



**C L I F F O R D
C H A N C E**

IIFM DOCUMENTATION AND PRODUCT STANDARDS

AN OVERVIEW

IIFM PRE-CONFERENCE DAY SEMINAR AT WIBC 2017
4TH DECEMBER 2017, BAHRAIN



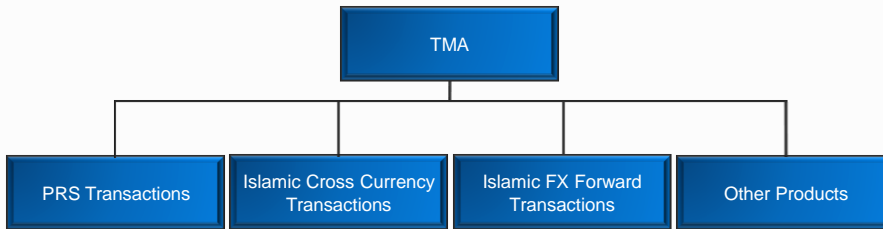
THE ISDA/IIFM TAHAWWUT MASTER AGREEMENT

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ISDA/IIFM TAHAWWUT MASTER AGREEMENT

Architecture

- Framework Agreement
- Multiproduct Single Agreement with close-out and netting
- Products under the TMA can be collateralised through cash variation margin through the use of the new Islamic Credit Support Deed for Cash Collateral



TRANSACTIONS/DFT TERMS AGREEMENTS

Under the Agreement, you can enter into:

- Transactions
- DFT Terms Agreements

CLOSE-OUT AND NETTING - SECTION 6 - EARLY TERMINATION

Murabaha with asset delivered and unpaid purchase price:

- (section 6(d)): accelerate the deferred purchase price payments and aggregate them (Close-out Amount)
- (Section 6(e)): add unpaid amounts

Everything Else:

- Calculate Market Quotation (or Loss) (section 6(h))
- Result may be positive or negative, becomes an index amount: the amount of 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
- Aggregate to give value of Relevant Index

SECTION 6 - EARLY TERMINATION - MUSAWAMA

- Section 6(f)(v): if Relevant Index is positive (Determining Party is in the money), 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 (Determining Party is out of the money) 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 (section 6(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)

THE ISDA/IIFM 2017 CREDIT SUPPORT DEED FOR CASH COLLATERAL (VM)

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ISDA/IIFM CREDIT SUPPORT DEED INTRODUCTION

- Published on 30 March 2017 in response to market demand for collateral document for use with TMA
- Allows parties to post cash collateral as variation margin on net exposures under trades that are designated as “Covered Items”
- Security interest (not title transfer) is created over Posted Cash Collateral: for Shari’ah reasons and lack of robust netting in some counterparty jurisdictions
- Eligible collateral is cash only
- Document facilitates collateralisation of unsecured OTC trades required under regimes such as EMIR and Dodd-Frank

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Clifford Chance 8

ISDA/IIFM CREDIT SUPPORT DEED KEY ELEMENTS

- **English law charge** – the security interest clause in the ICSD is an English law charging clause
 - local law considerations will apply if Posted Cash Collateral is held outside of England and Wales
 - perfection requirements will need to be considered depending on counterparties' jurisdiction
 - collateral posting and collection arrangements need to be considered
- **Variation margin calculation** – on net exposures of either party under trades or types of trades under the TMA which are designated as “Covered Items” in the Annex
 - haircuts on collateral may apply depending on currency of Eligible Collateral and if a party is in a robust netting jurisdiction
 - additional provisions need to be added if collateral needs to be collected or posted in gross exposures

ISDA/IIFM CREDIT SUPPORT DEED KEY ELEMENTS (CONTINUED)

- **Enforcement** – if there is an early termination under the TMA, security enforcement takes place on the Posted Cash Collateral against the amounts owed by the chargor-party
- **Returns on Posted Cash Collateral** – not in ICSD, but parties can agree further arrangements to pay Investment Returns on Posted Cash Collateral