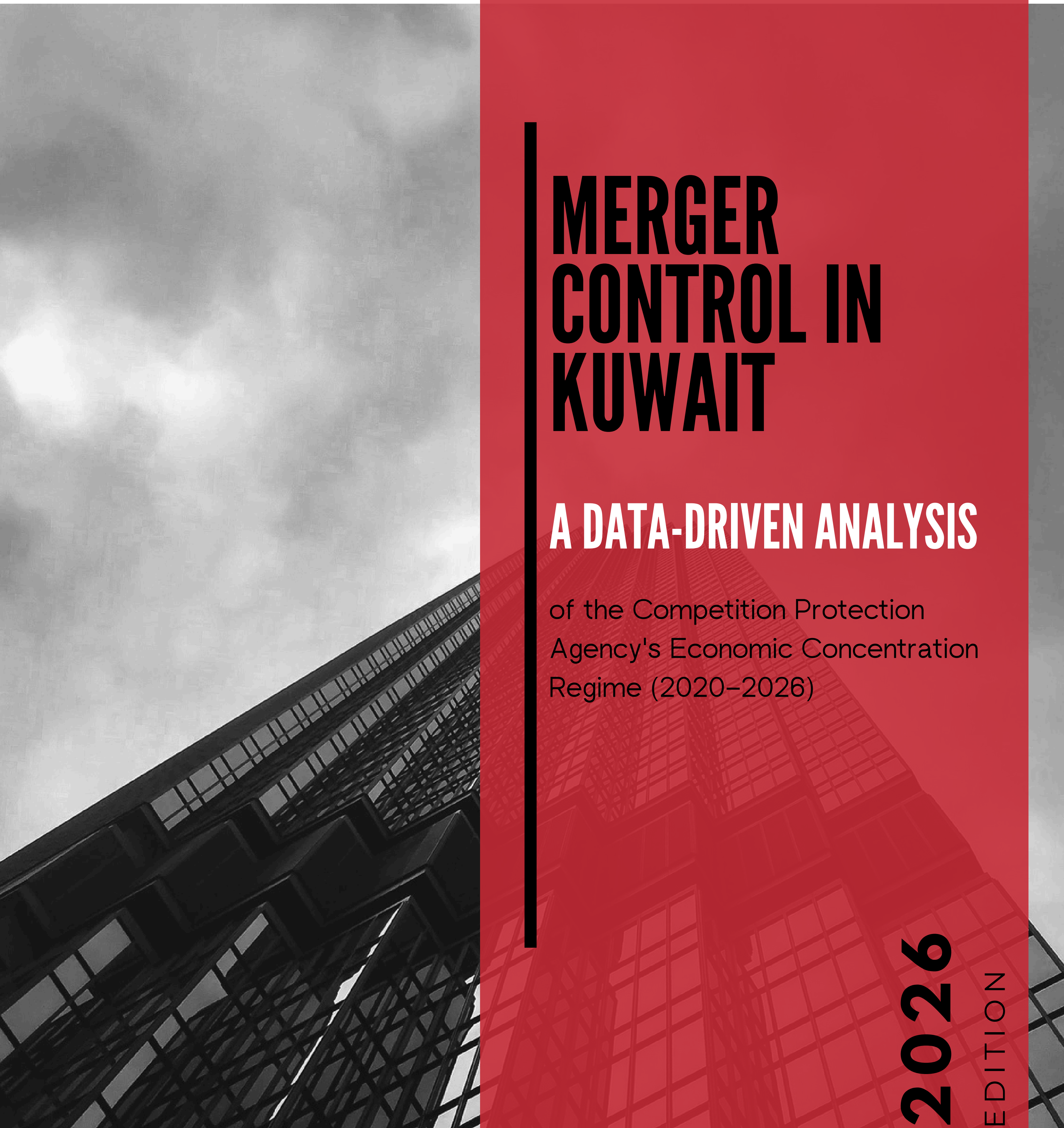


MERGER CONTROL IN KUWAIT

A DATA-DRIVEN ANALYSIS

of the Competition Protection Agency's Economic Concentration Regime (2020–2026)

2026 EDITION

BAHRAIN· EGYPT ·IRAQ · KUWAIT· QATAR ·OMAN · SAUDI ARABIA· UAE

WWW.GLACO.COM

Table of Contents

Executive Summary

This article provides a comprehensive, data-driven analysis of the development and current state of Kuwait's merger control regime administered by the Competition Protection Agency ("CPA"), as established under law No.72 of 2020 on Competition Protection ("the law") and its executive regulations issued on 30 June 2021 ("the Executive Regulations"). The analysis draws on statistical data from the CPA's published annual reports for the period 2020 to 2026, as well as GLA & Company's six years of direct experience advising on merger control filings before the CPA — during which period the firm has filed a substantial proportion of all economic concentration notifications submitted to the authority.

The central thesis is that Kuwait's merger control regime has undergone a transformative evolution — from a largely dormant framework receiving a single filing in an entire year to a sophisticated regulatory system processing over 60 economic concentration approvals annually and attracting significant cross-border transaction activity.

As Kuwait pursues its Vision 2035 economic transformation program, the CPA has emerged as a credible and increasingly active competition authority, processing transactions across diverse sectors, imposing meaningful conditions where competitive harm is identified, and levying substantial financial penalties against market participants who violate competition law.

Key Statistics at a Glance

62
in FY 2025–2026

72.6%
FOREIGN PARTICIPATION
in approved transactions

85.5%
dominate the filing landscape

6 YEARS
DIRECT MERGER-CONTROL EXPERIENCE

2020–2026
CPA annual reports analysed

60+ APPROVALS ANNUALLY
ECONOMIC CONCENTRATION APPROVALS NOW PROCESSED

2035
KUWAIT VISION ECONOMIC TRANSFORMATION TARGET

Key Findings

- **Following the enactment of Law no. 72 of 2020 and its , filing volumes have grown exponentially from** 7 applications in 2021, to 58 applications in 2022, and 62 confirmed Board approvals in the fiscal year 2025–2026 alone.
- The CPA maintains a near-perfect approval record, with zero outright rejections identified across the reporting period. The CPA has, however, demonstrated its willingness to impose conditions, most notably in the DSV/Agility conditional clearance in 2021–2022.
- Acquisitions dominate the filing landscape, accounting for 85.5% of all approved economic concentrations in 2025–2026, followed by mergers at 8.1% and joint ventures at 6.5%.
- Foreign participation is substantial and growing — 72.6% of all approved transactions in 2025–2026 involved at least one foreign entity, with particularly high foreign involvement in joint ventures (100%) and mergers (80%).

Overview Summary Table

Fiscal Year	Economic Concentration Requests	Pre-Consultation Requests	Total Applications	Key Insight
2020-2021	7	1	7	First filings under new law
2021-2022	22	36	58	729% increase; DSV/Agility conditional
2022-2023	45	15	60	81 Board decisions; 9 conditional approvals
2023-2024	43	25	68	Increase in filings
2025-2026	62 (confirmed approvals)	—	62+	Steady state; 72.6% foreign involvement

I. Introduction

The Data spanning from 2020-2026 tells the story of the Competition authority finding its feet, building capacity, and progressively asserting its role as a gatekeeper for Kuwait's market structures. The Law defines an economic concentration as a virtually permanent change in control in the relevant market, arising in any of the following cases: (a) the merger of two or more persons by absorption, amalgamation, or the merger of parts of persons leading to control or increased control; (b) the acquisition by one or more persons of direct or indirect control over another person or persons, whether by acquiring assets, ownership rights, usufruct rights, shares, stakes, or by any other means; or (c) the establishment of a partnership between two or more persons that leads to a permanent and independent economic or commercial activity, regardless of its legal form.

