

Ijarah Product Guide

Policy	Person / Function
Accountable Executive	Islamic Banking Division
Policy owner	Head of Islamic Banking Division

Approved by DAB Shariah Supervisory Board :	Date:
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1 INTRODUCTION

1.1 PURPOSE

This Ijarah Product Guide ("the Guide") is an integral part of the overall Shariah Governance Framework ("SGF") developed by the Islamic Banking Division ("the IBD") of Da Afghanistan Bank ("DAB"), the Central Bank of the Islamic Republic of Afghanistan and sets out guidance for the application of Ijarah contract to various products and services for use by any Islamic Finance Institution ("IFI"), Islamic Window Operation or an Islamic Unit operating in Islamic Republic of Afghanistan (collectively referred to as "the Bank") in developing products and services using the Ijarah contract.

The Guide shall, however, be read in conjunction with other related internal and external policies, manuals and guidelines and specific/general transaction documentation issued by DAB from time to time.

All relevant staff in the Bank are expected to be familiar with the policy and understand their roles and responsibilities with respect to application of the Ijarah contract to various products and services.

1.2 REVIEW AND UPDATE OF POLICY

- 1.2.1 This Guide shall be reviewed periodically by the Head of the IBD of DAB to ensure that it is in line with the leading industry practices and caters to the customer requirements as well as ensure that the Guide is in line with other applicable changes introduced by DAB and other regulatory authorities.

- 1.2.2 Amendments to the Guide may be required as a result of one or more of the following reasons (not exhaustive):
- i. Changes in laws and regulations
 - ii. Changes in functions and activities of the Banks in the Islamic Republic of Afghanistan
 - iii. Changes in business processes
 - iv. Changes in the organizational structure of the Bank
 - v. Changes in job roles, duties, and descriptions
 - vi. Any other change, where the management deems necessary to update the Bank's policies and procedures
 - vii. Any significant modifications arising out of the review shall be recommended by the Head of IBD reviewed by the Supreme Council of DAB and presented to the DAB Shariah Supervisory Board (the "SSB") for their approval.

2 OBJECTIVES AND SCOPE OF APPLICATION

2.1 OBJECTIVES

2.1.1 The objective of this Guide is to describe the features and the characteristics of the Shariah contract of Ijarah to be referred to by DAB to assist Banks in developing and offering Shariah compliant products which adopt the underlying Islamic contract of Ijarah.

2.1.2 The Guide is a framework which shall ensure that the process of product development and product offerings adopting the Ijarah contract at the Bank is governed by a set of clear guidelines to be adopted by the Bank staff.

2.1.3 The Guide shall outline and communicate the key guidelines for the application of Ijarah contracts to various products and services. More specifically, the primary objectives of the Guide is to:

- i. Provide concept and legitimacy of the Ijarah contract under Shariah;
- ii. Provide features of the Ijarah contract; and
- iii. Provide guidelines on the application of the Ijarah contract.

2.2 SCOPE OF POLICY

The Guide applies to the Bank, its subsidiaries and branches.

3 GOVERNANCE AND OVERSIGHT

3.1 SHARIAH SUPERVISORY BOARD OF DAB

3.1.1 The Shariah Supervisory Board (“SSB”) is the authority for approval of the Guide.

3.2 HEAD OF IBD

3.2.1 The Head of IBD is the Guide owner providing, in consultation with the SSB, the necessary oversight which shall consider the following:

- i. ensuring the Guide is in line with the current business strategy, governance framework and business structures;
- ii. ensuring that detailed procedures are in place across the Bank to ensure compliance with the Guide;
- iii. assisting in providing subject matter expertise, support and technical guidance to the business in accordance with the Service Level Agreements (SLAs) signed with various departments; and
- iv. Communicating the Guide to the business units and concerned functions and ensuring it is understood.

3.2.2 The Head of IBD is consulted on dealing with executive decisions and/or actionable issues arising from the Ijarah product offerings process and any deficiencies.

3.3 ISLAMIC BANKING DIVISION

3.3.1 The Head of IBD is the Accountable Executive (AE) for the Guide with the head of IBD shall be the Policy Owner.

3.3.2 The IBD assumes oversight and supervisory responsibilities for the framework used in the Ijarah product development, offerings process and ultimate responsibility for the ongoing review and for recommending alterations to the Guide.

