

Islamic Hedging and Liquidity Management Standards

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1) Introduction to IIFM

IIFM Profile



IIFM is a standard-setting organization for the Islamic Financial Services Industry focusing on standardization of Islamic financial contracts and product templates relating to the Capital & Money Market, Corporate Finance and Trade Finance segments of the industry.

IIFM plays its role in market unification by developing best practices at the global level and achieving Shari'ah harmonization through its efforts for creation of a robust, transparent and efficient Islamic finance industry. IIFM also contributes in the development of the industry by organizing a number of industry awareness seminars and workshops.

IIFM was founded in 2002 by the collective efforts of the Islamic Development Bank, Autoriti Monetari Brunei Darussalam, Bank Indonesia, Central Bank of Bahrain, Central Bank of Sudan and the Bank Negara Malaysia (delegated to Labuan Financial Services Authority) as a neutral and non-profit organization. Besides the founding members, IIFM is also supported as member by certain regulatory and government bodies such as State Bank of Pakistan, Dubai International Financial Centre, Indonesia Financial Services Authority, The National Bank of Kazakhstan, and by a number of international and regional financial institutions and other market participants.

IIFM Mandate



In the Islamic Financial Services Industry there are four main standard-setting bodies with clear mandate for each.

- No overlapping in their mandates
- They complement one another through a constructive cooperation and collective action as the basis of the relationship between them. The Institutions are as follows:

	Name of institution	Headquarter/Office	Date of establishment	Mandate
1	AAIOFI: Accounting and Auditing Organization for Islamic Financial Institutions.	Manama Kingdom of Bahrain	26 February, 1990 in Algiers. Then registered on 27 March, 1991 in the Kingdom of Bahrain.	General Shari 'ah rulings & Accounting Standards.
2	IFSB: Islamic Financial Services Board.	Kuala Lumpur Malaysia	Inaugurated officially on 3 rd November 2002 and started operations on 10 th March 2003.	Regulatory and Supervisory aspect of the Islamic Financial Industry.
3	IIFM: International Islamic Financial Market	Manama, Kingdom of Bahrain	Became officially operational on April 1, 2002.	Product and documentation standardization of all financial contracts particularly relating to Islamic Capital & Money Market, Corporate Finance & Trade Finance.
4	CIBAFI: General Council for Islamic Banks And Financial Institution	Manama, Kingdom of Bahrain	Established in 2001.	Representing the Islamic financial services industry globally, defending and protecting its role.

IIFM Published Standards



IIFM Standard 7:

ISDA/IIFM Islamic Cross Currency Swap (Himaayah Min Taqallub As'aar Assarf) Standard Product Template

The ICRCS standard template was published on 26th November 2015 as the second hedging product template under the TMA. With ICRCS the Islamic financial institutions can manage risk in transactions exposed to fluctuations in currencies and rate-of-return mismatches.

The ICRCS standard template also includes a product description for guidance purposes.

IIFM Standard 6:

IIFM Master Collateralized Murabahah Agreement

The MCMA was published on 16th November 2014 and it provides a mechanism for access to liquidity on a collateralized basis (based on the Shariah principle of Ar'rahn) utilizing Sukuk and other Islamic securities portfolio as collateral. It is an important new tool for Islamic financial institutions as they seek to address the increased global regulatory focus on liquidity and collateral.

Collateralized transactions based on Murabahah provide a level playing field to Islamic financial institutions by giving them option to tap funds from central banks in case of liquidity short-fall.

The MCMA is accompanied by an operational guidance memorandum which covers the operational procedures which may be implemented by potential users of the MCMA.

IIFM Published Standards (cont...)



IIFM Standard 5:

IIFM Inter-Bank Unrestricted Master Investment Wakalah Agreement

Published on 3rd June 2013, the inter-bank UMWA has being specifically designed to provide alternate liquidity management product to the Islamic finance industry in order to reduce over reliance on commodity Murabahah based transactions.

