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GLOBAL LEGAL GUIDES



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SRS Legal

Mozambique Merger Control Guide



Mozambique

National Expert

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SRS Legal regularly assists international companies with merger control proceedings in Mozambique through collaboration with Bhikha & Popat Advogados, SRS Global's local partner.

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- Abuse of Dominant Position
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- Horizontal and Vertical Agreements
- Merger Control
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No new regulation adopted

Note that relevant regulations may be changed before your contemplated transaction is completed. Mergerfilers and our national experts keep information on regulations up to date and even provide alerts on adopted or proposed changes that have not come into force yet but may come into effect before the transaction is completed. When this field is green, we have no knowledge of such imminent changes to the relevant regulations.

Relevant legislation and authorities

1) Is a merger control regulation in force?

Yes. Merger control regulation was introduced by Decree no. 97/2014, of 31 December 2014, amended by Decree no. 101/2021, of 31 December 2021.

2) Which authorities enforce the merger control regulation?

The Mozambican Competition Authority enforces the Mozambican Competition Act including the merger regulation contained therein.

3) Relevant regulations and guidelines with links

Merger control regulations	
Original version	Unofficial English translation
Lei n.º 10/2013, 11 de abril	Competition Act (translation not available)
Decreto n.º 97/14, de 31 de dezembro de 2014	Competition Act Regulation (translation not available)
Decreto n.º 101/2021, de 31 de dezembro	Regulation amending the Competition Act Regulation (translation not available)
Glossário da Lei n.º 10/2013 de 11 de abril	Glossary of the Competition Act
Diploma Ministerial n.º 77/2021, de 16 de Agosto	Table of Fees due in Proceedings before the Mozambican Competition Authority (translation not available)
Resolução n.º 01/2021	Notification Form Regulation (translation not available)
Decreto 96/2021, de 31 de Dezembro	Organic Statute of the Competition Regulatory Authority (translation not available)
Resolução n.º 1/CA/ARC/2023:	Resolution approving the Internal Regulation of the Competition Regulatory Authority (translation not available)

The relevant legislation may be downloaded from the [website](#) of the Competition Authority.

4) Does general competition regulation apply to mergers or ancillary restrictions?



Although Mozambican Competition Law does not directly address ancillary restraints, it should be noted that the notification forms require the parties to identify and justify potential ancillary restraints. This indicates that the Mozambican Competition Authority considers that restrictions of competition that are ancillary to the merger, are considered inherent parts of the merger and are not subject to separate scrutiny under the general competition regulation.

However, it should be noted that, according to the decisions available on its website, the Mozambican Competition Authority has not yet specifically assessed ancillary restraints.

General competition law will apply to all mergers that are not caught by the Mozambican Competition Act, as well as to those restrictions that are not considered directly related and necessary to the merger.

5) May an authority order a split-up of a business irrespective of a merger?

Yes. The Mozambican Competition Authority may order the split-up of an existing business to cease negative effects on competition.

6) Other authorities that also require merger filing or may prohibit transaction

Mozambique is still a strongly regulated economy. For this reason, several sectoral legislations are in force and must be considered on a case-by-case basis.

Banks and insurance companies:

Regarding merger approval, the Bank of Mozambique and the ISSM (Insurance Supervision Institute of Mozambique) have regulatory power over this matter with regard to banks and insurance companies respectively.

Please also see the separate Foreign Investment guide.

7) Are any parts of the territory exempted or covered by particular regulation?

Decree-Law 2/2014 of 2 December establishes the special legal and Contractual Framework applicable to liquefied natural gas projects in Areas 1 and 4 of the Rovuma Basin - the Rovuma Basin Project. This Project will be implemented through Rovuma Basin Enterprises under one or more approved development plans. This Decree-Law applies to each project in the Rovuma Basin, whether it is carried out solely under the terms of Concession Contracts for Exploration and Production or under Concession Contracts for Exploration and Production and Government Agreements together, as well as under the terms of other contractual instruments to which the Government is a party relating to the implementation of the Rovuma Basin Project.

