Terms of Reference

# “**IIFM Global Syndicated Financing Documentation**

#  **Standardization Project**”

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| **1.**  | **Introduction**  |

The International Islamic Financial Market (IIFM) has applied for grant financing from the Islamic Development Bank Institute toward the cost of developing Islamic Syndicated Financing Documentation Standards and Market Guidelines, and intends to apply part of the proceeds for consultant services.

This is In line with the IIFM’s mandate to develop documentation and product confirmation standards to be used by the industry participants particularly in the cross border international market place and to help promote the Islamic Finance Industry globally.

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| **2.**  | **Background**  |

The objective of appointing /assigning a legal firm is to prepare and develop a global “Syndicated Financing Documentation Standards & Market Guidelines”, that provides clarity, transparency and uniformity to the industry and are compatible with the rules and principles of Shari’ah (the Islamic Law).

This project comes at the right time given the importance of having a Shari’ah compliant syndicated transactions, which (i.e. syndicated transactions) remain an important tool needed by Islamic financial institutions to manage their balance sheets, financial condition etc.

In addition, the absence of Shari’ah compliant syndicated transactions standard documentation to match its conventional counterparts such as Loan Market Association (LMA) and the Loan Syndication Transactions Association (LSTA) agreements, has made it extremely necessary to have a syndicated transactions standard documentation which would be based on a Shari'ah-compliant structure. This will reduce time consuming process, tremendous cost saving, harmonization of legal & market practices and most important Shariah harmonization etc.

The detailed scope of this project includes hiring an international law firm with expertise in Islamic Finance particularly in the Syndication Documentation to submit their proposals to act as an external legal counsel and assist IIFM in the preparation and development of “Syndicated Financing Documentation Standards & Market Guidelines”.

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| **3.**  | **Objective, Methodology, Scope of Services & Deliverables** |

**OBJECTIVE**

The services to be provided by the selected external legal counsel / law firm is for the development and drafting of the full set of Islamic Syndication Financing Documentation Standards for Syndicated Ijarah and Syndicated Murabahah transactions. i.e. drafting of entire set of Syndication Financing standards including comprehensive Definitions and Clauses taking into account the specificities of Shari’ah principles wherever applicable.

**SCOPE & DELIVERABLES**

The services to be provided by the appointed law firm to act as external legal counsel will cover the following documentations to be prepared in relation with the Syndicated financing contracts:

* **Syndicated Murabahah Documentation Standard:**

The following standard documentation would be prepared in relation to the Syndicated Murabahah Documentation Standard:

1. an investment agency agreement;
2. a murabahah facility agreement;
3. one or more purchase undertakings; and
4. any other documentation recommended during the working group consultation process.
* **Syndicated Ijarah Documentation Standard**

The following standard documentation would be prepared in relation to the Syndicated Ijarah Documentation Standard:

1. an investment agency agreement;
2. an ijarah agreement;
3. a service agency agreement;
4. a purchase undertaking;
5. a sale undertaking; and
6. any other documentation recommended during the working group

 consultation process

* **Inter Creditor Agreement (Islamic & Dual tranche transactions)**

The inter-creditor agreement which is one of the essential parts of the syndication documentation need to be developed for Islamic transaction as well as dual tranche syndication transactions.

**KEY CONSIDERATIONS IN DEVELOPING THE OUTPUTS**

* **As Identified by the working group on this important project**
* Related standards such as IIFM Master Funded Participation Agreement, IIFM Master Collateralized Murabahah Agreement, IIFM Sukuk Al Ijarah Documentation will be available as reference documentation for this project.

* As per the Core Working Group recommendation; the Syndicated Financing Documentation architecture particularly terms and conditions relating to credit and dispute resolution issues may be based on LMA documentation.
* The drafting of Initial syndication documentation to be put together with the external legal counsel in coordination with the management will be based on syndication documentation shared by certain member institutions of IIFM. Moreover, the external legal counsel will be requested to use its internal documentation.
* As per IIFM standardization process external legal counsel will be appointed to assist in the drafting and the working group consultation process as well as Standard development final phase of IIFM Shari‘ah Board guidance and approval process.