The important features of this standard documentation is Wakil's discretion to invest the funds, use of general treasury pool (segregated and un-segregated asset pool), anticipated profit, early termination, replacement of asset, onbalance sheet accounting assessment etc.,

The Unrestricted Wakalah standard includes a detailed operational guidance memorandum on the mechanics of this agreement as well as how it should be applied by the transacting parties. In addition, the operational guidance memo also provides valuable recommendations to be taken into the consideration at the time of entering into unrestricted Wakalah investment transactions.

IIFM Standard 4 and IIFM Standard 3:

ISDA/IIFM Islamic Profit Rate Swap (Mubadalatul Arbaah) Standard Product Templates

In March 2012, in its efforts to accelerate the use of TMA, IIFM and ISDA jointly published the first hedging product template. The IPRS provides the industry access to robust and well developed product documentation under the TMA. It provides protection to Islamic financial institutions balance-sheet from wide swings in fixed and floating profit rates as well as enabling them to manage their cash-flow risk for various Islamic capital market instruments such as Sukuk.

Two sets of IPRS templates (four standard schedules in total) have been published, as follows:

One set of IPRS templates that are Wa'ad based and involve a Two Sales structure

Another set of IPRS template that are Wa'ad based and involve a Single Sale structure

The IPRS standard templates also include a product description for guidance purposes.

IIFM Published Standards (cont...)



IIFM Standard 2:

ISDA/IIFM Tahawwut (Hedging) Master Agreement

In March 2010, the Tahawwut Master Agreement (TMA) was jointly published by IIFM and ISDA and marked the introduction of the first globally standardized documentation for OTC Islamic hedging products. TMA is a framework document that provides a globally standardized early termination and close-out mechanism and other legal and Shariah provisions for privately negotiated and widely accepted Islamic hedging products. The master agreement is designed to facilitate the risk management function of Islamic financial institutions including providing a legal framework. Under the TMA, Islamic hedging products can be transacted.

In order to provide clarity and transparency the TMA also includes an Explanatory Memorandum.

IIFM Standard 1:

IIFM Master Agreements for Treasury Placement

This was the first ever global standard documentation published in Islamic finance for liquidity management purpose. The Master Agreements for Treasury Placement (MATP) comprises of standalone Master Murabahah Agreement and a Master Agency Agreement. The standard documentation involves Commodity Murabahah based on two structures namely: (i) Commodity Murabahah under Agency Agreement, and (ii) Commodity Murabahah based Principle to Principle.

The Agreement was published in 2008 and based on IIFM recent survey MATP is widely used in Islamic inter-bank market particularly involving cross border trades.

IIFM Standards under Finalization



IIFM Standard 8

Islamic Foreign Exchange Forward (IFX Forward)

FX Forward product template is part of TMA and the objective of the FX Forward is to minimize market participants' exposure to currency rate which is volatile and fluctuating. The development work on this standard template is in progress.

IIFM Standard #9

Islamic Foreign Exchange Forward (IFX Two Unilateral Wa'ad)

FX Forward product template is part of TMA and the objective of the FX Forward is to minimize market participants' exposure to currency rate which is volatile and fluctuating. The development work on this standard template is in progress.

IIFM Standards under Development/Consultation



Sukuk Standardization

As per IIFM consultation process the Sukuk standardization project will involve the development of specific guidelines and standard documentation on Ijarah Sukuk.

Risk Participation Agreement

This project is part of IIFM BOD recent strategic decision to expand IIFM scope of work to include corporate finance and trade finance financial contracts standardization. The objective is to standardize risk participation of funded and unfunded transactions.

Credit Support Arrangement (CSA)

CSA is part of Islamic Hedging and will fall under TMA. The purpose of CSA is to manage the risk arising from Islamic hedging transactions of the counterparty by providing collateral & margin maintenance requirements. The project is currently under consultation phase.



