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Key Triggers for Applying the Private Sector Participation Law

Background

The Saudi Private Sector Participation Law was issued by virtue of Royal Decree No. M/63 dated 05/08/1442H (the "**PSP Law**") and entered into force one hundred and twenty days following its publication in the Official Gazette on March 26, 2021G.

The PSP Law sets the legislative and regulatory framework governing (i) public-private participation projects ("**PPP Projects**") as well as (ii) divestment projects.

According to Articles (1) and (20) of the PSP Law, PPP projects are defined as any infrastructure or public service contract that results in a relationship where:

- The term of the contract is at least five years.

- The sponsors' obligations include two or more of the following components: asset design, construction, administration, operation, maintenance, or financing assets or services.
- There is a quantitative and qualitative distribution of risks between the parties.
- The financial return due to the sponsors is primarily based on performance assessment against specified criteria.
- Additionally, Article (3) of the PSP Law's Implementing Regulations issued by NCP's Resolution No. (k-9/2021) dated 23/04/1443H (the "**PSP IR**") establishes a minimum threshold for PPP projects of two hundred million (200,000,000) Saudi Riyals.

The value of the project is calculated based on the projected total nominal value for the term of the project as estimated by the contracting authority based on the calculation of the following items separately, with the threshold being satisfied by either of them:

a. CAPEX and OPEX and government-owned assets over which the private sector is granted any rights (including transfer of ownership), if any.
b. Possible financial commitments on the government.
c. The projected financial revenues for the government.

We further note that the contracting authority may combine more than one project of a similar nature to meet the aforementioned threshold.

In case the thresholds are not achieved, and the concerned public entity decides to proceed with the infrastructure or public service project, the applicable laws and regulations governing the procurement of the project (other than the PSP Law) shall apply.

If approval has been issued by a competent authority for an infrastructure or public service project, and the estimated value of that project exceeded the threshold identified by the Council of Ministers, or if the original duration of the contract, or its extension or renewal, is for a period of (5) years or more, in such a case, the Ministry of Finance shall, prior to the commencement of the tender process, or entering into, renewing, or extending the contract as the case may be, refer the project to NCP to conduct a preliminary study on the appropriateness of executing that project through PSP and submit the results of such study - within (60) working days from the date NCP receives the referral - to the Ministry of Finance to take the appropriate action.

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