How Saudi Arabia's Regulatory M&A Landscape is Evolving

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Merger control remains the most significant regulatory regime for mergers and acquisitions. Transactions in particularly regulated sectors may require additional procedures. The Kingdom is also implementing foreign direct investment (FDI) screening including changes in ultimate beneficial owners (UBO). These regulatory regimes introduce additional complexity to Saudi deals or foreign-to-foreign transactions.

Merger control developments

The September 2019 amendment to the Saudi merger control provisions substantially expanded the scope of the regime. The shift from market share to a turnover-based notification threshold has been particularly impactful. Since then, the Saudi General Authority for Competition (GAC) has continuously refined the regime. Most recently, it published the 5th version of the Saudi Merger Guidelines, which — among other things — introduced local revenue requirements for acquisitions to trigger the filing obligation.

How much target revenue is enough?

Certain questions remain about how the thresholds apply. The Guidelines only require that the target of an acquisition 'contribute' to the parties meeting the Saudi revenue element of the threshold. This raises the question of how substantial the target's Saudi revenue must be to trigger a filing. If taken strictly literally, the first SAR of target revenue in Saudi Arabia could suffice. Still, target turnover requirement was implemented as a local nexus corrective – a way to keep the regime from catching transactions with no impact on competition in Saudi Arabia. Any negligible target revenue in the Kingdom would arguably contradict that intention. The acquisition of a foreign office supply chain would not impact competition in the Kingdom simply because it sold a pen for SAR 1 to Saudi Arabia during the past fiscal year. The local nexus test included in the Guidelines may help resolve this question.

The local nexus test does not apply to all transactions. It is relevant only where the parties do not meet the Saudi revenue element of the threshold. The Guidelines explicitly state that Saudi revenue is not necessarily required to trigger a filing if other factors establish a (potential) impact in Saudi Arabia. The Guidelines use potential revenue in Saudi Arabia as an example of what those other factors may be. However, the mere possibility of an undertaking selling to Saudi Arabia does not suffice. There must be some level of concretization. The Guidelines give the example of a target that unsuccessfully participated in a tender in the past. That attempt to enter the Saudi market suffices to trigger a filing obligation. However, this limitation of the filing obligation does not appear to apply to cases where the target has Saudi revenue in a manner that would set a minimum amount the target must achieve to trigger a filing.

Practice suggests that the GAC takes the view that any target revenue in Saudi Arabia suffices. While the GAC has never formally endorsed this view, it has consistently found that acquisitions require notification, even if the target had negligible Saudi revenue. The GAC appears to base this position on the concept of potential revenue in Saudi Arabia. Negligible Saudi revenue of the target does not in itself establish a local effect, but the fact that the target has some revenue in Saudi Arabia suggests it is open to doing business in or with Saudi Arabia, thus establishing future, potential revenue. This potential future revenue suffices to meet the local nexus requirement and trigger a filing obligation. A scenario where the target, while having made minor sales to Saudi Arabia in the past, is not open to or barred from expanding its Saudi business, has so far not been explored. In practice, then, any target revenue in Saudi

Arabia generally suffices to trigger a filing obligation. It remains unclear whether credible arguments that the target will not make sales to Saudi Arabia in the future could provide grounds to exclude a filing.

Joint ventures and mergers

Questions about the application of the thresholds to other transactions such as joint ventures and mergers also persist. Traditionally, the GAC treated only newly formed jointly controlled entities as joint ventures. Acquisition of joint control in an existing entity was regarded as an acquisition. Before the 5th edition of the Guidelines, this distinction was not relevant when assessing whether the threshold was met. The new thresholds distinguish between acquisitions and joint ventures. They require target revenue in Saudi Arabia only in case of an acquisition. Joint ventures may require notification even if the joint venture itself has no Saudi revenue, provided the joint venture parties meet the threshold. The GAC appears to continue its initial view on joint ventures. Acquisitions of joint control in an existing entity still appear to be deemed acquisitions and thus do not require notification unless the target has Saudi revenue. However, the GAC has not confirmed this position in official guidance.

The target Saudi revenue requirement also does not apply to mergers. Mergers require notification if the joint, post-closing entity meets the Saudi revenue element of the threshold. This is of particular concern in US deals which often include a merger element to achieve what is effectively an acquisition. In the past the GAC has consistently deemed any transaction involving a merger element a merger - even if the merger element was simply a transaction step to carry out an acquisition. With the new thresholds in the 5th edition of the Guidelines, this position became relevant, because it would mean many transactions that are effectively an acquisition would not benefit from the target Saudi revenue requirement. The GAC appears open to reconsidering its prior, formalistic view on mergers and instead evaluate transactions from an effects-based view. Practice is still too sporadic, though, to conclude that the GAC to has changed its view.

Sector-specific regimes

The Saudi merger control regime applies regardless of the sector relevant to the transaction. Other regimes may obligate parties to transactions in certain sectors or targeting particularly regulated targets. Transactions involving targets listed on the Saudi stock market may be subject to the mandatory tender offers regulated by the Saudi Capital Market Law. Failure to comply may result in forced divestiture and fines.

Sector-specific regulations add further complexity. Transactions in the energy sector require involvement of the Saudi Ministry of Energy. Where downstream activities are involved, Saudi Aramco's contractual consent rights may also be relevant. Approval from the Saudi Central Bank (SAMA) is mandatory for transactions involving financial institutions. Telecommunications and media deal require clearance from the Communications, Space and Technology Commission. Review and confirmation of licenses by the Saudi Ministry of Health and the Saudi Food and Drug Authority (SFDA) may be required in healthcare-related transactions.

Foreign direct investment and the UBO register

Newly emerging regulatory regimes will add further layers. The Saudi legislator issued the new Investment Law in 2023, which establishes mandatory approval for foreign direct investment (FDI) in certain sectors. This marked a significant divergence from the traditional Saudi approach to FDI review, which only applied to newly established Saudi entities or direct acquisitions of shares in Saudi entities and required procuring or amending foreign investment licenses issued by the Saudi Ministry of Investment (MISA). The new regime will apply to direct and indirect acquisitions of Saudi entities, as well as acquisitions of foreign undertakings with relevant Saudi business. While the Executive Regulations to the Investment Law introduced in 2025 provided some clarification on the application and review process, the Saudi FDI regime remains dormant. The new FDI regime only applies to so-called ‘excluded’ activities and the list of excluded activities has not been issued yet. Until that list is published or other changes are made, the Saudi FDI regime is not being enforced. There is no official guidance on when the list of excluded activities can be expected.

In addition to the FDI screening, the Investment Law introduced a register of UBOs for Saudi entities. Saudi entities are required to maintain a record of their UBOs in this register and notify MISA of any changes. Unlike the FDI screening regime, the obligation to maintain and update the UBO register already applies.

Key takeaway

Over the past seven years, we have seen a considerable increase in regulatory oversight of M&A activities in and by Saudi Arabia. In particular, the Saudi merger control regime has become relevant beyond the Kingdom’s borders. Merger control clearance for foreign-to-foreign transactions is mandatory where the parties have relevant activities in or with the Kingdom. Sector-specific regulations and procedures add further obligations for transactions in certain industries. Finally, newly emerging regimes, such as the pending FDI screening regime will add further complexity and require diligent deal planning and timeline management. That said, the true impact of the FDI regime cannot be assessed until the pending instruments are issued and MISA begins applying the regime.

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