2 (b) Hedging in Islamic Finance

Hedging & Islamic Finance



- The consensus is now developing in the Islamic Financial Services Industry on the requirement for risk mitigating/hedging tools, as the institutions operating on Shari'ah principles can no longer afford to leave their positions un-hedged
- ➤ Hence, we are now seeing some key hedging products becoming common across Islamic jurisdictions

Tahawwut Master Agreement Significance



- ➤TMA key benefits
 - Global Islamic Close-out Mechanism
 - Multi Hedging Products
 - Close-out Netting and Legal Opinions
- ➤ Most used contract & principle in structuring of Islamic Risk mitigation Products
 - Murabahah
 - □Wa'ad

Islamic Hedging

Structuring Alternatives



Murabahah

- Treatment is defined based on use of Murabahah under the institution's product structure
- No discounting and claim for full amount
- Fully delivered terminated transactions treatment (Murabahah)
- Non-fully delivered terminated transactions treatment (DFT)

Wa'ad

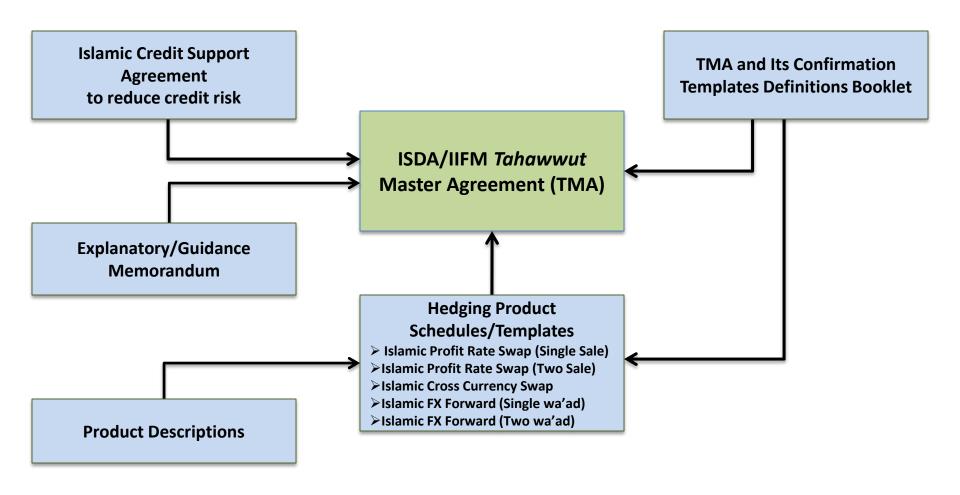
- Both parties will exchange Wa'ad at the time of entering into the transactions e.g. Profit Rate Swap
- Only one Wa'ad is exercisable
- In case of two Wa'ad, the Wa'ad are unilateral and totally separate/independent



3(a) Islamic Hedging Framework

Tahawwut Master Agreement Documentation Architecture





Tahawwut Master Agreement



Architecture

- Multiproduct Agreement
- Not specific to types of parties or regions

The Risk Management Approach And Value Of The Master Agreement



- Framework agreement covering all trades between the parties
- Incorporates the three pillars designed to ensure that in the event of a default or termination the exposures of the parties under all outstanding transactions are aggregated and netted, in particular in order to stop an insolvency practitioner from cherry picking, that is enforcing profitable ("in the money") transactions entered into under the Agreement and leaving unprofitable ("out of the money") transactions as claims in the insolvency.
 - Single Agreement
 - Flawed Asset and Conditionality
 - Close-Out and Netting

Transactions/DFT Terms Agreements



- Under the Agreement, you can enter into
 - Transactions
 - DFT Terms Agreements
- Example: agreement to enter into Murabahah annually over five years
 - First Murabahah entered into immediately Transaction
 - The agreement to enter into those Murabahah to be entered into on the first, second, third and fourth anniversaries is a DFT Terms Agreement

Section 1(c) - Single agreement



- Master Agreement, the Schedule and all confirmations together form one single agreement between the parties. The result is that there is a contractual interdependence between what might otherwise seem to be independent transactions
- Because the transactions under the Master Agreement collectively constitute one agreement, all transactions have to be dealt with and individual transactions cannot be cherry picked
- However, not every jurisdiction accepts this concept so legal position needs to be checked

