



# ISDA/IIFM launches new product documentation *Wiqayah Min Taqallub As'ar Assarf* (Islamic Foreign Exchange Forward)



## Introduction

The 2010 launch of the International Swaps and Derivatives, Inc. (ISDA) and International Islamic Financial Market (IIFM) *Tahawwut* (hedging) Master Agreement (the TMA), the first globally standardised master documentation for Islamic hedging products, laid the groundwork for a series of milestones in the field of Shari'a compliant hedging under a common framework benefitting from a Pronouncement of the IIFM Shari'a Board.

**Today's launch of the template documentation for both variations of a *Wiqayah Min Taqallub As'ar Assarf* (Islamic Foreign Exchange Forward) (IFX), designed to be used in conjunction with and governed by the TMA, represents the addition of a further important risk management tool for the Islamic Finance industry with regard to accessing and hedging foreign currencies.**

### The TMA – the general framework

This agreement, once entered into between two parties, sets out the framework terms and conditions pursuant to which the parties can enter into any number of subsequent, specific arrangements.

The TMA regulates key, general terms, including certain matters regarding Shari'a compliance:

- (a) the purpose of further arrangements entered into should be solely for the purpose of hedging actual risks;
- (b) there should be no speculation, i.e. there is actual settlements of assets and payments and where cash settlement occurs, it should be in relation to a deliverable asset;
- (c) the assets involved must be *halal*; and

- (d) no interest (regardless how described) is to be charged.

Other sections deal with general provisions regulating:

- (e) incorporation of further arrangements entered into under the TMA umbrella
- (f) obligations of parties regarding payment and deliveries
- (g) basic representations; information undertaking and indemnities
- (h) general events of default (eg. non-payment, failure to deliver, insolvency and others) and termination events (eg. illegality, force majeure, etc.);
- (i) the operation of early termination events for fully delivered, future, and partially delivered arrangements; expenses; notices; and
- (j) governing law, dispute resolution and jurisdiction.

Party specific information and individual elections (eg. applicable forum for dispute resolution) are set out in the Schedule to the TMA.

It is worth bearing in mind that the TMA caters to both of the possible types of further arrangements that may be entered into under the TMA umbrella:

- (a) actual transactions occurring on entry into the required further documentation. These are considered "Transactions" under the TMA from day one, with their specific terms and conditions set out in "Confirmations"; and

Published by  
Trowers & Hamblins

Trowers & Hamblins LLP  
Burjuman Business Tower  
Sheikh Khalifa bin Zayed  
Road  
PO Box 23092  
Dubai, UAE

t +971 (0)4 3519 201  
f +971 (0)4 3519 205

[www.trowers.com](http://www.trowers.com)

Trowers & Hamblins LLP is a limited liability partnership registered in England and Wales with registered number OC337852 whose registered office is at 3 Bunhill Row, London EC1Y 8YZ. Trowers & Hamblins LLP is authorised and regulated by the Solicitors Regulation Authority. The word "partner" is used to refer to a member of Trowers & Hamblins LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Trowers & Hamblins LLP's affiliated undertakings. A list of the members of Trowers & Hamblins LLP together with those non-members who are designated as partners is open to inspection at the registered office.

Trowers & Hamblins LLP has taken all reasonable precautions to ensure that information contained in this document is accurate but stresses that the content is not intended to be legally comprehensive.

Trowers & Hamblins LLP recommends that no action be taken on matters covered in this document without taking full legal advice.

- (b) arrangements such as *wa'ad* (undertakings) which, if the necessary conditions are met, lead to actual transactions in the future. These arrangements initially fall under the category of "Designated Future Transactions" (DFT), the specific terms and conditions of which, taken together with the relevant product's master agreement and specific transaction terms and conditions, constitute a "DFT Terms Agreement".

### The IFX templates

The set of templates now produced by IIFM and ISDA to support the entry into *Wiqayah Min Taqallub As'aar Assarf* (Islamic Foreign Exchange Forward) on a standardised basis as DFTs under the TMA framework consists of the two product master agreements, which contain the general terms and conditions that will govern individual IFX transactions the parties enter into going forward:

- 1 IFX Master Terms and Conditions for the single *wa'ad* based structure (**IFX Single Wa'ad Master**), incorporating the forms of documents, which, when completed, will contain the specific terms and conditions for each individual IFX transaction:
  - the *wa'ad*;
  - the exercise notice; and
  - the offer and acceptance.
- 2 IFX Master Terms and Conditions for the double *wa'ad* based structure (**IFX Double Wa'ad Master**), incorporating the forms of documents, which, when completed, will contain the specific terms and conditions for each individual IFX transaction:
  - each party's *wa'ad*;
  - the exercise notice; and
  - the offer and acceptance.

In addition, the IFX Single *Wa'ad* Master and the IFX Double *Wa'ad* Master (the **IFX Masters**) both contain footnotes to aid parties in their use and they are accompanied by a product description and operational guidance, including the IIFM's Shari'a Pronouncement.