Voluntary or mandatory filing

8) Is merger filing mandatory or voluntary?

Merger filing is mandatory, provided the thresholds are met.

The Mozambican Competition Authority may also request that a merger below thresholds be notified, or the parties may decide to voluntarily submit a simplified filing to the Authority, which may well be advisable if there is any chance that the Authority intervenes ex officio. Decree 101/2021 clarifies that in those cases, at least two of the undertakings concerned should achieve a turnover above MZN 105 million in Mozambique.



Types of transactions to file – what constitutes a merger

9) Is there a general definition of transactions subject to merger control?

Yes, according to the Mozambican Competition Act a merger subject to merger control consists of a transaction where a change of control occurs on a lasting basis as a result of:

1. the merger of two or more previously independent undertakings or parts of undertakings;
2. the acquisition, directly or indirectly, of control of the whole or parts of the share capital or parts of the assets of one or various other undertakings, by one or more persons or by one or more undertakings already controlling at least one undertaking; or
3. the creation of a full-functioning joint venture on a lasting basis.

10) Is "change of control" of a business required?

Yes, generally a merger will only be considered to take place if the transaction results in a change of control over a business. Transactions that consist of the establishment of a new business (that is, a joint venture), jointly controlled by two or more undertakings or persons already controlling one or more undertaking, will also be deemed to be a merger.

11) How is "control" defined?

The concept of "concentration" broadly follows that of EU and Portuguese competition law.

The definition of "control" under the Mozambican Competition Act is inferred from all legal and factual circumstances that confer the ability to exercise decisive influence on the target's activity, in particular through:

1. the acquisition of all or part of the share capital;
2. the acquisition of rights of ownership or use of all or part of an undertaking's assets; and
3. the acquisition of rights or the signing of contracts, which grant a decisive influence over the composition or decision making of an undertaking's corporate bodies.

12) Acquisition of a minority interest

Acquisition of a minority interest that does not result in anyone gaining control over a business is not subject to merger control.

13) Joint ventures/joint control – which transactions constitute mergers?

Transactions regarding businesses subject to joint control may be subject to merger control if the joint venture performs on a lasting basis all the functions of an autonomous economic entity and the notifications thresholds are met.

Where the creation of the joint venture has the object or effect of coordinating the competitive behavior of undertakings that remain independent, such coordination is assessed under the rules applicable to prohibited agreements and practices.

Thresholds that decide whether a merger notification must be filed

14) Turnover thresholds



Notification is mandatory whenever the transactions meets one of the following thresholds:

1. the combined turnover of all the undertakings concerned in Mozambique in the preceding year is equal to or exceeds 925 million MZN, provided that the turnover generated in Mozambique of at least two companies participating in the concentration is higher than MZN 105 million: or
2. 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, and each of at least two of the undertakings concerned achieved in the preceding year a turnover of at least 105 million MZN in Mozambique.

The Mozambican Competition Authority may request a notification if none of the above thresholds are met, but at least two of the undertakings concerned achieve a turnover above MZN 105 million in Mozambique.

15) Market share thresholds

Notification is mandatory if 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.

16) Value of transaction thresholds

N/A

17) Assets thresholds

N/A

18) Special thresholds for particular businesses

N/A

19) Other thresholds

N/A

20) Rules on calculation and geographical allocation of turnover

The Mozambican Competition Act does not specify any rules on calculation or geographical allocation of turnover. However, given that the Act is inspired by the Portuguese Competition Act, it can be expected that the authority will request that turnover is based on the most recent audited financial year and that turnover must be allocated geographically based on the location of the customer.

21) Is the seller/seller's group turnover relevant in a standard acquisition of sole control?

No.

22) Special rules on calculation of turnover for particular businesses

Insurance undertakings

For an insurance undertaking the value of the gross premiums written paid in Mozambique applies. This includes all premiums received by the undertaking the relevant year.

Amounts paid by the undertaking for reinsurance are not deducted.