Section 2(a)(iii) – Flawed Asset or Conditionality Provision



- A party has no obligation to make any payments or deliveries under a particular transaction when there is an Event of Default or Potential Event of Default with respect to the other party
- Liquidator attempting to cherry pick profitable contracts will be met by the response that the Non-defaulting Party has no obligation to perform the profitable contract as the Agreement expressly provides that no monies are due to the Defaulting Party in the circumstances
- In the ISDA/IIFM Tahawwut Master Agreement this condition applies to all obligations to pay, all obligations to deliver assets and all obligations to enter into Transactions in accordance with the requirements of DFT Terms Agreements

Section 3 - Representations



New Representations

■Satisfaction as to compliance with Shari'ah – Section 3(h)

Each party represents it has satisfied itself as to the Shari'ah-compliance of the Agreement, each Transaction, each DFT Terms Agreement (and each Designated Future Transaction under it)

Note: "Insofar as it wishes or is required for any reason to enter"

■Non-reliance – Section 3(i)

Each Party represents that it has not relied on the other party or on any documents (*including a pronouncement/fatwa*) prepared by or on behalf of the other party for the purposes of determining whether the Agreement, each Transaction, each DFT Terms Agreement (*and each Designated Future transactions under it*) is Shari'ah-compliant

Section 5 – Events of Default and Termination Events



- New Event of Default section 5(a)(ii)(3) of the Agreement
 - Failure to enter into a Designated Future transaction, if such failure is not remedied on or before the first Local Business Day after notice of such failure is given to the relevant party, constitutes an Event of Default
- Cross Default
 - Cross default revised so that default under either an Islamic financing or a conventional financing can trigger an Event of Default
- Note in connection with Section 5(b)(i) Illegality that definition of "law" does not include principles of Shari'ah, hence "unlawful" means contrary to a secular law as opposed to contrary to Shari'ah

Section 13 – Governing Law and Dispute Resolution



- No reference to Shari'ah in the governing law clause
- Parties may elect either English law or the laws of the State of New York as the governing law of the Agreement and each Transaction and Designated Future transaction made thereunder
- Both parties at the outset have the flexibility to elect whether dispute resolution should take place through the courts or through arbitration

Section 6 - Early Termination — Terminated Transactions Procedure



- Fully Delivered Terminated Transactions:
 - (section 6(d)): accelerate all payments due after the Early Termination Date (Close-out Amount)
 - (Section 6(e)): add unpaid amounts
- Non-Fully Delivered Terminated Transactions:
 - (section 6(e)): add unpaid amounts to Fully Delivered Transactions amount
 - (section 6(f)): treat not made deliveries and future payments like a DFT Terms Agreement
- Payable on day on which notice of amount payable is effective if Event of Default or 2 Local Business days after notice if Termination Event

Section 6 - Early Termination - DFT Terms Agreements



- For terminated DFT Terms Agreements, calculate the cost of replacement hedges (section 6(h))
- Do the same for not made deliveries and future payments under Non-Fully Delivered Terminated Transactions
- Result may be positive or negative
 - positive where a cost
 - negative where a gain
- Becomes value of Relevant Index
- Index Amount means, with respect to each DFT Terms Agreement or each group of DFT Terms Agreements, the amount of the losses or costs that would be incurred or gains that would be realised in replacing, the material terms of that DFT Terms Agreement or group of DFT Terms Agreements
- Note: no additional "compensation", only the cost or gain of replacement hedges

Section 6 - Early Termination - Musawama



- Section 6(f)(v): if Relevant Index is positive (replacement hedges will be a cost for the Determining Party), Determining Party can exercise the section 2(e) wa'ad of counterparty requiring counterparty to enter into musawama and purchase asset from Determining Party at the Positive Indexed Value
- Section 6(f)(v): if Relevant Index is negative (replacement hedges will be a gain for the Determining Party) other party can exercise the section 2(e) wa'ad of the Determining Party requiring the Determining Party to purchase asset from the other party at the Negative Indexed Value
- Need for real transaction with real assets
- Supported by set off (section6(h))
- The *musawama* price is expressed as a single number (actually calculated by adding cost of asset to Relevant Index Value plus applicable VAT or similar taxes)
- The type and quantity of the asset to be the subject of the *musawama* will be fixed and specified in the Schedule at the outset (minimises *gharar*)

