

KUWAIT

Law and Practice

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GLA & Company provides strategic, cost-effective and forward-thinking legal representation for companies seeking to do business in the Middle East. The firm's practice encompasses all legal issues companies will likely encounter in the global business environment. With extensive experience advising clients in the Gulf Cooperation Council (GCC) states of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE, it offers unique insights for companies seeking to establish or expand business operations in

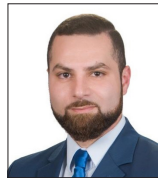
these nations. The firm's emphasis on deals is to get them cleared with the local competition authority and it has excellent relationships with regulators in the GCC. GLA has been successful in securing no objections from these bodies to clear deals. The firm's lawyers are intimately familiar with the governing sources of authority and routinely work with the relevant agencies, departments and committees on behalf of clients.

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1. Legislation and Enforcing Authorities

1.1 Merger Control Legislation

In Kuwait, issues of merger control are governed by Law No 72 of 2020, which came into force on 1 November 2020, and its regulations, ratified by the Kuwait Competition Protection Agency (“Kuwait CPA”) under Resolutions No 14 of 2021, No 26 of 2021, and No 25 of 2022 (Law No 72 of 2020 and its regulations are together referred to as the “Kuwait Competition Law”).

The Kuwait Competition Law repealed its predecessor, Law No 10 of 2007, expanding on the governing rules that impact competition in the State of Kuwait. The Kuwait Competition Law is without prejudice to the international treaties and agreements in force in the State of Kuwait, meaning that such treaties and agreements with the Kuwaiti government supersede any provisions that would otherwise apply pursuant to the Kuwait Competition Law.

1.2 Legislation Relating to Particular Sectors

Other than the Kuwait Competition Law, the following apply.

- The executive by-laws of the Kuwait Capital Markets Authority (“Kuwait CMA”) include certain disclosure requirements and other restrictions impacting transactions that are also subject to the Kuwait Competition Law. The Kuwait CMA governs companies that:
 - (a) are listed on the Kuwait stock exchange, the Boursa; or
 - (b) carry licences, such as investing, governed by the Kuwait CMA.
- The Central Bank of Kuwait (CBK) governs certain activities of financial institutions in Kuwait and carries its own set of regulations

that must be complied with where the transaction concerns a bank or other financial institution governed by the CBK.

1.3 Enforcement Authorities

The Kuwait CPA is an independent body established pursuant to the Kuwait Competition Law and is supervised by the Kuwait Minister of Commerce and Industry. The Kuwait CPA is the sole body charged with reviewing and determining applications to approve economic concentrations or some anti-competitive practices, and with enforcing the Kuwait Competition Law.

2. Jurisdiction

2.1 Notification

The Kuwait Competition Law requires submission of an application to the Kuwait CPA by persons involved in economic concentrations within at least 60 days from the date of the contract or agreement regarding the transaction, where the economic concentration meets certain thresholds established by the Kuwait CPA. The application must be submitted to the Kuwait CPA in accordance with the required form and the requirements under the Kuwait Competition Law, and must be approved by the Kuwait CPA before the economic concentration may be lawfully implemented. The Kuwait Competition Law provides relatively conservative thresholds for determining whether an application is required, as follows:

- where one of the parties to the concentration achieve annual sales in Kuwait exceeding KWD500,000, according to the audited financial statements of the last fiscal year before the concentration;
- where the parties to the concentration collectively achieve aggregate annual sales exceed-

ing KWD750,000, according to the audited financial statements of the last fiscal year before the concentration; and

- where the value of the registered assets of the parties to the concentration in Kuwait exceeds the value of KWD2.5 million, according to the audited financial statements of the last fiscal year before the concentration.

The Kuwait Competition Law exempts certain activities from being deemed economic concentrations, as follows:

banks, insurance companies, and financial institutions whose activities include trading in securities are exempt, provided they do not exercise the substantive voting rights conferred by such securities – in order to be exempt, the security must generally be disposed of within one year from the date of acquisition;

- acquisitions resulting from insolvencies, defaults, debt restructuring, compositions with creditors, or similar transactions are exempt; and
- restructuring within the same group of companies is exempt.