Credit institutions and other financial undertakings



Turnover is calculated as the sum of:

1. Interest income and similar income
2. Income from securities
3. Fees and commissions receivable
4. Net profit on financial operations
5. Other operating income

23) Series of transactions that must be treated as one transaction

Merger control rules are not clear with regard to transactions that take place in stages. In theory, transactions that are interdependent because they are linked by conditions must be treated as one if control in each transaction is acquired ultimately by the same undertaking(s).

Two or more transactions that take place within a period of five years between the same natural or legal persons and which, individually, are not subject to notification, must be filed to the Mozambican Competition Authority after the last agreement has been concluded and before it is implemented if the transactions in combination trigger any of the relevant thresholds.

Exempted transactions and industries (no merger control even if thresholds ARE met)

24) Temporary change of control

Merger filing is only required if there is a change of control on a lasting basis.

25) Special industries, owners or types of transactions

The Mozambican Competition Act specifies that there is no obligation to file a merger notification in the following situations:

1. Where control is acquired by a professional who has powers under current insolvency legislation to deal with and dispose of the undertaking;
2. Acquisition of shares with the mere objective of serving as collateral; or
3. Where credit institutions, other financial undertakings or insurance companies whose normal activities include transactions and dealing in securities are temporarily in possession of interests in an undertaking acquired with the intention to resell, provided that they a) do not exercise voting rights for the purpose of determining the competitive conduct of that undertaking or b) exercise voting rights exclusively with the aim of preparing the disposal of all or part of that undertaking and that the disposal takes place within one year of the date of acquisition.

26) Transactions involving only foreign businesses (foreign-to-foreign)

Foreign-to-foreign mergers are caught by the Mozambican Competition Law to the extent they have, or may have, effects in the territory of Mozambique. Therefore, the Mozambican Competition Law may apply whenever all parties or the target alone achieves, directly or indirectly, sales in Mozambique, despite the fact that neither of the undertakings concerned are established in the country.

27) No overlap of activities of the parties

There is no exemption for transactions with no overlap of activities, but there is a simplified procedure available if there is no overlap.

**28) Other exemptions from notification duty even if thresholds ARE met?**

N/A

Merger control even if thresholds are NOT met

29) May a merging party file voluntarily even if the thresholds are not exceeded?

Parties involved in a non-reportable transaction (i.e. a transaction that does not meet the notification thresholds) may voluntarily submit a simplified filing to the Authority.

Decree 101/2021 clarifies that in those cases, at least two of the undertakings concerned should achieve a turnover above MZN 105 million in Mozambique.

30) May the competition authority request a merger notification ("call in") or oppose a transaction even if thresholds are not met?

Yes. A merger that does not meet the notification thresholds may be subject to notification to the Mozambican Competition Authority, if the Authority considers that the transaction may impede, distort or restrict competition and is not exempted under the rules on restrictive agreements. Decree 101/2021 clarifies that in those cases, at least two of the undertakings concerned should achieve a turnover above MZN 105 million in Mozambique.

Referral to and from other authorities

31) Referral within the jurisdiction

N/A

32) Referral from another jurisdiction

N/A

33) Referral to another jurisdiction

N/A

34) May the merging parties request or oppose a referral decision?

N/A

Filing requirements and fees

35) Stage of transaction when notification must be filed

Transactions must be filed within 7 working days from the date of agreement or from the date of the acquisition project.

36) Pre-notification consultations

According to article 11 (3) of Decree-law 97/2014, prior to submitting the form, the parties may initiate an informal and confidential pre-notification procedure with the aim of obtaining assistance in completing the notification form and clarifying the issues relevant to the notification, in particular the need and obligation to notify.

**37) Special rules on timing of notification in case of public takeover bids and acquisitions on stock exchanges**

The Mozambican Competition Act does not prevent the implementation of a public takeover bid or an exchange offer that has been duly notified to the Mozambican Competition Authority, provided the buyer does not exercise voting rights attached to the respective shares or does so only to protect the full value of its investment.

