



بسم الله الرحمن الرحيم

## Fatwa and Shari'ah Supervisory Board

24 March 2014

### MUDARABA POINTS

#### The Issue

A customer of ADCB Islamic Banking would like to invite ADCB Islamic Banking to invest up to a certain amount ("Facility") in its Shari'ah compliant business activities ("Business") for a maximum defined period on Mudaraba basis.

The utilization of the Facility may (as explained in detail below) fluctuate in accordance with the funding requirement of the Business, i.e. the customer may withdraw and return unutilized funds at its own will.

Shari'ah guidance and approval is sought for the suitable structure and the necessary Shari'ah compliant documents are required to execute this transaction.

#### The Shari'ah Pronouncement

Mudaraba is a contract between a fund provider ("Rab Al Mal") and a fund manager (Mudareb) whereby Rab Al Mal provides the capital and the Mudareb manages the investment of Rab Al Mal's capital to make Halal profit, which is then distributed amongst them as per agreed ratio.

Mudareb must submit a diligently prepared financial feasibility study or investment proposal explaining the business activities where Rab Al Mal's funds will be invested, the investment period and the profit range (amount or percentage) expected from investing Rab Al Mal's capital in such business activities.

The Mudaraba is for a fixed period of time upon completion of which Mudareb is required to return the entire capital to Rab Al Mal alongwith its share of profit earned by the Mudaraba.

The remedy for the situation at hand calls for a deviation from the above in a sense that while the profit distribution will continue to take place periodically, the Mudaraba capital invested by Rab Al Mal will not be returned to it, although Mudareb will be able to utilize such funds in a fluctuating manner. For this reason, the "Points System" will be used to calculate the Mudaraba capital and the Mudareb's funds if Mudareb is allowed to mix its funds with Rab Al Mal's capital).

It must be noted that this is a very unique type of Mudaraba. Therefore, it is important that all parameters relating to the structure are laid down in detail for the avoidance of any doubt. The following Term Sheet explains the structure which is intended to provide a solution to the issue under discussion.

<b>Mudaraba Term Sheet</b>	
<b>Mudaraba Parties</b>	ABDC (as "Rab Al Mal") Customer (as "Mudareb")
<b>Status</b>	The Mudaraba will be a separate Shari'ah entity independent of the Mudaraba Parties (Rab Al Mal and Mudareb).
<b>Mudaraba Ceiling</b>	<b>AED 000,000,000/-</b> (Arab Emirates Dirhams 000 Million Only)



	Owned by Rab Al Mal but provided to Mudareb at its requests either in full or parts thereof as the Mudareb may require (in accordance with the funding requirements of the Business) from time to time during the Mudaraba Period and to be held by Mudareb as trustee for Rab Al Mal in accordance with the principles of Mudaraba in Shari'ah.
<b>Mudaraba Capital</b>	The amounts of funds actually utilized, or withdrawn from the Mudaraba account, by the Mudareb (within the Mudaraba Ceiling) on a daily basis shall be the Mudaraba Capital.
<b>Investment of Mudaraba Capital</b>	Mudareb will invest the utilized capital in the Business to earn profit for the Mudaraba.
<b>Capital Utilization</b>	Mudareb shall utilize the full capital or parts thereof, as and when it requires and depending upon the funding requirements of the Business. Mudareb is also entitled, at any time, to return the surplus funds to Rab Al Mal if the same could not be invested in the Business. Accordingly, the utilization will be tracked by the Points System (explained below).
<b>Points System</b>	<p><b>For Rab Al Mal</b></p> <p>At the end of each day Rab Al Mal will identify the net portion of capital withdrawn in excess of the Mudareb's available balance, to know the utilized Mudaraba capital for a day (C). To arrive at the number of point per day we may apply the following formula:</p> $C \div 360$ <p>The aggregate of the result of the above formula for each day in the Mudaraba Profit Distribution Period will give the points of Mudaraba Capital for the relevant Mudaraba Profit Distribution Period.</p> <p><b>For Mudareb</b></p> <p>Mudareb's net asset value (equity) (E) will be known at the beginning of the Mudaraba. The same shall not change during the Mudaraba Profit Distribution Period (X) unless it notifies Rab Al Mal. If no change takes place the following formula may apply for the period:</p> $E \div 360 * X$ <p>If a change takes place then:</p> $E1 \div 360 * (\text{No. of days from the beginning of the Mudaraba Profit Distribution Period till date of change, excluding that date of change})$ <p>+</p> $E2 \div 360 * (\text{No. of days from date of change till next date of change, excluding that next date of change})$ <p>+</p> $E3 \div 360 * (\text{No. of days from date of change till last date in the Mudaraba Profit Distribution Period})$
<b>Capital Return</b>	The return on the Mudaraba investments will be a pro rata percentage of the Mudareb's overall return on its Business in respect of the average Mudaraba Capital utilized against the Mudareb's capital contribution (Net Asset Value).





