



## Competition Law: Guidelines for Businesses

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## Table of contents

Overview .....	3
Definitions .....	3
Practical Guidance .....	3
Overview of Kuwait Law No. 72/2020 .....	3
Pre-filing preparations and considerations .....	4
CPA filing and review process .....	4
Post-filing considerations .....	4
What constitutes anti-competitive conduct.....	4
Abuse of dominance .....	4
Compliance risks and penalties .....	4
Practical guidance for businesses.....	5
Related Content .....	5
Authors .....	6

## Overview

This Practice Note provides a high-level guidance overview on competition law for businesses in Kuwait.

## Definitions

- *CPA*: Competition Protection Agency, the regulator responsible for enforcing Kuwait Law No. 72/2020 On the Protection of Competition and Kuwait Decision No. 14/2021 Concerning the Issue of Executive Regulation of Kuwait Law No. 72/2020 Concerning Protection of Competition Law in Kuwait.
- *Economic concentration*: Any merger, acquisition, or partnership that results in a permanent change of control over an undertaking.
- *Dominant position*: The position that any person holds, making it capable, either individually or in collaboration with other persons, of controlling or influencing the relevant market independently of competitors, customers, or consumers.
- *Relevant market*: The market which consists of two elements; namely, the relevant products and relevant geographic area.
- *Gun-jumping*: Implementation of a notifiable transaction prior to obtaining Competition Protection Agency (CPA) clearance.
- *Condition precedent*: A contractual or legal requirement that must be satisfied before a transaction can close, in this case CPA clearance.
- *GCC*: Gulf Cooperation Council.
- *Horizontal relationships*: Agreements between competitors at the same level of the production or distribution chain in the relevant market.
- *Vertical relationships*: Agreements between competitors at different levels of the production or distribution chain in the relevant market.
- *Concerted practices*: A form of coordination among persons without concluding an agreement in whatever form, which leads to practical cooperation among them.

## Practical Guidance

### Overview of Kuwait Law No. 72/2020

Kuwait's competition regime is founded on Kuwait Law No. 72/2020 and Kuwait Decision No. 14/2021, as amended by Kuwait Decision No. 25/2022 On the Issuance of the Implementing Regulation of Kuwait Law No. 72/2020 on the Protection of Competition. Together, they provide the framework for regulating mergers, acquisitions, joint ventures and other transactions resulting in economic concentration in Kuwait. The CPA is the oversight authority entrusted with reviewing notifiable transactions, enforcing prohibitions on anti-competitive practices, and monitoring market conduct. Central to this framework are several concepts:

- A "dominant position" exists where an undertaking can operate independently of competitors and consumers.
- The "relevant market" is defined by substitutability of products and the geographic area of competition.
- "Economic concentration" captures mergers, acquisitions or partnerships leading to a lasting change of control.

Additionally, businesses involved in transactions exceeding statutory thresholds for turnover or assets must file with the CPA prior to implementation. The statutory financial thresholds are the following:

- If any one party to the concentration achieves annual sales in Kuwait exceeding KWD 500,000, according to the audited financial statements of the last fiscal year before the concentration.
- If the parties to the concentration collectively achieve aggregate annual sales exceeding KWD 750,000, according to the audited financial statements of the last fiscal year before the concentration.
- If the value of the registered assets of the parties to the concentration in Kuwait exceeds KWD 2,500,000, according to the audited financial statements of the last fiscal year before the concentration.

The filing fee is calculated at 0.1% of paid-up capital or assets in Kuwait, whichever is lower, capped at KWD 100,000. Clearance from the CPA is a condition precedent to closing, and proceeding without clearance, often referred to as gun-jumping, exposes parties to penalties of up to 10% of annual revenues.

The filing obligation also extends to foreign-to-foreign transactions where any of the parties generate revenue, directly or indirectly, in the Kuwaiti market that exceeds the applicable financial thresholds. It should be noted that the parties to a filing are typically the buyer and target in acquisitions, or the merging entities in mergers.

Additionally, the CPA coordinates closely with other merger control authorities in the Gulf Cooperation Council (GCC) region. When a large entity files with another GCC authority and is known to have revenues or assets in Kuwait, the CPA may be prompted to launch its own investigation and directly inquire of these parties as to why no filing was made in Kuwait. The CPA

also maintains a dedicated monitoring team, including a social media unit, which actively tracks announcements of deals or acquisitions by major entities and may request an explanation from such parties that have not filed.

That said, under CPA practice, filing parties must have at least a two-year operating track record and provide financial statements. As a result, when newly formed special purpose vehicles are used, whether to structure a transaction or to avoid filing requirements or fees, the CPA typically “looks through” to the parent entities. In such cases, the CPA may require submission of the parent entities’ corporate and financial documents and, in some instances, calculate the filing fee based on the parent entities’ capital.

### **Pre-filing preparations and considerations**

Early preparation is critical in order to avoid delays during the CPA review, as the filing requires extensive documentation, including memoranda and articles of association, commercial register extracts, licences, and transaction documents. Additionally, two years of audited financial statements must be submitted in Arabic, with market studies also required for submission, to demonstrate the transaction’s competitive impact. Where the filing fee is calculated on the basis of assets, a valuation report prepared by a CPA-licensed valuator is also required.

For foreign entities, documentation must often be translated by an official translator in the State of Kuwait, and any corporate document must be legalised by the authority of foreign affairs for the issuing country, the Kuwaiti embassies abroad, and Ministry of Foreign Affairs in Kuwait. If a legal representative is appointed to handle the filing locally, a notarised and legalised power of attorney is needed.