Section 6 - Early Termination – *Musawama* continued



- The party exercising the wa'ad following an Event of Default may be the Defaulting Party if the Non-Defaulting Party calculates the Relevant Index as being negative (i.e. the Non-Defaulting Party would make a gain on replacement). Recognising that the Defaulting Party may be insolvent and unable to act swiftly, the TMA allows the party with the right to exercise this wa'ad up to one year in which to exercise the wa'ad.
- Where a party fails or is unwilling to comply with its obligation to purchase the Designated Assets, the party who exercised the wa'ad is discharged from its obligation to deliver the Designated Assets and is entitled, by way of <u>liquidated damages</u>, to payment of an amount equal to the value of the Relevant Index.
- A party will be deemed unwilling to comply with its obligation to purchase the Designated Assets if within one Local Delivery Day it does not give written notice to the party who exercised the wa'ad that it will purchase the Designated Assets on the date specified in the exercise notice.

Explanatory Memorandum



- Guidelines regarding the sorts of transaction that may be entered into under the ISDA/IIFM Tahawwut Master Agreement. For the purposes of Shari'ah compliance:
 - Transactions entered into under the ISDA/IIFM Tahawwut Master Agreement should only be for the purpose of hedging actual risks of the relevant party
 - Transactions should not be entered into under the ISDA/IIFM Tahawwut Master
 Agreement which are for the purposes of speculation
 - Transactions must be real transactions, involving the actual transfer of ownership of real assets, actual risk and real settlement
 - The asset itself must be halal
 - Interest must not be chargeable under the transaction



3(b) Islamic Hedging Products

Islamic Profit Rate Swap (Mubadalatul Arbaah)



In its efforts to accelerate the use of the Tahawwut Master Agreement, IIFM in association with ISDA published the first standard product template, the Islamic Profit Rate Swap (IPRS), or Mubadalatul Arbaah.

The IPRS provides the industry access to robust and well developed product documentation under the master agreement. It provides protection to the Islamic financial institution's balance-sheet from wide swings in fixed and floating profit rates and enables them to manage their cash-flow risk for various Islamic capital market instruments such as Sukuk. When dealing with the IPRS mechanism, two important points should be noted:

- Murabahah is used in this transaction to generate a fixed and floating payments (this includes: cost price and fixed or floating profits).
- It is structured on a Wa'ad basis where each of the contracting parties undertake the swapping of fixed and floating profit payments at a particular time and date in the future.

Normally a series of reverse Murabahah is used in this transaction to generate profit payments.