This article distils the available statistical data published by the CPA in its annual reports, contextualizes the findings within Kuwait's broader economic transformation objectives, draws out the legal and commercial implications for practitioners and their clients, and offers practical guidance for navigating the Kuwaiti merger control landscape. The analysis is further informed by GLA & Company's extensive practical experience over the past six years, during which the firm has advised on a significant share of the merger control filings submitted to the CPA across a wide range of sectors and transaction structures.

Notably, in 2025 and 2026, GLA & Company was consulted directly by the Kuwait CPA and the Kuwait Ministry of Commerce and Industry to provide advisory support in developing the new merger control threshold framework that ultimately became Board Resolution No. 32 of 2026. That mandate, in which a private law firm was invited to help shape the very rules that govern market participants, reflects a level of institutional trust that is difficult to replicate.

The analysis is structured around eight thematic areas: filing volumes, approval rates and conditions, review timelines, transaction types, foreign participation, sectoral trends, the enforcement landscape, and the regulatory framework.

Introduction at a Glance

- **2020–2026**
  Data period analysed
- **6 years**
  GLA & Company practical experience
- **8**
  Thematic areas covered
- **3**
  Cases defining economic concentration under the Law

II. Filing Volumes: From Dormancy to Momentum

The trajectory of economic concentration filings in Kuwait is best understood in two distinct phases: the pre-reform period under Law No. 10 of 2007, and the post-reform period following the enactment of Law No. 72 of 2020.

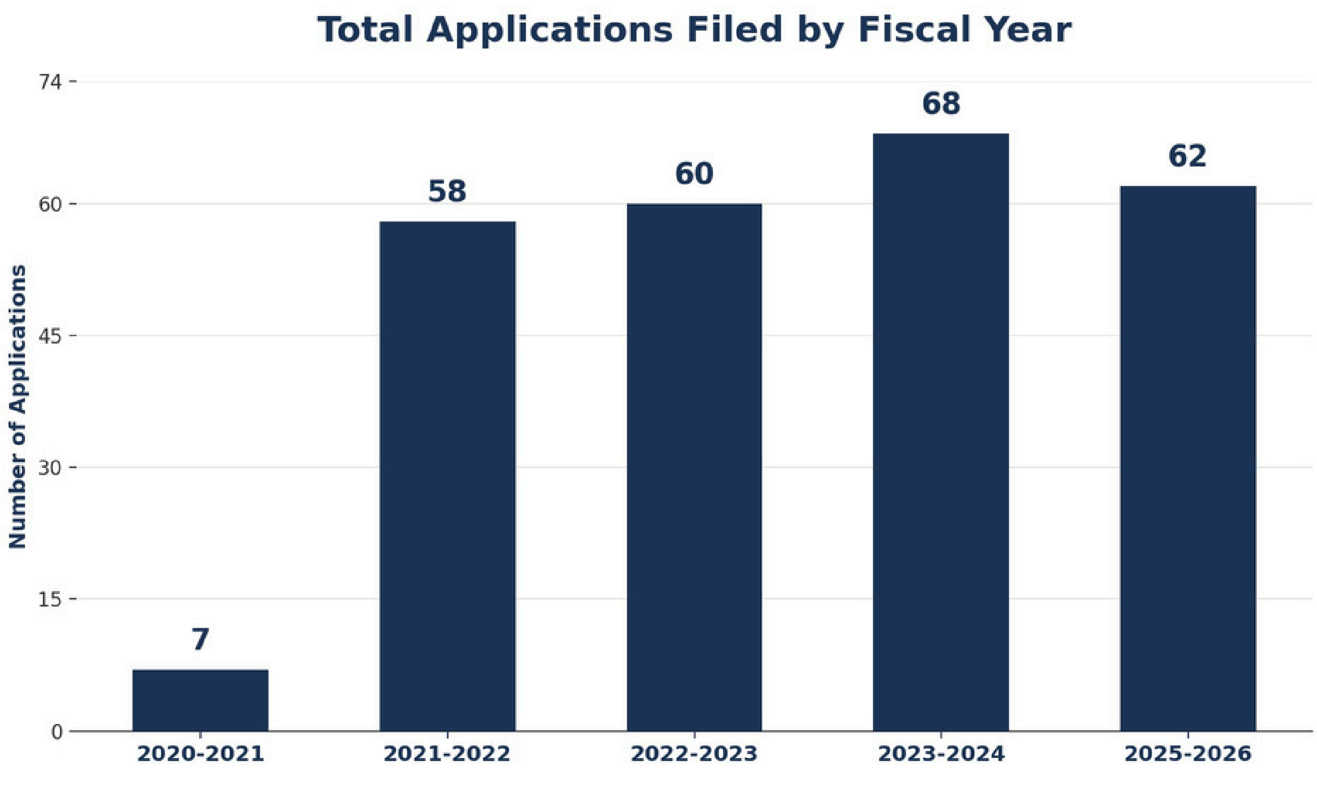
Phase One: The Pre-Reform Era (2017–2020)

Under Law No. 10 of 2007, Kuwait's merger control framework existed largely on paper. Over its twelve years of application, the law failed to draw a clear distinction between illegal monopolistic practices and legitimate competitive conduct, and its ambiguous provisions left it without the elements necessary for effective activation and application. The CPA received only a single economic concentration request during the fiscal year 2021–2022 period attributable to the old law. The authority's role during this period was limited to monitoring news reports and following upon occasional notifications, with minimal formal filing activity.

The CPA was established and commenced operations in 2017, but the absence of robust filing obligations and clear jurisdictional thresholds meant that the vast majority of M&A activity in Kuwait proceeded without regulatory scrutiny.

Phase Two: The Post-Reform Acceleration (2021–2026)

The enactment of Law No. 72 of 2020 (effective 1 November 2020) and its Executive Regulations (the "Executive Regulations" issued 30 June 2021, was built to close these gaps directly. It brought in mandatory pre-completion notification with a clear 60-day advance filing requirement, set specific jurisdictional thresholds tied to sales and assets in Kuwait, established formal filing procedures with detailed documentation requirements, and introduced real sanctions, including — penalties of up to 10% of annual revenues for non-compliance, to deter gun-jumping. It also added a pre-consultation mechanism, giving parties a way to engage with the CPA before filing formally.