* **The Impact of AAOIFI Shari‘ah Standard No. 59**

The impact of the AAOIFI Shari‘ah Standard No. (59) on the syndication transaction was extensively deliberated by CWG and it was pointed out that in certain jurisdictions Revolving Murabahah is a major challenge and fixing of profit rate etc are issues which need to be addressed in the drafting process of standard documentation.

The CWG noted that IIFM RFR implementation solution for Murabahah financing can be used to overcome the above challenges and the solutions to be referred in the documentation drafting process.

* **Other Syndication Material**

The related syndication and material which need to be developed as schedules is as follows:

* **Mandate Letter**
	+ Financing amount, currency and tranches, revolving facility
* Fees for the arrangers
* Governing law
* Duration of the mandate
* Deal Type – Fully underwritten, Club Deal, Best efforts basis
* Any security arrangement
* Term sheet
* Confidentiality
* **Use of benchmark rates**

The guidance memorandum should also explain use of Risk Free Rates (RFR) or Alternative Benchmark Rates generally for hard currencies like US Dollar, Euro, Japanese Yen etc., The explanation and the implementation solution should also cover both daily RFR and term RFR

* **Other Recommendations**

The external legal counsel to also assist and draft any other recommendation highlighted during working group consultation process

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| **4.**  | **Key Experts:** |

The law firm will assign experienced personnel with extensive knowledge and expertise of Syndication documentation used domestically and International cross border market

The assigned responsible personnel will be the partner and associate to work on drafting of complete set of Syndicated Ijarah and Murabahah documentation.

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| **5.**  | **Working modalities**  |

The main responsibility of the law firm will be to provide external legal counsel services and the counsel will be handling the drafting and documentation amendment process as per the following IIFM standard development process:

IIFM focus is to develop standard master agreements and product schedules on a global scale in conformity with the provisions and principles of Shari’ah, as well as legal and other financial market related matters. In practice, IIFM brings together all industry stakeholders on a common platform for the purpose of bringing uniformity and harmonization in practices through standardization of Shari‘ah compliant financial contracts and product standards.

In the development of IIFM standards in this case “Islamic Syndication Documentation”, there will be a comprehensive process divided into different phases as follows:

1. Formation of standardization project specific Global Working Group from various jurisdictions to tackle and address issues related to the standard. The working group includes regulators, financial institutions, legal firms and other relevant market practitioners. The project is also driven by major institutions involved in the consultation process and the external legal counsel responsibility will be drafting of the documentation

Note: The working group meetings are conducted on virtual basis and external legal counsel will be required to attend the meetings so that the working group comments and recommendation are properly analyzed and necessary amendments are incorporated in the updated draft.

1. Appointment of External Legal Counsel to the project is the first step towards commencement of the standardization project
2. Preparation of product structure and initial draft documentation by IIFM Secretariat (generally based on proprietary documentation and product template provided by certain institutions) as well as the external legal counsel may also use its internal draft as starting draft documentation. The external legal counsel in coordination with IIFM secretariat will carry out necessary enhancements and finalize the 1st Draft of the standard documentation (exposure draft). Moreover, the law firm also needs to assess the written comments received from working group members and my incorporate the comments, if feasible; in the amended draft documentation.
3. Circulation of the 1st Draft of the documentation to the working group members by IIFM for their comments. All comments are analyzed and incorporated accordingly in the preparation of the 2nd Draft of the documentation by the external legal counsel
4. IIFM circulate the 2nd Draft of the documentation to the working group members for additional comments and 3rd Draft of the documentation is produced by the external legal counsel based on comments received
5. The 3rd Draft of the documentation is generally sent to the IIFM Shari’ah Executive Committee for comprehensive Shari’ah deliberation and guidance in order to make the necessary corrections or amendments that are required from Shari’ah perspective.

More comments may be required from the working group and wider market participants after IIFM Shari’ah Executive Committee review, keeping in view the workability from wider market perspective. In some cases, more than 3 Drafts maybe required for working group consultation

1. As the project progresses, a meeting with the IIFM Shari’ah Board is organized for guidance and consequently approving the standard for market use by the IIFM Shari’ah Board which consists of around 10 eminent Shari’ah Scholars. Final verdict on approval of the standard lies with the IIFM Shari’ah Board.

