

MERGER CONTROL FRAMEWORKS IN TANZANIA MAINLAND AND ZANZIBAR¹

SCANNING THE DIFFERENCES

Overview: Union Set-Up

Not to unveil the debate on whether Tanzania has a perfect Union, properly so called, or not, the Constitution of the United Republic of Tanzania, Cap. 2 [R.E. 2002] (the “**Constitution**”) provides that there shall be a Government of the United Republic, which shall have authority over all Union Matters throughout the United Republic and over all other matters concerning Mainland Tanzania. The Constitution further stipulates that there shall be an Executive for Zanzibar, known as the Revolutionary Government of Zanzibar, which shall have authority in Zanzibar over all matters that are not Union Matters, in accordance with the provisions of the Constitution.

Importantly, the Constitution also declares that “the territory of the United Republic consists of the whole of the area of Mainland Tanzania and the whole of the area of Tanzania Zanzibar, and includes the territorial waters.” This territorial definition reinforces the fact that, while Tanzania comprises two constituent parts, Mainland Tanzania and Zanzibar, it remains a single sovereign state with clearly demarcated Union and non-Union competences.

Put simply, Tanzania is composed of Mainland Tanzania and Zanzibar. Certain shared matters, known as Union Matters, fall under the jurisdiction of the Government of the United Republic, while non-Union Matters are governed separately: by the Government of the United Republic in respect of Mainland Tanzania and by the Revolutionary Government of Zanzibar in respect of Zanzibar.

Union and Non-Union Matters

Fortunately, the list of Union Matters is not a matter of guesswork. The Constitution specifies 22 items that qualify as Union Matters. Technically, if a subject does not fall within this list, it is treated as a non-Union matter. Under the Constitution, these Union Matters include the following.

1. The Constitution of Tanzania and the Government of the United Republic.
2. Foreign Affairs.
3. Defence and Security.

¹More about Tanzania Zanzibar, please see: Sharifu, A. (2025). *Power Sharing Following Violation-Marred Elections and its Implication on the Protection of Human Rights in Africa*. In I. Kajiru et al. (Eds.), **Economic Development and Human Rights in Contemporary Sub-Saharan Africa** (Ius Gentium: Comparative Perspectives on Law and Justice, Vol. 122). Springer Nature Switzerland AG. https://doi.org/10.1007/978-3-031-81400-6_11.

4. Police.
5. Emergency Powers.
6. Citizenship.
7. Immigration.
8. External borrowing and trade.
9. Service in the Government of the United Republic.
10. Income tax payable by individuals and by corporations, customs duty and excise duty on goods manufactured in Tanzania collected by the Customs Department.
11. Harbours, matters relating to air transport, posts and telecommunications.
12. All matters concerning coinage and currency for the purposes of legal tender (including notes), banks (including savings banks) and all banking business; foreign exchange and exchange control.
13. Industrial licensing and statistics.
14. Higher education.
15. Mineral oil resources, including crude oil other categories of oil or products and natural gas.
16. The National Examinations Council of Tanzania and all matters connected with the functions of that Council.
17. Civil aviation.
18. Research.
19. Meteorology.
20. Statistics.
21. The Court of Appeal of the United Republic.
22. Registration of political parties and other matters related to political parties.

As our subject matter is competition, the next issue to address is whether competition constitutes a Union Matter or not, and the resulting implications depending on whether it is classified as a Union Matter or a non-Union matter.

Competition: A Union Matter or Not?

A close look at the list above suggests that the only item that appears to relate to competition is item 8 of the Union Matters, namely “...trade.” However, since competition is not specifically mentioned, it follows that it is excluded from the list and therefore cannot be deemed a Union Matter in the same way as those expressly listed.

Implications of Competition Not Being a Union Matter

Since, constitutionally, competition is not a Union Matter, it follows that it must be regulated separately by the Government of the United Republic (for Mainland Tanzania) and the Revolutionary Government of Zanzibar. For this reason, both Mainland Tanzania and Zanzibar maintain their own distinct competition frameworks, including separate systems for regulating competition and merger control.

