

*In the Name of Allah, The Beneficent, The Merciful*

Date: 28<sup>th</sup> day of May 2015

### **FATWA WITH RESPECT TO AN ISTISNA AND FORWARD IJARAH PRODUCT**

We, the undersigned, the scholars composing the National Bank of Fujairah PSC – Islamic Finance Division (“the Bank”) Shariah Supervisory Board (“SSB”) have been presented with the below mentioned structure and documents pertaining to the Istisna’ and Forward Lease Product (“Product”) for our Shariah review and approval.

The Istisna’ with Forward Ijarah structure provides the customer with financing for building and construction of a Shariah-compliant asset which qualifies for an Ijarah transaction. This broadly includes the conditions that the asset should have an identified usufruct and is non- consumable. Although the asset does not exist in its final form at the time of the signing of the contract the exact details and specifications of the asset shall be clearly described in both the Istisna’ Document and the Forward Ijarah.

The process flow is as follows:

1. The Bank finances the asset under construction through an “Istisna Agreement” by buying the asset to be constructed from the contractor (who shall be the customer). The staged payments are made by the Bank to the contractor as per the agreed schedule and terms and conditions as consideration for the purchase price of the asset. Cost overruns in the manufacturing / construction of the asset are a matter for the contractor (customer).
2. The title to the asset to be ideally transferred by the customer to the name of the Bank as owner of the asset. However if due to Tax/Regulatory reasons the customer is not able to transfer title to the Bank the Customer may retain it as agent of the bank under “Title Agency Agreement”.
3. Subsequent to the execution of the Istisna’ agreement, the Bank will enter into a Forward Lease Agreement with the Customer (“the Forward Lease”). The Customer will pay rental in accordance with the payment schedule contained in the Forward Lease (“the Advance Rental”) to the Bank. The rental may be fixed or floating (i.e., linked to a reference rate

like EIBOR.) The Advance Rental paid by the customer to NBF is not due until the delivery of the asset. If the Bank utilises this money it will need to replace same in the event that the asset is not delivered per specifications subject to set-off and payment of liquidated damages under the Istisna Agreement. NBF intends to pay this Advance Rental to its Mudarabah and Wakalah investment account holders “on account” if funds from such accounts are utilized for the transaction.

4. Upon the completion and delivery of the asset to the Customer as Title agent for the Bank and acceptance of same the Forward Lease automatically converts into a Lease agreement. The Customer may be asked to acknowledge the receipt of the asset in good shape. The Lease agreement takes effect immediately and the customer leases the asset from the Bank through the “Forward Lease Agreement”.
5. The Forward Rent shall be refunded to the Customer and same shall be netted off against the Initial rent payable for the asset pursuant to the Lease. In effect, no money will be released to the Customer on the conversion of the Forward Lease into an Ijarah (Lease).
6. NBF and the Customer will enter into a Service Agency Agreement whereby NBF appoints the Customer to maintain and keep insured/ provide Takaful cover for the asset and the structural maintenance and repair. The Lessee will use his best endeavours to acquire Takaful cover for the asset.
7. Customer will execute a “Purchase Undertaking” in favour of NBF undertaking to immediately purchase the asset from NBF in the event of a default. NBF will execute a “Sale Undertaking” in favour of the Customer undertaking, in the event the Customer wants to acquire the asset in advance of the termination of the Lease, to sell the asset and receipt of the Termination Sum.
8. The Customer will pay the rental amount as agreed in the Ijarah contract until the last rental payment is made as scheduled.
9. Upon payment of the final rental instalment, NBF will, in accordance with its undertaking to sell, sell the asset to the Customer for a nominal value or as a gift. The Customer may then dispose of the asset if he so wishes.

The use of the asset shall not be for any Shariah non-compliant purpose including gambling, alcohol etc.

We have reviewed the following documents (the "Documentation") in relation to the Product i.e. the Product Programme Guide received on the 28<sup>th</sup> of May 2015 and all attachments thereto namely:

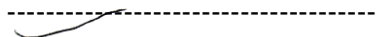
1. Forward Ijarah Agreement
2. Istisna' Agreement
3. Sale Undertaking
4. Purchase Undertaking
5. Service Agency Agreement
6. Title Agency Agreement
7. Security Documents

Pursuant to our review of the Documentation, we are of the opinion that the Product and Documentation is in compliance with the requirements of the glorious Shariah principles.

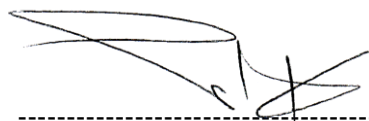
*Allah Almighty knows best.*

**APPROVED BY:-**

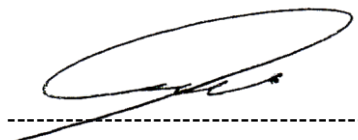
**Dr Mohamed Ali Elgari**



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