The IFX Single *Wa'ad* Master and the IFX Double *Wa'ad* Master are entered into by the parties at the outset of their relationship, while the forms of documents appended to the relevant IFX Master are to be completed and signed for each individual IFX entered into – the *wa'ad* (single or double) when the individual IFX is agreed, the exercise notice on the relevant exercise date and the offer and acceptance

within a specific time thereafter (frequently the same day the exercise notice is delivered).

### IFX Masters – some considerations

Because the *wa'ad* under the IFX Double *Wa'ad* are unilateral and independent, each has its own condition to becoming exercisable. The parties must, therefore, ensure the conditions are mutually exclusive so as to avoid both *wa'ad* becoming exercisable and disrupting the commercial intentions of the transaction. The footnotes in the precedent documents suggest that one *wa'ad* becomes exercisable if the relevant currency spot rate on the relevant exercise date is less than or equal to the agreed forward rate, while the other *wa'ad* becomes exercisable if the relevant currency spot rate on the relevant exercise date is greater than the agreed forward rate.

The IFX Single *Wa'ad* operates without any condition which must be met before becoming exercisable.

The documentation is designed in such a way that parties can enter into individual IFX transactions by filling in the line items provided (eg. trade date, exercise date, settlement date, currency amounts, etc.) but that does not mean that the parties cannot include additional terms to cater to their specific needs. To the extent the documents are varied, the parties should take care that it is clear how these varied terms are to be dealt with and interact with the TMA.

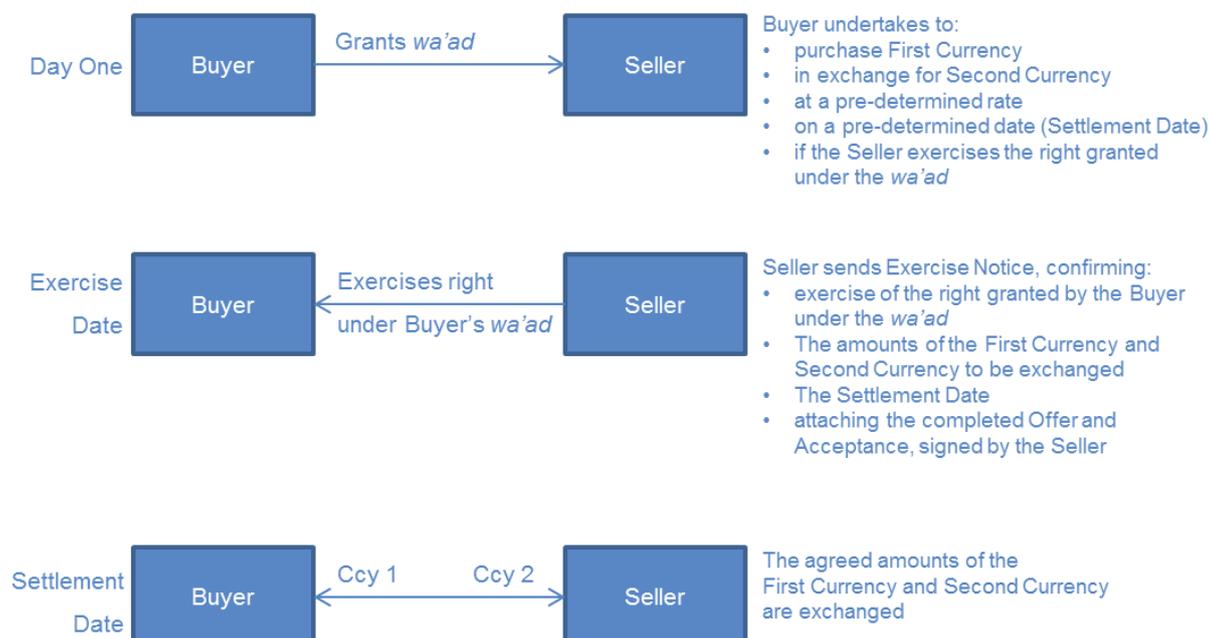
Failure to accept the Offer, if made, constitutes a failure to enter into a DFT under the TMA, triggering an event of default unless remedied in accordance with the terms of the TMA.

The *wa'ad* is laid out to be executed as a deed, arising out of the common practice for English law governed undertakings to be executed in such form (the TMA is intended to be governed by English or New York law). The parties should consider the appropriate manner of execution to ensure the DFT Agreement is properly executed as a deed.