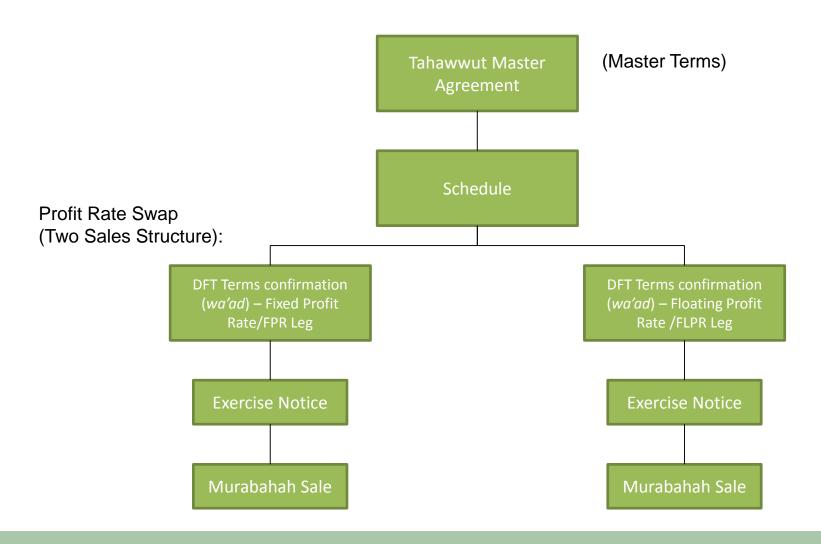
PRS Templates - Process



- Schedule
- Fixed Rate Leg DFT Terms confirmation (Wa'ad)
- Floating Rate Leg DFT Terms confirmation (Wa'ad)
- Exercise leads to
 - » entry into Murahabah (Transaction Confirmation)
 - » delivery of asset
 - » payment (deferred or spot basis)

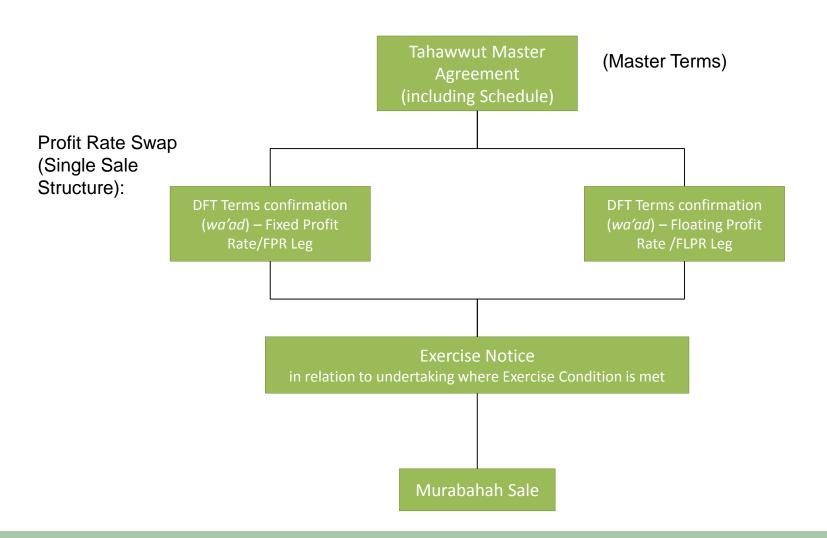
Two Sales Structure documentation architecture





Single Sale Structure documentation architecture







Islamic Cross Currency Swap (ICRCS) Product Purpose

An ICRCS enables parties to hedge currency risk and the profit rate risk associated with a given currency. For example, where a party has an investment in one jurisdiction in relation to which it has obtained funding denominated in the currency of that jurisdiction (for example where the party has issued Sukuk in the relevant currency and it will have to make regular payments in that currency with respect to the Sukuk), but the party accounts in the currency of its home jurisdiction, the ICRCS provides it with the potential to hedge its foreign currency requirements into the currency of its home jurisdiction.