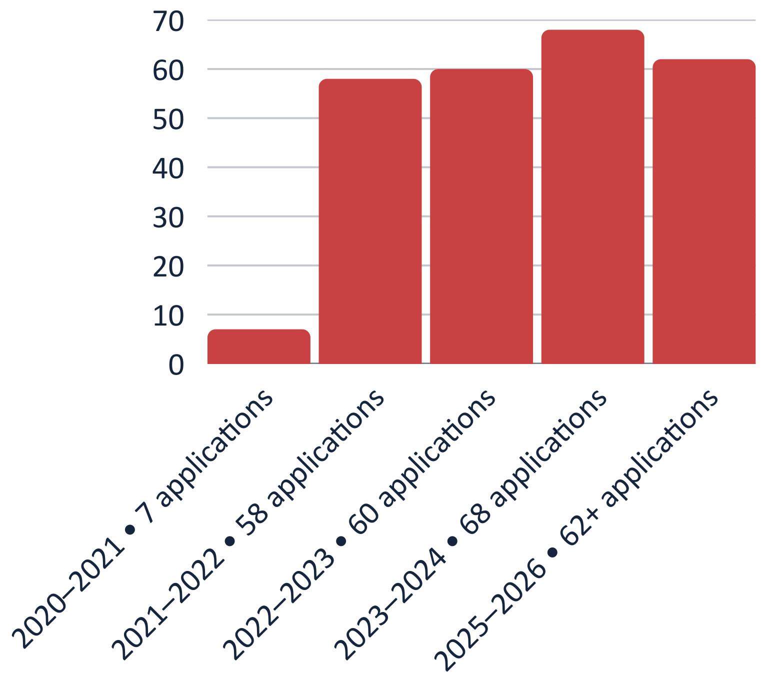
The increase from 7 applications in 2020–2021 to 58 in 2021–2022 represents a staggering 729% increase — reflecting the combined effect of the new law becoming operational, growing market awareness, and practitioners beginning to integrate Kuwaiti merger control into their transaction planning.

The fiscal year 2025–2026 data confirms that the CPA's merger control function has reached a steady state of meaningful activity, with 62 confirmed Board approvals representing consistent month-on-month throughput across Board Meetings 98 through 112 (April 2025 to April 2026).

Practitioner Insight

The volume trajectory confirms that Kuwaiti merger control is no longer optional for practitioners advising on transactions with a nexus to the State of Kuwait. With over 60 approvals per year now being processed by the CPA, the authority has crossed the threshold from a nascent regime to an established one. Any transaction strategy involving Kuwait must now account for CPA filing obligations — and the consequences of failing to do so.

CPA Filing Activity



729% increase from 2020–2021 to 2021–2022

III. Approval Rates and Conditional Clearances: A Facilitative but Watchful Regulator

The CPA's approval recorddemonstrates a pragmatic approach to merger control: the authority has approved the vast majority of notified transactions without conditions but has shown a clear willingness to intervene where competitive harmisidentified.

Unconditional Approvals

Across the entire reportingperiod, the CPA has not rejected any notified economic concentration outright. In the 2022–2023 fiscal year,the CPA Board issued 81 decisions approving economic concentration operations, alongside 9 conditional approvals and 2 referrals to the Disciplinary Board for competition law violations related to concentrations.

In the fiscal year 2025–2026, all 62 confirmed Board decisions resulted in approval, — suggesting that the pre-consultation mechanism and informal guidance process are functioning effectively to filter out or restructure problematic transactions before formal filing.

Conditional Clearances: The DSV/Agility Precedent

The most significant conditional approval in Kuwait's merger control history to date is the DSV/Agility transaction (fiscal year 2021–2022), involving the Danish logistics group DSV's acquisition of Agility Public Warehousing Company K.S.C.P. The CPA conducted a detailed market analysis of the logistics and warehousing sector, calculated market shares based on the four largest competitors' financial data, and imposed three conditions:

- An obligation on the parties not to enter into exclusive contracts with their clients;
- An obligation to adhere to principles of equal opportunity and non-discrimination between clients; and
- Subjecting the merged entity to CPA monitoring for a period of one year from the date of the decision. This precedent is instructive. It demonstrates that the CPA will conduct substantive competitive analysis, — including market definition, market share calculation, and identification of barriers to entry, — and that remedies will be behaviorally focused rather than structural. For practitioners, this means that horizontal acquisitions in concentrated markets will require careful preparation of a competitive assessment at the filing stage.

Practitioner Insight

The combination of zero rejections and targeted conditional approvals sends a clear signal: the CPA is not an obstructionist gatekeeper, but rather a substantive regulator. Clients should approach Kuwaiti merger control with the confidence that well-structured transactions will receive clearance, but with the awareness that dominant market positions will attract scrutiny — and that conditions may be imposed in sectors where competitive concerns are material.

IV. Review Timelines: The Price of Thoroughness

Statutory Framework

Under the Executive Regulations (Article 81), the Chairman must refer the application to the Executive Director within 5 days of receipt of a complete filing. The Executive Director then has 90 days to prepare a report for the Chairman, extendable by a further 90 days upon the Executive Director's request and the Board's approval. The Board must then decide within 30 days of the Chairman's submission.

In theory, the maximum review period from filing to decision could extend to approximately 215 days (5 + 180 + 30), though in practice the process is typically shorter.

Practical Observations

Based on the 2025–2026 data, the interval between Board meetings where approvals are issued averages approximately 4–6 weeks. Board Meeting 98 (16 April 2025) to Board Meeting 112 (9 April 2026) spans approximately 12 months, with 15 Board meetings issuing 62 approvals, — an average of approximately 4 approvals per meeting.

Regional Comparison

Jurisdiction	Average Review Timeline	Statutory Maximum (Phase I)
Saudi Arabia (GAC)	5 days (Q1 2026)	90 days
Kuwait (CPA)	Estimated 30 days	90 days
European Union	25 working days	25 working days (Phase I)
UAE (Ministry of Economy)	40–50 business days	90 business days

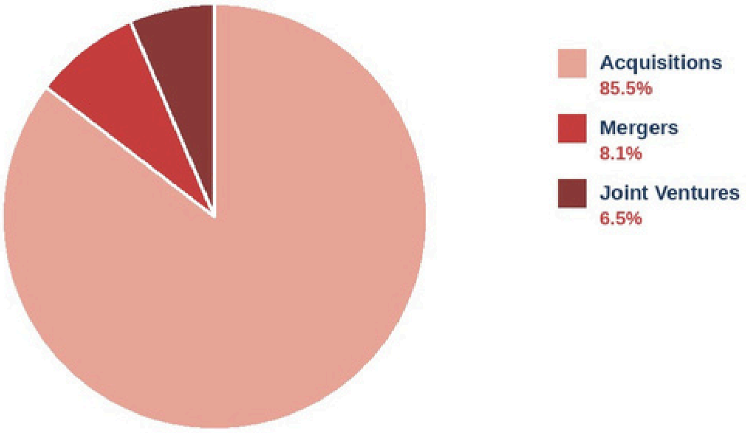
Practitioner Insight

Kuwait's review timelines must be factored into deal timetables from the outset. Based on practical experience, the CPA typically completes its review within approximately 30 days. Any extension to the review period generally arises as a result of third-party objection proceedings. Clients should nonetheless budget a reasonable contingency period for the entire process from pre-consultation through formal clearance.

V. Transaction Types: Acquisitions Dominate

The composition of approved transactions in the fiscal year 2025–2026 reveals the structural preferences of the Kuwaiti M&A market.

