

Approved Shariáh Concepts and Principles for the Purpose of Structuring, Documenting and Trading of Shariáh Compliant Securities

Preamble

- A. "Approved Shariáh Concepts and Principles for the Purpose of Structuring, Documenting and Trading of Shariáh Compliant Securities" has been formulated with the advice of CMDA's Capital Market Shariáh Advisory Committee.
- B. Notwithstanding the provisions herein, Shariáh Concepts and Principles not covered in these "Approved Concepts and Principles for the Purpose of Structuring, Documenting and Trading of Shariáh Compliant Securities" may be applied by an issuer of Shariáh compliant securities subject to approval of CMDA.
- C. "Shariáh compliant securities" means securities issued in compliance with the following Shariáh Concepts & Principles for the Purpose of Structuring, Documenting and Trading of Shariáh Compliant Securities, subject only to paragraph B herein.

I. Primary Principles

▪ Profit and Loss-Sharing [**Musharakah**]

A partnership arrangement between two parties or more to finance a business venture whereby all parties contribute capital either in the form of cash or in kind for the purpose of financing the business venture. Any profit derived from the venture will be distributed based on a pre-agreed profit sharing ratio, but a loss will be shared on the basis of equity participation.

▪ Profit-Sharing [**Mudharabah**]

A contract which is made between two parties to finance a business venture. The parties are a *rabb al-mal* or an investor who solely provides the capital and a *mudharib* or an entrepreneur who solely manages the project. If the venture is profitable, the profit will be distributed based on a pre-agreed ratio. In the event of a business loss, the loss shall be borne solely by the provider of the capital.

▪ Benevolent Loan [**Qardh Hasan**]

A contract of loan between two parties on the basis of social welfare or to fulfill a short-term financial need of the borrower. The amount of repayment must be equivalent to the amount borrowed. It is however legitimate for a borrower to pay more than the amount borrowed as long as it is not stated or agreed at the point of contract.



- **Leasing [*Ijarah*]**

A *manfaáh* (usufruct) type of contract whereby a lessor (owner) leases out an asset or an equipment to its client at an agreed rental fee and pre-determined lease period upon the *`aqqad*(contract). The ownership of the leased equipment remains in the hands of the lessor.

- **Lease to Purchase [*Ijarah Thumma Bai'*]**

A contract which begins with an *Ijarah* contract for the purpose of renting out a lessor's asset to a lessee. Consequently, at the end of the lease period, the lessee will purchase the asset at an agreed price from the lessor by executing a purchase (*Bai'*) contract.

- **Cost-Plus Sale [*Murabahah*]**

A contract that refers to the sale and purchase transaction for the financing of an asset whereby the cost and profit margin (mark-up) are made known and agreed by all parties involved. The settlement for the purchase can be either on a deferred lumpsum basis or on an installment basis, which will be specified in the agreement.

- **Purchase Order [*Istisna'*]**

A purchase contract of an asset whereby a buyer will place an order to purchase the asset which will be delivered in the future. In other words, the buyer will require a seller or a contractor to deliver or construct the asset that will be completed in the future according to the specifications given in the sale and purchase contract. Both parties of the contract will decide on the sale and purchase prices as they wish and the settlement can be delayed or arranged based on the schedule of the work completed.

- **Advance Purchase [*Bai' Salam*]**

A sale and purchase contract whereby the payment is made in cash at the point of contract but the delivery of the asset purchased will be deferred to a pre-determined date.

- **Deferred-payment Sale [*Bai' Bithaman Ajil (BBA)*]**

A contract referring to the sale and purchase transaction for the financing of an asset on a deferred and installment basis with a pre-agreed payment period. The sale price will include a profit margin.

- **Supply Sale [*Bai' Istijrar*]**

A contract between a client and a supplier, whereby the supplier agrees to supply a particular product on an ongoing basis, for example monthly, at an agreed price and on the basis of an agreed mode of payment.

- **Sale and Repurchase [*Bai' Wafa'*]**

A contract with the condition that when the seller pays back the price of goods sold, the buyer returns the goods to the seller.

II. **Supplementary Concepts and Principles**

- **Debt Trading [*Bai' Dayn*]**

A transaction that involves the sale and purchase of securities or debt certificates that conforms with Shari'ah. Securities or debt certificates will be issued by a debtor to a creditor as an evidence of indebtedness.

- **Open-Bidding Trading [*Bai' Muzayadah*]**

An action by a person to sell his asset in the open market through a bidding process among potential buyers. The asset for sale will be awarded to the person who has offered the highest bid/price. This is also known as the sale and purchase transaction based on tender.

- **Guarantee [*Kafalah*]**

A contract of guarantee whereby a guarantor underwrites any claim and obligation that should be fulfilled by an owner of the asset. This concept is also applicable to a guarantee provided on a debt transaction in the event a debtor fails to fulfill his debt obligation.

- **Ownership Right [*Haq Tamalluq*]**

An asset in the form of ownership rights as classified by Shari'ah which are tradable.

- **Gift [*Hibah*]**

A gift awarded to a person on voluntary basis.

- **Remittance [*Hawalah*]**

A contract that allows a debtor to transfer his debt obligation to a third party.

- **Rebate [*Ibra'*]**
An act by a person to withdraw his rights to collect payment from a person who has the obligation to repay the amount borrowed from him.
- **Pre-Agreed Contract [*Ittifaq Dhimni*]**
A sale and re-purchase of the underlying asset of which the prices are agreed by the parties prior to the completion of the contract. This is an external agreement which must be reached before the contract can be concluded to allow for the bidding process (Bai' al-Muzayadah) to take place.
- **Collateral [*Rahn*]**
An act whereby a valuable asset is made as collateral for a debt. The collateral will be utilised to settle the debt when a debtor is in default.
- **Islamic Bond [*Sukuk*]**
A document or certificate which represents the value of an asset.
- **Fee [*Ujrah*]**
A financial charge for the utilisation of services or *manfa'ah*. In the context of today's economy, it can be in the form of salary, wage, allowance, commission and alike.
- **Power of Attorney [*Wakalah*]**
A contract which gives the power to a person to nominate another person to act on his behalf as long as he is alive based on the agreed terms and conditions.