

CAPITALISING ON ENERGY SYNERGIES ACROSS MOZAMBIQUE AND ANGOLA - AVM ADVOGADOS

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“ We have experienced situations where merger deadlines have been substantially affected because of a jurisdictional change even at a relatively late stage of a transaction.”

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In an attempt to encourage long-term investment to realise the potential of recent gas finds, the Mozambique Government is looking to its near neighbour for guidance

The discovery of natural gas reserves off the coast of Mozambique has the potential to transform its economy, but in order to ensure the country's natural resources have a real positive economic effect, it is open to both international investment and guidance on how best to manage its reserves, say António Vicente Marques and Claudia Santos Cruz of Luanda and Maputo-based AVM Advogados.

“The scale of the gas finds may be transformational, but we are still five or more years away from full development, which means that both the Mozambican Government and international investors are looking very hard at the best ways to capitalise on the potential incomes that may be generated,” says Santos Cruz, who helps coordinate AVM's Maputo practice.



Salomé Cissal de Ugarte

The discovery by the Anadarko Consortium of potentially the largest global recoverable deposits currently estimated to top 30 trillion cubic feet – equal to nearly half of Canada's proved reserves, in the offshore Rovuma Basin may even lead to a change in the balance of regional economic power, suggest some. To date, Mozambique has largely relied on neighbouring South Africa for much of its energy infrastructure.

But legal issues have already arisen in relation to the finds, notes Santos Cruz. One of the consortium members UK-based Cove Energy, whose main asset is an 8.5 percent stake in the Rovuma Basin

Offshore Area 1 ECP, has put itself up for sale, with Shell already offering US\$1.6bn for the company and Thailand's PTT offering US\$1.8bn. The Mozambique Government has now stated that it will apply capital gains tax (CGT) in relation to Cove's local assets. A consortium of Indian public-sector energy companies, Oil and Natural Gas Corp and GAIL India, are also waiting in the background to submit a bid pending clarity on the current CGT issues, while Italy's ENI has put local assets up for sale.

"Many international companies are looking at what happens to get a sense of the depth of the Government's commitment to really capitalise on the potential of the gas finds. The application of CGT is perhaps controversial but could result in significant revenues that will certainly help the Government underwrite its commitments elsewhere," says Santos Cruz.

There are recent precedents in which multinationals have sold Mozambique interests and not paid tax locally, for which the Government has been criticised; notably last year's US\$3.9bn takeover by Rio Tinto of Riversdale Mining. The approach to Cove thus reflects that instead taken in the 2012 AUS\$600m sale of coal company Minas do Revuboe by Australia mining group Talbot, through which the Government raised AUS\$72m.

Anadarko now has plans for a major LNG plant in Mozambique, with an estimated project cost of US\$18bn, and reports suggest that it expects the Government to contribute financially and to make further investment in the country's transport and energy infrastructure.

What is interesting, says Vicente Marques, Managing Partner of the firm, is that many companies now looking at opportunities in Mozambique are already active in Angola. But he cautions investors about assuming too many similarities between the countries and their legal systems.

"Obviously there is a lot in common – language, a shared colonial history, and legacy civil law based legal frameworks – but also significant differences. Companies cannot assume that just because they are active in Angola the same rules apply in Mozambique. However when it comes to oil production, the latter is clearly looking to learn the lessons of the former."

The two countries have already signed a number of co-operation protocols, including to share expertise in areas like natural resources exploitation. There are also similarities in the way that each Government is looking to better manage foreign investment, including reassessing the applicable tax regimes and tightening-up the rules on the repatriation of profits.

"Angola has recently introduced a new Foreign Private Investment Law and is also now seeing major reform of its tax system, while Mozambique recently introduced a new PPP Law last year and is in the last phases of approving new mining and oil & gas legislation, and has well-established environmental regulation. Ultimately what both Governments want is greater certainty in the regulation of investment and they are looking at international best practices to encourage companies to invest for the long-term," says Vicente Marques.

It may take a number of years to realise the true potential of Mozambique's gas finds but the potential scale of the rewards requires careful legislative analysis, agrees Santos Cruz. "If international investors are to commit billions of dollars to major projects the Government is right to look for the very best guidance, wherever this may be found."