Furthermore, the following cases shall not be deemed economic concentrations.

- In cases of acquisition of control as a result of insolvency, default, debt rescheduling, settlements with creditors, or analogous proceedings.
- In cases where the persons that form one economic group perform restructuring procedures within the same group.

Based on the authors' practical experience, they successfully obtained an exemption for a client

on the basis of restructuring procedures taking place within the same group.

It is important to note that the persons desiring to perform an economic concentration, where an application is required, are forbidden under the Kuwait Competition Law from performing any actions or procedures to complete the concentration operations prior to the issuance of the Kuwait CPA's determination.

If the Kuwait CPA becomes aware of any steps taken toward completing a transaction before obtaining the necessary clearance from the Kuwait CPA, penalties may be imposed.

2.2 Failure to Notify

The Kuwait CPA has the authority to independently initiate research, investigations, evidence collection, and inquiries in accordance with the provisions of the Kuwait Competition Law. Moreover, any person may report any agreements, acts, or actions that violate the Kuwait Competition Law.

The Kuwait Competition Law established a disciplinary board, tasked with deciding disciplinary actions referred to it by the Kuwait CPA in relation to violations of the Kuwait Competition Law, and complaints filed by various stakeholders. The disciplinary board may impose financial penalties of no more than 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 application for concentration, or for providing misleading or incorrect information on an application.

Since the issuance of the Kuwait Competition Law, the Kuwait CPA has consistently increased its level of investigative activity, including, in one case, penalising a steel distribution company by

the amount of KWD250,000, which is equivalent to 1% of the company's total revenues achieved during the fiscal year 2020/2021, for the company's non-compliance with the Kuwait CPA's requests and refrainment from providing the requested data and information for a duration exceeding one month. Additionally, there was also a recent sanction by the Kuwait CPA published on 30 March 2023 where various food associations were fined by the Kuwait CPA due to abuse of their dominant position.

The authors are aware of a local company that submitted their filing with inaccurate information, and that, as a result, the Kuwait CPA overseeing the matter appropriately disregarded the erroneous submission and directed the company to resubmit their filing with accurate information which resulted in a major delay in obtaining clearance from the Kuwait CPA. GLA & Company was engaged following the misfiling by another law firm in Kuwait, and assisted the non-compliant company with making an appropriate filing with the Kuwait CPA.

It is worth highlighting that while the mentioned sanctions are not specifically related to merger control, they serve as evidence of the Kuwait CPA's proactive approach to identifying violations and imposing penalties.

2.3 Types of Transactions

The following types of transaction are deemed an economic concentration subject to the Kuwait Competition Law:

- the merger of two or more persons by amalgamation or by combination, or merger of parts of persons, resulting in acquiring control or acquiring more control (see **2.4 Definition of "Control"**);

- the acquisition, by one or more persons, or direct or indirect control over the 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; or
- 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 practised.

2.4 Definition of "Control"

Article 1 of the Kuwait Competition Law defines "control" as "the legal or contractual relationship which, either separately or in combination, results in exercising decisive influence."

2.5 Jurisdictional Thresholds

The Kuwait Competition Law, pursuant to Article 3 thereof, applies to acts committed inside or outside the State of Kuwait whenever such acts prevent, restrict, or distort free competition in the State of Kuwait.

The current jurisdictional thresholds are as follows, in accordance with Resolution No 26 of 2021:

- where one of the parties to the concentration achieve annual sales in Kuwait exceeding KWD500,000, according to the audited financial statements of the last fiscal year before the concentration;
- where the parties to the concentration collectively achieve aggregate annual sales exceeding KWD750,000, according to the audited financial statements of the last fiscal year before the concentration; and
- where the value of the registered assets of the parties to the concentration in Kuwait exceeds the value of KWD2.5 million, accord-

ing to the audited financial statements of the last fiscal year before the concentration.