- 3.3.3 Any deviations or exceptions to the Guide must be based on a proposal by the IBD and/or other relevant authorised senior management person to the SSB, who shall approve or deliberate on such exceptions periodically. Any material deviation or exception shall be referred to the SSB for guidance or approval.
- 3.3.4 The IBD shall review the Guide's validity, relevance and accuracy as and when needed.

4. OVERVIEW OF IJARAH PRODUCT GUIDE

4.1 INTRODUCTION

This Ijarah Product Guide (hereinafter referred to as "the Guide") describes the processes and guidelines to be used by Banks as a general guidance for the application of Ijarah contract in various leasing-based products and services.

- 4.2 Compliance with Shariah requirements is a prerequisite for Islamic financial products and services. Therefore, it is essential for banks to establish the necessary operational framework in ensuring that the products are consistent with the Shariah principles.

- 4.3 Generally, Ijarah contracts are applied under 2 categories i.e.:
- i) Operating Ijarah (lease): and
 - ii) Financing Ijarah (lease).

The detailed description of both categories are explained as below:

4.4 OPERATING IJARAH

Operating Ijarah is a contract of transfer of usufruct or service in exchange for

a specified consideration, normally in the form of monetary payments. The rental could also be in the form of commodity and services. The primary objective of this type of lease is to facilitate a lessee who does not plan to acquire ownership of the asset but only needs to use and benefit from the utilisation of the asset for a specified period of time. Accordingly, the lessee will make rental payment to the lessor throughout the entire leasing period on terms as mutually agreed upon.

4.5 FINANCING IJARAH

Financing Ijarah is a structured financing mechanism allowing the lessee to acquire the leased asset but instead of acquiring the said asset through an outright purchase, the ownership is established or transferred at the end of the specified leasing tenure either by way of hibah (gift) subject to certain conditions or through a bai' (sale and purchase arrangement) for nominal value or for any consideration to be agreed by both parties.

4.6 RISK PROFILING FOR IJARAH

In terms of risk profiling, the execution of Operating Ijarah would expose Banks to several types of risks depending on the Ijarah structure. Risks inherent in Ijarah primary structure include the operational risk arising from the asset ownership, for example maintenance costs related to ownership; market risk associated with the potential loss in value of the asset owned by the Bank; and credit risk arising from the loss associated with the potential failure of the lessee to pay the rental following the transfer of usufruct.

For Financing Ijarah, the Bank may be exposed to the credit risk of the potential failure of the lessee to pay the rental payments in order to acquire the ownership of the property at the end of the leasing tenure. However, this risk may be mitigated by providing an undertaking stating the commitment from the lessee/customer to purchase the asset at the end of the leasing tenure or in the case of default to pay the rental obligation.

- 4.7 Therefore, it is pertinent for Banks to conduct a thorough assessment on the suitability of the types of Ijarah structure to be applied given that each Ijarah structure will have different risk and return profiles as reflected by the degree of responsibilities and level of risk borne by both the Bank and the customer.

5 LEGITIMACY OF IJARAH CONTRACT

- 5.1 The legitimacy of Ijarah is derived from all the primary sources of Shariah i.e. the Qur'an, the Sunnah of the Prophet Muhammad (SAW), the consensus of the majority of Muslim jurists and Qiyas (analogy). The details of its basis are as per the following:

5.2 THE QUR'AN

The following verse of the holy Quran that implies the acceptability of the Ijarah contract.

“And said one of them (the two women): O my father! Hire him! Verily, the best of men for you to hire is strong, the trustworthy. He said: I intend to wed one of these two daughters of mine to you, on condition that you serve me for eight years, but if you complete ten years, it will be (a favor) from you. But I intend not to place you under a difficulty. If Allah will, you will find me one of the righteous”.

(Al-Qasas: verse 27)

The verse describes the story of Prophet Musa (a.s) being hired for a certain time period to undertake a specific task. The compensation of the specific task undertaken by the Prophet was deemed as payment for the outstanding dowry for his marriage.

5.3 THE SUNNAH OF THE PROPHET MUHAMMAD (SAW)

The following hadith implies the general permissibility of Ijarah.

