

<b>MODULE</b>	<b>LR:</b>	<b>Licensing Requirements</b>
<b>CHAPTER</b>	<b>LR-1:</b>	<b>Requirement to Hold a License</b>

### LR-1.3 Definition of Regulated Islamic Banking Services

#### LR-1.3.1

Regulated Islamic banking services are any of the following activities, carried on by way of business:

- (a) Accepting Shari'a money placements/deposits;
- (b) Offering Shari'a Financing Contracts;
- (c) Managing Unrestricted Shari'a profit sharing investment accounts;
- (d) Managing Restricted Shari'a profit sharing investment accounts;
- (e) Dealing in Shari'a compliant financial instruments as principal;
- (f) Dealing in Shari'a compliant financial instruments as agent;
- (g) Managing Shari'a compliant financial instruments;
- (h) Safeguarding Shari'a compliant financial instruments;
- (i) Operating a Shari'a compliant Collective Investment Undertaking;
- (j) Arranging deals in Shari'a compliant financial instruments;
- (k) Advising on Shari'a compliant financial instruments;
- (l) Providing money exchange/remittance services; or
- (m) Issuing/ administering means of payment.

#### LR-1.3.2

Upon application, the CBB may exclude specific transactions from the definition of regulated Islamic banking services.

#### LR-1.3.3

The CBB will normally only consider granting such an exemption when a Bahrain resident is unable to obtain a specific product in Bahrain and it would be unreasonable to require the overseas provider of that product to be licensed for that specific transaction, and the provider has no intention of regularly soliciting such business in Bahrain.

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### LR-1.3 Definition of Regulated Islamic Banking Services (continued)

#### *Managing Restricted Shari'a Profit Sharing Investment Accounts*

LR-1.3.17B

Managing a Restricted Shari'a profit sharing investment account is defined as managing an account, portfolio or fund, whereby a sum of money is placed with the service provider on terms that a return will be made according to an agreed Shari'a compliant profit-sharing arrangement, such as a mudaraba or musharaka partnership where the investor imposes certain restrictions as to where, how and for what purpose the funds should be invested. Such assets and liabilities relating to the equity of restricted investment account holders shall be treated separately from the bank's assets and liabilities (see AAOIFI Standard FAS6).

LR-1.3.17C

With effect from 1<sup>st</sup> January 2013, banks are no longer allowed to issue or open new profit sharing investment arrangements in the form of 'restricted investment accounts' where the bank acts as mudarib or trustee with the exception of accounts referred to in Paragraphs LR-1.3.17D and LR-1.3.17E. Any new restricted Shari'a profit sharing investment relationships in the bank's own structured products may only be opened in the following three ways. The first is in the form of units or shares in a collective investment undertaking and will be subject to the Rules and Guidance contained in Volume 7 and relevant sections of Module BC Chapter 9 (Volume 2). Banks should also refer to Paragraphs LR-1.3.33 to LR-1.3.34 of this Module. All existing restricted Shari'a profit sharing investment accounts may continue to be kept open, however banks may not accept any new funds into such accounts. The second and third arrangements are outlined in Paragraphs LR-1.3.17D and LR-1.3.17E.

LR-1.3.17D

Banks will be allowed to open RIAs for investments initiated by the investor at his own discretion, where the investor specifies what he wants to invest into and at what time (non-discretionary asset management), including short term investments in the interbank market. This permission is applicable to an investor on an individual basis but not to a group of investors.

LR-1.3.17E

Banks will be allowed to open RIAs on a wakala basis for funding specific financing where the investor(s) (the mu'wakil) has agreed that he/she is bearing the entire risk of default. For the purpose of the CBB Rulebook, such arrangements are referred to as 'special Murabaha accounts' and are subject to minimum terms and conditions outlined in Chapter BC-7A.

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### LR-1.3 Definition of Regulated Islamic Banking Services (continued)

#### *Offering Shari'a Financing Contracts*

LR-1.3.18

Offering Shari'a financing contracts is defined as entering into, or making arrangement for another person to enter into, a contract to provide finance in accordance with Shari'a principles, such as murabaha, bay muajjal, bay salam, ijara wa iktina and istisna'a contracts.

<b>MODULE</b>	<b>BC: Business and Market Conduct</b>
<b>CHAPTER</b>	<b>BC-7A: Special Murabaha Financing Contracts</b>

## **BC-7A.1 Minimum Terms and Conditions**

**BC-7A.1.1** Special Murabaha financing (SMF) contracts referred to in Paragraph LR-1.3.17E may only be offered to accredited investors. Any offering document for SMF contracts must specify the minimum subscription levels and currency restrictions.

**BC-7A.1.2** The CBB's prior written approval must be obtained before any SMF contracts are offered to investors.

**BC-7A.1.3** SMFs can only be offered through an SPV (see Paragraph BC-7A.1.6) which is allowed to market such services by obtaining the CBB's express written permission in accordance with Subparagraph LR-1.1.1(c)(iii).