2.6 Calculations of Jurisdictional Thresholds

The calculation of the thresholds appears to be based on the audited financial statements of the persons involved in the economic concentration, which would generally be the transacting participants of the transaction. The Kuwait Competition Law does not specifically address the issue of currency conversion, or whether to rely on the book or fair market value of the assets being appraised. In the authors' experience, clients have provided the value of assets as presented in the audited financial statements submitted to the Kuwait CPA.

2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds

Based on the authors' experience, the Kuwait CPA primarily requires audited financial statements of the entities involved in a transaction to ensure the accuracy of the provided amounts. As a result, the authors recommend their clients provide precise audited financial statements, as the Kuwait CPA has zero tolerance for misleading or false information, which can result in penalties.

2.8 Foreign-to-Foreign Transactions

In short, foreign-to-foreign transactions are subject to merger control and other measures – as previously mentioned, the Kuwait Competition Law applies to acts committed inside or outside the State of Kuwait whenever such acts prevent, restrict, or distort free competition in the State of Kuwait.

2.9 Market Share Jurisdictional Threshold

The Kuwait Competition Law does not have a market share threshold; however, disclosure of estimated market share is part of the notice application to the Kuwait CPA.

2.10 Joint Ventures

Joint ventures are subject to merger control. A 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 practised, is considered an economic concentration. There are no other special rules provided for in the Kuwait Competition Law pertaining to joint ventures.

2.11 Power of Authorities to Investigate a Transaction

The Kuwait Competition Law confers the capacity of law enforcement officers upon the Kuwait CPA's employees. These officers are entitled to enter persons' premises and workplaces to investigate violations of the Kuwait Competition Law. They are entitled to access records, books, and documents, to obtain information, data, documents, access to files (physical or electronic) held by a government or non-governmental body, and may seek the assistance of police officers when needed.

2.12 Requirement for Clearance Before Implementation

Implementation may not lawfully proceed before an approval is issued by the Kuwait CPA.

2.13 Penalties for the Implementation of a Transaction Before Clearance

The Kuwait CPA is entitled to take corrective action for violations of the Kuwait Competition Law. Unfortunately, specific consequences for

implementing a concentration before an approval from the Kuwait CPA, where an application is required, are not provided for in the Kuwait Competition Law. It is possible that the Kuwait CPA would order the unwinding of a transaction for failing to comply with the procedures stipulated in the Kuwait Competition Law.

The authors witnessed a situation in which a company that should have filed an application nonetheless proceeded to fulfill the completion obligations outlined in the Share Purchase Agreement, specifically regarding the transfer of shares, without filing with the Kuwait CPA. The Kuwait CPA became aware of this, and, as a consequence, that company is likely to face penalties which range from 1% to 10% of annual turnover. The matter is being referred to the Kuwait CPA Disciplinary Board for their judgment.

2.14 Exceptions to Suspensive Effect

Unfortunately, there are no reliable sources of publicly available information on this issue.

2.15 Circumstances Where Implementation Before Clearance Is Permitted

While possible, these circumstances are not specifically provided for in the Kuwait Competition Law.

3. Procedure: Notification to Clearance

3.1 Deadlines for Notification

An application must be filed at least 60 days from the date of the contract or agreement regarding the transaction.

3.2 Type of Agreement Required Prior to Notification

No binding agreement is required prior to notification; it is sufficient for parties to file on the basis of a less formal agreement such as a letter of intent, memorandum of understanding, or good faith intent by the parties to reach an agreement.

3.3 Filing Fees

There are filing fees, and applications must be accompanied by a receipt for payment of a fee equal to the lesser of (i) one tenth (0.1%) of the paid-up capital of both parties of the economic concentration, or (ii) of the combined assets of both parties in Kuwait, whichever is less and not exceeding KWD100,000. Moreover, the filing fees cannot be zero.

3.4 Parties Responsible for Filing

Persons directly involved in the economic concentration are required to submit the application to the Kuwait CPA. Typically, these are the parties to the transaction agreement, while legal counsels usually handle the filing procedures on behalf of their clients through the use of powers of attorney.

