

## IIFM LAUNCH SUKUK AL IJARAH TEMPLATE DOCUMENTATION

### INTRODUCTION

The International Islamic Financial Market (IIFM) have published a suite of template Sukuk Al Ijarah documents (**Template Sukuk Al Ijarah Documents**) in October 2020.

The primary objective of the launch of the Template Sukuk Al Ijarah Documents is to create non-jurisdictional specific templates which will ease the issuance of Sukuk Al Ijarah and such documents may be used by corporates, financial institutions, arrangers and lawyers working on Sukuk Al Ijarah transactions.

The Template Sukuk Al Ijarah Documents (other than the Sale and Purchase Agreement, the Lease Agreement and the Sale Agreements under the Purchase Undertaking and Sale Undertaking) are English law governed documents which demonstrates the widespread use and robustness of English law as a benchmark for sukuk issuances. The Sale and Purchase Agreement, the Lease Agreement and the Sale Agreements under the Purchase Undertaking and Sale Undertaking will be governed by the jurisdiction of the location of the relevant assets and will need to be considered on a transaction specific basis.

Of course, these are template documentation and therefore these will need to be used by legal counsel on a transaction specific basis and local counsel will also be required in each relevant jurisdiction. However, the launch of the Template Sukuk Al Ijarah Documents will lead to greater efficiency in terms of costs and time for the issuance of Sukuk Al Ijarah.

To meet the needs of market participants including issuers, arrangers and sukuk investors, as identified through the IIFM's market consultation, the Template Sukuk Al Ijarah Documents are "asset based" documents (and not "asset backed") which are to be used for a senior unsecured Sukuk Al Ijarah issuance. It should be noted that the IIFM are considering the creation of "asset backed" sukuk documentation as a future project.

### DOCUMENTATION

The Template Sukuk Al Ijarah Documents comprise of the following documents (a brief description of which is set out further below) and copies can be obtained at [www.iifm.net](http://www.iifm.net):

- Template Prospectus
- Sale and Purchase Agreement
- Lease Agreement
- Service Agency Agreement

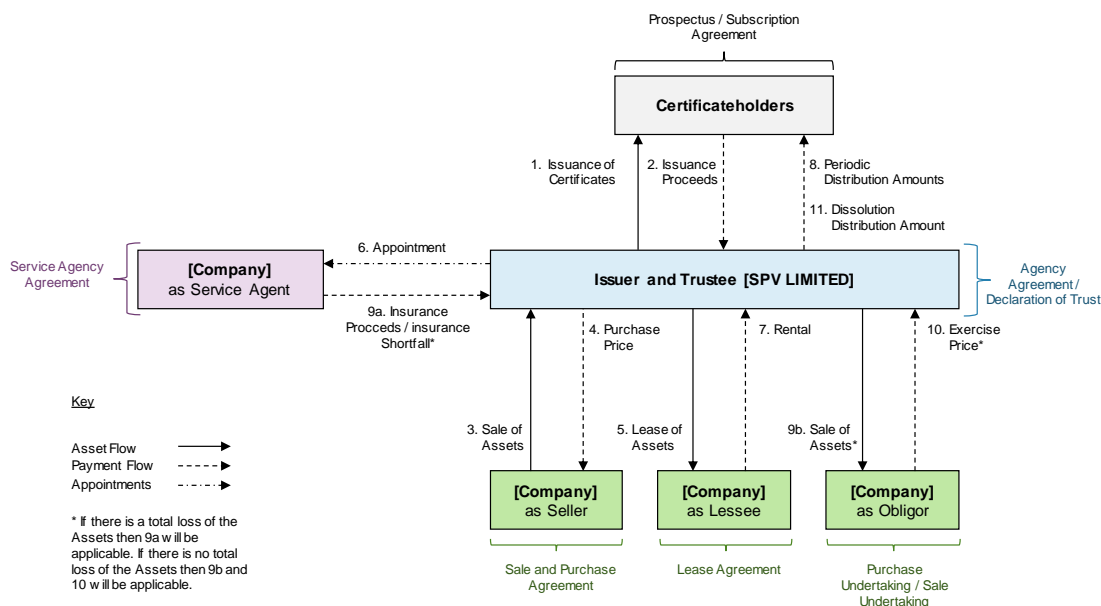
#### Key issues

- Introduction
- Documentation
- Structure Diagram
- Template Prospectus
- Sale and Purchase Agreement
- Lease Agreement
- Service Agency Agreement
- Purchase Undertaking
- Sale and Substitution Undertaking
- Declaration of Trust
- *Shari'ah* Compliance
- *Shari'ah* Approval
- Contacts

- Purchase Undertaking
- Sale Undertaking.

