

AMENDMENTS TO THE REGULATION ON THE REGISTRATION AND LICENSING OF INTERMEDIARY PROVIDERS OF ELECTRONIC SERVICES AND DIGITAL PLATFORM OPERATORS

Decree number 59/2023, of 27 October, which approves the Regulation on the Registration and Licensing of Intermediary Providers of Electronic Services and Digital Platform Operators, has just been amended (in its numbers 1 of article 18, articles 51, 54 and 64, as well as the title of Chapter II) and partially repealed (in its numbers 7 and 8 of article 18, Article 22(6) and Article 53). This is a surprising change given the almost non-existent public debate on the subject, possibly due to the apparent minor importance of the affected provisions

WHAT'S NEW?

In addition to the changes in the sanctioning regime, we have highlighted the following points as the most relevant in the new wording of the Regulation:

- 1. Clarification regarding Entities Subject to Registration and Licensing by INTIC** – The new normative text sheds light on what could constitute a positive conflict of competences in the field of registration and licensing for the activity. In fact, reiterating that Intermediary Providers of Electronic Services and Digital Platform Operators are subject to registration and licensing by INDU, the new text clarifies that entities whose registration and licensing is the responsibility of the Communications Regulatory Authority (INCM), within the scope of the Telecommunications Law (which, as is known, are the natural and legal persons who intend to establish, manage and operate telecommunications networks) and within the scope of the Postal Law (which, as is also known, are the operators of postal services).
- 2. Clarification on the Applicable Fees** – The new regime also clarifies what was the focus of some confusion about the applicable fees under the Regulation, clearly determining that operators of digital platforms associated with telecommunications services regulated, registered and licensed by the Communications Regulatory Authority under the Telecommunications Law and the Postal Law are excluded from the application of the fee regime provided for in the Regulation. This is a question, for example, of telecommunications network operators that also provide services that qualify as digital platform operators.
- 3. Fees** – the new regime modifies and clarifies the matter of fees that had been left open in the previous wording of the Regulation:

Fixed Rate – as for the Fixed Rate, whose definition in the previous wording referred to the areas of economic activities, as defined in the Classifier of Economic Activities – CAE, the new wording determines that it corresponds to a minimum wage for the civil service;

Annual Fee – as for the annual fee, it is no longer due by providers and operators who offer services to the Mozambican public "holders of essential access control power" and is simply required from all providers and operators who offer services to the Mozambican public.

WHAT WAS LEFT TO DO?

- Definition of Startup** – we have been warning that given the fact that this Regulation determines differential treatment for the so-called startups, it is essential to define this term (as is the case in all jurisdictions that offer differentiated treatment to this class of economic agents). The new wording maintains this differentiated treatment and even qualifies some startups according to share capital and turnover, but does not define, for the purposes of this Regulation, what a Start-up is.
- Qualification of "Intermediary Service Provider"** – the concept of "intermediary service provider" is another concept whose clarification we believe should be carried out in this new wording. Although apparently clear, it is not in line with what is determined in the Electronic Transactions Law

WHY IS THIS REGULATION IMPORTANT?

This is the Regulation whose compliance guarantees, in essence, the legal compliance of all Intermediary Providers of Electronic Services and Digital Operators and Platforms. The implementation of the aforementioned aspects mentioned above, as well as the strengthening of the sanctioning regime, require economic agents in the ICT sector to consider an appropriate review of their situation, based on the provisions of the Regulation.

At **Cambule & Américo** we are deeply dedicated to ensuring that our clients in the sector are within the compliance framework required by the Regulation.



Gil Cambule
Head of TMT Practice

Practice Area:
- **Technology, Media and Telecommunications**
- **Data Protection**
- **Litigation and Arbitration**

gcambule@ca.co.mz

+258 878 885 500
info@ca.co.mz

Edifício JN130
Avenida Julius Nyerere,
Nr.130 - 6º Andar Dto.
Cidade de Maputo, Moçambique.