Transaction Types — FY 2025–2026



Fiscal Year 2025–2026 Breakdown

Transaction Type	Count	% of Total	Foreign Entity Involved
Acquisitions (pure)	53	85.5%	37 (69.8%)
Mergers (incl. hybrids & merger-through-acquisition)	5	8.1%	4 (80.0%)
Joint Ventures / Joint Control	4	6.5%	4 (100.0%)
Total	62	100.0%	45 (72.6%)

The dominance of acquisitions mirrors the pattern observed in Saudi Arabia, where acquisitions accounted for 94% of filings by Q1 2026. Joint ventures are comparatively rarebut notable — all four joint ventures approved in 2025–2026 involved foreign entities, including Saudi-Dutch, Saudi-Spanish, and UAE-based consortium structures.

The merger category includes both traditional mergers by absorption (such as Arla Foods/Deutsches Milchkontor and Hino Motors/Mitsubishi Fuso) and merger-through-acquisition structures (such as Baker Hughes/Chart Industries), reflecting the full range of transaction mechanics that trigger notification obligations under Kuwaiti law.

The statistics are based on consolidated data compiled by the authors following a comprehensive review of all economic concentration approvals published in the Kuwait Alyoum Official Gazette during the 2025–2026 period, supplemented by information published on the Competition Protection Agency's website. Each approval was reviewed and categorized according to transaction type and foreign participation to provide a comprehensive picture of the CPA's merger control activity during the relevant period.

Practitioner Insight

The data confirms that transaction counsel should focus their notification analysis primarily on acquisition structures but should not overlook joint venture and merger transactions — particularly given that the CPA treats joint control arrangements and partnership structures as notifiable economic concentrations where they create a permanent and independent economic activity.

Transaction Structures to Assess

ACQUISITIONS

Primary focus for notification analysis

JOINT VENTURES

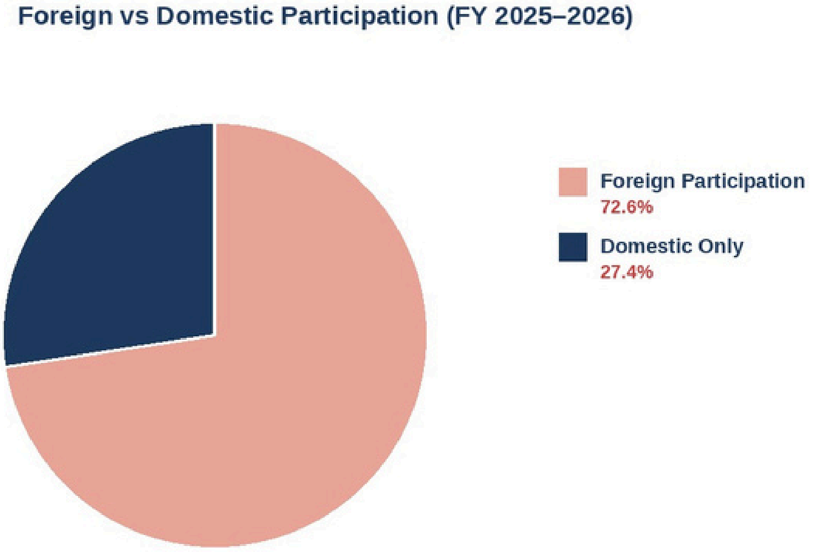
Assess whether joint control creates a notifiable concentration

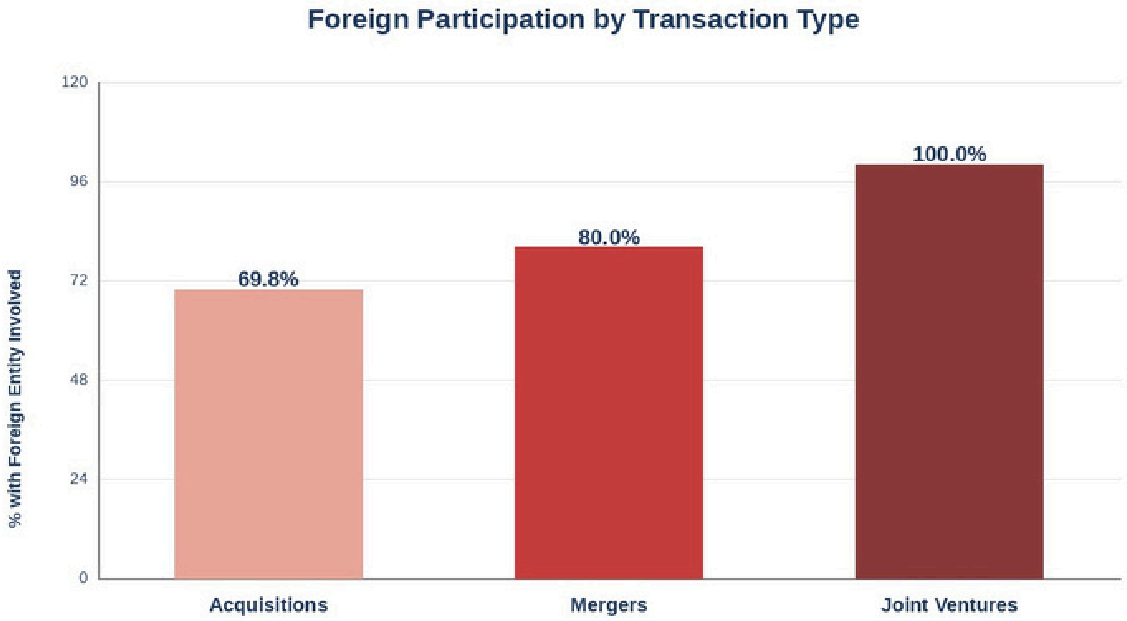
MERGERS

Review alongside acquisition and control structures

VI. Foreign Participation:
Kuwait as a Nexus for International Capital

Of the 62 approved transactions in the fiscal year 2025–2026, 45 (72.6%) involved at least one foreign entity, — a clear indicator of Kuwait's integration into global capital flows.





Geographic Distribution of Foreign Participants

Region	Key Jurisdictions
GCC	Saudi Arabia, UAE, Bahrain, Oman
Europe	Germany, Netherlands, France, UK, Italy, Spain, Belgium, Denmark, Austria, Luxembourg, Sweden
Americas	USA, Cayman Islands
Asia-Pacific	Japan, India, Australia

Saudi Arabia is the most represented foreign jurisdiction, reflecting the close economic integration between the two GCC economies. Saudi entities, — including the Public Investment Fund (PIF), ACWA Power, MAGRABi Retail Group, Saudi Fransi Capital, and Sika Saudi Arabia, — are active acquirers of Kuwaiti assets.

The UAE is the second most active foreign jurisdiction, with entities such as ADNOC Drilling, Q Logistics (Aramex), DHL eCommerce, Al Hikma MENA, and BKA Décor all receiving CPA clearance.

Practitioner Insight

Global M&A filing strategies must now routinely include Kuwait as a jurisdiction requiring analysis. The CPA's broad effects-based jurisdiction means that transactions with no direct Kuwaiti party may nonetheless trigger mandatory notification obligations.

