



## Relevant Thresholds Applicable under the Competition Law

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## Overview

Kuwait's merger control regime is primarily governed by 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, 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, and Kuwait Decision No. 26/2021 On the Controls of Aggregate and Individual Thresholds, which sets out the jurisdictional financial thresholds.

Under this regime, any transaction that qualifies as an economic concentration and exceeds at least one of the prescribed financial thresholds must be notified to the Kuwait Competition Protection Agency (CPA) (may not be implemented until clearance is obtained from the regulator). This mandatory notification and suspensory obligation applies equally to domestic and cross-border transactions.

Given the relatively low thresholds, many transactions, including deals involving foreign entities with modest sales or asset values in Kuwait, fall within scope, making merger control an increasingly important consideration in merger and acquisition (M&A) planning in Kuwait.

## Definitions

- *CPA*: Competition Protection Agency.
- *M&A*: Merger and acquisition.

## Practical Guidance

### Economic concentration criteria

- An economic concentration is defined as a lasting change in control in a relevant market, arising from mergers, acquisitions, or the establishment of joint ventures between two or more persons that perform an autonomous economic or commercial activity on a lasting basis (article 10 of Kuwait Law No. 72/2020).
- The concept of "control" is broad, encompassing any legal or contractual relationship which, either separately or in combination, results in exercising decisive influence over the business activity of another person. This decisive influence may arise from:
  - Ownership of shares or voting rights.
  - Contractual arrangements (e.g., shareholder agreements).
  - Rights to use company assets or appoint decision-makers.
- Specifically, article 10 of Kuwait Law No. 72/2020 classifies the following as economic concentrations:
  - The merger of two or more persons by amalgamation or combination, or the merger of parts of persons, resulting in acquiring control or acquiring more control.
  - The acquisition, by one or more persons of direct or indirect control over entire or parts of another person or persons, whether by acquisition of any assets, property rights or usufructs, by purchase of shares or liabilities, or by any other means.
  - The joint venture of two or more persons, resulting in performing, on a lasting basis, an autonomous economic or commercial activity, regardless of its legal form or the activity to be practiced.
- Article 11 of Kuwait Law No. 72/2020 and Kuwait Decision No. 14/2021 exempt certain activities from being classified as economic concentrations. These typically include:
  - Temporary holdings of securities by banks, insurance companies, and financial institutions for resale, provided voting rights are not exercised to influence competitive conduct (unless for disposal purposes within one year, extendable by the CPA).
  - Acquisitions of control resulting from insolvency, default, debt rescheduling, compositions with creditors, or analogous proceedings.
  - Restructuring procedures performed within the same economic group.
- For example, consider a scenario where company A (a global pharmaceutical firm) establishes a new joint venture with company B (a local Kuwaiti distribution network) to exclusively market and distribute its products in Kuwait. If this joint venture is intended to operate independently on a lasting basis, making its own strategic decisions and controlling its own sales and operations, it would likely be deemed an economic concentration, as it creates a lasting change in control in the relevant market. This is also assuming the parties meet the financial thresholds.

## Financial thresholds

Pursuant to Kuwait Decision No. 26/2021, notification to the CPA is required if any of the following are met, based on the most recent audited financial statements of the parties (buyer and target):

- Aggregate turnover threshold: If the parties to the concentration achieve aggregate annual sales in Kuwait exceeding KWD 750 000.
- Individual turnover threshold: If any party to the concentration generated annual sales in Kuwait exceeding KWD 500 000.
- Asset threshold: If the value of the registered assets of the parties to the concentration in Kuwait exceeds KWD 2.5 million.

Meeting any one of these thresholds is sufficient to trigger a mandatory filing obligation.

## Foreign-to-foreign transactions

Foreign-to-foreign transactions are also notifiable if they meet the definition of an economic concentration and exceed one of the prescribed financial thresholds. Failure to notify a transaction that meets the thresholds, or to implement a transaction before obtaining clearance from the CPA, may result in severe penalties. Pursuant to article 34 of Kuwait Law No. 72/2020, the disciplinary board may impose financial penalties of up to 10% of the total revenues earned by the parties to the concentration during the preceding fiscal year for failure to submit the application or for providing misleading information.

## Key takeaways

Kuwait's financial thresholds are notably low by international standards, thereby capturing a significant number of transactions, including smaller local deals and global transactions with only limited Kuwaiti revenues or assets. Notification to the CPA is mandatory and suspensory, meaning that transactions cannot be implemented before clearance is obtained. Since thresholds are calculated strictly on the basis of audited financial statements, parties should plan early to obtain the required documentation. Where relevant, pre-notification discussions with the CPA should be considered. Non-compliance carries severe financial penalties as prescribed by law, making a thorough threshold analysis and proactive regulatory planning an essential part of executing M&A transactions in Kuwait.

There will be a change to the Kuwait financial thresholds in the upcoming year (most likely in quarter three or quarter four). The thresholds will be increased, as there has been substantial negative local and international feedback.

## 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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**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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**Biography**

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.