MIDDLE EAST - NEW GUIDELINES RELEASED TO UPDATE AND EXPAND THE TAWAZUN ECONOMIC PROGRAM - MAY 2019

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Legal Briefings – By **Zubair Mir, Geoffroy Hermanns and Harley Stewart**

The Tawazun Economic Council ("**TEC**"), founded in 1992 and originally mandated to be a prime enabler for the Defense and Security sector in the UAE, albeit with a strong focus on economic development, established the offset program known as Tawazun Economic Program ("**TEP**"). Off the back of its announcement of a new economic program framework in February this year, and its launch of a USD 680 million fund to invest in the country's defense sector, the TEC released new Tawazun Economic Program Policy Guidelines on 31 March this year (the "**Guidelines**"), which overhaul the previous TEP. Key changes to the TEP include the expansion of the TEP to more industries; the ability of suppliers to bank and trade excess offset credits; and the introduction of a credit multiplier scheme (each discussed below).

SCOPE

The Guidelines expand the scope beyond the growth and development of the defense and security industry to include the following "priority sectors": aerospace, infrastructure and transportation, communication technology, education technology, sustainability, environment and climate change, food and water security, and other strategic sectors as can be advised from time to time by the TEC. The TEC will also consider projects that comprise dual-use or standalone specific technologies for the purpose of the TEP. Examples given in the Guidelines include artificial intelligence and big data analytics; blockchain; virtual and augmented reality; quantum computing and encryption; robotics; internet-of-things (iot); advanced energy capture, storage and propulsion; and smart materials and smart sensors.

OFFSET OBLIGATIONS

The offset obligations under the TEP were originally triggered when, added together, a series of contracts with a supplier reached a threshold value of USD 10 million. The Guidelines have modified this threshold such that obligations are incurred when a single contract in excess of USD 10 million is entered into (unless the supplier or its parent company already has an active account under the TEP). Subsequent contracts with that supplier which are of lower value will also fall under the TEP.

INVESTMENT OPTIONS

The Guidelines also provide for a greater range of investment vehicle options than previously. Options for suppliers now include investment (whether through a joint venture, non-equity co-production or technology co-development); contractual engagement with local suppliers/manufacturers; and capability development, whereby suppliers provide knowledge, technology and/or capabilities to local entities or UAE nationals.

CREDIT BANKING AND TRANSFERABILITY

As part of the desire of the TEC to increase the ease, convenience and flexibility of the TEP process, the credit aspect of the TEP has been reformed. Suppliers can generate credits in nine different ways (including contribution of cash or tangible and intangible assets; generating income, IP or export revenues in the UAE; and training and development programs); and such credits are subject to a multiplier value if the project is related to the high-end of the value chain, is 'local content' or employs UAE nationals in highly skilled positions. Input and output ratios have been removed, and suppliers are able to 'bank' excess credits generated for a period of five years. These banked credits can be used against future obligations or can be transferred or traded with other entities, including third parties (with the prior approval of the TEP). In the event that a project fails to generate sufficient credits, suppliers can choose between either paying 8.5% of the shortfall value or rolling over the shortfall value into an existing or new project.

CONCLUSION

The changes introduced by the Guidelines greatly expand the scope of the TEP and increase its ease of use and accessibility for suppliers. Although the threshold has been raised, we anticipate that there will be increased TEP activity in the coming years as larger players are attracted by the broader range of eligible sectors, the increased flexibility of investment options, the options to bank or trade credits, and the option to pay shortfalls in credit.

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