September 28, 2017

New monetary thresholds for the classification of intermediate mergers, which require mandatory notification to the Competition Commission, have been introduced in South Africa. In addition, merger filing fees have been increased for both intermediate and large mergers. The changes will take effect on 1 October 2017.

According to Government Gazette No. 41124, the combined annual turnover or assets of the merging firms (in the highest combination) has been increased to R 600 million (approximately US$ 45 million) from the previous figure of R 560 million (approximately US$ 42 million) whilst the annual turnover or assets of the target firm (whichever is higher) has been increased from R 80 million (approximately US$ 6 million) to R 100 million (approximately US$ 7.5 million).

The merger thresholds for transactions classified as large mergers remain unchanged where the turnover or asset value of the target firm exceeds R 190 million (approximately US$ 14 million) and the combined figure exceeds R 6.6 billion (approximately US$ 495 million).

Mergers that meet or exceed the prescribed monetary thresholds for an intermediate or large merger must be automatically notified. These transactions cannot be implemented prior to approval being granted by the competition authorities. Small mergers do not require notification and can be implemented without approval unless the competition authorities request that notification be made.

The new filing fees payable to the Competition Commission on submission of an intermediate merger have been increased from R 100,000 (approximately US$ 7,500) to R 150,000 (approximately US$ 11,000) and for large mergers the new filing fees are now R 350,000 (approximately US$ 26,000) having been increased from the previous amount of R 300,000 (approximately US$ 22,500). No filing fee is payable for small mergers.

These amendments should be taken into account when considering transactions in South Africa as parties who implement a notifiable merger without approval may be fined up to 10 per cent of their annual turnover.