3.5 Information Included in a Filing

The application requires a considerable amount of information and detail on the entities involved in the transaction and the economics resulting therefrom. An application requires the following to be included to the extent available and appropriate.

- Asset appraiser report provided that it shall belong to one of the auditing offices approved by the CMA, with the payable fee mentioned in **3.3 Filing Fees**. (Please note that this would be required only if the parties

- chose to submit filing fees based on their combined assets in Kuwait).
- Memorandum of association, articles of association, commercial register, and commercial licences of the parties to the economic concentration.
 - Names of the board members of each of the parties to the concentration or their legal representatives.
 - Financial statements for the last two fiscal years for all relevant persons in the economic concentration's operation and their branches.
 - Copy of the contract executed or in draft form, and any other documents of a public or private offering, and information on the number of shares or assets that will be acquired.
 - A report containing the economic aspects of the proposed transaction.
 - Fully completing the economic concentration application which must include the following:
 - (a) Information about the concentration parties:
 - (i) names of the parties of the concentration operation, memorandum of association, articles of association (if any), commercial licences, and the commercial register;
 - (ii) activity of the parties of the concentration operation;
 - (iii) addresses, phone numbers, and email addresses of the parties of the concentration operation;
 - (iv) name, title, copy of ID, phone number, and email address of the liaison officer for the parties of the concentration;
 - (v) capital;
 - (vi) the most important customers and their percentages in the market;
 - (vii) volume, value and percentage of sales in the market; and
 - (viii) a description of competitors and their shares in the market.
 - (b) Data of the concentration operation:
 - (i) type of transaction (ie, merger, acquisition, or joint venture);
 - (ii) description of whether the transaction relates to all or some parties of the economic concentration;
 - (iii) a brief explanation for the economic and financial structure of the economic concentration;
 - (iv) the dates, proposed or estimated, of any important procedures aimed at the completion of the concentration operation;
 - (v) the proposed ownership structure and the decisive influence post-completion;
 - (vi) relevant products of the economic concentration, its volume, and percentage of sale;
 - (vii) relevant market and its volume;
 - (viii) products in which the applicants deal;
 - (ix) positive impacts of the transaction on the economy;
 - (x) negative impacts of the transaction and the proposed procedures to mitigate such impacts;
 - (xi) markets affected by the transaction;
 - (xii) factors influencing access to the market;
 - (xiii) nature of the distribution channels;
 - (xiv) factors affecting price fixation during the past five years;
 - (xv) volume of available productive capacity and percentage of usage;
 - (xvi) volume of demand for products, and its structure;
 - (xvii) alternative products; and
 - (xviii) concentration value in Kuwaiti dinars, provided that it shall include the purchase rate and the value of all

relevant assets.

(c) Ownership and decisive influence:

- (i) all persons who have a decisive influence on participants in the economic concentration, whether directly or indirectly, shall be determined and the nature of such influence and its methods shall be described; and
- (ii) all persons dealing in any affected market where participants in the concentration operation, or any other person, enjoy a decisive influence on that market, whether directly or indirectly – the nature and methods of such influence shall be described.

3.6 Penalties/Consequences of Incomplete Notification

Typically, the Kuwait CPA will notify the applicants of additional information requested. Otherwise, failure to provide a complete application may result in a denial by the Kuwait CPA, or other corrective action the Kuwait CPA deems appropriate.

It is important to note that when the Kuwait CPA requests additional information, the duration of the review process of the concentration application pauses, and resumes once the information is received and accepted by the Kuwait CPA.

3.7 Penalties/Consequences of Inaccurate or Misleading Information

The disciplinary board may impose financial penalties of no more than 10% of the total revenues earned by the parties to the concentration during the previous fiscal year in the event that the application contains misleading or incorrect information.

3.8 Review Process

Once an application is submitted, the chairman of the Kuwait CPA must refer the application to the executive director of the Kuwait CPA within five days, plus any additional time in the event additional information is requested from the applicants.

