



Economic Concentration Notification Process

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Overview

This Practice Note provides an overview of the economic concentration notification process in Kuwait, from scoping and threshold assessment through filing, review, publication and clearance.

Definitions

- *CPA*: Competition Protection Agency, the regulator responsible for enforcing Kuwait Law No. 72/2020 On the Protection of Competition.
- *Economic concentration*: A lasting change in control in the relevant market, arising from a merger, acquisition, or the establishment of a joint venture between two or more persons that carry on an economic activity independently on a lasting basis, as defined in Kuwait Law No. 72/2020.

Practical Guidance

Overview of Kuwait Law No. 72/2020

The Competition Protection Agency (CPA) serves as Kuwait's competition regulator, overseeing compliance with Kuwait Law No. 72/2020 and Kuwait Decision No. 14/2021 Concerning the Issue of Executive Regulation of Kuwait Law No. 72/2020 Concerning Protection of Competition. An economic concentration is defined therein as a merger of two or more persons, the acquisition of direct or indirect control over another person, or a joint venture resulting in a lasting change of control over an undertaking, including the transfer of assets, property rights, usufructs, shares, or liabilities.

When an economic concentration occurs and meets the specific conditions outlined in Kuwait Law No. 72/2020 and Kuwait Decision No. 14/2021, it requires the preparation and submission of an economic concentration filing to the CPA. Clearance from the CPA must be obtained before the economic concentration can be implemented.

This Practice Note outlines the process for preparing and submitting an economic concentration filing, as well as providing an overview of the CPA's review process prior to issuing clearance.

Scope and thresholds: When filing is required

A mandatory pre-closing economic concentration filing to the CPA is required when an economic concentration meets any of the prescribed financial thresholds, which are assessed based on the last fiscal year's audited financial statements. These thresholds, as set forth in Kuwait Decision No. 26/2021 On the Controls of Aggregate and Individual Thresholds, are met if:

- Any party to the concentration achieves annual sales in Kuwait exceeding KWD 500 000.
- The parties to the concentration achieve aggregate annual sales in Kuwait exceeding KWD 750 000.
- The value of the registered assets of the parties in Kuwait exceeds KWD 2.5 million.

Notably, foreign-to-foreign transactions are also subject to notification if any party has direct or indirect sales or assets in Kuwait that meet these thresholds. The parties typically responsible for filing an application are the buyer and the target in acquisitions, or the merging entities in the case of mergers.

Pre-filing preparation: Documentation and formalities

Prior to filing, the parties to the economic concentration must gather a comprehensive set of documents, including, but not limited to:

- The memorandum of association or articles of association.
- A commercial licence for all participating persons.
- Commercial register certificate for all participating persons.
- Where a legal representative is appointed to file on behalf of the parties', a copy of the power of attorney.
- The name of the company manager, or names of the board of directors members or legal representative of each person.
- Contact names and information (including job title, civil identity document, passport copy, phone and email) of the parties to the economic concentration.

If any of these documents are issued outside Kuwait, they must be fully legalised by the Ministry of Foreign Affairs of the issuing country and the Kuwaiti Embassy, followed by legalisation in Kuwait by the Ministry of Foreign Affairs.

Additionally, each party must provide:

- Audited financial statements for the last two fiscal years for all persons concerned with the economic concentration process, including their branches, subsidiary, and affiliate companies, if any.
- High-resolution copies of their logos.

The application should also include a market study or analysis that covers the rationale for the economic concentration, market definition, market shares, competitive conditions, potential efficiencies, and the expected effects on competition.

The transaction documents, such as the executed or draft share purchase agreement, memorandum of agreement, or joint venture agreement, must be submitted as well. It should be noted that once a transaction agreement is executed, the executed version must be provided, and draft versions are not acceptable.

Additionally, a comprehensive report comprising the economic dimensions of the economic concentration, as outlined in Kuwait Decision No. 14/2021, must be submitted. This report should assess the competitive effects (both positive and negative), efficiencies, barriers to entry, consumer impact, and details on products, market share, and affected markets.

Importantly, any documents not in Arabic must be translated by a certified translator in Kuwait and legalised, if applicable.

Filing fees and payment mechanics

The filing fee for submission of an economic concentration application is calculated as 0.1% of either the paid-up capital of the relevant persons in Kuwait or the aggregate value of their assets in Kuwait (whichever is less), with a maximum cap of KWD 100 000. If the parties choose to base the fee calculation on assets, a valuation report issued by a CPA-approved valuator is mandatory and must be submitted as part of the application. The CPA does not accept a zero-filing fee under any circumstances.

Payment of the filing fee must be made by certified cheque drawn on a Kuwaiti bank and submitted together with the filing or through a wire transfer.

Preparation and submission

The process of preparing and submitting an economic concentration application to the CPA in Kuwait typically happens in several phases.

Article 78 of Kuwait Decision No. 14/2021 requires that the economic concentration application must be submitted to the CPA at least 60 days before the date of preparing the draft contract or agreement in connection with the concentration process. In practice, the CPA does not strictly apply this provision. During the initial preparation phase, which typically takes four to six weeks, the parties should collect all necessary corporate and financial documents and ensure they are legalised and translated, if required. In parallel, the parties complete the CPA economic concentration filing form, providing transaction details and market information. A legal and economic review of the draft is conducted to ensure consistency in market definition and competitive assessment, and the finalised filing is translated into Arabic if necessary.

All supporting documents are then collated into a complete application bundle and submitted to the CPA, together with the applicable filing fees.

The submission phase follows, typically within one to two working days after the economic concentration application has been finalised. During this phase, the parties submit the application and obtain an acknowledgment from the CPA. The CPA conducts an immediate completeness check upon submission and may reject applications if any required documents or procedures are incomplete, such as missing legalisations or translations into Arabic.

Review and clearance

After the application is accepted and deemed complete, the CPA arranges for publication of a summary of the economic concentration application in the official gazette and two local newspapers, at the applicant's cost. Following this publication or notification, third parties have 15 days to submit a reasoned objection to the application, upon payment of a prescribed fee (articles 82-83 of Kuwait Decision No. 14/2021).

If no objections are raised, the CPA's review team then reviews the application and prepares a report and recommendation for the CPA Board of Directors. The Board typically meets monthly to discuss applications and issue clearances, often with short notice near the end of the month.

This review, publication, and decision phase typically lasts 45 to 60 days, although the statutory period is up to 90 days and may be extended by an additional 90 days in complex cases. During this time, parties must respond promptly to any follow-up queries or document requests from the CPA to avoid any delays of issuance of clearance.

Once clearance is granted by the CPA board of directors, a letter is issued to the applicant confirming that clearance has been granted for the transaction. The clearance is also published in the official gazette, and the parties may proceed with implementing the economic concentration.

Risks, penalties and common pitfalls

Failure to notify a notifiable economic concentration or engaging in "gun-jumping" (implementing the transaction before receiving clearance) can result in significant consequences. These include administrative fines of up to 10% of the parties' total revenue earned during the previous fiscal year, as stipulated in article 34 of Kuwait Law No. 72/2020. Additionally, the transaction may be suspended or invalidated, and further penalties may be imposed for providing incomplete or misleading information in the application.

Common pitfalls in the economic concentration process often include underestimating the time required for notarisation, legalisation, and translation of documents. Parties, particularly non-Kuwaiti entities, are therefore encouraged to begin the legalisation and translation process as early as possible, while simultaneously completing the application form.

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
- Kuwait Decision No. 26/2021 On the Controls of Aggregate and Individual Thresholds

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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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