

Mergers and Acquisitions Report **2016**

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Section 1: GENERAL OUTLOOK**1.1 What have been the key recent M&A trends or developments in your jurisdiction?**

The main M&A trends and major deals in Mozambique over recent years have principally related to the energy/natural resources and the banking/financial sectors.

Common transactions have involved the sale and purchase of stakes and participating interests in coal and gas assets.

1.2 What is your outlook for public M&A in your jurisdiction over the next 12 months?

Due to the socio-economic and political outlook, the government's struggle with the balance of payments crisis and the weakening of Mozambique's currency against the US dollar, it is difficult to predict what will happen during 2016. However, in terms of public M&A, less than a handful of companies are listed on the Mozambican Stock Exchange and it is not anticipated that any of them will execute deals in the near future.

However, this will change in the near future, because recently enacted oil and gas legislation requires oil and gas companies with interests in Mozambique to be incorporated in the country, and listed on the Mozambican Stock Exchange.

Section 2: REGULATORY FRAMEWORK**2.1 What legislation and regulatory bodies govern public M&A activity in your jurisdiction?**

The main legislation governing M&A activity includes: the Commercial Code of Mozambique; the Securities Code; the Investment Law; the Credit and Financial Institutions Law; and the Competition Law.

The public regulatory bodies that govern M&A activity include the Mozambican Stock Exchange and the Bank of Mozambique.

2.2 How, by whom, and by what measures, are takeover regulations (or equivalent) enforced?

The country does not have any specific takeover regulations. Takeovers are governed and covered by the contracts made between the parties to a specific transaction. This means the rules governing transactions can only be enforced in a court of law in Mozambique.

Section 3: STRUCTURAL CONSIDERATIONS**3.1 What are the basic structures for friendly and hostile acquisitions?**

Friendly structures governed by Mozambican law include: mergers; the sale and purchase of assets and/or shares; divestment; joint ventures and public-private partnerships; privatisation; and, initial public offers (IPOs). The latter are rare in the Mozambican market.

Hostile acquisitions are rare in the Mozambican M&A market. According to local practice, they may instead be understood to be a forced acquisition or buy-outs between shareholders, by means of enforcement of certain agreements.

3.2 What determines the choice of structure, including in the case of a cross-border deal?

The choice of structure is usually determined by factors relating to the jurisdictions (and parties) involved in the transaction. Considerations include:

- the ease of doing business and applicable procedures;
- the existence of double taxation treaties (and government investment treaties);
- dispute resolution methods (acceptance of arbitration and acceptable applicable arbitration rules);
- exchange control regulations applicable to the transaction;
- the costs of creating and/or maintaining offshore corporations for the purposes of the transactions, ultimately dealing with Mozambican assets.

3.3 How quickly can a bidder complete an acquisition? How long is the deal open to competing bids?

The timings for completion differ from one transaction to another, depending on the conditions precedent required and public institutions involved. Ordinary transactions may take only a month to be completed. Public M&A transactions will depend on the initial calendar presented by the company to the Bank of Mozambique. No specific timings are established.

3.4 Are there restrictions on the price offered or its form (cash or shares)?

There are no restrictions on the price offered or its form. However, the Bank of Mozambique has discretionary powers when analysing transactions and, in practical terms, transactions are usually paid in cash.

3.5 What level of acceptance/ownership and other conditions determine whether the acquisition proceeds and can satisfactorily squeeze out or otherwise eliminate minority shareholders?

Since there are almost no transactions taking place on the Mozambican Stock Exchange, it is difficult to address this issue. Nevertheless, the bank of Mozambique has discretionary powers when deciding whether to list and admit a transaction.

3.6 Do minority shareholders enjoy protections against the payment of control premiums, other preferential pricing for selected shareholders, and partial acquisitions, for example by mandatory offer requirements, ownership disclosure obligations and a best price/all holders rule?

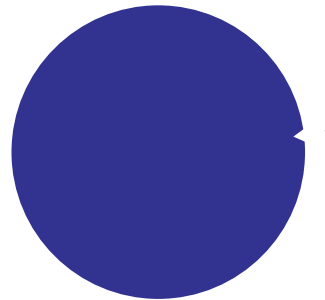
Minority shareholders may enjoy such protection, if that protection has been specifically established under the relevant contracts.

3.7 To what extent can buyers make conditional offers, for example subject to financing, absence of material adverse changes or truth of representations? Are bank guarantees or certain funding of the purchase price required?

The law does not specifically regulate this.

INBOUND

No reported value for outbound activity



NB only deals with publicly disclosed values are represented in the charts and infographics



Section 4: TAX CONSIDERATIONS

4.1 What are the basic tax considerations and trade-offs?

The basic tax considerations include:

- whether tax treaties are in force between the target company and the seller's jurisdiction;
- tax residency rules applicable to non-resident entities (in cross-border transactions), as withholding tax applies on capital gains made to non-residents;
- whether there is specific tax legislation applicable to a certain sector (for example, oil and gas and mining have their own tax rules). This means that calculations vary.

4.2 Are there special considerations in cross-border deals?

The existence of double taxation treaties (and government investment treaties) may have a fiscal impact upon the transaction.

Section 5: ANTI-TAKEOVER DEFENCES

5.1 What are the most important forms of anti-takeover defences and are there any restrictions on their use?

Mozambique does not have specific regulations on anti-takeover defences. However, in practice, the law allows for the usual defences, through contract provisions or regulations.