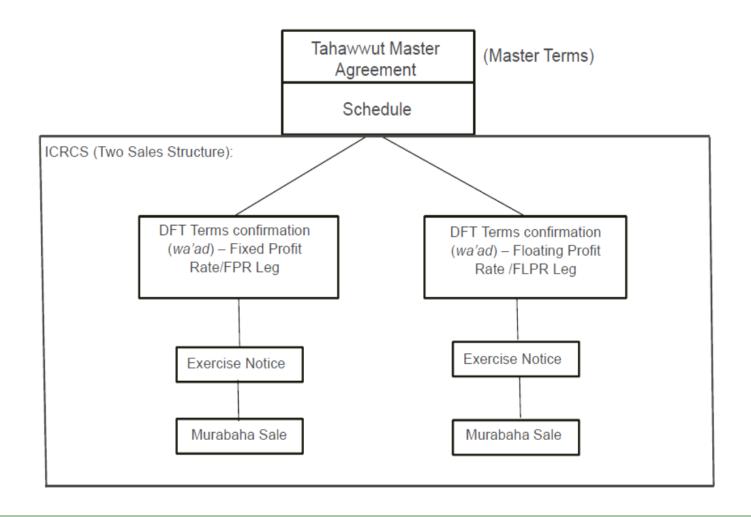


Islamic Cross Currency Swap (ICRCS) Two Sales Structure

The ICRCS assumes a Two Sales Structure ICRCS. For each Calculation Period in relation to the ICRCS, the two Wa'ads set out in the DFT Terms confirmations for the First Leg and for the Second Leg, respectively, will be exercisable and exercised against the undertaking party (i.e. the Buyer) by the exercising party (the Seller). Therefore, two Murabahah Sales will be entered into between the parties; one in relation to the First Leg and one in relation to the Second Leg. Accordingly, there will be two asset-flows and two cash-flows (in two different currencies) between the parties in relation to each Calculation Period for the ICRCS.

ICRCS Two Sales Structure documentation architecture





ICRCS – Use of Wa'ad leading to Murabahah Sale



The ICRCS templates use a Wa'ad (or undertaking) structure, as is now increasingly common in Islamic finance transactions.

A Wa'ad is an undertaking or promise made by one party (the Buyer of assets) to the other party (the Seller of assets) that, if required by the Seller (usually called exercise of the undertaking or Wa'ad), the Buyer will fulfil its promise, in this case, to enter into a Murabahah (or sale and purchase) contract under which it will buy from the Seller an agreed quantity of agreed Shari'ah compliant assets at an agreed price (which may be determined by applying an agreed formula for calculating a price) on the relevant exercise date.

If and when the Buyer's Wa'ad (or undertaking) is exercised by the Seller on an Exercise Date, the Buyer is required to purchase specified assets under a Murabahah contract with the Seller and execute a **Murabahah Asset Sale Confirmation**. A Murabahah Sale entered into between the parties constitutes a Transaction under the TMA.



Agency/brokerage

The template DFT Terms confirmations anticipate that the parties may wish to appoint an agent or broker to deliver, buy, sell or receive delivery of assets on its behalf. In these cases, the views of Shari'ah advisers should be sought to ensure that the use of the agent/broker and the relevant agency/brokerage procedures in the context of the particular ICRCS transaction do not fall foul of restrictions such as the prohibition on Bai Al Inah.

Execution as a Deed

The usual practice in the Islamic finance market is that a Wa'ad (or undertaking) is evidenced or confirmed using a deed and, therefore, the DFT Terms confirmations provide for the Buyer to enter into a DFT Terms Agreement as a deed. The parties will need to satisfy themselves as to the correct form of words to be used in the place designated for signature by the Buyer to ensure that the DFT Terms Agreement is properly executed as a deed.



Islamic Foreign Exchange Forward (IFX)

Islamic FX Definition

Islamic Foreign Exchange (IFX) is a contract that is designed as a hedging mechanism to minimize market participants' exposure to market currency exchange rates which is volatile and fluctuating.

IFX Forward Structures

There are two structures which are commonly used in the market for Shari'ah compliant IFX hedging arrangements namely:

- Single binding Wa 'ad based structure
- Two unilateral Wa'ad based structure

It is worth noting that the single binding Wa'ad and the two unilateral Wa'ad based structures are the most preferred in terms of consensus amongst Shari'ah scholars as well as market participants.

Forward IFX essentially involves two dissimilar currencies. According to Islamic Law the exchange of two dissimilar currencies / counter values must be spot or simultaneous (i.e. hand to hand) as it is considered to be interest based items (i.e. Ribawi).

In the IFX Forward transaction as it is being practice in the current IFX market, the rate of exchange will be locked in the day of the contract (i.e. today) but the delivery of the two dissimilar currencies will be deferred to a future date. It is important to point out here, in this regard, that Shari'ah does not prohibit a promise to buy and sell currencies on one date with delivery to be made on another date because the proper contract only concludes on the day of delivery.



Islamic Foreign Exchange Forward (IFX)

Under the single binding Wa'ad structure a binding promise will be applied whereby the party who promised to buy or sell, as the case may be, is obliged to fulfill that promise.