- 5.3.1 The Prophet (SAW) said: “Pay the hired worker his wages before his sweat dries off.” (Sunan Ibn Majah). Islamic Banking and Takaful Department Ijarah
- 5.3.2 The Prophet (SAW) is reported to have said: “He who hires a person should inform him of his fee.” (Al-Sunan al-Kubra li Al-Baihaqi).
- 5.3.3 Abdullah ibn Umar narrates, “Allah’s Apostle gave the land of Khaibar to the Jews to work on and cultivate and take half of its yield.” Ibn Umar added, “The land was used to be rented for a certain portion (of its yield).” (Sahih Bukhari)

5.4 CONSENSUS OF THE MUSLIM JURISTS (IJMA)

Ijarah has been consistently approved by the companions of the Prophet Muhammad (SAW) and prominent jurists of the recognized schools of Islamic law. They view that the need to utilize the usufruct of different goods and services, is similar to the need to utilize the articles. When the contract of sale of such goods and services is permitted, the lease of its usufruct shall also be permitted on the grounds of public interest and needs.

6 DEFINITION AND TENANTS OF IJARAH

- 6.1 Ijarah literally means “to give something on rent”.
- 6.2 Ijarah technically refers to a contract that transfers ownership of a permitted usufruct and/or service for a specified period in exchange for a specified consideration.
- 6.3 According to Accounting and Auditing Organization for Islamic Financial Institutions (“AAOIFI”), the definitions of both operating and financing Ijarah are as follows:
 - a. Operating Ijarah refers to a lease arrangement which does not end with the transfer of the legal title of the leased asset to the lessee at the end of the leasing agreement; and

- b. Financing Ijarah refers to the lease that ends with the transfer of the legal title of the leased asset to the lessee at the end of the lease agreement which can be done as per the following:
- i) hibah (gift) for no consideration;
 - ii) a token of consideration or other nominal amount specified in the lease;
 - iii) transfer of the legal asset prior to the end of the leasing tenure for the remaining instalment price; or
 - iv) gradual sale of the leased asset.

6.4 NATURE

The specific inherent nature of the contract of Ijarah (whether operating Ijarah or financing Ijarah) is the transfer of ownership of usufruct (right to use); or rendering service in exchange for specified consideration.

6.5 COMPONENTS OF IJARAH

6.5.1 Contracting parties:

6.5.2 There shall be two parties in an Ijarah contract i.e. a lessor and a lessee (hereinafter referred to as "the Contracting Parties").

6.5.3 The contracting parties may be of a natural person or a legal entity.

6.5.4 A party to an Ijarah contract may conclude the contract through an agent.

6.5.5 The contracting parties may consist of more than one lessor or lessee.

6.5.6 If an undividable asset is owned by more than one owner, consent of all owners is required before the asset is leased.

6.6 OFFER AND ACCEPTANCE

- 6.6.1 An Ijarah contract shall be concluded by an offer and acceptance process that shall take place between the contracting parties.
- 6.6.2 The offer and acceptance shall be adduced in a proper writing form (legal documentation) although the initial agreement may be achieved by any other methods which do not contravene Shariah principles such as verbal agreement.
- 6.6.3 All terms or conditions mutually agreed upon, which does not contravene the Shariah principles, shall be binding on the contracting parties.

6.7 ASSET AND USUFRUCT

- 6.7.1 The asset and usufruct of the Ijarah contract shall be something which is acceptable by the Shariah law.
- 6.7.2 The asset and usufruct shall be owned by the lessor.
- 6.7.3 If the usufruct turns out to be unusable due to any defect within lease period, such asset/usufruct shall cease to qualify as a valid leasable asset/usufruct.
- 6.7.4 Any defect in the asset as discovered by the lessee after execution of the contract shall entitle the lessee to the defect option (khiyar `ayb) where the lessee has the option to either terminate the contract or to request for a replacement of the leased asset.
- 6.7.5 The lessor may appoint the lessee or any third party as agent to acquire the asset to be leased.
- 6.7.6 The asset can be both tangible such as building vehicles and machinery and/or intangible such as trademark, patent and other forms of intellectual property.
- 6.7.7 The tangible asset may be movable or immovable but shall be non-perishable.
- 6.7.8 The asset shall not include an asset which is debt in nature.
- 6.7.9 The asset shall not be leased in two or more Ijarah contracts simultaneously.
- 6.7.10 In the event that the lessee consented to any defect discovered in the asset at the time of execution of the contract, the lessee shall not be entitled to the

defect option provided that the defect does not totally eliminate the usufruct.