Accordingly, this article aims to unveil the differences in approach to merger control between Mainland Tanzania and Zanzibar, as detailed below. In short, beyond the divergence in legal frameworks, the institutional structures also differ. Whereas in Mainland Tanzania the regulator is the Fair Competition Commission (“FCC”), in Zanzibar the responsible authority is the Zanzibar Fair Competition Commission (“ZFCC”).

From a historical perspective, it is reasonable to observe that Mainland Tanzania has a more mature merger control framework compared to Zanzibar. This is evident from the fact that the FCC began its operations earlier than the ZFCC, giving the Mainland system more time to develop its institutional capacity, jurisprudence, and enforcement practice.

Merger Control Framework: Tanzania Mainland

Merger control framework is mainly premised from the Fair Competition Act, Cap. 285 [R.E. 2023] (the “**FCA**”). The FCA, and the Competition Rules, 2018 (the “**Competition Rules**”), set out a two-pronged test to determine if a “merger” is notifiable to the FCC. All these tests must be met for a transaction to be considered a notifiable merger:

- (a) *Change of control* – the transaction must involve a change of control of a business or assets in Tanzania; and
- (b) *Financial threshold* – the combined global turnover or asset value, whichever is higher, of the merging parties must meet or exceed a set threshold.

Change of Control

The FCA defines a “merger” as, “an acquisition of shares, a business or other assets, whether inside or outside Tanzania, resulting in the change of control of a business, part of a business or an asset of a business in Tanzania.”

An “acquisition” is defined as, “in relation to shares or assets means the acquisition, either alone or jointly with another person, of any legal or equitable interest in such shares or assets but does not include acquisition by way of charge only.” Further, the word “acquire” is defined to include acquire by purchase, exchange, lease, hire, hire-purchase or gift.

Although change of control is not specifically defined under Tanzanian law, the FCC takes a broad view. It considers change of control as any situation where a party gains significant or decisive influence over the target's assets or operations. Such an influence may arise through the ownership of all or part of the company's assets, shares, or rights, which confer decisive influence on the decision-making process of the company.

In a scenario where a third-party acquirer is involved, there will typically be a change of control over a business or part of a business in Tanzania in terms of the third-party acquirer's potential ability to materially influence the business policy and operations of the Tanzanian target in the

post-merger scenario, irrespective of the size of the ownership change. Consequently, the nature of such a transaction results in a change of control.

Financial Threshold

A merger is notifiable to the FCC if the merging parties' combined global annual turnover or asset value (whichever is higher) during the previous financial year equals or exceeds TZS 3.5 billion (approximately USD 1.6 million). Since the threshold is calculated on a global basis, if either party (the target or the acquirer) meets the financial threshold, then the proposed transaction triggers the notification requirement.

Merger Control: Zanzibar

The Fair Competition and Consumer Protection Act, 2018, together with the Fair Competition Regulations, 2019 in Zanzibar, closely mirror the Tanzanian Mainland's merger control framework, particularly in defining what constitutes a merger or acquisition and the criteria for a notifiable merger.

Under this regime, a merger is notifiable if it satisfies the following two tests:

- (a) *Change of control test*; and
- (b) *Financial threshold test*.

The change of control test focuses on whether the transaction results in one party gaining the ability to exercise material or decisive influence over another entity's operations or strategic decisions. This can occur through shareholding, voting rights, or contractual arrangements, even if the acquiring party does not obtain majority ownership.

The financial threshold test in Zanzibar is notably more stringent than that of Mainland Tanzania. A merger must be notified to the ZFCC if the combined global annual turnover or asset value of the merging parties in the preceding financial year equals or exceeds TZS 500,000,000 (approximately USD 206,611.57). Compared to the TZS 3.5 billion financial threshold required for a notifiable merger in Mainland Tanzania, the TZS 500,000,000 threshold is significantly lower, meaning that almost every transaction that results in a change of control is likely to trigger a mandatory notification to the ZFCC.

Conclusion

Where the target entity has a physical presence or business arrangements (such as distributorships or agency relationships) that establish a nexus in Zanzibar, Tanzania, or both, the parties may need to undertake a merger control analysis to confirm whether the proposed transaction, whether occurring offshore or onshore, triggers the notification requirements in Tanzania, Zanzibar, or both.