



السوق المالية
الإسلامية الدولية
International Islamic
Financial Market

**FINAL STRUCTURE MEMORANDUM - MASTER
AGREEMENT FOR TREASURY PLACEMENT
DATED 23 JUNE 2008**

This Structure Memorandum is designed primarily to give an indication of some of the key concepts that are intended to apply in respect of the proposed treasury commodity murabaha financing structures. It is not designed to describe all of the features of the transaction and is subject to further discussion on the proposed cash flows and the Shari'ah compliant nature of the proposed structures.

This Structure Memorandum has been approved by IIFM Shari'ah on [6th] September 2007.

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1. OVERVIEW OF THE STRUCTURE PAPER - GENERAL DESCRIPTION

This structure memorandum details the two proposed structures for the development of a master agreement for a Shari'ah compliant deposit placement. The two structures that will be examined in further detail are as follows:

- 1.1 The deposit taking entity acts as buying agent (either disclosed or undisclosed) of the deposit placing entity; and
- 1.2 The deposit taking entity and the deposit placing entity act as principals with no agency relationship.

Each structure will be examined from the perspective of cash flow and commodity flow (together with title flow) as well as an examination of the additional parties involved and the documentation that will be required.

2. STRUCTURE I

Deposit taking entity acts as buying agent (disclosed or undisclosed) of the deposit placing entity.

2.1 Parties

Deposit Taker/Deposit Taking Entity	The bank or financial institution accepting the deposit (or, in other words, the bank or financial institution acting on behalf of the Deposit Placing Entity for (i) purchasing the Commodities from the Supplier; (ii) purchasing the Commodities on a deferred payment basis; and (iii) selling, at a later date and when desired, the Commodities to a third party ¹)
Deposit Placer/Deposit Placing Entity	The entity/individual placing the deposit (or, in other words, the entity/individual appointing the Deposit Taker for (i) purchasing the Commodities; and (ii) selling the Commodities on deferred payment terms to a third party ²)
The Agent	The Deposit Taking Entity, as appointed by the Deposit Placing Entity.
Supplier	The supplier which sells the Commodity to the Deposit Taking Entity as Agent
Purchaser	The purchaser (other than the Deposit Placing Entity or the Supplier) which buys the Commodity from the Deposit Taking Entity

2.2 Structure³

The Deposit Placing Entity will appoint the Deposit Taking Entity as its (disclosed or undisclosed) buying agent. The Agent will purchase shari'a compliant commodities (the “**Commodities**”) from the Supplier on behalf of the Deposit Placer (the “**Purchase**”).

This purchase will be effected by spot payment by the Deposit Taker (acting on behalf of the Deposit Placer) and immediate delivery of the Commodity by the Supplier. The Agent will only be obliged to purchase the Commodities from the Supplier once it has been put in clear funds by the Deposit Placing Entity for an amount equal to the purchase price. Following conclusion of the Purchase, the Agent will hold legal title to the

¹ At the request of Shari'ah the documentation for the Second Sale (as defined below) will make it clear that the Deposit Taking Entity may sell the commodity to any party *other than* the Deposit Placing Entity or the Supplier.

² At the request of Shari'ah the documentation for the First Sale (as defined below) will not oblige the Deposit Placer to sell the commodity to the Deposit Taker but rather the Deposit Placer may elect to effect the First Sale with the Deposit Taker.

³ This structure currently envisages that the purchase of the commodities will be OTC.

Commodity on behalf of the Deposit Placing Entity. The Agent will take possession of the Commodity (either actual or constructive) on behalf of the Deposit Placing Entity.

Once the Agent holds legal title to the Commodity on behalf of the Deposit Placer, the Deposit Taker (in its corporate/personal capacity and not in its capacity as Agent) may offer to purchase the Commodity from the Deposit Placing Entity and upon the Deposit Placing Entity accepting such offer, a sale shall be effected (the “**First Sale**”). Title will move from the Agent to the Deposit Taker. The First Sale will be effected immediately without the need for actual delivery by the Deposit Placer. The quantum of the deferred payment for the First Sale will be the aggregate of (i) the purchase price paid under the Purchase; and (ii) a profit amount (the “**Profit**”). The Profit will be dependant upon the period for which the payment is deferred and will be agreed between the Deposit Taking Entity and the Deposit Placing Entity prior to the First Sale.⁴

Once the First Sale is concluded and the Deposit Taker becomes the owner of the Commodity which is in its possession (either actual or constructive) it will be entitled to sell the Commodity to the Purchaser (a third party other than the Deposit Placing Entity or the Supplier) for immediate delivery and spot payment (the “**Second Sale**”). The purchase price for the Second Sale will be as agreed between the parties to that sale⁵.

To mitigate commodity settlement risk, the Deposit Taking Entity (both in its capacities as principal and agent) and the Purchaser will be required to have a commodity account with the Supplier. Delivery of the Commodities under each of the Purchase, the First Sale and the Second Sale will be effected by the commodity account of the relevant seller being debited and the commodity account of the relevant purchaser being credited.

To mitigate cash settlement risk under each of the Purchase and the Second Sale, the purchase price payable by the Deposit Taking Entity (as Agent) to the Supplier under the Purchase may be 'settled' against the purchase price payable by the Purchaser to the Deposit Taking Entity under the Second Sale.⁶

2.3 Documentation

Master Agreement	Between Deposit Taker and Deposit Placer. This will include all the necessary covenants, representations, events of default and boiler plate clauses.
Terms of agency appointment (to be appended as schedule to	Between Deposit Placer as principal and Deposit Taker as Agent

⁴ It has been assumed that any brokerage/commodity fees will be built into the pricing to be agreed between the parties.

⁵ At the request of Shari'ah the purchase price for the Second Sale cannot be agreed before the First Sale. In practical terms however this will be equal to the purchase price paid for the Purchase.