The executive director then has 90 days to study the application and prepare a report to the board of the Kuwait CPA. The board of the Kuwait CPA may extend this 90-day limitation upon request from the executive director of the Kuwait CPA. During this phase, the executive director:

- ensures that the fees paid are consistent with the requirements;
- may require additional documents, information, or data deemed necessary for studying the application;
- notifies persons the executive director considers to be affected by the approval of the economic concentration application in order for them to submit any objections or documents they may have;
- publishes a summary of the economic concentration application on the website of the Kuwait CPA, and in the official gazette and two local daily Arabic newspapers for any potential third-party objections;
- holds hearings with the applicants, and others as appropriate; and
- seeks the help of any expert, and local or international companies that are specialised in examination of the application, or obtains any information from third parties as appropriate.

In the event of any objection by a third party, the time to consider and decide on this does not count towards the 90-day limitation otherwise

imposed on the executive director of the Kuwait CPA during his phase of review.

Following completion of the executive director's review, a report will be issued to the chairman of the Kuwait CPA containing details of the application, a description of all facts and procedures taken with respect to the application, an evaluation of the application from both a legal and economic standpoint, and a recommendation. The chairman of the Kuwait CPA presents the application to the Kuwait CPA's board, who will in turn decide on the application within 30 days from the date of the chairman's presentation. The board's decision will be as follows:

- approving the economic concentration application;
- conditionally approving the economic concentration application; or
- rejecting the economic concentration application, provided that such a decision is justified.

Once a decision is rendered, the executive director must inform the stakeholders within 15 days of the date of the board's decision.

The total timeline for a decision to be rendered from the time an application is properly submitted is an estimated four months. The actual time, however, may vary depending on follow-up requests for additional information, requests for additional time by the executive director, or objections raised by third parties.

3.9 Pre-notification Discussions With Authorities

Pre-notification discussions with authorities can be engaged in. Any person who desires to enter into an economic concentration may apply for a meeting prior to submission of an application. There is no particular obligation of confidential-

ity provided for in the Kuwait Competition Law. According to Resolution No 24 of 2021, the pre-notification fee is KWD250.

3.10 Requests for Information During the Review Process

Requests for information are common and expected, depending on the extent of the application submitted. Requests will effectively suspend the time otherwise imposed on the Kuwait CPA to process an application.

3.11 Accelerated Procedure

There is no formal method for expediting or accelerating the procedure of review of an economic concentration application.

4. Substance of the Review

4.1 Substantive Test

When considering an application, the Kuwait CPA considers the following standards:

- maintaining and encouraging effective competition amongst competitors in the market;
- enhancing the interests of consumers with respect to quality and price of the relevant products; and
- encouraging, through competition, the reduction of costs, developing new products, and facilitating the access of new competitors to the market.

The executive director, during his review, takes the following elements into consideration.

- Studying the products according to the following:
 - (a) comparing the products subject to the transaction with other similar products in the market; and

- (b) the availability of substitute products to consumers.
- Determining the possibility of competition within a relevant geographic area with the following standards in mind:
 - (a) the ability of the consumer to move from one geographic area to another;
 - (b) the ability of vendors to make changes based on the moving of purchasers between various geographic areas due to the relative change in the prices or other competitive factors;
 - (c) barriers to entering the relevant market;
 - (d) costs of moving between geographic areas; and
 - (e) customs and administrative restrictions at the local and foreign levels.
- The market share of the relevant persons.
- Revenues and assets of relevant persons.
- Actual or possible competitiveness in the relevant market.
- The extent of ease of entry into the relevant market.
- The possible influence on prices of relevant commodities or services.
- The barriers to entry affecting new or potential competitors.
- The possibility that a dominant position in the relevant market is created.
- The possible influence on creativity, innovation and technological efficiency.
- The extent of the impact on investment or export encouragement.
- The impact on consumers' interests.

4.2 Markets Affected by a Transaction

Unfortunately, at this stage the regulations do not provide much guidance on this issue. The Kuwait Competition Law provides that the relevant geographic area is the area where the products regarded as interchangeable are substituted. It further provides that the relevant

products are all the products which are regarded as interchangeable or substitutable in terms of meeting the needs of the recipient of the service or the commodity.