VII. Sectoral Trends: A Diversifying Economy

Approvals in the fiscal year 2025–2026 span a diverse range of sectors, reflecting the breadth of Kuwait's economic transformation.

Sector	Representative Transactions
Food and Consumer Products	A Various local and international food producers and distributors
Energy and Industrial Services	Various energy, industrial services, and power generation companies.
Financial Services and Insurance	Various financial services, insurance, and brokerage entities.
Healthcare and Pharmaceuticals	Various healthcare, pharmaceutical, and insurance providers.
Logistics and Transport	Various logistics, transport, and defense entities.
Education	Various educational services providers
Real Estate and Construction	Various real estate, construction, and utilities companies
Retail and Luxury	Various real estate, construction, and utilities companies Various retail, luxury, and consumer brands
Technology	Various technology and cybersecurity companies

The CPA has historically conducted detailed market studies in sectors including fish auctions, banking services, residential real estate, cooperative societies, food and consumer products, and automotive agencies.

VIII. The Regulatory Framework: Key Timelines, Fees and Notification Thresholds

Notification Thresholds

The obligation to notify arises where the transaction constitutes an economic concentration and the registered asset values or annual sales of the parties in Kuwait exceed the aggregate and individual thresholds set by the CPA Board pursuant to Article 10 of Law No. 72 of 2020.

Filing Fees

- Filing fee: 0.1% (one per mille) of paid-up capital or combined asset value of the relevant parties in Kuwait, whicheveris lower, subject to a maximum cap of KD 100,000 (approximately USD 325,000).
- Pre-consultation fees: initially set at 250 KD, which was subsequently increased to 500KD pursuant to a decision ofthe CPA board.

Key Timelines

Stage	Timeline
Mandatory pre-filing period	At least 60 days before execution of the transaction agreement
Formal completeness check + Referral to Executive Director	5 days from receipt
Executive Director’s review and report	90 days (extendable by 90 days)
Board decision	30 days from Chairman’s submission
Notification of decision to parties Third-	15 days from Board decision
party objection period	15 days from publication/notification
Publication requirements	Official Gazette + 2 Arabic daily newspapers

Pre-Consultation Mechanism

The Executive Regulations provide for a formal pre-consultation process under Article 74. The purpose of this mechanism is to allow parties intending to enter an economic concentration to engage with the CPA prior to formal filing, in order to confirm whether the notification thresholds are triggered, understand the documentation requirements, and identify any potential competitive concerns at an early stage. Parties may also seek advice during the pre-consultation on whether a filing is required and how to comply with application requirements and may request exemption from submitting certain information if deemed unnecessary. Separately, Article 11 of the Law provides that the following transactions are not considered an economic concentration: (a) securities dealings and transactions by banks, insurance companies, or financial institutions involving the temporary acquisition of securities for resale, provided no voting rights are exercised to determine competitive behavior and the securities are disposed of within one year; (b) control arising from insolvency, cessation of payment, debt rescheduling, or similar proceedings; and (c) internal restructuring within the same economic group.

Pre-Consultation Mechanism

The Executive Regulations provide for a formal pre-consultation process under Article 74. The purpose of this mechanism is to allow parties intending to enter an economic concentration to engage with the CPA prior to formal filing, in order to confirm whether the notification thresholds are triggered, understand the documentation requirements, and identify any potential competitive concerns at an early stage. Parties may also seek advice during the pre-consultation on whether a filing is required and how to comply with application requirements and may request exemption from submitting certain information if deemed unnecessary. Separately, Article 11 of the Law provides that the following transactions are not considered an economic concentration: (a) securities dealings and transactions by banks, insurance companies, or financial institutions involving the temporary acquisition of securities for resale, provided no voting rights are exercised to determine competitive behavior and the securities are disposed of within one year; (b) control arising from insolvency, cessation of payment, debt rescheduling, or similar proceedings; and (c) internal restructuring within the same economic group.

Filing Requirements

The formal filing must include:

- Receipt of fee payment
- Articles of association, commercial register, and trade license of all parties
- Names of directors or legal representatives
- Audited financial statements for the last two financial years of all parties and their subsidiaries
- Draft transaction agreement and any public/private offering documents
- An economic dimensions report

IX. Practical Tips for Clients and Practitioners

As practitioners with extensive experience advising on merger control filings before the CPA, GLA & Company strongly recommend that clients engage competition counsel at the earliest possible stage. The mandatory 60-day pre-filing period, coupled with the CPA's detailed documentation and economic assessment requirements, means that early preparation is essential to securing timely clearance. GLA & Company has developed deep familiarity with the CPA's processes and expectations through its track record of advising on economic concentration filings across a wide range of sectors and transaction structures and is well-positioned to guide clients through the Kuwaiti merger control landscape.

1. Engage early: the 60-day rule demands it.

Filingat least 60 days before execution of the transaction agreement is mandatory; clients should engage Kuwaiti counsel as soon as a transaction with Kuwaiti nexus is contemplated.

2. Budget for realistic timelines.

Plan for 3–4 months from pre-consultation through formal clearance, with contingency for the additional 90-day extension permitted tothe Executive Director.

3. Prepare a substantive economic assessment.

Where a transaction involves concentrated markets, prepare a market definition, market share calculation, and barriers-to-entry analysis at thefilingstage.

4. Do not assume foreign transactions are exempt.

The CPA's effects-based jurisdiction captures cross-border transactions with no Kuwaiti party where Kuwaiti markets are affected.

5. Coordinate with regional filings.

Where a transaction triggers filings in Saudi Arabia, UAE or other GCC states, sequence Kuwaiti filing to align with regional clearance timetables.

6. Take enforcement seriously.

The CPA's Disciplinary Board has demonstrated its willingness to pursue enforcement action, including referrals for competition law violations related to economic concentrations. While the Constitutional Court's landmark ruling declared the 10% revenue-based penalty provision under Article 34(1) unconstitutional, penalties under Article 34(2) for failure to notify remain in force. Clients should ensure full compliance with mandatory filing obligations to avoid exposure to financial sanctions.

6A. Be aware of extraterritorial enforcement.
The CPA has demonstrated an increasingly proactive approach to cross-border enforcement. There are confirmed instances of the CPA issuing inquiry letters to companies headquartered outside Kuwait, with no local corporate presence, in connection with potential gun-jumping investigations. This extraterritorial posture reinforces the importance of conducting merger control screening for any transaction generating material Kuwait revenues, regardless of whether the parties maintain a physical establishment in the jurisdiction.

7. Monitor the CPA's market studies.

The CPA has conducted market studies invarious sectors including fish auctions, banking services, residential real estate, cooperative societies, food and consumer products, and automotive agencies. Transactions in sectors that have been the subject of such studies should be approached with particular care, as the CPA's familiarity with these markets may result in more detailed scrutiny of competitive dynamics.

7A. Monitor developments on fast-track procedures.

Industry stakeholders have been advocating for the introduction of a fast-track procedure for transactions that clearly pose no competitive concerns, a development that would bring Kuwait closer to international best practice if adopted. Practitioners should monitor this potential reform, which could meaningfully accelerate clearance timelines for straightforward transactions.

8. Utilize Arabic-language counsel.

Allinteractions with the CPA and all filing documentation must be in Arabic, which is the official language of the State of Kuwait. Engaging counsel with Arabic-language capability is therefore essential.