38) Forms available for completing a notification

There are two forms available: one for simplified notification (for the transactions that do not meet the notification thresholds, as set out in Article 17(3) of the Competition Regulation – i.e. where the Mozambican Competition Authority has requested a notification) and one for full notification.

39) Languages that may be applied in notifications and communication

Portuguese.

40) Documents that must be supplied with notification

The parties are normally required to provide with the filing form, among other less significant annexes:

1. the financial statements and annual reports;
2. any documents, reports or studies prepared and submitted to the management bodies of notifying party in the context of the preparation and assessment of the concentration;
3. All documents directly related with the transaction, such as share purchase or asset purchase agreement;
4. preliminary announcements;
5. articles of association;
6. shareholders' agreements;
7. information on suppliers and customers; and
8. non-confidential version of the notification.

41) Filing fees

Merger filings are subject to a notification fee of 0.11% of the turnover of the parties in Mozambique in the year prior to that of the request for review of the concentration; however, the fee cannot exceed 2,250,000.00 MZN.

Implementation of merger before approval – “gun jumping” and “carve out”

42) Is implementation of the merger before approval prohibited?

Yes. A merger subject to prior notification shall not be implemented until tacit or express clearance is granted by the Mozambican Competition Authority.

43) May the parties get permission to implement before approval?

Yes, pursuant to Article 24(3) of the Mozambican Competition Act, the notifying party may submit a reasoned request prior to or subsequent to the notification requesting that the standstill obligation is waived.

44) Due diligence and other preparatory steps

There are no specific provisions or guidance in this regard.



45) Veto rights before closing and "Ordinary course of business" clauses

An "ordinary course of business" clause that prevents the target company from taking decisions outside the course of its ordinary business until the closing date is generally considered acceptable.

However, it must be assessed on a case-by-case basis to what extent the parties may discuss – or provide each other with veto rights concerning – any decisions in their respective businesses.

46) Implementation outside the jurisdiction before approval – "Carve out"

There are no specific rules on "carve out" of the Mozambican part of a transaction to avoid delaying implementation in the rest of the world pending approval in Mozambique.

47) Consequences of implementing without approval/permission

The Mozambican Competition Act foresees a number of possible legal and financial consequences if a merger is not notified: the Mozambican Competition Authority may impose a fine of up to 5% of a party's worldwide turnover and the transaction may be considered null and void.

The Mozambican Competition Authority may also impose the following penalties (depending on the seriousness of the offense):

1. (at the party's expense) publication of the sanction in the Official Gazette or in a newspaper with a major national, regional or local circulation, in accordance with the geographical market where the transaction has had its effect;
2. exclusion from public tenders for up to five years; and/or
3. the spin-off of a business, the transfer of shareholder control, the sale of assets, the partial cessation of activities or any other act considered necessary to eliminate harmful effects to competition.

The process – phases and deadlines

48) Phases and deadlines

Phase	Duration/deadline
<u>Call-in:</u> A merger below the thresholds for mandatory notification may be "called in" (merger notification requested) by the Mozambican Competition Authority.	Six months after the publication of the merger
<u>Pre-notification phase:</u> There is no pre-notification.	N/A
<u>Phase I:</u> Initial investigation by the Directorate General.	30 calendar days

Deadline only starts running after a 7-day deadline for the Authority to confirm that the notification is complete.	
<u>Phase II:</u> If the case raises serious competition concerns, it may be followed by an in-depth investigation.	60 calendar days
If the director general submits a report to the board for a final decision, either in phase 1 or phase 2, the board has a further 30 days to clear the transaction, with or without commitments from the parties, or (in phase 2) to issue a prohibition decision	30 calendar days

The deadlines are extended whenever the Authority asks for further information from the parties, assesses commitments and conducts a hearing of the notifying parties and third parties who have expressed opposition to the transaction. A hearing can be waived by the Authority in case of clearance decisions without commitments and in the absence of interested third parties. In a case of gun jumping, if the Authority initiates an ex officio investigation, the procedural deadlines do not apply.

