

LEGAL ALERT

COMPETITION LAW REGULATION OF MOZAMBIQUE: AMENDMENTS TO THE MERGER NOTIFICATION THRESHOLDS

Decree no. 101/2021, of 31 December 2021, recently made public, amends the Competition Law Regulation, approved by Decree no. 97/2014, of 31 December 2014, in particular concerning the jurisdictional thresholds for prior notification of concentrations to the Competition Regulatory Authority of Mozambique (CRA).

The new Decree effects a small increase in the turnover of the undertakings concerned and introduces a *de minimis* limb to the turnover threshold of the Competition Law Regulation.

Pursuant to Article 11 (1) of the revised Competition Law Regulation, concentrations are subject to mandatory filing to the CRA whenever they meet at least one of the following thresholds:

- The transaction results in the acquisition, creation or reinforcement of a **share of or above 50%** of the national market of a given good or service;
- The transaction results in the acquisition, creation or reinforcement of a **share of or above 30%** of the national market of a given good or service, as long as each of at least **two of the undertakings concerned** achieved in the preceding year a **turnover of at least MZN 105 million** (approximately USD 1.6 million) in Mozambique, net of directly related taxes;

- The **combined turnover** of all the undertakings concerned in Mozambique in the preceding year exceeds **MZN 925 million** (approximately USD 14.5 million), as long as each of at least **two of the undertakings concerned** achieved in the preceding year a turnover of at least **MZN 105 million** (approximately USD 1.6 million) in Mozambique, in both cases net of directly related taxes.

While the notification thresholds in Mozambique are still relatively low, the introduction of a *de minimis* limb to the turnover threshold is a positive and welcome change, since from now on the threshold will be met only if at least two of the undertakings concerned (*e.g.*, the Acquirer and the Target, in an acquisition of sole control) have a meaningful presence in Mozambique.

This means that transactions where only one of the undertakings concerned is active in Mozambique will only be subject to mandatory filing to the CRA if they result in the creation or reinforcement of a 50%-plus market share in one or more relevant markets.

Pursuant to Article 17 of the Competition Law Regulation, the simplified review procedure continues to apply to transactions which do not meet the mandatory notification thresholds. Decree no. 101/2021 nevertheless clarifies that in such cases, at least two of the undertakings concerned should achieve a turnover above MZN 105 million (approximately USD 1.6 million) in Mozambique.

Besides the voluntary notification transactions covered by Article 17, it is hoped that the CRA continues to accept filings based on the simplified notification form in the case of transactions subject to mandatory filing, but which in a preliminary assessment do not raise competition concerns (*e.g.*, where market shares do not exceed the 30% lower market share threshold), as foreseen in CRA Resolution no. 1/2021, of 22 April, approving the Notification Forms Regulation. Decree no. 101/2021 entered into force with immediate effect. Companies planning M&A projects with impact in Mozambique should therefore consider the revised notification thresholds in their jurisdictional assessments of whether the transaction is subject to mandatory filing to the CRA.

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