## STRUCTURE DIAGRAM

We have set out below a simplified structure diagram of the overall sukuk structure which should be read in conjunction with the summary of each Template Sukuk Al Ijarah Document below.



## TEMPLATE PROSPECTUS

The template prospectus covers the following key areas:

- Structure diagram (as set out above) and principal cashflows section;
- Summary of principal transaction documents; and
- Risk factors relating to the Certificates and the Leased Assets as a result of the structure.

It should be noted that this is a framework prospectus only and which should be a starting point for the development of a prospectus on a transaction specific basis. The above inclusions are the essential elements required for the Islamic structuring of a Sukuk Al Ijarah. Other items that will need to be developed on a transaction specific basis includes the disclosure sections, other risk factors sections (for example, company risk factors, country risk factors and market risk factors) and typical capital markets clauses including regulatory disclosures and listing and exchange disclaimers.

## SALE AND PURCHASE AGREEMENT

The Sale and Purchase Agreement will be between the trustee SPV (the **Trustee**) (as the Purchaser) and the obligor (the **Obligor**) (as the **Seller**) and will be governed by the laws of the jurisdiction in which those assets are located (specific local law guidance will be required in this regard).

Pursuant to the Sale and Purchase Agreement, the Purchaser will purchase and accept the transfer and conveyance from the Seller of all of the Seller's

[ownership interests, rights, title, benefit and entitlements, present and future, in, to and under] certain assets identified in the Sale and Purchase Agreement (the **Assets**). The Trustee will collect the issuance proceeds (the **Issuance Proceeds**) from investors (the **Certificateholders**) and an amount equal to the Issuance Proceeds less an amount equal to the All Expense Reserve Amount (see below under the heading Service Agency Agreement for an explanation on this) will be paid by the Trustee to the Obligor as consideration for the purchase of the Assets.

The phrase "[ownership interests, rights, title, benefit and entitlements, present and future, in, to and under]" is retained in square brackets as, whilst the language is intended to give the broadest application across civil law and common law jurisdictions, legal counsel in the relevant jurisdiction will need to consider the method of transfer of the Assets from the Obligor to the Trustee.

## **LEASE AGREEMENT**

The Lease Agreement will be between the Trustee (as the **Lessor**) and the Obligor (as the **Lessee**) and the governing law of the Lease Agreement will be the same as the Sale and Purchase Agreement.

Under the Lease Agreement, the Lessor will lease to the Lessee the Assets (the **Lease Assets**) and the Lessee will agree to pay the Lessor the rent specified in the Lease Agreement for each rental period. The rental payments due under the Lease Agreement in respect of the Lease Assets will be sufficient to pay the relevant periodic distribution amounts (the profit) to Certificateholders on each periodic distribution date.

The Lessee shall bear the entire risk of loss or damage to (the whole or part of) the Lease Assets. The Lessee shall, at its own cost and expense, be responsible for the performance of all ordinary maintenance and repair of the Lease Assets.

The Lessor shall be responsible for: (i) the performance of all major maintenance and structural repair; (ii) the payment of any proprietorship taxes; and (iii) insuring the Lease Assets, and the Lessor will instruct the Service Agent, in accordance with the terms of the Service Agency Agreement, to perform, or to procure the performance of, the major maintenance and structural repair, the payment of any proprietorship taxes and the insurance of the Lease Assets (the **Services**), in each case on behalf of the Lessor.

If a Total Loss Event occurs with respect to the Lease Assets, the lease shall automatically terminate and the Lessor will be entitled to all insurance proceeds payable pursuant to the Service Agency Agreement as a result of the Total Loss Event, together with any accrued and unpaid rental to the date on which the Total Loss Event occurred.