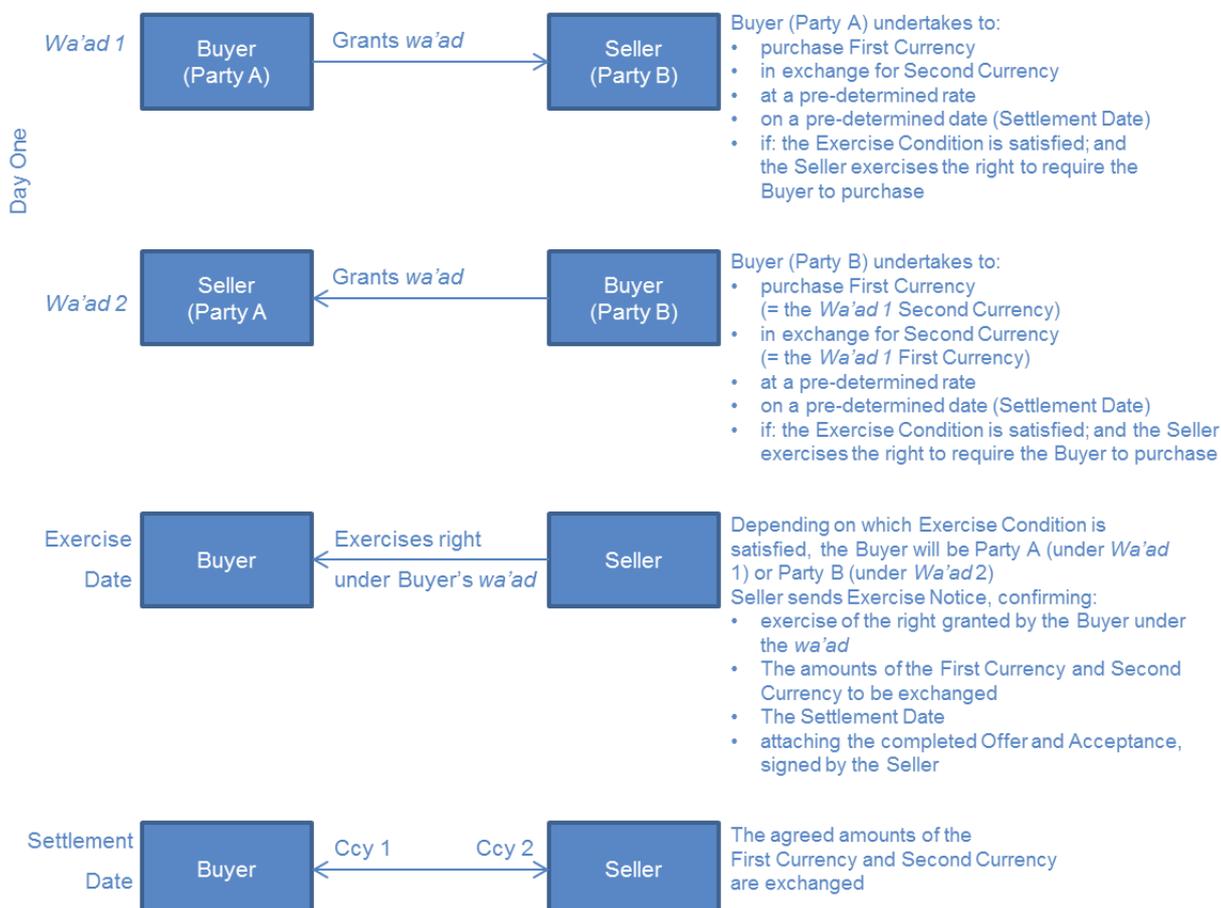
### Shari'a approval

While the TMA benefits from the IIFM Shari'a Board's Pronouncement and the IFX Masters have been developed together with and reviewed by the Board, it remains key that individual parties for whom Shari'a compliance is a requirement individually satisfy themselves that the TMA, the relevant IFX Master and any individual transaction entered into thereunder are acceptable to and in line with their own Shari'a advisers' or board's requirements.

**IFX Single *Wa'ad* – the transaction**



**IFX Double *Wa'ad* – the transaction**



### About Trowers & Hamlins

Trowers & Hamlins is a long established international law firm which provides the full range of corporate, business and commercial legal services. Further information about the firm can be found at [www.trowers.com](http://www.trowers.com)

Our head office is in the City of London. The firm has been in existence since 1886.

### The international practice

The international practice of Trowers & Hamlins undertakes work in many jurisdictions but is particularly closely associated with the Middle East. Trowers & Hamlins has offices in Abu Dhabi, Dubai, Bahrain, Oman and Malaysia. We also enjoy very close and regular working relationships with law firms in Jordan, Kuwait, Qatar, Turkey, and Syria as well as a cooperation agreement with Prima Law in relation to Saudi Arabia.

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.

"Trowers & Hamlins' renowned Islamic finance practice continues to lead on the most significant transactions in the market for the top banks. Particular areas of expertise include Shari'a-compliant capital markets and real estate, project finance and social housing projects. The firm is also active in Islamically compliant restructurings and workouts."

Legal 500, 2015

### June 2016 © Trowers & Hamlins

For further information please do not hesitate to contact:

Salman Ahmed  
Partner, Head of Islamic  
Finance (Middle East and  
Africa)  
t +973 17 515616  
e [sahmed@trowers.com](mailto:sahmed@trowers.com)



Elias Moubarak  
Partner, Head of Banking &  
Finance UAE, Dubai  
t + 971 4 3025 106  
e [emoubarak@trowers.com](mailto:emoubarak@trowers.com)



Barbara Anderson  
Solicitor, Banking & Finance,  
Dubai  
t + 971 4 3025 126  
e [banderson@trowers.com](mailto:banderson@trowers.com)