Given the time required for notarisation, legalisation and translation, transaction parties should begin preparations well in advance and coordinate closely with advisers to ensure accuracy and completeness.

### **CPA filing and review process**

The filing is made by submitting a formal application to the CPA, together with notification forms and all supporting materials, and filing fees must be paid by certified cheque drawn on a Kuwaiti bank or through a wire transfer. Once accepted, the CPA typically reviews the filing and notice of the filing is then published in the official gazette and in two local newspapers, opening a 15-day window for third parties to raise objections. The CPA then conducts a review of the filing within a period of 45 to 60 days, with a possible extension of a further 90 days in complex cases. During this period, the CPA may request additional documents or clarifications, and therefore timely and consistent responses are essential in order to keep the review on track.

The CPA board of directors then considers the application alongside any objections and issues its decision to clear or block the transaction. It should be noted that the board meets monthly, usually with limited prior notice, which means applications may be carried forward to subsequent meetings if not ready for consideration.

### **Post-filing considerations**

Clearance does not always mark the end of the process, and thus businesses must monitor the objection period closely and be prepared to respond to concerns raised by competitors or other market participants. The CPA may impose conditions to address competition concerns, which must be factored into implementation, and so coordination between the parties remains important throughout the post-filing stage to ensure that any CPA queries are handled consistently and effectively.

### **What constitutes anti-competitive conduct**

Kuwait Law No. 72/2020 addresses not only concentrations but also a wide range of anti-competitive behaviour, such as:

- **Horizontal restrictive agreements:** These are expressly prohibited and include acts related to horizontal relationships such as setting prices, dividing or sharing product markets, fixing the volume of production, distribution or sale, limiting technical development or investment, and collusive tendering or bidding for sale, purchase, or supply of any products or services.
- **Vertical agreements:** Persons involved in a vertical relationship are prohibited from entering into any agreements or carrying out any concerted practices that may restrict, lessen, or prevent competition, with the CPA board setting the standards that impede free competition.

### **Abuse of dominance**

Kuwait Law No. 72/2020 prohibits companies from abusing their dominant position in the market. Any practice that prevents, restricts, or lessens competition in the relevant market constitutes an abuse of dominant position. This includes practices such as imposing resale price maintenance, engaging in exclusionary conduct, creating artificial shortages, applying discriminatory terms, imposing exclusivity arrangements, refusing to deal without a legitimate reason, and tying contracts to unrelated conditions.

### **Compliance risks and penalties**

Failure to notify a notifiable transaction can result in severe consequences, including administrative fines of up to 10% of revenues, suspension of the transaction or even invalidation. Gun-jumping, or implementing a transaction before obtaining clearance, is particularly risky, and providing incomplete or misleading information to the CPA also attracts penalties.

As aforementioned, the CPA actively monitors the market, including public deal announcements and disclosures on social media, and coordinates with other GCC competition authorities. As such, avoiding notification is highly inadvisable.

## **Practical guidance for businesses**

For companies operating in Kuwait, effective compliance requires careful planning. Document collection, notarisation and legalisation should begin as early as possible, as delays in these processes can derail timetables.

Therefore, engaging specialist competition counsel during the structuring stage allows businesses to anticipate potential issues, prepare robust filings and avoid procedural missteps. Above all, accurate and complete information must be provided to the CPA, since misleading submissions can trigger penalties. Furthermore, businesses should implement internal compliance programs, conduct regular audits, provide ongoing staff training, and establish clear reporting mechanisms for potential competition law breaches.

## **Related Content**

- Kuwait Law No. 72/2020 On the Protection of Competition
- Kuwait Decision No. 14/2021 Concerning the Issue of Executive Regulation of Kuwait Law No. 72/2020 Concerning Protection of Competition
- Kuwait Decision No. 25/2022 On the Issuance of the Implementing Regulation of Kuwait Law No. 72/2020 on the Protection of Competition

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**Biography**

Asad leads the Anti-Trust and Competition Practice at GLA & Co, renowned for his expertise in merger control and corporate law. His extensive experience spans various sectors including renewable energy, finance, data protection, education and healthcare. He has extensive experience in conducting thorough due diligence for complex mergers and acquisitions, excelling in navigating cross boarder distribution arrangements and ensuring corporate regulatory compliance. As a seasoned corporate attorney, Asad is skilled in negotiating intricate agreements and managing corporate transactions. Notably, his decade-long background in healthcare as a registered respiratory therapist provides a distinctive perspective to his legal counsel. His diverse expertise uniquely positions him to offer insightful guidance in merger control matters, leveraging a deep understanding of corporate complexities and regulatory environments. Asad is known as a relentless advocate on behalf of his clients and was distinguished with the 2023 Rising Star Award, by The Law MEA.

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**Biography**

Khaled Al Makhezeem is a corporate and commercial lawyer. His expertise focuses on corporate and M&A, commercial advisory, and capital markets.

Khaled advises on various matters such as drafting agreements, carrying out legal due diligence exercises and providing legal opinions on corporate and commercial matters. Khaled focuses on corporate governance compliance, corporate structuring and restructuring, M&A transactions as well as shareholder disputes.

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Liana Rashid is an accomplished Associate at GLA & Company's Kuwait office, bringing 2.5 years of extensive legal experience across a diverse range of practice areas. A graduate of the University of Sheffield School of Law, Liana has developed a strong foundation in litigation, mediation, employment law, data privacy, mergers and acquisitions, banking, and competition law. Her bilingual proficiency in Arabic and English enables her to deliver high-quality legal advice to prominent clients in Kuwait and the GCC region, contributing to high-value transactions and managing cross-border matters with precision and expertise.