



Definition of Control under the new Saudi Merger Guidelines

Following a public consultation process initiated in July 2024 the Saudi General Authority for Competition (GAC) published the 5th edition of their Merger Guidelines on 8 April 2025. The updated Guidelines introduce key changes aimed at aligning Saudi Arabia's merger control regime more closely with international best practices. A key change introduced with the updated Guidelines was the amendment of the notification threshold which now requires that the target of an acquisition contributes to the Saudi revenue element of the threshold (see our [client brief from May 2025](#) for a comprehensive discussion of the new threshold). However, the authority also included clarifications on the GAC's interpretation of the change of control element of the Saudi merger control regime. While these primarily confirmed existing practice, the explicit description of the GAC's practice in the guidelines is welcome and aids transparency.

The concept of control remains central to GAC's notification requirement. Even if parties meet the notification threshold, notification is required only where a transaction results in a change of control over the targeted undertaking. The GAC now for the first time included a comprehensive description of their interpretation of the control test in the Guidelines.

The GAC continues to define "control" as the ability of a person or entity to exert decisive influence over an undertaking—either solely or jointly. Decisive influence is the ability to impact the strategic or operational decisions of the undertaking. In particular, the GAC will consider whether the person or entity will have the ability to impact decisions on business plan, budget, appointment and removal of senior management, or changes to the business focus of the undertaking.

The guidelines identify exemplary cases of control. These include:

- direct or indirect ownership of more than 50% of the undertaking's share capital, business assets, shares, voting rights, or similar;
- the right to appoint a majority of the undertaking's board of directors, supervisory board, or similar body;
- control of the undertaking through long-term contractual arrangements such as management, advisory, or licensing, agreements; and
- *de facto* influence through structural or other ties such as family ties, financial entanglement, economic dependency, or structural ties.

This catalogue of forms of control is not exhaustive. It only serves to illustrate possible forms of control. Control will be assessed for each individual transaction on a case-by-case basis considering the particular circumstances of the transaction the parties involved.

Furthermore, the Guidelines clarify that with respect to change of control as a criterion for merger control review the ability to exercise influence is decisive. Hence, a person or entity has control where it can exert influence, regardless of whether it actually exercises this influence.

When assessing whether a person or entity has control over an undertaking, the GAC looks beyond legal ownership. The GAC will attribute control to the ultimate controlling person or entity that *de facto* has the power to (indirectly) exercise the decisive influence. This approach serves to prevent that hidden or complex control structures are used to circumvent merger control obligations. In an effort to support this approach, Saudi Arabia legislator recently issued Ultimate Beneficial Ownership Rules that provide for the

establishment of an ultimate beneficial owner register by the Ministry of Investment (for more details on the new Saudi Ultimate Beneficial Ownership Rules see our [client brief of March 2025](#)).

The updated Guidelines distinguish between positive control—the ability to impose decisions—and negative control—the ability to stop or veto decisions. The GAC considers a transaction to result in a change of control if a person or entity that prior to closing:

- had neither positive nor negative control over an undertaking acquires positive or negative control;
- had negative control prior acquires positive control, unless no other person or entity had any form of control over the undertaking prior to closing, since in that the acquirer remains to be the only person or entity whose agreement is required for strategic decisions.

Joint control is caught by the Saudi merger control regime and suffices to trigger a filing obligation. Furthermore, two independent persons or entities that do not individually control an undertaking will be considered to have control, if they agree to or *de facto* act in concert with respect to the undertaking and thereby together exert decisive influence over the undertaking.

Common minority shareholders protection typically does not lead to control. In particular, veto rights concerning material amendments of an undertaking's constituting agreements, increase or reduction of share capital, or liquidation are not deemed to confer control. Whether veto rights over investment decisions

constitute control will be determined based on their scope. The Guidelines recognize that such rights may aim at safeguarding minority shareholders' interests, rather than to allow them to shape an undertaking's business strategy or policy. Thus, veto rights over limited investments are typically not deemed to establish control. However, the Guidelines do not provide a threshold for when veto rights concerning investment decisions would establish control.

In addition, the updated Guidelines include specific conditions under which investment funds acquiring minority stakes in an undertaking may not be considered as leading to a change of control, despite the funds being granted significant veto rights. This is the case, if all of the following criteria are met:

- the purpose of the acquisition is solely to make a financial investment without intention to directly or indirectly influence the management or market behavior of the target;
- the veto rights are used solely to preserve the value of the investment;
- the investment's objectives and intention not to intervene in the target's operations are clearly documented prior to closing; and
- the investment fund does not hold controlling interests in competing undertakings.

Where these conditions were initially met but are abandoned later, a filing is required. The changes may only be implemented after clearance from the GAC.

These clarifications on the GAC's interpretation of the change of control requirement largely reflect prior practice of the GAC. Essentially, only the exemption for investment funds is entirely new. Still, the explicit description of the GAC's position in the updated Guidelines provides clarity and allows parties to better assess their obligations under the Saudi merger control regime.



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