

Legal update — November 2014

Islamic finance IIFM new standard

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Repurchase arrangements, commonly referred to as "repos", are an important tool for financial institutions when it comes to managing liquidity and credit risk. However, Islamic financial institutions (IFIs) are unable to avail themselves of conventional repo products as these products are generally regarded as having features that do not comply with Shari'ah.

In response to the requirements of IFIs, the International Islamic Financial Market (IIFM) has developed a standardised master collateralised murabaha agreement (MCMA) with a view to providing the market participants a starting point for repo transactions and thus saving essential transaction lead time and administrative costs. The MCMA is an addition to the highly successful commodity murabaha based IIFM Master Agreement for Treasury Placement.

Against this background, Trowers & Hamblins' Global Islamic finance practice has published this briefing note (Note) which is designed to provide an introduction to the basic features and issues with respect to the MCMA. This Note only provides a general overview of the principal provisions of the MCMA and should not be construed as tax or legal advice and must be read in conjunction with the MCMA and the IIFM Master Collateralised Murabaha Agreement Operational Guidance Memorandum.

Your Trowers & Hamblins or IIFM contact will be happy to assist you on any issue associated with the MCMA. Contact details of Trowers & Hamblins contacts are provided at the bottom of this Note.

The definitions used in the Note have the same meaning attributed to them in the MCMA unless specified otherwise.

Salient features of the MCMA

- The MCMA is a master agreement to be used primarily between two IFIs for interbank transactions but can be adapted to cater to other situations and counterparties. The MCMA envisages that a provider of liquidity (Seller) will

sell commodities to a party wishing to raise liquidity (Buyer) pursuant to a Murabahah Contract entered into pursuant to and in accordance with the terms of the MCMA.

- The deferred payment obligation of the Buyer under each Murabahah Contract entered into are collateralized, with the Buyer granting a security interest to the Seller over certain Shari'ah compliant assets (which may include, without limitation, Sukuk, cash, and Shari'ah compliant securities).
- The MCMA incorporates margin call features.
- The Seller may not make use of the Posted Collateral and must keep the Posted Collateral in a segregated and identifiable account.
- The Buyer may elect to substitute Posted Collateral and the conditions to such substitution are to be agreed between the Buyer and the Seller.
- Upon the occurrence of an event of default, the Seller will be able to enforce its rights under the security granted in its favour, including, but not limited to the sale of the Posted Collateral.
- Upon the discharge of the deferred payment obligation of the Buyer under a Murabahah Contract, the security over the Posted Collateral is released.

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The international practice

The international practice of Trowers & Hamblins undertakes work in many jurisdictions but is particularly closely associated with the Middle East. Trowers &

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Our Islamic finance practice is acknowledged as one of the leading legal practices in the region. The expertise and experience of our lawyers and the overall strength and depth of our MENA practice is evidenced by our involvement (past and present) in some of the most significant, complex and high profile projects and transactions of recent years. Our global Islamic finance practice enables us to offer a full range of Islamic finance services, including advice on both domestic and cross-border transactions.

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