6.7.11 If the agreement is an Operating Ijarah, the lessor may sell the leased asset to a third party without obtaining permission of the lessee during the lease period, unless agreed otherwise. However, this is not applicable to agreement of a Financing Ijarah.

6.7.12 In the event the leased asset is sold to a third party during the lease period, all rights and liabilities of the lessor are thereby transferred to the third party. In the case where the third party was not informed of the existing lease agreement of the asset prior to the execution of such a sale, the third party may withdraw the sale contract.

6.8 RENTAL

6.8.1 Rental is determined and agreed at the point of execution of the Ijarah contract.

6.8.2 The payment of the rental may be paid either by instalments or lump sum according to the agreement by the contracting parties.

6.8.3 The rental may be in the form of monetary terms or in kind as agreed by the contracting parties.

6.8.4 The rental may be determined by fixed amount, specified benchmark or specified formula or combination of both, as agreed by the contracting parties.

6.8.5 In the case where the rental is determined by a specified benchmark or specific formula:

6.8.5.1 the amount of rental for the first period shall be specified and the rental for the following period may be determined based on the agreed benchmark or formula; and

6.8.5.2 The determination of rental based on the agreed benchmark or formula may be subject to minimum and maximum limit.

6.8.6 The lessor shall not increase the rental unilaterally but such increase in rent must be agreed between the contracting parties.

6.8.7 The contracting parties may agree to amend the rental of a future period.

- 6.8.8 The payment may be received in advance and may be utilized by the lessor.
- 6.8.9 Where an advanced rental has been paid by the lessee for an asset not yet in existence, the lessor shall refund the rental to the lessee in the case of non-delivery of the leased asset by an agreed specified time.
- 6.8.10 The lessee shall ensure that the payment of rental be made in accordance with an agreed method and paid immediately as per the payment terms. Any outstanding rental arising from non-payment shall be deemed as debt due from the lessee to the lessor.
- 6.8.11 The rental shall be reduced accordingly; or the lease shall be extended by an equivalent period after its original expiry date.
- 6.8.12 If the lessee ceases to utilize the leased asset and returns it to the owner without the latter's consent, the lessor shall have the right to demand the rental until the end of the lease period. During the remaining period, the lessor shall not be allowed to lease the asset to another party.

7 MANAGEMENT OF IJARAH

7.1 UTILISATION OF THE LEASED ASSET

- 7.1.1 The lessee may utilize the asset for the purpose as agreed by the contracting parties as long as it does not contradict any clear Shariah principles.
- 7.1.2 The lessee may utilize the asset for any permissible purpose in accordance with the customary practice ('urf) of the market if the agreement does not specify the purpose of the lease.
- 7.1.3 However, the lessee must obtain permission from the lessor if the leased asset is to be utilized for customary purposes as per clause 7.1.2 above.

7.2 RIGHTS AND LIABILITIES

- 7.2.1 The right and liabilities arising from the ownership of the leased asset shall be

under the responsibility of the lessor. Any risks, loss or impairment expenses incurred in maintaining or associated to the leased asset shall be assumed by the lessor.

7.2.2 The rights and liabilities arising from the usage of the leased asset shall be assumed by the lessee.

7.2.3 The lessor may mitigate other specific risks relating to physical damage, theft and/or loss or destruction of the leased asset by participating in a takaful contract or wherever unavailable, an insurance contract.

7.2.4 The contracting parties shall mutually agree on whom shall bear the cost of maintenance as well as takaful/insurance coverage of the leased asset. However, the lessor, by way of an agency contract, may directly appoint the lessee to take care of the maintenance of the leased asset or to undertake the subscription of the takaful/insurance coverage. All costs incurred in the maintenance shall be reimbursed to the lessee, by the lessor as such obligation shall be borne by the lessor.

7.2.5 The lessee shall not be liable for any loss or impairment of the leased asset unless such loss arises due to the lessee's negligence, misconduct or any breach in the specified terms of the contract.