A **Total Loss Event** means:

- (a) the total loss or destruction of, or damage to [70] per cent of, the Lease Assets or any event or occurrence that renders [70] per cent of the Lease Assets permanently unfit for any economic use and (but only after taking into consideration any insurances payable or other indemnity granted by any third party in respect of the Lease Assets) the repair or remedial work in respect thereof is wholly uneconomical; or
- (b) the expropriation, nationalisation, requisition, confiscation, attachment, sequestration or execution of any legal process in respect of [70] per cent of the Lease Assets.

Therefore, to the extent there is a total loss of less than [70] per cent of the Lease Asset, then the rental payment under the Lease Agreement will continue to be paid in full. Whilst the IIFM have recommended the relevant threshold to be [70] per cent, this is retained in square brackets for each party to consider on a transaction specific basis. To the extent, the total loss is to [70] per cent or more of the Lease Asset then the Total Loss provisions of the Service Agency Agreement shall apply (see below on this).

## **SERVICE AGENCY AGREEMENT**

The Service Agency Agreement will be between the Trustee (as the Lessor) and the Obligor (as the Service Agent) and will be governed by English law.

Under the terms of the Service Agency Agreement, the Service Agent will be responsible on behalf of the Lessor for the performance of the Services.

### *Takaful*

The Service Agent shall ensure that any insurances obtained in accordance with the terms of the Service Agency Agreement, will be on an Islamic insurance (*takaful*) basis, provided that if no such Islamic insurance (*takaful*) is available on commercially viable terms then the Service Agent shall obtain an approval from the relevant *Shari'ah* board to maintain conventional insurance.

### *All Expenses Reserve Amount and Service Charge Amounts*

The Lessor shall pay an amount equal to the All Expenses Reserve Amount (with the amount to be agreed on a transaction specific basis) to the Service Agent on the date of the Service Agency Agreement and such amount shall be funded from the Issuance Proceeds. The Service Agent shall not be permitted to incur any liability in respect of the Services which, individually or in the aggregate, would exceed the All Expenses Reserve Amount unless: (a) a request for the incurrence of additional service charge amount (the **Additional Service Charge Amount**) has been made by the Service Agent to the Lessor; and (b) following such request, the Lessee has agreed to pay to the Lessor an amount of additional supplementary rental equal to such Additional Service Charge Amount under the Lease Agreement.

If, during any Rental Period, the Service Agent incurs any additional Service Charge Amounts (which excludes any liabilities or payments which comprise Additional Service Charge Amounts), then it shall be responsible to pay all such liabilities for its own account and the Lessor shall have no responsibility whatsoever in connection with such liability or amounts.

The Service Agent shall, no later than three Business Days before each rental payment date (the **Services Invoice Date**), submit to the Lessor or its agent a consolidated invoice for all payments and liabilities incurred or paid by the Service Agent in performing the Services (the **Service Charge Amounts**). On the rental payment date immediately following the Service Invoice Date, the Service Agent shall be entitled to deduct an amount equal to the Service Charge Amounts specified in such consolidated invoice from the All Expense Reserve Amount by way for reimbursement of the Service Charge Amounts incurred provided that, save as provided in the Service Agency Agreement, the Service Agent shall not be entitled to any reimbursement which, in aggregate, is in excess of or would be in excess of the All Expense Reserve Amount.

### *Total Loss*

If, following the occurrence of a Total Loss Event, the amount (if any) credited to the Transaction Account is less than the full reinstatement value (an amount equal to the aggregate of the face amount of the certificates, any accrued but unpaid periodic distribution amounts and all other amounts outstanding under the Transaction Documents) (the **Full Reinstatement Value**), the difference between such Full Reinstatement Value and the amount credited to the Transaction Account shall be the **Total Loss Shortfall Amount**.

In the event that the Service Agent fails to comply with its obligations to insure the Lease Assets for an amount at least equal to the Full Reinstatement Value and to ensure that insurance proceeds are paid into the Transaction Account within an agreed number of days of such Total Loss Event, the Service Agent (unless it proves beyond any doubt that any shortfall in the insurance proceeds is not attributable to its negligence or its failing to comply with the terms of the Service Agency Agreement relating to insurances) irrevocably and unconditionally undertakes to pay the Lessor the Total Loss Shortfall Amount.

The Total Loss Event provisions and the consequences of there being a Total Loss Shortfall Amount were subject to extensive discussions by market participants and also by the IIFM and its *Shari'ah* Board. Following these extensive discussions, the above position was recommended by the IIFM.

