

ISDA/IIFM *TAHAWWUT* MASTER AGREEMENT

Clarification Summary

1. **What is ISDA/IIFM *Tahawwut* master agreement?**

The ISDA/IIFM *Tahawwut* master agreement (TMA) is a framework agreement which sets out terms upon which the parties can subsequently enter into risk management arrangements. Entering into the Master Agreement does not give rise to any transactions. After the parties have entered into the Master Agreement, they may subsequently enter into further arrangements which will be subject to and governed by the *Tahawwut* Master Agreement.

In other words, it's a document agreed between two parties that sets out standard terms that apply to all the transactions entered into between those parties.

The TMA agreement is designed for use with Shari 'ah-compliant genuine hedging transactions that use *Murabahah* contracts based on *Wa 'ad*.

Each time that a transaction is entered into, the terms of the master agreement do not need to be re-negotiated and apply automatically.

2. **What are the components of the *Tahawwut* Master Agreement?**

This master agreement is part of a framework of documents, which consists of a:

- (a) Master agreement
- (b) DFT terms confirmation and agreement and,
- (c) Annexes (1&2).

3. **What is the DFT terms confirmation and DFT terms agreement?**

In the ISDA/IIFM *Tahawwut* Master Agreement the concept of DFT (i.e. Designated Future transactions) is introduced. It means, transactions which the parties have agreed to enter into in the future under the *Tahawwut* master agreement. Its distinct between non-concluded transactions and concluded Transactions.

In other words, DFT transactions are either transactions which the parties agree that they will enter into at a future date or transactions which one party

undertakes to the other party, pursuant to a *Wa 'ad*, to enter into at a future date at the election of the other party.

The agreement to enter into such transactions is referred to as a DFT Terms Agreement and it (Designated Future transactions) will be confirmed by a DFT terms confirmation.

Until they are entered into, Designated Future transactions do not constitute Transactions for the purposes of the Agreement and are therefore treated differently from concluded Transactions especially in relation to close-out. However, once entered into, Designated Future transactions constitute Transactions for the purposes of the Agreement.

4. Are the parties needed to sign a separate *Murabahah* agreement after signing of the DFT Terms agreement/confirmation?

Answer to this question needs to be direct, precise and detail. To make sure we achieve that, we put the question to the lawyer who prepared the TMA agreement Mr. Habib Montani of Clifford Chance, London. Here is his answer with regard to the question:

Quote:

If you take for example the DFT Terms confirmation for the Fixed Profit Rate Leg, you will see that it has **3 parts as follows**:

The main body;

Annex 1; and

Annex 2.

1. The main body of the DFT Term confirmation is a confirmation in respect of the *Wa 'ad* i.e. it deals only with the *Wa 'ad*. It does not document the *Murabahah* transaction entered into upon exercise of the *Wa 'ad*.
2. When the buyer wants to exercise the Seller's *Wa 'ad*, Buyer needs to send an Exercise Notice. A pro –forma of that Exercise Notice is contained in **Annex 1** of the DFT Terms confirmation.
3. If you look at the pro forma Exercise Notice it says (in paragraph 3) that it is being sent together with 2 copies of a *Murabahah* Fixed Profit Rate (FPR) Asset Sale

Confirmation. **This is the *Murabahah* Agreement that is used to document the *Murabahah* entered into following exercise of the *Wa 'ad*.**

A pro-forma of that *Murabahah* FPR Asset Sale Confirmation (and thus the form of *Murabahah* Agreement) is contained in Annex 2 to the DFT Terms confirmation.

This pro-forma *Murabahah* FPR Asset Sale Confirmation is written so that, in addition to being a *Murabahah* Agreement, it is also a Confirmation (for the purposes of the TMA) in respect of the Transaction (i.e. the *Murabahah* transaction) being entered into under the TMA by virtue of entry into that *Murabahah*.