

ISDA and IIFM publish Master Terms and Conditions for Islamic Foreign Exchange Forwards (*Wiqayah Min Taqallub As'aar Assarf*)

Client Alert

Introduction

On 6 June 2016 the International Swaps and Derivatives Association (ISDA) and the International Islamic Financial Market (IIFM) published template documentation for Islamic Foreign Exchange Forwards (*Wiqayah Min Taqallub As'aar Assarf*) (“IFX”). The template documentation comprises:

- > a set of Master Terms and Conditions for IFX using two unilateral and independent undertakings (*Wa'ad*) (the “**Two Wa'ad Structure**”); and
- > a set of Master Terms and Conditions for IFX using a single unilateral undertaking (*Wa'ad*) (the “**Single Wa'ad Structure**”).

Document Architecture

Each set of IFX Master Terms and Conditions is designed for use with the ISDA/IIFM *Tahawwut* Master Agreement (the “**TMA**”). Parties wishing to document an IFX transaction under the TMA will need to prepare a single undertaking (in the case of the Single *Wa'ad* Structure) or two undertakings (in the case of the Two *Wa'ad* Structure) which reference the relevant set of IFX Master Terms and Conditions. The form of the undertaking is annexed to the relevant set of IFX Master Terms and Conditions and provides for one party (the Buyer) to undertake to the other (the Seller) to enter into a transaction to purchase a specified amount of one currency and deliver a specified amount of another currency on a specified future date if the Seller exercises its rights under the undertaking.

Once each relevant undertaking has been executed the IFX Master Terms and Conditions, as supplemented by the relevant undertaking(s), constitutes a “DFT Terms confirmation” for the purposes of the TMA. The transaction documentation will therefore comprise:

- > the relevant undertaking(s);
- > the relevant IFX Master Terms and Conditions; and
- > the TMA.

If the Seller wishes to exercise its right under the relevant undertaking, an exercise notice and an offer and acceptance will also need to be prepared.

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Two *Wa'ad* Structure

The Two *Wa'ad* Structure envisages that each party gives a *Wa'ad* (or undertaking) to the other party. Under each *Wa'ad* one party (the Buyer) undertakes to the other party (the Seller) that if the relevant condition (the Exercise Condition) is satisfied and the Seller exercises its rights under the *Wa'ad* by delivering to the Buyer a notice (an Exercise Notice) on a specified date (the Exercise Date), the Buyer will purchase from the Seller a specified amount of one currency (the First Currency) and pay to the Seller a specified amount of another currency (the Second Currency).

Each *Wa'ad* will only be capable of being exercised by the Seller if the relevant Exercise Condition is satisfied. It is important to note that the Exercise Conditions differ between the two undertakings and have been drafted in such a way that if the Exercise Condition under one *Wa'ad* is satisfied then the Exercise Condition under the other *Wa'ad* will not be satisfied. The Exercise Conditions in the *Wa'ad* are therefore mutually exclusive such that only one *Wa'ad* can be exercised on the relevant Exercise Date. The Exercise Condition in respect of the first *Wa'ad* is satisfied if the currency exchange rate for foreign exchange transactions in the First Currency and the Second Currency for value on the Exercise Date (expressed as an amount of the Second Currency per one unit of the First Currency) (the Spot Rate) on the Exercise Date is **less than or equal to** the currency exchange rate specified in the *Wa'ad* as the Forward Rate (the Forward Rate). The Exercise Condition in respect of the second *Wa'ad* is satisfied if the Forward Rate is **greater than** the Spot Rate on the Exercise Date.

Single *Wa'ad* Structure

The Single *Wa'ad* Structure envisages that one party (the Buyer) gives a *Wa'ad* (or undertaking) to the other party (the Seller). Under the *Wa'ad* the Buyer undertakes to the Seller that if the Seller exercises its rights under the *Wa'ad* by delivering to the Buyer a notice (an Exercise Notice) on or prior to a specified date (the Exercise Date), the Buyer will purchase from the Seller a specified amount of one currency (the First Currency) and pay to the Seller a specified amount of another currency (the Second Currency).

Sale Transaction

If the Seller wishes to exercise its rights under the relevant *Wa'ad*, at the same time it sends to the Buyer the Exercise Notice it also needs to send two copies of an offer and acceptance (the Offer and Acceptance) duly completed and executed by the Seller. The Offer and Acceptance constitutes an offer by the Seller to the Buyer to enter into the sale of the specified amount of the First Currency to the Buyer in exchange for payment by the Buyer of the specified amount of the Second Currency. Under the relevant IFX Master Terms and Conditions the Buyer is obliged to accept such offer. The sale transaction is then completed by the Seller transferring to the Buyer the specified amount of the First Currency, and the Buyer transferring to the Seller the specified amount of the Second Currency, in each case on the settlement date.

Shari'ah compliance

While IIFM's *Shari'ah* Board has approved the IFX templates after extensive consideration, it is always the responsibility of each party to ensure that, to the extent that *Shari'ah* compliance is relevant to its dealings and corporate governance, it has satisfied its own *Shari'ah* advisers that the relevant transaction is *Shari'ah* compliant and that the documents are suitable for, and are being used appropriately in, the context of that particular transaction.

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