7.2.6 The lessee shall be held liable unless he proves that there is no misconduct breach and negligence. In case the lessee fails to prove his innocence, the lessee is responsible for bearing all the costs including rental to restore the asset.

7.2.7 If the usufruct of the leased asset is partially impaired as a result of a natural cause or other reasons and there is no negligence on the part of the lessee, the lessor or any third party shall be responsible for restoring the usufruct and bearing such cost.

7.3 LEASE PERIOD

7.3.1 The Ijarah period shall be agreed and specified by the contracting parties

and expressly stated under the Ijarah contract.

7.3.2 Nevertheless, the lessor and lessee may agree to amend the period of Ijarah provided that both parties mutually agree on the variation of the terms.

7.3.3 The lease period shall effectively start from the time the lessee has the access to the usufruct of the leased asset, regardless of whether or not the asset was actually utilised by the lessee.

8 ARRANGEMENT OF SUB-LEASE AND LEASE BACK

8.1 SUB-LEASE

8.1.1 It shall be permissible for the lessee to sub-lease the leased asset to third party unless clearly stated otherwise in the primary Ijarah contract.

8.1.2 If the primary Ijarah contract is silent on the permission to sub-lease, it shall be a mandatory requirement for the lessee to obtain the consent of the lessor to conduct sub-leasing to the leased asset because it is the lessor alone who is vested with the ownership of the asset.

8.1.3 The sub-lease period shall not exceed the tenure of the primary Ijarah contract.

8.1.4 The sub-lease contract may either be based on the same terms with the primary Ijarah contract, e.g. rental amount, methods of payment etc or different terms altogether as both contracts shall be totally independent. Any such differences on the terms shall be upon the mutual agreement of the lessee (now lessor) and the sub-lessee.

8.1.5 The Shariah compliance aspects of the sub-lease must flow from primary Ijarah contract to the sub-lease contract.

8.1.6 If the sub-lease is a form of a forward sub-lease, the forward sub-lease must be back to back with the primary forward lease.

9. ARRANGEMENT OF IJARAH WITH OTHER CONTRACTS OR CONCEPTS

9.1 SALE AND LEASE

- 9.1.1 A party may sell an asset to another party and subsequently lease the asset from the latter.
- 9.1.2 Further to Clause 9.1.1, both the sale and Ijarah contracts shall be executed separately in accordance to the correct sequence.
- 9.1.3 The Ijarah contract shall not be stipulated as a condition of the sale contract.

9.2 IJARAH MUNTAHIYAH BI TAMLIK (IJARAH ENDING WITH OWNERSHIP)

- 9.2.1 Definition of Ijarah muntahiyah bi tamlik; A contract that is accompanied with an option to transfer the ownership of the leased asset to the lessee at the end of the lease period.
- 9.2.2 The transfer of ownership of the leased asset may take place in the forms and conditions as stated below:
 - 9.2.2.1 By way of sale: the sale contract shall be executed separately after the expiry or termination of the Ijarah contract. Both contracts must be independent from each other;
 - 9.2.2.2 By way of conditional gift (hibah): the transfer shall be effective once the condition is fulfilled; or
 - 9.2.2.3 By way of promise (wa'd) to hibah: the hibah shall be executed when the event of promise takes place usually at the expiration of the contract.
- 9.2.3 The arrangement of the contracts shall be executed according to the correct and proper sequences.
- 9.2.4 The lessor, may request the lessee to give a binding promise (wa`d mulzim) at the inception of the contract to purchase the asset upon certain events such

as default of payment or breach of the Ijarah contract. These are grounds which lead to termination of the contract.

9.2.5 The contracting parties may agree on a specific method of price calculation acquiring the leased asset prior to the expiry of the lease period.

9.2.6 In the event when the lessee decides to discontinue with the lease, the lessee may transfer his rights and liabilities to a third party who will continue the lease and be bound by the initial terms. Provided always that this has been agreed and accepted by both parties and adduced in proper writing form to evidence the arrangement.

9.2.7 The lessee may require that, at the outset of the lease, that the lessor will promise to sell the leased asset to the lessee upon receipt of the termination sum (as stipulated in the lease). This allows for the eventuality where the lessee is in funds and wishes to acquire ownership of the asset for his own purposes. Upon transfer of ownership of the asset from the lessor to the lessee the lessee is free to utilize the asset at his full disposal such as enter into another lease agreement with him now becoming the lessor or selling the asset to a third party.

