King & Spalding

Client Alert

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FINANCIAL SERVICES

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The Evolving Face of Finance: Private Credit's Role in the GCC - insights from the $400m Tamara financing and beyond

INTRODUCTION

The successful closing of the up to $400 million debt financing secured by Tamara, led by Goldman Sachs and King & Spalding client Shorooq Partners, was a landmark deal in the evolution of private credit in the GCC region.

This Client Alert aims to provide an overview of this benchmark transaction, its innovative features, particularly in the burgeoning sector of private credit within the GCC, and its broader implications for the market in 2024.

There is now growing optimism about the continued growth of private credit in the GCC, which paves the way for non-bank lenders to enter the market. Such growth also enables borrowers, who may have previously faced challenges in securing financing, to obtain loans.

1. TRANSACTION SUMMARY

The *Shari'ah*-compliant financing arrangement advanced to Tamara comprise:

- an up to $200 million increase in senior debt arranged by Goldman Sachs, culminating in a $350 million senior warehouse facility; and
- a $50 million syndicated mezzanine murabaha tranche advanced by The Nahda Fund, and led by Shorooq Partners.

2. EXPLORING THE INNOVATIVE FEATURES OF THE DEAL: A LEGAL AND A COMMERCIAL PERSPECTIVE

We have noted below a number of key features of the transaction:

Pioneering Market Participation

- **The Nahda Fund**: Represented by King & Spalding, The Nahda Fund hails itself as the first *Shari'ah*-compliant dedicated venture debt fund in the ADGM. The Nahda Fund aims to (a) support and advance the entrepreneurial ecosystem in the MENA region, and (b) bridge existing the liquidity gap in the lending market in the GCC.

  The Nahda Fund represents a new era in credit financing for technology companies, whilst its partnership with IMM Investment Global illustrates the increasing international investor confidence in the region.

- **Tamara's milestone**: Tamara, a leading Saudi fintech platform, achieved unicorn status in December 2023. The financing highlights the importance of strategic financings in nurturing startup growth in the GCC.

- **Goldman Sachs**: Goldman Sachs' involvement in the transaction highlights the participation of sophisticated international market players in regional deals, reflecting a maturing legal and financial ecosystem in the GCC, and thus championing innovation within the GCC legal and finance landscape.

Transformative Investment Dynamics

- **Facilities' size**: The facilities' size, at $400 million, is a notable achievement in the GCC for a startup, signalling an evolving investment landscape as well as a changing appetite for investment in innovative ventures.

- **Reversal of capital flow trends**: The transaction marks a shift in traditional GCC investment patterns, with international capital now flowing into the GCC. Traditionally, funds in the GCC were pooled locally and invested outside the region. The entry of foreign capital presents an exciting and new opportunity, signifying a pivotal shift in the foreign investment landscape and a notable surge in international investor confidence. This shift is the result of several key factors, including the introduction of the insolvency regimes in countries such as the UAE and Saudi Arabia, as well as the continued development of laws concerning the granting and enforcement of security.

- **Rising level of financial sophistication amongst regional founders and start-ups**: The transaction underscores not only the growing need for financing among founders and startups in the GCC but also their increasing sophistication in managing complex financial deals.

Shari'ah-Compliant and Conventional Integration

- **Structuring**: The seamless integration of a *Shari'ah*-compliant murabaha agreement (led by Shorooq Partners) with a conventional loan (led by Goldman Sachs) demonstrates the adaptability of *Shari'ah*-compliant instruments. Such instruments can be drafted and structured to ensure that the investors' ultimate commercial goal is achieved in line with the principals of *Shari'ah*. This is not new - but rather a continuation of an established practice in the Islamic finance sector.

- **Intercreditor arrangements**: The transaction involved intricate intercreditor arrangements. While intercreditor agreements are commonly used in Europe and the UK, they are less frequently utilised in jurisdictions like Saudi Arabia. In our recent experience, the absence of intercreditor arrangements in the region has often complicated restructuring cases. This complexity arises when a financially distressed company has numerous creditors, but there is no established framework governing their mutual relationships. Consequently, in insolvency proceedings, the relevant courts are required to play a more active role than merely enforcing the commercial agreement of the parties. This naturally results in protracted negotiations, lengthy court proceedings, and increased costs.

Therefore, the introduction and adoption of intercreditor arrangements are a positive development for the GCC market.

- **Securitisation of receivables portfolio**: In this financing arrangement, Tamara's receivables portfolio serves as collateral. The typical securitisation model which involves Tamara selling receivables to a special purpose vehicle which then issues notes continues to face issues under Saudi law. The reason being that the sale of receivables other than at par is not deemed *Shari'ah*-compliant. Consequently, in the transaction the essence of securitisation was realised by the financiers taking security over the book of receivables. This was supplemented by implementing a series of cash sweeps and mechanics for controlling accounts.

Private Credit Expansion in the GCC

- **Emergence of new financing solutions**: The transaction signifies a transition from traditional banking-dominated financings to a diversified debt funding landscape in the GCC.
- **Role of debt funds and private credit**: Traditionally, banks dominated financings in the GCC, but a transformative shift has occurred, especially in certain sectors (e.g. fintech and development financings) and with respect to specific types of borrower (e.g. startups and SMEs). Debt funds and alternative finance providers are seeking to bridge the existing liquidity gap, with market players such as The Nahda Fund seeking to deliver a new product line - particularly in areas historically underserved by traditional banking.
- **Empowering startups and fintech**: The transaction showcases the growing importance of private credit in the GCC. By providing tailored financing solutions, debt funds enable startups and fintech companies to access capital that may not be readily available through traditional banking channels.

3. MARKET IMPLICATIONS IN 2024

Transactions such as this will show both local and international market participants that the GCC legal and commercial landscape is evolving at an incredible pace. Market players have greater capability to navigate complex financial structures, combining elements such as *Shari'ah*-compliant and conventional finance, as well as bank and non-bank lending and senior and mezzanine arrangements.

The new insolvency and security laws in Saudi Arabia has significantly enhanced market certainty, facilitating the successful execution of the Tamara financing. Path finder transactions play a crucial role in building market confidence, and the Tamara financing stands as a great example of such a transaction. We expect that the success of the transaction will set a precedent, encouraging similar deals in the market.

Foreign investor confidence in the GCC market will continue to grow, leading to increased foreign investments.

It goes without saying that private credit, as an emerging product line, is not just necessary in the GCC and globally, but also represents a new era of financial solutions and products. Watch this space as it grows.

CONCLUSION

The completion of this landmark $400 million financing marks an important moment for the financial and legal sectors in the GCC.

As a law firm, King & Spalding is committed to promoting the growth of private credit globally – a sector we regard as a key area of focus. Our approach involves a close collaboration with our clients to identify and implement strategic opportunities. By leveraging our extensive international network, particularly in areas such as Europe where private credit is a well-established product, we are able to draw valuable lessons and insights from various jurisdictions. This global outlook, when combined with our deep understanding of the local markets and our extensive history in advising on *Shari'ah*-compliant financing arrangements, enables us to deliver practical solutions to our clients in this evolving sector.

We encourage you to contact us regarding your specific needs, alternative finance, or its broader implications. Please feel free to contact Mike Rainey (mrainey@kslaw.com) and Asal Saghari (asaghari@kslaw.com).