**BC-7A.1.4** All SMF contracts offered by a bank where the investor(s) acts as the Mu'wakil must include the following terms and conditions:

- (a) Details of the parties to the contract, as well as a description of the objects and purposes (whether general or specific) of the particular contract;
- (b) Information on the limits/restrictions on the financing activity to be made by the bank under the contract (whether general or specific), as well as a reference to any discretion in this context which the bank has under the contract;
- (c) Details of how and by whom the contract assets will be managed, as well as disclosure of any policies behind the contract (if applicable). Reference should also be made to any delegation powers of the bank in relation to the management of the contract;
- (d) A description of how the contract is to be evidenced (e.g. by account numbers or certificates);
- (e) The governing law of the contract;
- (f) The Shari'a compliance as per the pronouncement of the Shari'a supervisory board;
- (g) The term/period of the contract, as well as the start and termination dates thereof;
- (h) The contract must clearly state that the contract assets will be segregated from the assets of the bank and cannot be comingled under any circumstances;
- (i) Details of all fees, cost and associated charges related to the SMFs, payable by the investor and when and how these charges will be paid to the bank;
- (j) The existence or absence of a right to transfer or waive rights and obligations under the contract or to cancel the SMF contract;

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## **BC-7A.1 Minimum Terms and Conditions**

### **BC-7A.1.4 (continued)**

- (k) Details of any withdrawal/redemption features of the contract and the effects of exercising such option on the contractual rights and on the contract assets;
- (l) Details of the liability of the bank for breach of contract and negligence, and whether a guarantee from a third party exists in respect of this potential liability;
- (m) Details on how the contract assets will be valued, how often and by whom;
- (n) Details on how the investor's complaints are to be handled as well as provision for dispute resolutions and jurisdiction for litigation;
- (o) The manner and timing of notices from the bank to the investor and vice versa; and
- (p) How the terms and conditions of the contract may be amended.

**BC-7A.1.5** The Shari'a supervisory board must review and approve the contents of the SMF contracts that can be offered by the bank to potential investors.

**BC-7A.1.6** The bank must segregate the funds of the SMF contracts from its own assets and from the claims of the bank's other creditors by establishing a special purpose vehicle (SPV) under the bank's control which will receive the funds from the investor(s).

**BC-7A.1.7** The SPV established under Paragraph BC-7A.1.6 must comply with the following conditions:

- (a) The memorandum and articles of association of the SPV must clearly limit and define its objectives;
- (b) The SPV must be subject to internal audit and internal Shari'a review by the bank's internal audit and internal Shari'a review functions respectively;
- (c) The SPV must be subject to an annual external audit;
- (d) The SPV must maintain proper audited books and records;
- (e) The audited financial statements of the SPV must be submitted to the CBB and to the subject investor(s) within three months of the financial year end of the SPV;
- (f) The audited financial statements of the SPV must be prepared in accordance with AAOIFI standards by a qualified independent external auditor located in Bahrain and acceptable to the CBB;
- (g) The assets of the SPV must be segregated from those of the bank's own assets; and

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## BC-7A.1 Minimum Terms and Conditions

### BC-7A.1.7(continued)

(h) The assets of the SPV must be evaluated by an independent third party in terms of their fair value and the recoverability of the investor's funds.

### BC-7A.1.8

Provision must be made for a power of attorney to be given to the bank by the investor, where necessary. In addition where lien and set-off rights are to be given in favour of the bank, these should be expressly provided for.

### *Disclosure Requirements of Key Terms of SMF Contracts*

### BC-7A.1.9

Banks must make clear to potential investors, prior to entering into a SMF contract, all relevant terms of the agreement in the SMF contract, in order for the potential investor to clearly understand the characteristics of the SMF contract being offered.

### BC-7A.1.10

Banks must disclose adequate information about the risks associated with the SMF contract, including credit risk, currency risk and any other risks underlying the contract that are not readily apparent. The disclosure of risk to the investor must be given due prominence in all related materials and must not be concealed or masked in any way by the wording, design, or format of the information provided.

### BC-7A.1.11

The disclosure requirements under Paragraphs BC-7A.1.9 and BC-7A.1.10 must be summarised in both plain English and Arabic and must be documented in a 'key term disclosure' document, signed and dated by the investor(s) and the bank in duplicate as having been read and understood, prior to signing the SMF contract. One copy must be provided to the investor for his retention and the other must be retained by the bank in its investor file.

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## BC-7A.1 Minimum Terms and Conditions (continued)

### *Periodic Statements*

**BC-7A.1.12** The bank must provide the investor and the CBB at least every six months a periodic statement which must contain information on the total cash held, the total value of the contract assets and a statement as to the basis on which the value of the contract assets was established.

**BC-7A.1.13** In instances where the investor may suffer any losses under the SMF contract, the periodic statement must include in addition to the information under Paragraph BC-7A.1.12:

- (a) The aggregate amount of money transferred into and out of the investor's account during the period; and
- (b) The resulting profit or loss to the investor after deducting fees or charges.