9. Monitor Specialized Courts development.

Regional developments indicate that specialized competition courts may be established in Kuwait. Practitioners should monitor this potential reform, which could affect the judicial review landscape for CPA decisions and competition enforcement matters.

X. The Enforcement Landscape

The CPA's enforcement framework underscores the seriousness with which Kuwait's competition authority approaches compliance with the merger control regime. From remedies and penalties to judicial oversight and cross-border coordination, the enforcement landscape has matured considerably since the enactment of Law No. 72 of 2020.

Remedies

There is no formally prescribed initiation point for when parties may begin negotiating remedies with the CPA. In practice, however, the CPA may propose its own remedies and retains the authority to impose remedies that have not been agreed between the parties, provided such remedies fall within its statutory powers. This approach affords the CPA considerable flexibility in addressing competitive concerns arising from notified transactions.

Penalties for Non-Compliance

The Kuwait Competition Law established a Disciplinary Board tasked with deciding disciplinary actions referred to it by the CPA concerning violations of the law, as well as complaints filed by various stakeholders. The Disciplinary Board may impose financial penalties of up to 10% of the total revenues earned by the parties to the economic concentration during the previous fiscal year in the event of failure to submit the concentration application or for providing misleading or incorrect information on an application.

In a recent enforcement action, the CPA's Disciplinary Board fined a company an amount equal to 5% of its total revenues. This penalty was imposed because the company engaged in an economic concentration without submitting the required application to the CPA; a clear demonstration of the authority's willingness to pursue meaningful financial sanctions against non-compliant market participants.

Judicial Review

A final decision by the CPA may be appealed to the judicial system in Kuwait by way of a formal writ of summons against the authority. Kuwait's judicial court system includes a dedicated department devoted to complaints filed against governmental authorities, providing an established avenue for parties seeking to challenge CPA decisions.

Investigative Powers and Cross-Border Coordination

The CPA is empowered to independently launch research, investigations, and evidence gathering in line with the Kuwait Competition Law. GLA & Company has direct experience engaging with the CPA on investigative matters, though formal procedural guidelines have not been published by the authority.

Additionally, the CPA coordinates closely with other merger control authorities across the GCC region. The CPA also actively monitors public announcements of mergers and acquisitions by major corporations across social media platforms. Accordingly, if a major corporation notifies a GCC competition authority, and that corporation is known to have revenues or assets in Kuwait, the CPA may initiate its own review and directly inquire as to why no corresponding filing was made in Kuwait. This exact scenario has occurred, on more than one occasion, to multinational corporations who either ignored the jurisdiction, or received incorrect merger control assessments. With the rise of enforcement, parties can no longer afford to exclude Kuwait from their merger control assessments and filings.

Planned Reforms

Following GLA & Company's successful constitutional challenge to the CPA's penalty provisions, amendments to Article 34 of the Kuwait Competition Law are understood to be under consideration. If enacted, these reforms would mark a significant recalibration of Kuwait's competition enforcement framework.

Practitioner Insight

The enforcement landscape confirms that Kuwaiti merger control carries real consequences for non-compliance. The CPA's demonstrated willingness to impose substantial financial penalties, including the recent 5% revenue fine, coupled with its proactive cross-border monitoring activities, means that parties cannot afford to treat Kuwait as a jurisdiction where filing obligations may be overlooked. Practitioners should advise clients to prioritise timely and complete filings, and to engage with the CPA at the earliest opportunity where any doubt exists as to whether notification thresholds are triggered.

XI. Unique Cases and Notable Precedents

Case Study No. 1: Strategic Acquisition of a Kuwait-Based Investment Company

GLA & Company acted as legal counsel to a Kuwait-based investment consortium in its strategic acquisition of a stake in a Kuwait-based investment company from a regional investment group. The transaction stands out in Kuwait's M&A landscape due to its execution through an unconventional procedural route through the Enforcement Department at the Ministry of Justice, marking one of the rarest transactional structures in the country's corporate history. GLA & Company's legal team coordinated closely with all relevant regulatory and supervisory authorities, including the Capital Markets Authority, the Ministry of Commerce and Industry, Boursa Kuwait, and the Enforcement Department of the Ministry of Justice, ensuring full compliance with Kuwait's legal and regulatory framework.

What rendered this transaction truly unique from a competition law perspective was the firm's proactive approach to the CPA clearance process. Under Kuwait Law No. 72/2020 on the Protection of Competition, persons participating in economic concentration operations are ordinarily required to apply to the CPA prior to completion of the transaction. However, given the urgent commercial imperatives driving the deal, GLA & Company advised on a strategy whereby early engagement with the CPA was initiated through the formal channels available under the law — including pre-notification and direct meetings with the authority — ahead of the transaction's completion. The transaction was nonetheless completed before the CPA's formal clearance was issued, and the firm subsequently filed for and successfully obtained the requisite CPA clearance, thereby validating the approach, which was a course of action that departed from the strict letter of the law, which contemplates pre-completion filing and approval.

It should be noted that the CPA does not provide unofficial instructions or informal guidance outside the tools and procedures set out under the law; any engagement with the authority proceeds strictly through formal legal channels, whether by pre-notification or scheduled meetings.

In managing the CPA process, GLA & Company had to balance the transaction's urgent timeline against a competition regime that ordinarily requires pre-completion filing and restricts completion steps before the relevant CPA decision is issued. The firm's work involved early engagement with the CPA, and preparation of a competition filing that explained the deal structure, the relevant investment-sector market context, and why the acquisition did not create material harm to competition in Kuwait. The key lesson from this matter was that, in time-sensitive transactions, the CPA process must be handled as an important workstream from the beginning, requiring clear communication with the regulator. Through the legal channels it makes available, whether by pre-notification or scheduled meeting. Practical knowledge of the CPA's expectations therefore can be crucial in preserving deal certainty while maintaining regulatory compliance.

Case Study No. 2: Food Delivery Platform Commercial Referral Arrangement

GLA & Company advised an international food delivery platform on a commercial referral arrangement with a competing local food delivery platform that had been forced to exit the Kuwaiti market due to severe financial and operational difficulties, exacerbated by aggressive below-cost pricing from a new international market entrant. The arrangement, structured as a temporary promotional referral partnership, involved the exiting platform directing its existing customers to the international platform through targeted promotional offers, including new customer vouchers and a subscription program trial, in exchange for referral fees of up to approximately KWD 750,000.

The critical competition law dimension of this deal lay in the fact that the referral arrangement constituted a horizontal agreement between competitors in the same relevant market. Under Articles 5 and 6 of Kuwait Law No. 72/2020, horizontal agreements and concerted practices that may distort, limit, or prevent competition are prohibited. However, Article 9 of the same law permits the CPA's Board to grant exemptions for agreements that would otherwise restrict competition, provided the arrangements meet certain conditions, including that they enhance economic development, are specifically designed to minimize harm to competition, and are likely to produce economic benefits and clear consumer advantages that outweigh any competitive burdens. GLA & Company successfully argued before the CPA that the arrangement was pro-competitive in both objective and effect: it provided Kuwaiti consumers with attractive promotional terms during the disruption caused by the local platform's exit; it enabled Kuwaiti investors and creditors to recover a portion of their exposure through the referral payments; and it strengthened the international platform as a viable competitive force against larger regional and international food delivery platforms, thereby reducing market concentration.

