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Launch of IIFM Master Collateralised Murabahah Agreement

Today marks a further milestone in the development of standardised documentation for the Islamic Finance industry with the publication by the International Islamic Financial Market (IIFM) of its Master Collateralised Murabahah Agreement (the MCM Agreement).

The MCM Agreement, which provides a mechanism for access to liquidity on a collateralised basis (based on the *Shari'ah* principle of *Arrahn*) utilising *Sukuk* and other *Shari'ah* compliant securities as collateral, is an important new tool for Islamic Financial institutions as they seek to address the increased global regulatory focus on liquidity and collateral.

Background

The IIFM, the Shari'ah Advisory Panel of IIFM and Clifford Chance have been working alongside a global working group of market participants to develop a widely acceptable industry-standard agreement to serve the market in meeting this need for a collateralised mechanism through which to generate liquidity.

As with other of IIFM's previously published standard documentation, the MCM Agreement is a framework agreement to document multiple collateralised *murabahah* transactions. The deferred payment obligation(s) of the Buyer under each individual *Murabahah* Contract are collateralized by the Buyer granting a security interest to the Seller over *Shari'ah* compliant assets, such as *Sukuk* and other *Shari'ah* compliant securities.

The *Shari'ah* principle on which this security is based is *Arrahn*.

Alongside the MCM Agreement, IIFM has published an operational guidance memorandum covering the operational procedures which may be implemented by potential users of the MCM Agreement. This is intended to facilitate adoption of the Agreement by Islamic Financial Institutions. IIFM is also making the Agreement available to non IIFM members.

The principal features of the MCM Agreement include the following:

1. Entry into MCM Agreement

Although the MCM Agreement includes prescribed mechanics for a Buyer and a Seller to enter into *Murabahah* Contracts in the future and the terms for governing such contracts, the MCM Agreement is a framework agreement and signature of the MCM Agreement in itself does not give rise to any transaction.

The Seller is the party who is the financier and will also be the Secured Party/*Al-mutahin* pursuant to security granted in its favour under the MCM Agreement in relation to the deferred payment due under each *Murabahah* Contract by the Buyer. The Buyer is the party who is the obligor and will also be the Chargor/*Arrahin* who will grant a security interest in favour of the Seller/A*l-murtahin* in relation to its deferred payment obligations under the relevant *Murabahah* Contract. If the parties wish to reverse their roles, a separate MCM Agreement would have to be entered into with separate security arrangements.

2. Entry into Murabahah Contracts

Schedules set out in the MCM Agreement will enable individual *Murabahah* Contracts to be entered into between the Buyer and Seller from time to time, each covered by the framework created under the MCM Agreement. The entry into a *Murabahah* Contract is accompanied by the granting of security by the Buyer which, together, constitutes a Collateralised *Murabahah* Transaction.

The role of buying agents (on behalf of the Seller) and/or selling agents (on behalf of the Buyer) is contemplated in the party elections set out in the MCM Agreement. Parties who wish to appoint third party agents may do so by separately signing the IIFM Master Agency Agreement for the Purchase of Commodities.

3. Collateralisation

Both initial collateral and periodical additional collateral is posted or delivered to the Seller through the grant of a security interest given by the Buyer in the MCM Agreement. Posted collateral may not be used (or re-hypothecated) by the Seller.

Margin maintenance is set out in the MCM Agreement by allowing the parties to appoint a Valuation Agent (who may be the Seller, the Buyer, or an independent third party) to make daily valuations of the aggregate deferred prices under the outstanding Collateralised *Murabahah* Transactions against the value of posted collateral. Valuation percentages, Threshold Percentages and Required Minimum amounts can be elected within the MCM Agreement.

Triparty custody arrangements are contemplated in the MCM Agreement, but the terms of business of any triparty and custody services provided by the triparty agent/ custodian will need to be documented separately.

4. Governing Law

The governing law of the MCM Agreement is at the option of the parties. The template MCM Agreement has been drafted on the assumption that the governing law would be English law. Particularly in the context of the security interest created over Posted Collateral, the MCM Agreement refers to a charge being granted by the Buyer. Parties should make their own investigations in light of their choice of law and the relevant home jurisdictions.

5. Shari'ah approval

While IIFM's *Shari'ah* Board has approved the MCM Agreement after extensive consideration, it is always the responsibility of each of the parties entering to a MCM Agreement to ensure that, to the extent that *Shari'ah* compliance is relevant to its dealings and corporate governance, its use of the documents in the context of the transactions which it enters into satisfies its own *Shari'ah* advisers that the relevant hedging transaction is *Shari'ah* compliant and that the documents are suitable for, and are being used appropriately in, the context of that particular transaction.

Concluding remarks

The IIFM's initiative to provide a framework which is capable of global acceptance to address liquidity requirements in the market has been much anticipated by Islamic finance market participants and is an important contribution to the development of the Islamic finance market.

Clifford Chance acted as legal counsel to IIFM in the preparation of the MCM Agreement and the Operational Guidance Memorandum.

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