Assessment and remedies/decisions

49) Tests or criteria applied when a merger is assessed

The substantive test for the assessment of a concentration is the 'dominance test', pursuant to which concentrations should be blocked if they are likely to create or strengthen a dominant position that may significantly impede effective competition in the relevant markets (art. 18 (1) of the Competition Act).

The wording of the Competition Law Regulation, however, appears to empower the Authority to block a concentration that gives rise to a significant impediment of effective competition, even in the absence of a dominant position. It is hoped that the administrative practice of the Authority clarifies the scope of the substantive test.

50) May any non-competition issues be considered?

Yes. The Authority is bound to take into account public interest reasons which may justify any restrictions of competition resulting from the notified concentration. In its public interest assessment, the Authority should consider the effect of the transaction on:

1. a specific sector or region;
2. employment;
3. the capacity of small enterprises, or enterprises controlled by historically disfavored persons, to



- become competitive; and
4. the capability of national industry to compete internationally.

51) Special tests or criteria applicable for joint ventures

The assessment for joint ventures is the same as for other mergers.

52) Decisions and remedies/commitments available

A merger may be approved, approved with conditions/commitments or prohibited.

Commitments may take any form and they can be either structural or behavioural and with or without time limitations.

Publicity and access to the file

53) How and when will details about the merger be published?

The Mozambican Competition Authority will make a public announcement, in two large newspapers, 5 days after it has received a merger notification and again when a decision has been taken, as referred in article 29 of [decree no. 97/2014](#).

54) Access to the file – the merging parties

The merging parties have a right to access to the file, which includes correspondence with third parties that the Mozambican Competition Authority may have had, including market survey questionnaires as well as an overview of all documents/correspondence in the file.

55) Access to the file – third parties

Following publication of a notice of the notification by the Authority in two national newspapers (which should be made within five days of filing) any interested third party whose rights or legitimate interests may be affected by the transaction may submit comments within the deadline established by the Authority, which cannot be less than 15 business days. In addition, prior to the adoption of a final decision, the Authority must hold a hearing with interested third parties which have already intervened in the procedure and expressed an adverse opinion of the merger. The hearing suspends the time periods for the adoption of the decision.

Judicial review

56) Who can appeal and what may be appealed?

According to the applicable general rules, in particular, article 25 of decree no. 97/2014, it is important to stress that all decisions on merger control by the Authority are subject to judicial review.

The Statute of the Competition Regulatory Authority (CRA) of Mozambique states that the Authority's decisions can be appealed in Court, be it before the Judicial Court of the City of Maputo or the Administrative Court.

If a decision of the Authority is appealed, as a rule, the effects of such decision are suspended.

This does not apply to decisions that impose fines. When this kind of decision is at stake, article 25(2) must be followed, in particular "appeals against decisions which impose fines shall comply with the provisions of the Criminal Procedure Code and shall have merely devolutive effect. The affected party may request, when



instituting the appeal, that it shall have sufficient effect when the execution of the decision causes it considerable prejudice, if it offers to put up security in substitution, and the attribution of this effect shall be conditional upon the effective putting up of that security, within the time period set by the court."