<b>Mudaraba Period</b>	[ ] months.
<b>Mudaraba Profit Distribution Period</b>	[ ] months.
<b>Mudaraba Profit</b>	<p>As per Shari'ah, anything over and above the original Mudaraba capital after deducting the Mudaraba expenditure (directly expenses) will be the Mudaraba profit.</p> <p>The Mudaraba profit will be distributed every [ ] months in arrear ("Periodic Mudaraba Profit") by evaluating Mudaraba asset so as to determine the profit. Evaluation of the Mudaraba assets will be carried out every [ ]-month and the net profit will be distributed in arrear every [ ] months ("Periodic Profit Distribution Date").</p>
<b>Project Feasibility</b>	<p>Mudareb will submit a feasibility worksheet to Rab Al Mal. The worksheet will show (in detail) the investment of Mudaraba capital into the Business and the return expected to be derived from it.</p> <p>Mudareb shall be responsible for the results projected statistics shown in the worksheet including the expected return, unless it proves beyond doubt that the projected performance could not be achieved due to the change of circumstances upon which he had no control, and which he could not expect or avoid after submitting the study to Rab Al Mal and signing the Mudaraba Agreement.</p>
<b>Profit Distribution</b>	<p>Prior to the Mudaraba Profit Distribution, the Profit will be distributed between the Mudaraba and the Mudareb's own funds (equity) according to their respective points as calculated and aggregated at the end of each Mudaraba Profit Distribution Period.</p>
<b>Mudaraba Profit Distribution</b>	<p>The Mudaraba Profit will be distributed between Rab Al Mal and Mudareb as per the following ratio:</p> <ul style="list-style-type: none"><li>▪ Rab Al Mal: [ ] %</li><li>▪ Mudareb: [ ] %</li></ul>
<b>Incentive</b>	<p>Rab Al Mal agrees to reward Mudareb for prudent and profitable investment of Rab Al Mal's capital. The reward will be equal to an amount earned on investment of Mudaraba Capital by Rab Al Mal in excess of [ ] % p.a.</p>
<b>Mudaraba Accounts</b>	<p>A separate Mudaraba Account to be opened with Rab Al Mal from which the Mudareb will be allowed to withdraw amounts up to the Mudaraba Ceiling and return funds thereof.</p>
<b>Mudareb's obligations</b>	<p>The Mudareb is under obligation to invest or use the Mudaraba Capital in the business activities mentioned in the Feasibility Study attached with the Mudaraba Contract as an integral part thereof.</p> <p>After signing the Mudaraba Agreement, Mudareb is not allowed to borrow funds for the Mudaraba or to mortgage the Mudaraba asset.</p> <p>Mudareb is obliged to allow Rab Al Mal or its nominee to examine accounts and to inspect the Mudaraba asset at any time during the Mudaraba Period by giving a minimum of 3 days advance notice to Mudareb.</p>