For clarification, according to Shari'ah, a binding promise from only one party is not deemed as a contract. Thus, this can make the process of the Islamic FX contracts as they are currently being applied in market acceptable from Shari'ah perspective.

Under the two unilateral Wa'ad structure, each party to the agreement unilaterally will give an independent promise (undertaking) to exchange currencies against another currency, as the case may be, on a future date at a specified amount. Each promise will contain a different set of conditions such that only one of the promises can be exercised on the settlement date with no further obligations arising under the other promise.



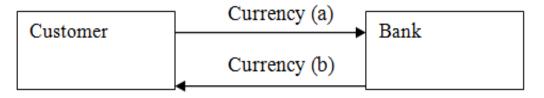


Promises to purchase currency (b) for currency (a) at a predetermined rate

Bank

Bank

2. Sale of currencies (bay` al-sarf) at the settlement date



Two Unilateral *Wa'ad* Based Structure



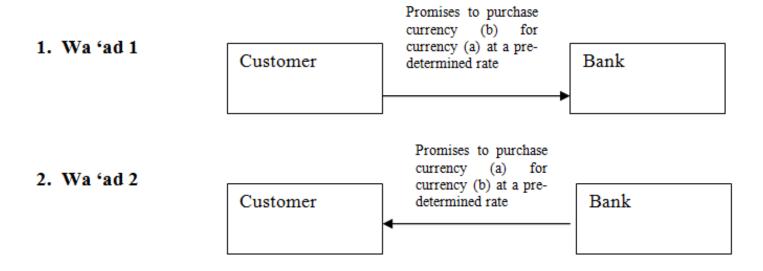
The main difference between the binding single *Wa'ad* based structure and the two unilateral *Wa'ad* based structure is that under the two unilateral Wa 'ad based structure, each party to the agreement unilaterally gives <u>an independent promise</u> (undertaking) to exchange currencies against another currency on a future date at a specified amount. Each promise will contain a different set of conditions such that only one of the promises can be exercised on the settlement date with no further obligations arising under the other promise. To elaborate further on this structure:

Where Customer has surplus funds denominated in currency (a) (being USD) and wishes to invest/hedge in currency (b) (being Euro), each of the Customer and the Bank will provide a unilateral undertaking. The customer will undertake to purchase from Bank currency (b) for currency (a) for settlement on the Purchase Date if the USD/EUR exchange rate is is equal to below a predetermined rate. The bank will undertake to purchase from Customer currency (a) for currency (b) for settlement on the Purchase Date if the USD/EUR exchange rate is above a pre-determined rate. These will be documented as two separate and distinct unilateral undertakings with different conditions such that only one of the undertakings can be exercised at any one time. On the Purchase Date, the Party that is in the money will exercise the relevant *Wa ád*.

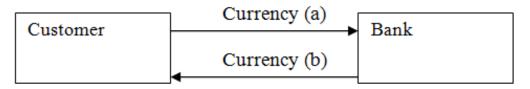
Other terms such as Trade Date, Effective Date, Purchase Date, Strike Rate, Spot Rate, Currency and Amounts will remain consistent between the two promises

Shari'ah-Compliant Two Unilateral FX Based Wa'ad Transaction





3. Sale of currencies (bay' al-sarf) at the settlement date





Finally, as indicated above, the documentation architecture is to cater for both the binding single *Wa'ad* and the two unilateral *Wa'ad* structures.

For the binding single *Wa'ad* structure, <u>only one DFT Terms Agreement/ Confirmation</u> containing the relevant undertaking would be executed.

For the two unilateral Wa'ad structure, two DFT Terms Agreements/ Confirmations (each containing a separate unilateral undertaking from the relevant party) would be executed.

Other Hedging Standards Under Consultation



Credit Support Arrangement (CSA)

CSA is one of the key documentations for risk management where counter-parties transactional risk is managed through collateral and margin maintenance mechanism under the already published Tahawwut Master Agreement for Islamic hedging transactions. There is a growing requirement for CSA in the GCC, Europe, Far East regions

Other FX Products (Maybe Considered)



Shukran Wassalamu 'Alaikum