Note: The IIFM Shairah Executive Committee meeting(s) is generally conducted virtually and external legal counsel is required to attend this meeting. The Shariah Board meeting(s) is mostly in person and the external legal counsel will be required to attend the meeting and to provide expert views and recommendations particularly from legal point of view and to also provide explanation on queries raised by the Scholars on certain issues or clauses

1. Once the standard documentation is approved by the IIFM Shari’ah Board, the IIFM Board of Directors concurrence is obtained on the date and mode of publication of the standard.
2. IIFM contract with external legal counsel end once the IIFM Shariah Board approve the standard and the approved documentation is produced by the law firm

In this entire standard development process, the IIFM Secretariat plays a very pro-active role in the completion of the standard and the external legal counsel main responsibility is to ensure that all amendments are included and the final standard documentation as approved by IIFM Shariah Board as well as development of the guidance memorandum to assist the users in the implementation process.

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| **6.**  | **Duration of the Assignment**  |

The expected duration is estimated to be **12 months**. As per the IIFM standard development process and to control the external legal counsel fee, IIFM selection criteria also include the fee is capped and that is why concept of five draft to be produced by the law firm is required. IIFM is also mindful that it should not take too long to complete the project and most of the standards are completed in a year time. Moreover, law firms also prefer that the project is completed in shortest possible time.

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| **7.**  | **Payment schedule**  |

The assignment price shall be quoted on a lumpsum basis against each of the deliverables identified in the ToR. IsDBI won’t pay any taxes or customs fees, as per the grant agreement. Any taxes or fees shall be paid IIFM.

The expected fee will be based on the number of draft documentations to be produced by the law firm so that the fee can be capped. The contract with the law firm will limit the number of drafts to be produced to five drafts and if any additional draft is required then IIFM secretariat coordinate with the legal counsel and ensure that there will be no significant cost over run and the project’s cost is kept as per the allocated budget.

The payment will be done on a lumpsum basis as follows:

* 15% of the contract amount against the IIFM acceptance on the 1st draft for Ijarah Syndication documentation and 1st draft of Murabahah Syndication documentation
* 20% of the contract amount against the IIFM acceptance on the 2nd draft for Ijarah Syndication documentation and 2nd draft of Murabahah Syndication documentation
* 15% of the contract amount against the IIFM acceptance on the 3rd draft for Ijarah Syndication documentation and 3rd draft of Murabahah Syndication documentation
* 20% of the contract amount against the IIFM acceptance on the 4th draft for Ijarah Syndication documentation and 4th draft of Murabahah Syndication documentation
* 27% of the contract amount against the IIFM acceptance on the 5th draft for Ijarah Syndication documentation and 5th draft of Murabahah Syndication documentation
* 3% of the contract amount against the IIFM acceptance on final sets of Ijarah Syndication documentation and Murabahah Syndication documentation as approved by IIFM Shariah Board.

The legal firm shall include and consider in their lumsum price the following: documentation draft charges, time spend in attending the working group meetings, amended draft documentation related charges, any discussion with IIFM management, meetings of Shariah Board and so on till the approval of standard by the Shariah Board and the production of the final approved Syndication documentation standard and the guidance note.

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| **8.**  | **Instructions to Consultant Firm**  |

Prospective consulting firms are invited to submit a technical proposal (including company profile) and financial proposal, each in two different files no later than (**31 October 2023**). All proposals should be sent or submitted in person to the following addresses:

**Mr. Ijlal Ahmed Alvi**

Chief Executive Officer

International Islamic Financial Market (IIFM)

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Government Avenue

P.O. Box 11454, Manama, Kingdom of Bahrain

Tel: +973 17500161

Email: ijlal.alvi@iifm.net

**Clarification mechanism:** For any technical queries or clarification, the Consultant may send an email to the focal person on the above contact details.

**Proposals Validity:** All submitted proposals shall remain valid for two (2) months after the above submission date.

The consultant is expected to have fully read and understood **ALL sections** of this ToR document to comprehend the expectations of the hiring department from this project.