council of Ministers.
- State Participation: share of profit.
- Subject to Mozambican Law.
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BASED ON THE MODEL CONTRACT AVAILABLE AT THE INP WEBSITE:

- **ENH** assumes the position of member of the Concessionaire with a negotiable participation (by rule up to 15%)
  
  > ENH participation is usually financed up to and including the date upon which the first Development Plan has been approved (*Carry*)
  
  > Carry amounts shall be reimbursed in full from the date of commencement of Commercial Production

MINING CONCESSIONS AND LICENCES
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MINING CONCESSIONS AND LICENCES

- There are five types of mineral rights/licences available:
  - reconnaissance licences;
  - prospecting and exploration licences;
  - mining concessions;
  - mining certificates, and
  - mining passes.

- The most important licences for medium and large scale projects are the **prospecting and exploration licences** (for the exploration phase) and the **mining concessions** (for the mining/production phase).

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PROSPECTING AND EXPLORATION LICENCES

- Initially granted for 5 years for an area of up to 25,000 hectares.

- May be extended for up to a further 5 years, after which a new licence must be sought or the licence must be converted into another type of mineral right, such as a mining concession.

- The licence holder has exclusive exploration rights over the minerals specified in the licence and a preferential right in respect of associated and other materials discovered within the licence area.
MINING CONCESSIONS

- Where a prospecting and exploration licence is currently in place, only the holder of the same may apply for a Mining Concession covering the area comprised therein.

- Granted for up to 25 years; May be extended for a further 25 years.

TAXATION
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TAXATION: PETROLEUM

- Under the Petroleum Law individual and collective persons who are holders of a right to conduct petroleum operations are subject to the payment of the following fiscal impositions:
  - Oil companies are liable to a 32% corporate income tax on the profits arising out of sale of their share of gas
  - Value Added Tax and tax on specific consumption owed on the operations
  - Non recoverable 6% Royalty is levied on gas production /10% on crude oil
  - Property contribution and property transfer tax (SISA)
  - Custom duties established in the customs duty schedule
  - Municipal taxes

- Mozambique has Double Taxation Agreements in force with Italy, Mauritius, Portugal, United Arab Emirates, South Africa, Macao, Vietnam, Botswana and India

- Mozambique has entered into 22 bilateral investments treaties, including with China, India, Vietnam, Indonesia and Portugal

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TAXATION: MINING

- **Surface tax:**
  Holders of mining titles are required to pay surface tax of a fixed amount per km² of land comprised in the licence

- **Production tax (Royalties):**
  Mining concessionaires are required to pay production tax (royalty). The value is calculated based on the price at which the previous consignment of the mineral was sold, or if no mineral was yet been sold, the market value of the mineral as determined by any hedging arrangements or forward contracts concluded by the seller
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ENGINEERING, PROCUREMENT AND CONSTRUCTION WORKS

- **Legal framework**: Regulations on public works procurement and supply of goods and services to the State (Decree No. 15/2010, of 24 May 2013) and Administrative Procedure Code (Law No. 14/2001, of 10 August 2011)

- Not applicable to special sectors such as Oil & Gas and Mining

- Foreign competitors are free to submit tenders, but nationals may be protected in public tenders of a value equal or inferior to USD 350,000 for works and USD 125,000 for goods and services

- Procurement procedures: public tender (rule); restricted procedure; two stage tender; tender according to segments; small scale tender and direct award
HIRING EXPATRIATES AND REPATRIATION OF FUNDS

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HIRING OF EXPATRIATES

- Hiring of expatriates for petroleum and mining operations may follow one of the following regimes: (i) under a quota, (ii) for short term work, (iii) under an investment project approved by the Government and (iv) under a work authorisation

- **Quota regime**: a company is entitled to hire upon a simple notice to the Minister of Labor, a certain percentage of expatriates, which varies according to the total average number of employees of the company in the preceding calendar year

- Non-resident subcontractors of petroleum and mining concessionaires may assign their expatriates to Mozambique under the “umbrella” of their customers, provided that the concessionaire issues an undertaking accepting responsibility for breaches of labor legislation by those expatriates

- Time limit for employing expatriates under the short term work regime has been extended from 90 to 180 consecutive or non-consecutive days per year
FOREIGN EXCHANGE

- Foreign exchange ("FX") operations are subject to a licensing process, consisting in registration or approval by the Central Bank of Mozambique ("BoM"), the country's FX authority, or both.

- "Current" or "day-to-day" transactions are not subject to the prior approval/licensing of BoM, but rather to a mere legality control and registration procedure by the intermediary commercial bank; a number of supporting documents must be presented.

- Capital operations require both registration and prior-approval with the BoM.

- Import and export operations between resident and non-resident entities which cause the transfer of ownership rights over movable goods will, as a general rule, qualify as day–to–day transactions and, thus, only subject to registration with BoM.

- Any payments to Mozambican FX residents shall be made into bank accounts domiciled in Mozambique and/or, where made outside, shall be subsequently transferred to Mozambique.

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- **Duty of repatriation of sales proceeds**: mandatory transfer to Mozambique of the export sales proceeds received in foreign currency and conversion of 50% of such proceeds into local currency.
  
  - The Bank of Mozambique may authorize the retention of part of the earnings abroad for: (i) amortization of debts and fulfillment of obligations abroad; and (ii) tax obligations.

- **Repatriation of profits**: qualifies as a capital operation and is subject to the prior authorisation of, and registration with, BoM. To this end, the foreign investor must have a foreign investment project approved by the Investment Promotion Centre ("Centro de Promoção de Investimentos" - CPI).

- **Mining Sector**: The State warrants to holders of mining licences the right to export and repatriate profits arising out of mining activities – including the proceeds from the export or sale of minerals, but subject to the applicable Forex regulations and procedures.

- **Oil & Gas companies** are subject to a foreign exchange special regime.
THANK YOU
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