5.2 How do targets use anti-takeover defences?

The most common anti-takeover defences are: enforcement of shareholders' special rights; issuance of preferred shares; and asset and liability restructuring agreed by means of shareholder agreements or joint venture agreements. Besides being stipulated in such agreements, the best way to have them enforced in a court of law is to stipulate them in the articles of association of the target company. Lack of recommendation by the board for a specific deal may also be considered an anti-takeover defence strategy.

5.3 Is a target required to provide due diligence information to a potential bidder?

No.

5.4 How do bidders overcome anti-takeover defences?

The usual approach is to make better offers and/or seek the recommendation of the target company's board. Alternatively, when due diligence paperwork is not made available, the bidder may invoke this issue in negotiating the purchase price.

5.5 Are there many examples of successful hostile acquisitions?

There are not many examples of (known) hostile takeovers.

Section 6: DEAL PROTECTIONS

6.1 What are the main ways for a friendly bidder and target to protect a friendly deal from a hostile interloper?

Mozambican law's main background principle, in terms of contracting between stakeholders, is that the parties to an agreement enjoy almost complete freedom of contract. Within certain legal boundaries, the parties are free to establish their will and protections, including the target company.

6.2 To what extent are deal protections prevented, for example by restrictions on impediments to competing bidders, break fees or lock-up agreements?

There is no case law in Mozambique regarding this issue.

Section 7: ANTITRUST/REGULATORY REVIEW

7.1 What are the antitrust notification thresholds in your jurisdiction?

Under the applicable regulation, concentrations between companies are subject to prior notification when they fulfil one of the following conditions:

- as a consequence of the concentration, a market share equal to or greater than 50% of the domestic market in a specific product or service, or in a substantial part of it, is acquired, created or reinforced;
- as a consequence of the concentration, a market share equal to or greater than 30% but smaller than 50% of the domestic market in a specific product or service, or in a substantial part of it, is acquired, created or reinforced;
- the companies involved in the concentration reached an aggregate turnover in Mozambique in the previous financial year greater than 900 million MZN (approximately \$18.6 million).

Note that although the Mozambican Competition Law and its regulation were enacted in 2014, the Competition Regulation Authority has not yet started to operate.

7.2 When will transactions falling below those thresholds be investigated?

Transactions are not normally subject to investigation, unless specific legal requirements are met. These are assessed on case by case basis.

7.3 Is an antitrust notification filing mandatory or voluntary?

Prior notification of a concentration between companies is mandatory.

7.4 What are the deadlines for filing, and what are the penalties for not filing?

The deadline for filing is five days from the transaction closing. By law and without prejudice to any criminal liability, any infringement of the applicable provisions, including failure to notify a concentration subject to prior notification, will be deemed an administrative offence punishable with a fine that may not exceed one percent of the annual turnover. In some circumstances, the Competition Regulatory Authority can apply accessory sanctions.

7.5 How long are the antitrust review periods?

Antitrust reviews may last between 45 and 75 days. This depends on whether the regulatory authority decides to issue an approval or rejection notification decision by the end of the 45th day or, instead, decides to begin an in-depth investigation.

7.6 At what level does your antitrust authority have jurisdiction to review and impose penalties for failure to notify deals that do not have local competition effect?

The Mozambican Competition Regulatory Authority does not have any powers to act or even to impose penalties for failure to notify deals or merger operations that do not have any competition effect within Mozambican territory.

7.7 What other regulatory or related obstacles do bidders face, including national security or protected industry review, foreign ownership restrictions, employment regulation and other governmental regulation?

Local content principles should be applied in many fields of activity, including the construction sector, major concession public-private-partnership projects (PPP) and the oil and gas industry. For example, the law states that PPP investment must benefit the Mozambican economy and create jobs for Mozambicans. It must also promote the inclusion of Mozambican investors by encouraging the offer of between five to twenty percent of investment shares on the local stock market to Mozambican companies.

Section 8: ANTI-CORRUPTION REGIMES

8.1 What is the applicable anti-corruption legislation in your jurisdiction?

These are:

- (i) The Criminal Code;
- (ii) The Anti-bribery Law;
- (iii) The Public Probity Law.

8.2 What are the potential sanctions and how stringently have they been enforced?

Corruption activities are sanctioned with a penalty of imprisonment up to two years and a fine of 360 days. Any public official convicted of corruption can be sanctioned with penalty of imprisonment of up to eight years, without prejudice to other accessory sanctions.

Section 9: OTHER MATTERS

9.1 Are there any other material issues in your jurisdiction that might affect a public M&A transaction?

No



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About the author

Miguel Spínola is the partner responsible for PLMJ's Mozambique desk in Lisbon. He specialises in foreign investment, corporate and M&A matters. Since 2008, he has advised national players and foreign investors on drafting and implementing investment projects in several sectors of the economy, including energy and infrastructure.

He has extensive experience in multi-jurisdictional and multilingual international corporate and M&A transactions.

More recently, he has assisted Portuguese and international companies and banks in their investments and activities in Mozambique. This assistance has included advising on oil and gas deals, infrastructure projects and their financing.

7



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About the author

Josina Correia is a senior associate at TTA – Sociedade de Advogados, a member of the PLMJ International Legal Network. She specialises in corporate, tax and international financing.

She has been advising several Mozambican and international clients in both national and cross-border deals since 2003, with a special focus on M&A in energy and mineral resources deals.

She has great knowledge and experience of undertaking M&A due diligence processes, cross-border facility arrangements and double taxation matters.

More recently, she has assisted the FNB (Mozambique) bank in a cross-border facility to Bayport Financial Services; and ONGC Videsh in the acquisition of a 20% stake in the Rovuma Basin Area 1.