GLA & Company further demonstrated to the CPA that the arrangement did not constitute an "economic concentration" under the law, as it involved no change in ownership, control, or market structure, no transfer of shares, assets, voting rights, or merchant contracts between the parties, and was expressly temporary and limited in scope. The CPA granted the exemption.

Engagement with the CPA required translating a commercial rescue and referral arrangement into competition-law terms and demonstrating that the arrangement was limited, temporary, and consumer- facing rather than a hidden concentration or market allocation. GLA & Co team prepared the economic and legal case required for an Article 9 exemption, focusing on consumer benefits, preservation of competitive choice, investor and creditor recovery, the absence of ownership or control transfer, and highlighting the absence of any limits to competitive concerns.

Case Study No. 3: Constitutional Court Ruling and Striking Down Penalty Provisions of Kuwait's Competition Law

In what constitutes one of the most significant constitutional law developments in Kuwait's recent legal history, Senior Partner Nader Al Awadhi of GLA & Co successfully led a constitutional challenge before the Constitutional Court, securing a ruling that declared Paragraph (1) of Article (34) of Law No. 72/2020 on the Protection of Competition unconstitutional. Article 34(1) had empowered the Disciplinary Board to impose pecuniary penalties of up to 10% of a concerned person's total revenues from the preceding fiscal year for violations of Articles 5, 6, 7, and 8 of the competition law, the provisions governing anti-competitive horizontal agreements, concerted practices, vertical restraints, and abuse of dominant position.

Building on this success, a second ruling followed in June 2025, striking down Article 34(5), which had authorised the CPA to penalise entities for failure to provide information during investigations. Together, these rulings, secured through GLA & Company’s litigation strategy, significantly constrained the CPA’s sanctioning powers pending legislative reform.

The constitutional challenge was filed by GLA & Company on behalf of a national cooperative-sector body and a group of cooperative societies. The legal pleadings centered on the provision's clear violations of fundamental constitutional principles, including the right to personal liberty, the requirement for judicial oversight of penalties, the right of due process and defense, and the principle of proportionality between penalties and violations. Furthermore, GLA & Company argued that the provision undermined the constitutional protections afforded to private ownership, transforming what should be regulatory financial sanctions into punitive measures beyond the proper scope of administrative enforcement.

The Constitutional Court's decision affirmed these arguments and declared the provision unconstitutional.

Although this matter proceeded through the Constitutional Court rather than as a CPA clearance application, it directly engaged the CPA enforcement framework. GLA & Company had to navigate the connections between regulatory enforcement, administrative penalties, and constitutional safeguards, particularly where Article 34 empowered the disciplinary system to impose penalties tied to total revenues. This experience highlighted an important lesson for competition enforcement in Kuwait: effective CPA regulation must be supported by clear statutory limits, proportionate sanctions, due process, and judicial oversight. This case further strengthened the firm’s ability to advise clients not only on transactional CPA filings and exemptions, but also on the constitutional and administrative law risks that may arise from competition enforcement.

XII. Frequently Asked Questions: The CPA on Kuwait's Merger Control Regime

Below are answers to frequently asked questions about Kuwait's merger control regime, based on GLA's extensive experience with the CPA, publicly available information and the CPA's published guidance.

How does the CPA define its role in supporting Kuwait's Vision 2035 economic diversification objectives, and what specific contributions has the merger control regime made to this effort?

Answer: The CPA plays a critical role in Kuwait's Vision 2035 by ensuring that the economic transformation program unfolds within a competitive market structure. Our mandate under Law No. 72 of 2020 is to protect free competition, prevent monopolistic practices, and maintain market structures that support economic multilateralism and consumer choice. The merger control regime directly supports diversification by facilitating foreign investment — as evidenced by the 72.6% foreign participation rate in approved transactions — while ensuring that market consolidation does not undermine competitive dynamics. The CPA's review of transactions across diverse sectors including food and consumer products, financial services, healthcare, logistics, and technology demonstrate our commitment to supporting a diversified, competitive economy aligned with Vision 2035.

Law No. 72 of 2020 introduced a comprehensive new framework for merger control in Kuwait. What were the key shortcomings of the previous Law No. 10 of 2007 that necessitated this reform, and how does the new law address them?

Answer: Law No. 10 of 2007 was Kuwait's first competition legislation, but the CPA identified several deficiencies during its twelve years of application. The previous law fell short in distinguishing clearly between illegal monopolistic practices and competitive, legal conduct — a critical distinction that affects both market freedom and effective enforcement. Some provisions were ambiguous, and the framework lacked elements essential for proper activation and application. Law No. 72 of 2020 addresses these shortcomings by introducing mandatory pre-completion notification obligations with clear 60-day advance filing requirements, specific jurisdictional thresholds based on sales and assets in Kuwait, formal filing procedures with detailed documentation requirements, meaningful sanctions including penalties of up to 10% of annual revenues for non-compliance, and a structured pre-consultation mechanism that allows parties to engage with the CPA before formal filing. The new law was designed not only to fulfil global obligations but also to create an effective framework for evaluating anti-competitive behaviors that harm the national economy.

The CPA recently issued Board Resolution No. 32 of 2026, significantly increasing the financial thresholds for merger control filings. What policy objectives drove this change, and how do you expect it to impact the CPA's workload and focus?

Answer: Resolution No. 32 of 2026 reflects the CPA's continued efforts to refine our regulatory framework in line with evolving market conditions and international merger control practice. The substantial increases, from KWD 500,000 to KWD 1,500,000 for individual sales (a 200% increase), from KWD 750,000 to KWD 3,000,000 for combined sales (a 300% increase), and from KWD 2,250,000 to KWD 7,500,000 for registered assets, represent a deliberate policy shift. We have introduced a target-specific requirement (KWD 1,500,000 minimum sales for the target) to ensure we capture transactions where the target has a meaningful presence in Kuwait, aligning with international practice. This calibration allows the CPA to focus regulatory resources on larger, potentially more impactful transactions while reducing the compliance burden on smaller transactions with limited local nexus. The filing system remains mandatory and suspensory, meaning that parties meeting the new thresholds must still obtain CPA clearance before completion, but the increased thresholds contribute to greater clarity and predictability in the application of merger control rules.

The pre-consultation mechanism has become an important feature of the CPA's merger control process. Can you explain how this process works, what benefits it provides to filing parties, and approximately how many pre-consultations the CPA receives relative to formal filings?

Answer: The pre-consultation mechanism, established under Article 74 of the Executive Regulations, allows parties intending to enter an economic concentration to submit a consultation application before formal filing. This involves a meeting with CPA personnel to discuss whether a filing is required and how to comply with application requirements. Parties must provide contact information, the concentration type (acquisition, merger, or joint venture), affected markets, and financial statements for the last two fiscal years. The pre-consultation fee was initially set at 250KD and has since increased to 500KD pursuant to a Board decision. This process offers significant benefits: parties can confirm whether notification thresholds are triggered, understand the documentation requirements, identify any potential competitive concerns early, and in some cases request exemption from submitting certain information if unnecessary. The fiscal year 2021–2022 data showed 36 pre-consultation requests alongside 22 formal economic concentration applications — demonstrating strong engagement with this mechanism. We encourage parties to utilize pre-consultation, particularly for complex transactions or those close to threshold boundaries.