10 DISSOLUTION/TERMINATION OR END OF AN IJARAH CONTRACT

10.1 An Ijarah contract shall expire/terminate or end due to the occurrence of one of the following circumstances:

10.1.1 Expiration of the Ijarah period and settlement of all rental payments;

10.1.2 Mutual agreement by the lessor and the lessee to terminate the contract;

10.1.3 If it is a financing Ijarah, whenever the lessee exercises the option to assume ownership of the asset. Provided always that such condition is clearly stipulated in the Ijarah contract;

10.1.4 When the leased asset can no longer serve its ordinary function to be used as an asset as per its ordinary use for usufruct; and

10.1.5 Any other circumstances that legally terminates an Ijarah contract

11 OPERATIONAL REQUIREMENTS FOR FINANCING IJARAH

11.1 GOVERNANCE AND OVERSIGHT

11.1.1 The Board of Directors ("the Board") shall ensure sufficient oversight arrangements for Financing Ijarah which include setting business strategies, risk appetite, approving policies procedures, internal controls, to ensure that the application of Financing Ijarah is conducted with sound practices and comply with Shariah.

11.1.2 The adequacy of governance structure shall commensurate with the nature, complexity and risk profile associated with Financing Ijarah activities.

11.1.3 Banks are allowed to utilise existing governance structure arrangements sufficiently address the inherent risks of Ijarah financing, including Shariah non-compliance risk.

11.2 STRUCTURING

11.2.1 Banks shall identify and determine the appropriate arrangement involving other Islamic contracts in structuring a Financing Ijarah product. These include:

11.2.1.1 any promise either to reflect customer's intention to own asset or the Bank's intention to transfer ownership;

11.2.1.2 a contract or an arrangement for the ownership transfer;

11.2.1.3 Banks may structure its ijarah financing using either of the following mechanisms for asset ownership transfer upon maturity i.e.:

(a) wa'd (promise) to purchase by customer; or

- (b) wa'd to give via hibah or sell or conditional hibah by the Bank.
- 11.2.3 Pursuant to the structure concerning a wa'd, Banks shall ensure that a subsequent contract is executed to transfer the ownership of asset.
- 11.2.4 In determining which mechanism to use for asset ownership transfer upon maturity, Banks may adopt the most practical and convenient mechanism for its operation.
- 11.2.5 Banks shall ensure that these contracts or arrangements are effective in accordance to the correct and proper sequence.
- 11.2.6 In developing Financing Ijarah products, Banks must obtain the ownership of the ijarah asset before executing the contract with customer; and the sale (bai') contract must be effective only after the Financing Ijarah period has ended or terminated.
- 11.2.7 Banks shall observe the consequential treatment of the deposits paid by customer from any termination of the Financing Ijarah.

11.3 COST AND EXPENSES

- 11.3.1 Banks shall ensure fair dealings in negotiating cost of maintenance and takaful/insurance of the asset.
- 11.3.2 In negotiating the cost of maintenance and takaful/insurance of asset, the Banks may take into consideration the following:
- 11.3.2.1 Adjusted rental: Where the customer agrees to bear the cost of maintenance and takaful/insurance of the asset, the customer may enjoy a lower or a more competitive rental; and/or
- 11.3.2.2 Quiet enjoyment rights: The customer will bear the negotiated maintenance and takaful/insurance cost while having total enjoyment of the asset during the ijarah period specified in the Financing Ijarah agreement.
- 11.3.3 Banks must determine other related charges onto the customer in line with

other Guidelines as issued by DAB from time to time.

11.4 DOCUMENTATION

- 11.4.1 Banks shall develop comprehensive and legally enforceable documentation and supporting arrangements that comply with Shariah for Financing Ijarah. These documents shall specify the agreed terms on asset ownership, leasing of the asset and transfer of asset ownership.
- 11.4.2 Banks shall ensure the following is documented in writing and executed in sequence by the contracting parties:
 - 11.4.3 Documentation evidencing the asset ownership by the Bank;
 - 11.4.4 Documentation of leasing/ Financing Ijarah;
 - 11.4.5 Documentation on mechanism for transfer of asset ownership upon maturity or early termination;
 - 11.4.6 Documentation evidencing asset ownership transfer to the customer;
- 11.4.7 The use of Arabic terminology in documents shall be sufficiently clarified or translated to facilitate the understanding of the contracting parties.

