

**Summary of the Competition Protection
Authority Requirements For Mergers and
Acquisitions**



للاستشارات القانونية وأعمال المحاماة
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The Competition Protection Authority (the “**CPA**”) in Kuwait governs economic concentrations, particularly mergers and acquisitions, to ensure they do not hinder fair competition in the market. Economic concentration applications are a critical regulatory requirement under Kuwaiti law, and failing to adhere to these provisions may result in penalties, delays, or voiding of transactions. Understanding the thresholds and procedural requirements is crucial for businesses seeking to comply with the CPA’s mandate while minimizing potential disruptions to their transactions.

Thresholds for Filing an Economic Concentration Application

Under Kuwaiti CPA law, businesses involved in mergers or acquisitions must submit an economic concentration application if they meet any of the following conditions based on the previous year’s financial statements:

1. Annual Sales Threshold for One Party

If a party to the merger or acquisition has annual sales exceeding KWD 500,000 within Kuwait, they must file an application. This threshold applies even if only one party meets the criterion, underscoring the CPA’s emphasis on monitoring entities with significant market presence.

2. Combined Annual Sales Threshold

When the combined annual sales of all parties involved in the merger or acquisition exceed KWD 750,000, an application becomes necessary. This provision captures transactions involving multiple entities that, together, hold substantial economic weight in Kuwait's market.

3. Assets Ownership Threshold

An application is required if the parties collectively own assets in Kuwait valued at more than KWD 2,500,000. This clause ensures that significant asset consolidations, which could impact market dynamics, are subject to regulatory oversight.

The CPA's Jurisdictional Reach

The CPA's jurisdiction extends beyond entities physically operating within Kuwait. It also applies to businesses outside Kuwait whose activities may have a commercial effect within the country. This provision reflects Kuwait's alignment with global competition law practices, where regulators consider the economic impact of foreign transactions on domestic markets. Entities operating internationally must therefore evaluate their activities against CPA thresholds to ensure compliance, even if their physical presence in Kuwait is limited.

Steps in the Economic Concentration Application Process

To streamline the process and mitigate potential delays or costs, it is advisable to follow a two-step approach for filing an economic concentration application with the CPA:

Step 1: Initial Consultation Application

The first step involves submitting an application for a consultation with the CPA. This consultation determines whether an economic concentration application is required based on the transaction's details and financial data.

- Purpose and Benefits

This step can save significant resources by avoiding unnecessary filings. The CPA, upon reviewing the parties' financial statements from the previous year, may determine that the merger or acquisition does not meet the thresholds for requiring a full economic concentration application.

- Cost and Timeline

The CPA charges a consultation fee of KWD 250, and the process typically takes 2–3 weeks from the submission of the application. This relatively short timeline makes it an efficient preliminary measure for businesses aiming to gauge their obligations under CPA law.

Step 2: Full Economic Concentration Application

If the CPA concludes during Step 1 that an economic concentration application is necessary, the parties must proceed with a more detailed filing. This step involves submitting extensive documentation and may require engagement in discussions with the CPA to address queries or concerns.

• Cost Structure

The CPA's fees for this application are calculated as 0.1% of the lesser of:

1. The paid-up capital of the entity, or
2. The value of the assets in Kuwait.

These fees are capped at KWD 100,000, ensuring predictability in costs for larger transactions. While the fees can be substantial for high-value transactions, the cap provides a safeguard for businesses against excessive regulatory costs.

• Timeline

The approval process for the application spans between 45 days to a maximum of 197 days from submission. Notably, approval must be granted at least 60 days before the merger's execution to ensure compliance with CPA regulations. This timeline necessitates meticulous planning to align regulatory processes with transaction milestones.

Strategic Considerations for Businesses

Compliance with CPA requirements is not merely a legal obligation; it is a strategic necessity for businesses aiming to execute mergers and acquisitions smoothly. The CPA's dual-step process offers an opportunity to assess potential regulatory hurdles early on, helping parties allocate resources efficiently and minimize disruptions.

Key Benefits of Initial Consultation

- **Cost Saving:** By determining early that a full application is unnecessary, parties can avoid the more substantial fees and extended timelines associated with Step 2.
- **Clarity:** An early consultation allows businesses to understand the CPA's perspective on their transaction, providing valuable insights for structuring the deal.

Planning for Full Applications

For transactions requiring full applications, businesses should prioritize assembling accurate financial data and engaging legal and financial advisors well-versed in CPA procedures. Early preparation ensures the ability to address potential CPA concerns promptly, thereby avoiding delays.

Navigating Cross-Border Transactions

Entities with international operations must pay close attention to the CPA's jurisdictional scope. Given the CPA's focus on transactions with a commercial effect in Kuwait, businesses should assess whether their activities abroad might inadvertently trigger compliance requirements. This consideration is especially relevant for multinational corporations and investment entities.

Conclusion

The CPA's economic concentration application process underscores the Kuwaiti government's commitment to preserving fair competition and regulating significant market transactions. By adhering to the prescribed thresholds and following a structured approach, businesses can navigate this regulatory framework efficiently. The two-step process—starting with a preliminary consultation—offers a practical means to manage compliance costs and timelines, enabling businesses to focus on achieving their strategic objectives. Whether dealing with local or international transactions, understanding and integrating CPA requirements into transaction planning is essential for success in Kuwait's competitive market landscape.



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