<b>Rab Al Mal's Obligations</b>	<p>Rab Al Mal will allow the Mudareb to withdraw within the agreed ceiling funds from the Mudaraba Capital immediately as and when Mudareb requires and in the amounts required by the Mudareb, while allowing the Mudareb to return any such funds or parts thereof.</p> <p>Rab Al Mal will not interfere into the day to day running of the Mudaraba affairs.</p>
<b>Security</b>	<p>Mudareb will provide the Rab Al Mal, as continuing security for its due and full performance under the Mudaraba Agreement, with the following security ("Security"):</p> <ol style="list-style-type: none"><li>1. [Insert security details]</li><li>2.</li></ol> <p>The enforcement of the Security by Rab Al Mal shall be confined to the circumstances where Mudareb is negligent, fraudulent, dishonest or misconduct itself thereby resulting in loss to the Mudaraba.</p>
<b>Events of Default</b>	<p>The occurrence of the following events will allow the Rab Al Mal to liquidate / terminate the Mudaraba and consequently the Mudareb shall return the Mudaraba Capital together with the realized profit, if any, or the Rab Al Mal shall exercise its right under the Purchase Undertaking:</p> <ol style="list-style-type: none"><li>i) Excess of authority in taking an investment decision or in any other sphere of Mudaraba.</li><li>ii) Misrepresentation to the Rab Al Mal before entering into the Mudaraba arrangement.</li><li>iii) Any representation given by the Mudareb to the Rab Al Mal having fallen off or are no more valid.</li><li>iv) Concealment of any facts and figures by the Mudareb from the Rab Al Mal.</li><li>v) Inability to submit the information sought by the Rab Al Mal within a reasonable period of time.</li><li>vi) Submission of exaggerated or unrealistic feasibility study or investment proposal, thereby misleading the Rab Al Mal.</li><li>vii) Dishonesty towards the Rab Al Mal.</li><li>viii) Carelessness towards maintaining Mudaraba asset upto the anticipated level.</li><li>ix) Mudareb having been declared insolvent or commencement of the insolvency proceedings against Mudareb, or for its winding up or liquidation or re-organization, or appointment of receiver or liquidator, etc.</li><li>x) Disposal or attempted disposal of the Mudaraba assets without the knowledge of Rab Al Mal</li><li>xi) Use of Mudaraba capital for non Shari'ah compliant purposes</li><li>xii) Investment of Mudaraba capital in business activities or project other than the Business (approved by Rab Al Mal)</li><li>xiii) Inability of Mudareb to pay its debt when become due or payable.</li></ol> <p>[PLEASE ADD SPECIFIC UNDERTAKING, COVENANT (POSITIVE AND NEGATIVE) IF SO REQUIRED ]</p>
<b>Partial / Total Loss</b>	<p>The Mudareb will be responsible to return the Mudaraba Capital to Rab Al Mal with its share of the profit. However, the Mudareb is allowed to prove that loss has</p>





	been resulted by reasons beyond its control.
<b>Indemnity</b>	All the Mudaraba transactions will be carried out in the name and at the sole responsibility of the Mudareb.  Rab Al Mal will not be responsible to face any third party liability / claims as a result of Mudareb's dealings on behalf of the Mudaraba. If Rab Al Mal is forced to pay any claim / damages to a third party as a result of Mudareb's dealings, Mudareb will indemnify Rab Al Mal (on full indemnity basis) from its own sources.
<b>Governing law</b>	The Mudaraba contract will be governed by and shall be construed in accordance with the laws of the Emirate of [ ] and applicable federal laws of the United Arab Emirates to the extent that these do not contravene the principles of Shari'ah in which case the principles of Shari'ah shall prevail.

This Fatwa is further to certify the Shari'ah compliance of the following ADCB Islamic Banking's Shari'ah compliant Mudaraba Points related documents:

1. Mudaraba Contract, sent May 16<sup>th</sup> 2008.
2. Purchase Undertaking, sent May 16<sup>th</sup> 2008.
3. Lien over Deposit, sent May 16<sup>th</sup> 2008.
4. Financial Excel Module for Mudaraba Points, sent May 16<sup>th</sup> 2008.

Please do not hesitate to contact us should you require further assistance.

Please note that the above is a provisional opinion and is subject to the formal approval by the Shari'ah Supervisory Board in the next meeting.

We would revert to you if there is any additional observation / comment by the Shari'ah Supervisory Board in the matter. However, you may proceed as advised above.

**Dr. Hussain Hamed Hassan**

Chairman  
Fatwa and Shari'ah Supervisory Board  
ADCB Islamic Banking

\* This Fatwa replaces the Fatwa (in relation to the above) which was issued on 17 May 2008