

LEGAL ALERT

NEW STATUTE FOR THE COMPETITION REGULATORY AUTHORITY OF MOZAMBIQUE

Decree no. 96/2021, of 31 December, approved the new Statute of the Competition Regulatory Authority (CRA) of Mozambique.¹

The main change brought by the new Statute relate to the internal organization of the CRA's bodies and services. In any case, the Statute strengthens the duties to provide reasoning, information and secrecy impending over the CRA and its staff.

The Board of Directors, the decision-making body of the CRA, is now composed of five members, including the President, with once-renewable five year terms. Under the Statute Board members are now independent and cannot be removed (except for cause and other limited situations), thereby reinforcing the autonomy of the CRA.

The CRA's services are subject to a deep restructuring. A division devoted specifically to the investigation of anti-competitive practices is reinstated, evidencing that the CRA will, as recently expressed by its President, start enforcing the prohibition of anticompetitive conduct (such as cartels or abuses of dominant position), especially in industries where competition issues are identified and that can be a priority for the CRA in the future.

¹ Decree no. 96/2021, of 31 December, partially consolidates the changes introduced over the years to Decree no. 37/2014, of 1 August, the previous Organic Statute of the ARC. Decree no. 96/2021 revokes Decree no. 37/2014, as well as Decree no. 96/2014, of 31 December, Decree no. 6/2021, of 23 February, and Ministerial Diploma no. 32/2021, of 20 May.

The merger control division has acquired competence to conduct sectoral inquiries, and can now, *inter alia*, continue the inquiry to the cement and construction industries, already announced by the CRA to have been contracted to external consultants.

The CRA's support services are also beefed up with new divisions for corporate affairs, support to the Board, internal audit and procurement, following the measures being taken by the CRA to become fully operational, such as hiring staff, searching for new premises and approval of internal regulations.

Lastly, the CRA's financial autonomy is strengthened with the earmarking to the CRA of 5% of the fees charged by the 14 sectoral regulators (which had already been established by Ministerial Diploma no. 32/2021, of 20 May, but had not yet become operational). Together with the merger filing fees (whose rules were amended last August by Ministerial Diploma no. 77/2021), receiving a part of the fees charged by sectoral regulators allows the CRA to ensure financial stability to its activities.

With its new Statute the CRA starts off 2022 with reinforced conditions to actively enforce the Competition Law, not only in the review of merger notifications, which are already being filed with the CRA on a regular basis, but also, in particular, in investigating anticompetitive conduct. Companies operating in Mozambique are therefore well advised to actively ensure that both its daily business and its strategic decisions comply with competition law, engaging specialist legal advice when appropriate.

MDR Advogados

[Tiago Arouca Mendes \[+info\]](#)

[Fabrícia de Almeida Henriques \[+info\]](#)

[Henrique Calvão Martins \[+info\]](#)

Morais Leitão

[Pedro de Gouveia e Melo \[+info\]](#)

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