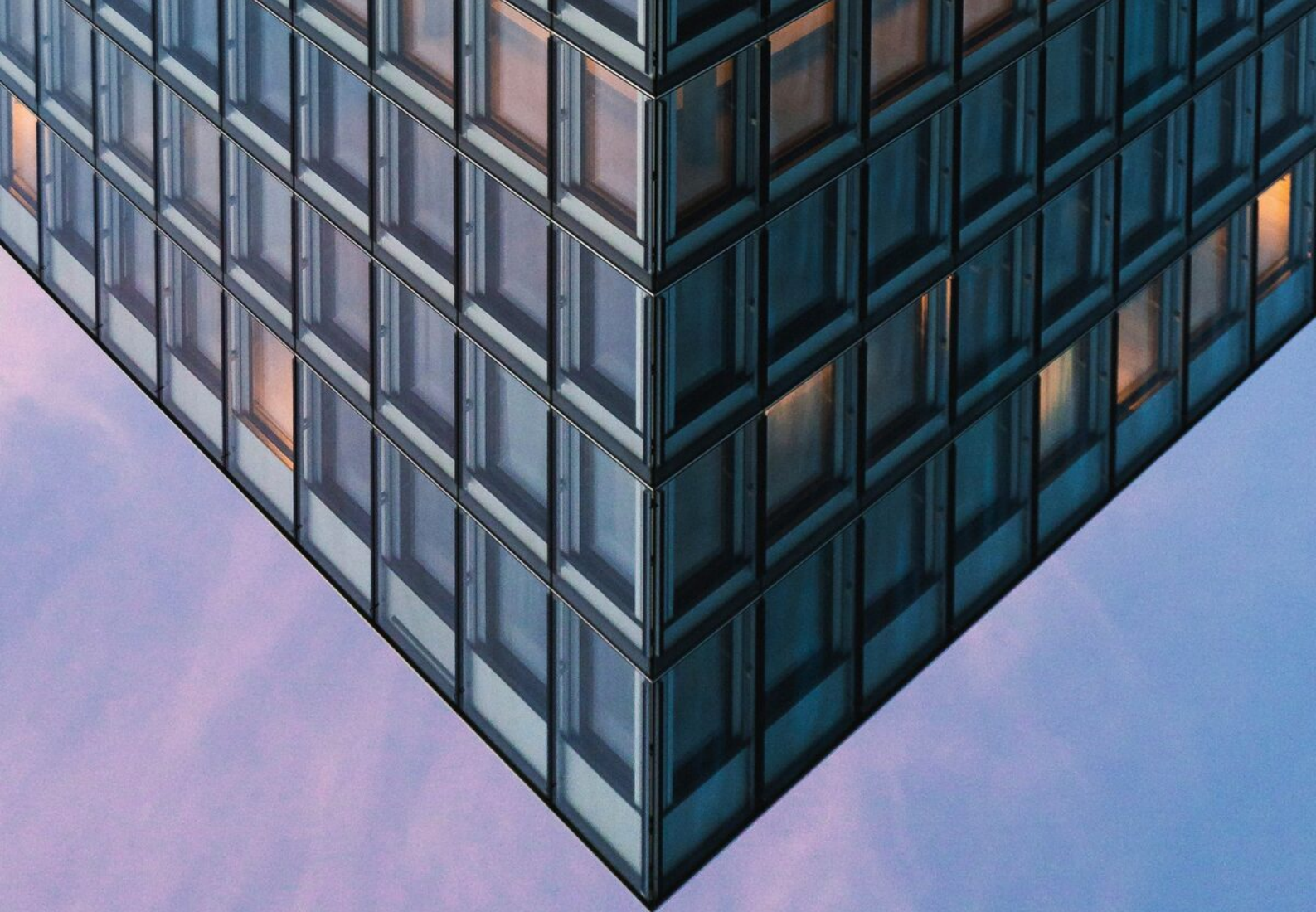
Third Parties may appeal the decision of the CRA if it affects them.

Regarding the competent court, article 50 of Decree 96/21 of 31 of December of 2021 stipulates that:

1. Decisions issued by the ARC, in proceedings that result in the imposition of fines or other sanctions as provided by law, can be challenged in the City of Maputo Judicial Court.
2. Decisions related to concentration proceedings and exemption procedure are subject to appeal in the Administrative Court.

With regards to the deadlines, the law is not clear, but if the decision of the ARC applies fines or other sanctions, the processual penal code establishes a deadline of 15 days to pay the fine, and it is our understanding that it is within this deadline that appeal must be made.

If the decision of the ARC is connected to merger proceedings and exemption procedure, the Administrative Litigation Procedural Law is applicable, which determines a deadline for appeal that varies between 90 to 365 days. However, an appeal claiming nullity of a decision can be exercised at any time.



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