11.5 LEASING/ IJARAH FINANCING

- 11.5.1 Banks must particularly stipulate the important details of the contract such as the terms, conditions, rights, duties and obligations of the contracting parties in the Financing Ijarah document. Among others, these include the following:
 - 11.5.1.1 The relationship between contracting parties;
 - 11.5.1.2 Features of Ijarah contract, such as;
 - (a) Description and specification of the Ijarah asset;
 - (b) Ijarah period;

- (c) Event of default and event of total loss, along with the treatment;
- (d) Compensation due to the Bank where total loss event is caused by the customer/lessee;
- (e) Events of force majeure causing loss to the asset;
- (f) Events of the demise or loss of legal capacity of either party;
- (g) Formula of the purchase price in situations that trigger the transfer of ownership of the asset;
- (h) Terms on early settlement and late payment; and
- (i) Compensation (if any) to the lessee in the event of a total loss of the asset where there is a Takaful/ insurance proceeds surplus for loss of opportunity to acquire ownership of the asset. Each Bank Shariah Board may decide if they wish to pay this money to the Lessee or otherwise.

11.5.1.3 **Clearly stipulate rights, duties and obligations of parties to contract which includes:**

- (a) Periodic rental amount and total rental;
- (b) First rental amount, benchmark or formula, and applicable;
- (c) Costs and expenses to be borne by contracting parties;
- (d) Customer's responsibility to ensure good condition of asset; and any applicable recovery processes for each occurrence; customer's negligence, misconduct or breach of specified terms; and

11.5.1.4 permissibility of customer to sub-lease the ijarah asset to a third minimum and maximum limits (if Bank uses floating rate); party for any impairment of asset; throughout the Ijarah period and utilize asset according to Shariah and applicable laws; and party, in which approval from lessor is required.

11.6 MECHANISM OF TRANSFER OF ASSET OWNERSHIP

- 11.6.1 Banks must ensure that the relevant mechanism for the transfer of the ownership of the asset together with its documents (wherever applicable) are clearly explained and provided separately from the leasing document.

11.7 TRANSFER OF ASSET OWNERSHIP

- 11.7.1 Banks must ensure the transfer of asset ownership, upon maturity or early termination, must be independent and separate from the leasing document.
- 11.7.2 Banks must ensure documentation for transfer of ownership from the Bank to customer reflects the mechanism of transfer of asset as agreed by the contracting parties.
- 11.7.3 The mechanism of transfer must clearly be separate and independent from the leasing arrangement and agreement.

11.8 SUPPLEMENTARY DOCUMENTS

- 11.8.1 Banks may choose to execute supplementary documentation to follow from the Ijarah agreement such as:
- 11.8.1.1 Document for any deposits paid by the lessee to the dealer in whatever Shariah form it constitutes;
- 11.8.1.2 Documentation evidencing Bank's beneficial ownership over the Ijarah asset to ensure Banks have recourse to asset throughout Ijarah period;
- 11.8.1.3 Document to acknowledge acceptance and satisfaction on the conditions of the asset by the customer;
- 11.8.1.4 Document to provide guarantee for the payment of outstanding rental or any amounts owing to the Bank by customer/lessee;
- 11.8.1.5 Document to provide the Bank with indemnification against loss or damage

arising from the use of asset by lessee upon the lessee's own gross negligence;

- 11.8.1.6 Any other relevant legal documents that are deemed relevant by any of the Bank's internal team members.
- 11.8.2 A master agreement may be drawn up covering the whole transaction of Financing Ijarah transaction.

12 CUSTODIAN OF THE DOCUMENT

This Ijarah Product Guide shall be under the safe custody of the Islamic Banking Division of DAB. Any changes to the Guide shall be made by the Islamic Banking Division of the DAB, with prior consultation with the SSB, as reviewed by the DAB Executive Board and upon approval by DAB Supreme Council. A copy of the amended Guide shall be made available to all stakeholders for reference and implementation.

13 EFFECTIVE DATE OF THE DOCUMENT

The Effective date of this Guide is the _____ day of _____ 20__