4.3 Reliance on Case Law

Unfortunately, at this stage the regulations do not provide guidance on this issue. However, it is likely that case law would play a relatively small role in influencing the enforcement of the Kuwait Competition Law.

4.4 Competition Concerns

See the factors taken into consideration by the executive director, detailed in 4.1 **Substantive Test**.

4.5 Economic Efficiencies

The Kuwait CPA considers the possible influence on economic efficiencies; however, the extent of such consideration is not apparent.

4.6 Non-competition Issues

There are no formally approved additional considerations that the Kuwait CPA may take into account where such considerations fall outside the scope of application of the Kuwait Competition Law.

4.7 Special Consideration for Joint Ventures

There are no other special rules provided for in the Kuwait Competition Law pertaining to joint ventures in particular.

5. Decision: Prohibitions and Remedies

5.1 Authorities' Ability to Prohibit or Interfere With Transactions

The Kuwait CPA has the authority to take corrective actions for violations of the Kuwait Competition Law.

5.2 Parties' Ability to Negotiate Remedies

The Kuwait CPA may, at any stage of the procedures taken against the violator and until a decision is issued by the disciplinary board or a final judgment, offer settlement or accept it according to the template prepared for this purpose with any person who committed one of the violations stipulated in the law, for the payment of an amount that is not less than the dedicated minimum fine and shall not exceed the maximum fine.

The Kuwait CPA would determine the period during which the violator should fulfil the settlement conditions. Where the settlement is completed, the procedures taken against the violator expire.

A settlement request may also be submitted by the violator or their legal representative to the Kuwait CPA. The Kuwait CPA would examine the request and assess its value without affecting the rights of the one who is affected by the violation.

5.3 Legal Standard

In order to offer or accept a settlement, the following conditions must be met:

- no decision must have been issued for the violation, unless a final judgment is issued for the violation where the violator appeals (in a

timely manner) the decision of the disciplinary board; and

- the value of the settlement must not be less than half of, or greater than, the maximum penalty.

5.4 Negotiating Remedies With Authorities

There is no formal initiation point for when parties may begin negotiating remedies with the authorities. As previously mentioned, the Kuwait CPA may propose its own remedy, but may impose remedies not agreed between the parties that it otherwise has the authority to impose.

5.5 Conditions and Timing for Divestitures

Unfortunately, there are no reliable sources of publicly available information on this issue.

5.6 Issuance of Decisions

Formal decisions permitting or prohibiting transactions are made publicly available – the decisions of the Kuwait CPA are generally published on the authority's website.

5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions

Unfortunately, there are no reliable sources of publicly available information on this issue.

6. Ancillary Restraints and Related Transactions

6.1 Clearance Decisions and Separate Notifications

Unfortunately, there are no reliable sources of publicly available information on this issue. The Kuwait CPA, in the event it issues a conditional approval, will outline the conditions regarding this.

7. Third-Party Rights, Confidentiality and Cross-Border Co-operation

7.1 Third-Party Rights

During the process of review by the Kuwait CPA, a summary of the application is published on the website of the Kuwait CPA, and in the official gazette and two local daily Arabic newspapers.

Every interested person is entitled to submit a justified objection to the Kuwait CPA against the economic concentration application within 15 days from the date of notice or publication. If an objection is filed, the applicant has 15 days from the date of notice of the objection, to provide its statements and documents in reply to the objection. The review process and timeline are effectively paused from the time an objection is filed to the time a decision is reached by the Kuwait CPA on the matter.

7.2 Contacting Third Parties

During the process of review by the Kuwait CPA, a summary of the application is published on the website of the Kuwait CPA, and in the official gazette and two local daily Arabic newspapers.

The Kuwait CPA is also permitted to notify persons it considers to be affected by the approval of the economic concentration application. Those persons will have 15 days from the date of being notified, or the date of publication of the summary of the application, whichever is earlier, to lodge any objections they may have.