⁶ The 'settlement' may occur using the principle of *hawala* and may be effected by the use of standing instructions given by both the Supplier and the Purchaser to the Deposit Taking Entity.

Master Agreement)

Terms of First Sale (to be appended as schedule to the Master Agreement) Between Deposit Placer and Deposit Taker

Terms of Purchase (to be documented outside of the Master Agreement) Between Deposit Taker (as undisclosed/disclosed buying Agent) and Supplier

Terms of Second Sale (to be documented outside of the Master Agreement) Between Deposit Taker and Purchaser

Standing Instructions (to be documented outside of the Master Agreement) Between Deposit Taker (as Agent), Supplier, Deposit Taker (as principal) and Purchaser (as applicable).

3. STRUCTURE II⁷

Deposit placing entity and the deposit taking entity act as principals.

4. PARTIES

Deposit Taker/Deposit Taking Entity The bank or financial institution accepting the deposit (or, in other words, the bank or financial institution purchasing the Commodities on deferred payment terms from the Deposit Placing Entity)

Deposit Placer/Deposit Placing Entity The entity/individual placing the deposit (or, in other words, the bank or financial institution selling the Commodities on deferred payment terms to the Deposit Taking Entity)

Supplier The supplier which sells the commodity to the Deposit Placing Entity

Purchaser The purchaser (other than the Deposit Placing Entity or the Supplier) which buys the commodity from the Deposit Taking Entity

4.1 Structure

The Deposit Placing Entity will purchase shari'a compliant commodities (the "Commodities") from the Supplier for immediate delivery and spot payment (the "Purchase").

Once the Deposit Placing Entity holds legal title of the Commodities along with possession (either actual or constructive), the Deposit Placing Entity may offer to sell the same Commodities to the Deposit Taking Entity for immediate delivery and deferred payment and upon the Deposit Taking Entity accepting such an offer, a sale shall be effected (the "First Sale"). Legal title to the Commodities will pass to the Deposit Taking Entity along with possession (either actual or constructive). The quantum of the deferred payment for the First Sale will be the aggregate of (i) the purchase price paid under the Purchase; and (ii) a profit amount (the "Profit"). The Profit will depend on the period for which the payment is deferred and will be agreed between the Deposit Placing Entity and the Deposit Placing Entity.⁸

Once the Deposit Taking Entity holds legal title of the Commodities along with possession (either actual or constructive), the Deposit Taking Entity may offer to sell the same Commodities to the Purchaser (a third party other than the Deposit Placing Entity or the Supplier) for immediate delivery and spot payment and upon the Purchaser accepting such an offer, a sale shall be effected (the "Second Sale"). The purchase price

⁷ This structure currently envisages that the purchase of the Commodities will be OTC.

⁸ This assumes that any brokerage/commodity fees for the Purchase and the Second Sale will be built into the pricing to be agreed between the parties.

under the Second Sale will be as agreed between the parties.⁹ Legal title will pass from the Deposit Placing Entity to the Purchaser along with possession (either actual or constructive).

To mitigate commodity settlement risk, each of the Deposit Placing Entity, Deposit Taking Entity and the Purchaser will be required to have a commodity account with the Supplier. Delivery of the Commodities under each of the Purchase, First Sale and Second Sale will be effected by the commodity account of the relevant seller being debited and the commodity account of the relevant buyer being credited.

To mitigate cash settlement risk under each of the Purchase and Second Sale, the purchase price payable by the Deposit Placing Entity to the Supplier under the Purchase may be 'settled' against the purchase price payable by the Purchaser to the Deposit Taking Entity under the Second Sale¹⁰.

4.2 Documentation

Master Agreement Between Deposit Taker and Deposit Placer. This will include all the necessary covenants, representations, events of default and boiler plate clauses

Terms of Purchase (to be documented outside of the proposed Master Agreement) Between the Supplier and Deposit Placer

Terms of First Sale (to be documented outside of the Master Agreement) Between Deposit Taker and the Deposit Taker

Terms of Second Sale (to be documented outside of the Master Agreement) Between Deposit Taker and the Purchaser

Standing Instructions (to be documented outside of the Master Agreement) Between Deposit Taker, Deposit Placer, the Supplier and the Purchaser

5. KEY DOCUMENTATION

Each of the following documents will be prepared by Clifford Chance:

⁹ At the request of Shari'ah the purchase price for the Second Sale cannot be agreed in advance. In practical terms however this will be equal to the purchase price paid for the Purchase.

¹⁰ The 'settlement' may occur using the principle of *hawala* and may be effected by the use of standing instructions given by both the Supplier and the Purchaser to the Deposit Taking Entity.

5.1 **Master Agreement**

There will only be one Master Agreement. The main body of the Master Agreement will include the definitions, representation and warranties, covenants, events of default, governing law and jurisdictions clauses as well as the First Sale for each of Structures I and II.

The mechanical steps for the agency appointment for Structure I will be documented separately to the Master Agreement.

5.2 **Standing Instructions**

As each of the Supplier and the Purchaser will need to be a party to the settlement arrangements, these will have to be documented outside of the Master Agreement in the form of standing instructions.

5.3 **Terms of Purchase**

As the Supplier will be a party to the memorandum of understanding for the Purchase, this will have to be documented outside the Master Agreement. The form of the memorandum of understanding may be appended to the Master Agreement and its execution may be made a condition precedent to any trade under the Master Agreement.

5.4 **Terms of Second Sale**

As the Purchaser will be a party to the memorandum of understanding for the Second Sale, this will have to be documented outside the Master Agreement. The form of the memorandum of understanding may be appended to the Master Agreement and its execution may be made a condition precedent to any trade under the Master Agreement.