

بسم الله الرحمن الرحيم

General *Shari'ah* Parameters On the IIFM Published Standards

Workshop on IIFM Standards – Islamic Hedging and Liquidity Management
Session: Unrestricted *Wakalah* Standard – An Emerging Islamic Liquidity Management Alternative
Wednesday, 13 September 2017 at Clifford Chance LLP, London

Dr. Ahmed Rufai
Head of Compliance
IIFM

IIFM Interbank Unrestricted Master Investment *Wakalah* Agreement & Its Operational Guidance Memorandum

Islamization of the contemporary Islamic financial products

1. Identification of the existing conventional products and remove from them any prohibited elements in the Islamic Law.
2. Application of various Islamic Law principles in order to facilitate the innovation of new products.

IIFM *Shari'ah* Harmonization Strategy & Application of Fundamental Islamic Principles and Maxims

- ❖ To achieve the necessary *Shari'ah* harmonization and attempt to consolidate products and agreements, IIFM adopted certain policy in its work:
 1. Forming a *Shari'ah* board composed of almost all Islamic countries and beyond.
 2. Relying on known solid fundamental Islamic Principles & Maxims in its efforts, such as:

General *Shari'ah* Provisions of *Wakalah* Contract: Key Elements and Characteristics

- ❖ *Wakalah*: Means the act of one party delegating the other to act on its behalf **in what can be a subject matter of delegation.**
- ❖ Basically *Wakalah* contract is a non-binding contract for both parties (*Muwakkil/Principal* and *Wakil/Agent*)....
- ❖ **Basic Key elements of *Wakalah* include the:**
 - Form of Agency/*Wakalah*
 - The subject matter of agency &
 - The two parties to the contract.

Types of *Wakalah*:

- ❖ *Wakalah* contract could be one of the following forms:
 - Restricted or Unrestricted (*Muqayyadah* or *Mutalaqah*).
 - Binding or Non-Binding (*Lazimah* or *Ghayr Lazimah*).
 - Paid or Non-Paid (*Be Ajr* or *Dun Ajr*).
- **If *Wakalah* is Restricted (*Muqayyadah*)** The *Wakil* has no right to violate what has been restricted to do by the *Muwakkil*.
- **If it is Unrestricted (*Mutalaqah*),** *Shari'ah* principles and customary practices (*al-urf*) must be observed with regard to any transaction involved.

❖ **Wakalah would become a binding contract:**

- When it's a paid *Wakalah* (*Wakalah* with fee)
- When the *Wakil* commences a transaction that cannot be discontinued &
- When the *Wakil* or *Muwakkil* undertake not to cancel the contract within a certain period of time.

❖ **The appointment of an agent/*wakil* by the principal constitutes offer and acceptance.**

The role of the agent should be clearly set out in the *Wakalah agreement*.

IIFM Interbank Unrestricted Master Investment *Wakalah* Agreement & its Operational Guidance Memorandum

Objective

- Standardizing the interbank *Wakalah* documentation to be followed by counterparties.
- Reducing the reliance on commodity *Murabahah* for their wholesale liquidity management purposes.
- Avoidance of issues and concerns related to commodity *Murabahah* transactions.
- Diversifying the range of liquidity management solutions available to the IFSI.

Key Elements Reflected in the IIFM Agreement include:

- Investment Amount;
- Investment Transaction (unrestricted basis);
- *Wakalah* Pool (commingled vs segregated);
- Anticipated Profit Rate;
- Investment Period;
- *Wakil* Fee; and
- Rights and obligations of both parties

Operational Guidance Memorandum & Commitment of the *Wakil*/Agent

- ❖ **Shifting the burden of proof of the loss to *Wakil* (Risk management)**
- ❖ Key factors about *Wakalah* Arrangement
 - *Wakil* /Agent is considered as a **trustee** in holding the underlying *Wakalah* Asset.
 - *Wakil*/Agent is only responsible for indemnity in case of loss as a result of his misconduct, negligence or breach of terms of the Agreement.

In case of such situation (i.e. default), who has the burden to prove the loss in the transaction?

Shari'ah Scholars view and the third *Fiqh* Conference for Islamic Financial Institutions - Kuwait - 2009

Can Conventional Financial Institutions use the IIFM *Wakalah* Agreement & Act as *Wakil /Agent*?

The answer is (Yes) provided that certain minimum requirements are met such as:

- The *Wakalah* funds to be invested in a *Shari'ah* compliant manner.
- To have a *Shari'ah* Board supervising its *Shari'ah* compliant business including the deployment of *Wakalah* investments.
- To ensure of having *Shari'ah* compliant assets at all times during the Investment period.

To Conclude:

1. The contemporary/modern Islamic money market and transactions are primarily set up to help Muslim individuals and organizations to finance their businesses.
2. It has, in general, the same purpose as conventional money market practices except that it operates in accordance with the rules and principles of Islamic Law (i.e. *Shari'ah*).
3. *Wakalah* structure, transactions and arrangements should stick and comply with the general objectives and principles of the Islamic Law (Shariah). *Riba* (interest), *Gharar* (uncertainty) and *Maisir* (gambling) to be avoided.
4. Subject matter of the *Wakalah* transactions should be clearly defined and documented. (Not to relate to any prohibited items such as alcohol, pork, or any impermissible financial instruments).

هذا وصلى الله على نبينا محمد وآله وصحبه أجمعين

Thank you