7.3 Confidentiality

The applicant for economic concentration, desiring that data included in the application and the attached documents be treated as confidential, may mark the application as “Confidential”, and attach a statement in support of holding

the application or its contents as confidential. In these circumstances, the applicant should provide non-confidential summaries that provide a sufficient understanding of the content of the confidential data, provided that these are marked as “Not Confidential”.

The Kuwait CPA ultimately determines whether, or to what extent, to hold information contained in an application as confidential in accordance with controls set by its board of directors.

7.4 Co-operation With Other Jurisdictions

There is no clear indication of the level or extent of co-operation between the Kuwait CPA and other jurisdictions; however, as mentioned in **1.1 Merger Control Legislation**, the Kuwait Competition Law is subject to international treaties or agreements entered into by the State of Kuwait. Thus, to the extent a treaty provides for the co-operation by the State of Kuwait with other jurisdictions and to the extent relevant to the Kuwait Competition Law, those conditions will apply.

8. Appeals and Judicial Review

8.1 Access to Appeal and Judicial Review

A final decision by the Kuwait CPA may be appealed to the judicial system in Kuwait by way of a formal writ of summons against the authority. There is a dedicated department within the judicial court system devoted to complaints filed involving governmental authorities.

8.2 Typical Timeline for Appeals

The timeline of a case filed against a governmental authority varies on a case-by-case basis, and may last over one year in the court system.

8.3 Ability of Third Parties to Appeal Clearance Decisions

Assuming that a third party made a proper objection during the reviewing phase of an application, the decision made by the Kuwait CPA to such an objection may be appealed by that third party. However, it is highly unlikely that such an appeal would pause the review process.

9. Foreign Direct Investment/ Subsidies Review

9.1 Legislation and Filing Requirements

There are no other special rules provided for in the Kuwait Competition Law pertaining to foreign direct investment or foreign subsidies legislation with respect to economic concentration filing.

10. Recent Developments

10.1 Recent Changes or Impending Legislation

Law No 72 of 2020, Resolution No 14 of 2021, Resolution No 26 of 2021, and Resolution No 25 of 2022 which make up the Kuwait Competition Law, have all been enacted in the last couple of years. The authors expect the Kuwait CPA to issue additional amendments and regulations as it continues to grow and develop.

10.2 Recent Enforcement Record

The Kuwait CPA has actively been publishing numerous announcements on its website during the years 2022, 2023 and 2024. These announcements pertain to various parties submitting applications for economic concentration, as well as cases in which the Kuwait CPA declares its approval for specific transactions. These publications serve as a means of transparent communication and keeping the public

informed about the ongoing activities and decisions of the Kuwait CPA in relation to economic concentration matters.

To date, the Kuwait CPA has not published any official announcements regarding the denial or rejection of any economic concentration applications.

10.3 Current Competition Concerns

The Kuwait CPA has historically remained dormant and relatively inactive in the market compared with some of its sister jurisdictions in the GCC. However, the enactment of the recent Kuwait Competition Law demonstrates Kuwait's dedication to the enforcement of the principle of freedom of competition in the State.

The level of involvement of the Kuwait CPA is very high and has increased every year since its inception in 2021. Its conservative financial thresholds for determining when an application is required for approval of an economic concentration – which is broadly defined to include any merger, any acquisition resulting in direct or indirect control of another, and any joint venture resulting in a lasting co-operation of an economic or commercial activity – make it necessary for many cross-border deals to pay attention to the Kuwait CPA's requirements and comply with the Kuwait Competition Law, regardless of whether or not the directly transacting entities are based outside the state.

It is highly probable that the Kuwait CPA will make revisions to the regulations, specifically by raising the existing thresholds. This is due to the fact that the current thresholds are regarded as relatively low, leading to a significant number of economic concentration filings being submitted to the Kuwait CPA. The purpose of these potential amendments would be to address the

overwhelming volume of filings and streamline the process, ensuring that only transactions of greater significance are subject to scrutiny and evaluation by the Kuwait CPA. Such adjustments would aim to strike a balance between efficient regulation and appropriate oversight of economic concentration activities.