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MOZAMBIQUE

REGULATORY UPDATE

New downstream regulations in Mozambique have been set but will they encourage the production of petroleum products for domestic use?

Over the years, Mozambique has been an importer of oil, gas and petroleum products in general. The situation has somewhat changed over the last 15 years or so with the start of natural gas and gas condensate production in the Pande and Temane fields. Still, most of the natural gas production is exported to South Africa by pipeline and only a fraction is used in Mozambique in industrial, gas-to-power and limited local distribution projects.

The country's importer status has been not only the result of its own domestic supply needs, but also a consequence of its strategic geographic location. Several neighboring interland countries – such as Zimbabwe, Zambia and Malawi – are also dependent on oil and gas imports to satisfy their needs and Mozambique is a natural gateway for such imports. Therefore, the Mozambican downstream business, besides the domestic supply, has always comprised a significant component of petroleum products in transit to neighboring countries.

The prospects of change are however very significant. On the one hand, there are plans for some light oil production to be used in the local production of petroleum products. And on the other hand, there is considerable hope that part of the very large natural gas reserves discovered in the Rovuma Basin will not be exported as LNG and will be used domestically in different projects, such as power generation, production of fertilizers and gas-to-liquids (GTL).

The regulation of downstream activities in Mozambique has therefore historically significantly focused on import activities and pricing-related issues. Notwithstanding, activities such as production, reception, storage, handling, transportation, distribution, trading, exportation and re-exportation of petroleum products have also been regulated and liberalized. Duly licensed private entities have been able to carry on these activities for many years now and this was the case under the former Petroleum Operations Regulations, which had been approved by way of Decree No. 45/2012, of 28 December 2012. It was therefore with some expectation that existing and prospective stakeholders viewed the Government's initiative of revision of such statute. Eventually such revision was enacted in the form of

Decree No. 89/2019, of 18 November 2019, which approved the new Petroleum Products' Regulations and revoked the former 2012 Petroleum Downstream Regulations.

The expectation among industry players was not however the same across the entire value chain. While the majority of existing stakeholders were mainly concerned with the impact of changes on ongoing activities and these essentially related to import and pricing, prospective investors looking at future production activities were hoping to see some evolution on how the use of oil and gas of Mozambican origin would be treated by the lawmaker. It is fair to conclude that not all expectations were adequately addressed by the Government, as we will further discuss below.

By way of initial observation, we would say that the 2019 Petroleum Products' Regulations represent a relatively light evolution of the legal framework set forth in the 2012 Petroleum Downstream Regulations. The focus appears to have been to clarify certain matters that were not previously fully addressed, while preserving a similar structure to the regime now repealed. A number of changes were introduced, most importantly in connection with the licensing procedure: while production and distribution licenses remain standardized, specific subtypes for retail and storage are now available for downstream players, as well as a new license for exportation. A new register for petroleum downstream facilities is created and the registration and inspection requirements and procedures are detailed. Comprehensive provisions on the transfer of petroleum facilities are also included.

Bunkering activities are again regulated, as is also the case of the supply of petroleum products to platforms, support vessels and other facilities used in petroleum upstream activities. Such supply continues to be exclusively reserved for distributors licensed in Mozambique.

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IMOPEYRO is once more entrusted with the role of Liquid Fuels Procurement Operator for LPG, gasoline, jet fuel and diesel. Although the importers of record will be distributors or other eligible licensed entities, IMOPEYRO acts as their agent in purchasing the petroleum products from abroad.

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Source: Sasol

Currently, Sasol's operations in the Pande and Temane fields feed the country's downstream exports via pipeline

An important variation is that the share capital of IMOPETRO will no longer have to be held in at least 51% by the State-owned fuels company, PETROMOC – Petróleos de Moçambique, and that such capital shall be held by the licensed distributors *prorata* to their market share and taking into account the geographic coverage of their business. Among the detailed provisions on the conduct of IMOPETRO's business activities, it is worth highlighting that its management shall be entrusted to a General Manager hired pursuant to a public tender, although subject to homologation of the Minister of Mineral Resources and Energy.

To ensure the transparency and competitiveness in procurement procedures, a Liquid Fuels Procurement Committee (CAFL) is also foreseen and its composition and powers are thoroughly addressed. This evidences a particular concern in monitoring the cost of imports in view of their impact on the price structure. This is further evidenced by the provisions on international public tender requirements and procedures relating to supply contracts to be entered into by IMOPETRO.

Price regulation is also once more one of the key matters detailed in the 2019 Regulations, including in terms of the margins of distributors, storage retailers and general retailers selling products to end consumers. ARENE (Mozambique's Energy Regulatory Authority) is responsible for determining the sales prices for end consumers to be practiced throughout the Mozambican territory.

Another matter that carries on being thoroughly dealt with pertains to the security of supply and the creation of strategic reserves. Safety standards for petroleum facilities and technicians are also provided for,

as well as the specifications for petroleum products and associated inspection mechanisms.

Lastly, one must also stress the concern evidenced in multiple provisions of the Regulations in connection with anti-competitive practices. In most cases, these provisions stand on their own, but it will always be necessary to take into account the general legal framework applicable to competition matters.

Overall, one can say that the 2019 Petroleum Products Regulations are a positive evolution of the 2012 Downstream Regulations. Notwithstanding, the lawmaker has not been particularly concerned in creating a more robust regime for the local production of petroleum products, in particular on the basis of oil and gas originating from Mozambique. It is true

that the preference for the procurement of locally produced products is expressly provided for, but there is no distinction between products deriving from imported oil and gas and products originating from oil and gas extracted in Mozambique. This is also reflected in various pricing-related provisions.

Still, the more relevant issues that prospective investors in sizeable downstream activities face arise from other pieces of legislation. There is no specific tax regime for production activities, for instance. The

same applies to investment and foreign exchange matters, which are typically delicate. Furthermore, certain larger projects, as would be the case of a refinery, would have to tackle the challenges presented by the legislation on public-private partnerships, large scale projects and business concessions, but it is unclear to which extent such legislation could also apply to other entities involved in downstream activities. It is probably too harsh

to state that the lawmaker has lost a good opportunity to fix all these issues, but it is fair to acknowledge that with regard to the production and use of petroleum products deriving from oil and gas extracted in Mozambique, the new Regulations have not quite lived up to the industry expectations. **Pa**

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