## **PURCHASE UNDERTAKING**

The Purchase Undertaking will be granted by the Obligor in favour of the Trustee and the delegate (the **Delegate**) and governed by English law.

Pursuant to the Purchase Undertaking and subject to the provisions contained therein, the Trustee and/or the Delegate, as the case may be, may, by exercising their rights under the Purchase Undertaking, be able to oblige the Obligor to purchase all of the Trustee's [rights, title, ownership interests, benefits and entitlements] in and to the Lease Assets on the relevant dissolution date at the Exercise Price (an amount equal to the aggregate of the face amount of the certificates, any accrued but unpaid periodic distribution amounts and all other amounts outstanding under the Transaction Documents).

If the Exercise Price is not paid in accordance with the provisions of the Purchase Undertaking, whether as a result of a dispute or challenge in relation to the [ownership interests, right, benefits and entitlements] that the Trustee may have in, to and under the remaining Lease Assets, or any of them, or for any other reason, the Obligor undertakes that it will fully indemnify the Trustee for the purpose of redemption in full of the outstanding Certificates and, accordingly, the amount payable under any such indemnity claim will equal the Exercise Price.

## **SALE AND SUBSTITUTION UNDERTAKING**

The Sale and Substitution Undertaking will be granted by the Trustee in favour of the Company and governed by English law.

Subject to the Trustee being entitled to redeem the Certificates for tax reasons in accordance with the term and conditions of the Sukuk Al Ijarah, the Obligor may, by exercising its right under the Sale and Substitution Undertaking, be able to oblige the Trustee to sell all of its [ownership interests, rights, title, benefits and entitlements in, to and under] the Lease Assets at the Exercise Price.

The Obligor will also be able to exercise its rights under the Sale and Substitution Undertaking to effect the substitution of Lease Assets, subject to any new assets being of a value equal to or greater than the value of the substituted assets.

## **DECLARATION OF TRUST**

The Declaration of Trust will be between the Obligor, the Trustee and the delegate (the **Delegate**) and governed by English law.

The Trust Assets will comprise, *inter alia*:

- (a) all of the Trustee's ownership rights, title, interest and benefit, present and future, in, to and under the Lease Assets;
- (b) all of the Trustee's ownership rights, title, interest and benefit, present and future, in, to and under the Transaction Documents (excluding: (i) any representations given by the Obligor to the Trustee pursuant to any of the Transaction Documents and any rights which have been expressly waived by the Trustee or the Delegate in any of the Transaction Documents; and (ii) the covenant given to the Trustee pursuant to the remuneration and indemnification clause of the Declaration of Trust); and
- (c) all monies standing to the credit of the Transaction Account; and all proceeds of the foregoing, which are held by the Trustee upon trust absolutely for the Certificateholders pro rata according to the face amount of Certificates held by each holder in accordance with the terms of the Declaration of Trust and the Conditions.

## **SHARI'AH COMPLIANCE**

The Trustee and the Obligor will agree in each Transaction Document that it has accepted the *Shari'ah* compliant nature of the Transaction Documents to which it is a party and shall not claim that its obligations under that Transaction Document are *ultra vires* or not compliant with the principles of *Shari'ah* and shall not take any steps to bring any proceedings to challenge the *Shari'ah* compliance of the Transaction Documents to which it is a party.

## **SHARI'AH APPROVAL**

IIFM's *Shari'ah* Board has approved the Template Sukuk Al Ijarah Documents after extensive consideration. Naturally, the approval from IIFM's *Shari'ah* Board does not extend to any specific transactions between the parties or to any amendments or additions made to the Template Sukuk Al Ijarah Documents.

It would be the responsibility of each of the parties using and entering into the Template Sukuk Al Ijarah Documents to ensure that its use of the documents satisfies its own *Shari'ah* advisers that the relevant transaction are *Shari'ah* compliant and that the Template Sukuk Al Ijarah Documents are suitable for, and is being used appropriately in, the context of that party's needs.

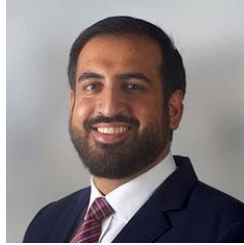
**Clifford Chance acted as legal counsel to IIFM in the preparation of the Template Sukuk Al Ijarah Documents.**

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