Law No. 72 of 2020 provides for exemption from the prohibition on certain anti-competitive agreements under Article 9. What types of agreements might qualify for exemption, and what does the CPA look for when evaluating exemption applications?

Answer: Article 9 of Law No. 72 of 2020 authorizes the Board to permit certain agreements, acts, or concerted practices that may restrict competition, subject to specific conditions. An exemption may be granted where the arrangements contribute to enhancing economic development, improving efficiency or technical feasibility, financial soundness, research activities, or developing product production or distribution systems; are specifically designed with appropriate guarantees to significantly reduce their adverse effect on competition; and are likely to have economic benefits that outweigh the economic burdens from any restriction of competition, achieving significant benefits for consumers that outweigh any burdens. When evaluating applications, the Executive Director examines the relevant products and geographic area, market shares, actual or possible competition levels, expected price or quantity changes, production and demand volumes, and the expected duration of the arrangements. The applicant must demonstrate that the benefits clearly exceed the competitive harm and that the arrangements will not lead to prohibited outcomes such as price-fixing, market division, or discrimination among customers.

Kuwait's competition framework includes a leniency-type mechanism under Article 38 of Law No. 72 of 2020. How does this reconciliation process work, and what incentives does it provide for parties to self-report violations?

Answer: Article 38 of Law No. 72 of 2020 provides a powerful incentive for self-reporting of cartel violations. Under this provision, any violator who reports and discloses to the Agency their participation in a prohibited agreement, practice, or contract under Article 5 — which covers hard-core horizontal restrictions such as price-fixing, market division, output restrictions, and bid-rigging — and provides evidence of committing such violation before the violation is detected, shall be exempted from the financial penalties under the Executive Regulations further elaborate the reconciliation process, requiring that the reporter be the original source of the information, that the Agency had not been informed of the violation from another source, and that the information was not derived from allegations in judicial or administrative investigations or supervisory reports. The CPA may use the information provided to uncover other participants in the violation, while the reporting party receives immunity from financial penalties. We encourage market participants with knowledge of anti-competitive arrangements to utilize this mechanism. The Kuwait Constitutional Court has established a significant precedent by declaring paragraph 1 of Article 34 of Law No. 72 of 2020 unconstitutional. In its judgement, the Court emphasized that legislation must be carefully drafted to achieve its intended objectives and that penalties must be conducive to the protection of established rights with measures to prevent their abuse. Critically the Court ruled that judicial discretion in penalty determination must not result in disproportionate financial sanctions, as such penalties constitute unconstitutional expropriation of private property the Court found the imposition fine of up to 10% of the gross revenue of the breaching party for the year preceding the violation, as stipulated in paragraph 1 of Article 34, to be an unjust confiscation of funds unrelated to the specific offence, exceeding the bounds of balanced financial penalties and contravening Articles 16, 18, and 19 of the Kuwaiti Constitution. Consequently, paragraph 1 of Article 34 is now null and void.

Separately, Article 38 of Law No. 72 of 2020 provides an incentive for self-reporting of cartel violations. Under this provision, any violator who reports and discloses to the Agency their participation in a prohibited agreement, practice, or contract under Article 5 — which covers hard-core horizontal restrictions such as price-fixing, market division, output restrictions, and bid-rigging — and provides evidence of committing such violation before the violation is detected, shall be exempted from the financial penalties under Article 34(2). The Executive Regulations further elaborate the reconciliation process, requiring that the reporter be the original source of the information, that the Agency had not been informed of the violation from another source, and that the information was not derived from allegations in judicial or administrative investigations or supervisory reports. The CPA may use the information provided to uncover other participants in the violation, while the reporting party receives immunity from financial penalties.

Given the significant financial exposure arising from non-compliance with filing obligations, we strongly recommend that parties engage with specialized competition counsel such as GLA & Company, and communicate with the CPA at the earliest opportunity, to ensure full compliance with mandatory filing requirements and to avoid the imposition of penalties under Article 34(2). Early engagement with the CPA through the pre-consultation mechanism is particularly advisable for complex or borderline transactions

Looking ahead, what are the CPA's priorities for developing Kuwait's competition regime over the coming years? Are there particular sectors or types of conduct that the CPA intends to focus on?

Answer: The CPA remains committed to strengthening Kuwait's competition framework and ensuring effective enforcement. Our priorities include continuing to build institutional capacity, enhancing our market analysis capabilities, and developing our enforcement expertise across all areas of competition law — not only merger control but also the prohibition of anti-competitive agreements and abuse of dominant position. We have historically conducted market studies in sectors including fish auctions, banking services, residential real estate, cooperative societies, food and consumer products, and automotive agencies, and we will continue to monitor sectors of economic significance. International cooperation remains important — Article 16 of Law No. 72 of 2020 mandates the establishment of mechanisms for information exchange and coordination with competition authorities in other countries, economic blocs, and international organizations. The recent threshold revisions demonstrate our willingness to refine the regulatory framework based on practical

experience. We will continue to engage early with market participants, provide guidance through the pre-consultation mechanism, and ensure that Kuwait's merger control regime supports rather than impedes legitimate commercial activity while maintaining effective oversight of transactions that may impact competition.

XIII. Conclusion

The statistical record of Kuwait's Competition Protection Agency from 2020 through 2026 tells the story of a competition authority in transition — from a largely dormant institution under outdated legislation to a credible, active, and increasingly sophisticated regulatory body processing meaningful volumes of economic concentration filings.

The CPA's filing volumes have grown from a single application per year to over 60 annual Board approvals. Foreign participation has reached 72.6% of all transactions, confirming Kuwait's position as a jurisdiction of real importance for international M&A. The authority has demonstrated both the willingness to approve the vast majority of transactions efficiently and the capacity to impose conditions where competitive harm is identified. And its Disciplinary Board has imposed penalties of a magnitude that demands the attention of any market participant operating in Kuwait.

For clients and practitioners, the imperative is clear: Kuwaiti merger control is no longer a peripheral or theoretical consideration. It is an operational regulatory requirement that must be integrated into any transaction strategy touching the State of Kuwait. Those who engage early, prepare thoroughly, and approach the CPA with the seriousness that its statutory powers and enforcement record demand will be best positioned to secure timely and favorable outcomes.

The views expressed in this article are based on publicly available statistics published by the Kuwait Competition Protection Agency in its annual reports and on information obtained directly from the CPA. The analysis represents the views of GLA & Company's competition and antitrust practice.

GLA & Co.

GLA & CO

KUWAIT ANTI-TRUST AND COMPETITION TEAM

ASAD AHMAD

Partner and Head of Antitrust & Competition
Asad.ahmad@glaco.com

KHALED AL MAKHEZEEM

Associate

AHMED ALBUAIJAN

Associate

LIANA RASHID

Trainee Lawyer

FAHAD ALZOUMAN

Trainee Lawyer