



**GUIDANCE NOTE ON SHARĪ'AH-COMPLIANT
LENDER-OF-LAST-RESORT FACILITIES**

December 2019

GN - 7

ISLAMIC FINANCIAL SERVICES BOARD



ISLAMIC FINANCIAL SERVICES BOARD

GN - 7

**GUIDANCE NOTE ON SHARĪ'AH-COMPLIANT
LENDER-OF-LAST-RESORT FACILITIES**

December 2019

ABOUT THE ISLAMIC FINANCIAL SERVICES BOARD (IFSB)

The IFSB is an international standard-setting organisation which was officially inaugurated on 3 November 2002 and started operations on 10 March 2003. The organisation promotes and enhances the soundness and stability of the Islamic financial services industry by issuing global prudential standards and guiding principles for the industry, broadly defined to include the banking, capital markets and insurance sectors. The standards prepared by the IFSB follow a lengthy due process as outlined in its Guidelines and Procedures for the Preparation of Standards/Guidelines, which involves, among others, the issuance of exposure drafts, the holding of workshops and, where necessary, public hearings. The IFSB also conducts research and coordinates initiatives on industry-related issues, as well as organises roundtables, seminars and conferences for regulators and industry stakeholders. Towards this end, the IFSB works closely with relevant international, regional and national organisations, research/educational institutions and market players.

For more information about the IFSB, please visit **www.ifsb.org**.

COUNCIL

Chairman

H.E. Fazle Kabir – Governor, Bangladesh Bank

Deputy Chairman

H.E. Nor Shamsiah Mohd Yunus– Governor, Bank Negara Malaysia

Members*

H.E. Dr. Bandar Mohammed Hajar	President, Islamic Development Bank
H.E. Rasheed M. Al-Maraj	Governor, Central Bank of Bahrain
H.E. Rokiah Badar	Managing Director, Autoriti Monetari Brunei Darussalam
H.E. Ahmed Osman Ali	Governor, Banque Centrale De Djibouti
H.E. Tarek Hassan Ali Amer	Governor, Central Bank of Egypt
H.E. Dr. Perry Warjiyo	Governor, Bank Indonesia
H.E. Dr. Abdolnaser Hemmati	Governor, Central Bank of the Islamic Republic of Iran
H.E. Dr. Ali Mohsen Ismail	Governor, Central Bank of Iraq
H.E. Dr. Ziad Fariz	Governor, Central Bank of Jordan
H.E. Erbolat Dossae	Governor, National Bank of Kazakhstan
H.E. Dr. Mohammad Y. Al-Hashel	Governor, Central Bank of Kuwait
H.E. Saddek El Kabir	Governor, Central Bank of Libya
H.E. Abdellatif Jouahri	Governor, Bank Al-Maghrib
H.E. Abdel Aziz Ould Dahi	Governor, Central Bank of Mauritania
H.E. Yandraduth Googoolye	Governor, Bank of Mauritius
H.E. Godwin Emefiele	Governor, Central Bank of Nigeria
H.E. Tahir bin Salim bin Abdullah Al Amri	Executive President, Central Bank of Oman
H.E. Dr. Reza Baqir	Governor, State Bank of Pakistan
H.E. Sheikh Abdulla Saoud Al-Thani	Governor, Qatar Central Bank
H.E. Dr. Ahmed Abdulkarim Alkholifey	Governor, Saudi Arabian Monetary Authority
H.E. Ravi Menon	Managing Director, Monetary Authority of Singapore
H.E. Prof. BadrEldin Abdelrahim Ibrahim	Governor, Central Bank of Sudan
H.E. Mehmet Ali Akben	Chairman, Banking Regulation and Supervision Agency
H. E. Mubarak Rashed Khamis Al Mansoori	Governor, Central Bank of the United Arab Emirates

***In alphabetical order of the country the member's organisation represents**

TECHNICAL COMMITTEE

Chairperson

Mr. Khalid Omar al-Kharji – Central Bank of the United Arab Emirates (until 2 November 2019)

Mr. Waleed Al Awadhi – Central Bank of Kuwait (from 3 November 2019)

Deputy Chairperson

Mr. Waleed Al Awadhi – Central Bank of Kuwait (until 2 November 2019)

Mr. Khalid Omar al-Kharji – Central Bank of the United Arab Emirates (from 3 November 2019)

Members*

Dr. Gaffar A. Khalid	Islamic Development Bank
Mrs. Shireen Al Sayed	Central Bank of Bahrain
Mr. Abu Farah Md. Nasser (until 7 February 2019)	Bangladesh Bank
Mr. A. K. M. Amjad Hussain (from 29 April 2019)	Bangladesh Bank
Ms. Rafezah Abd Rahman	Autoriti Monetari Brunei Darussalam
Mr. Mohamed Aboumoussa	Central Bank of Egypt
Dr. Jardine Husman	Bank Indonesia
Mr. Ahmad Soekro Tratmono	Financial Services Authority, Indonesia
Dr. Jafar Jamali	Securities and Exchange Organization, Iran
Prof. Dr. Mahmood Dagher	Central Bank of Iraq
Mr. Arafat Alfayoumi	Central Bank of Jordan
Mr. Alibek Nurbekov	Astana Financial Services Authority
Mr. Mohd Zabidi Md Nor (until 5 December 2018)	Bank Negara Malaysia
Mrs. Madelena Mohamed (from 6 December 2018)	Bank Negara Malaysia
Datuk Zainal Izlan Zainal Abidin (until 1 April 2019)	Securities Commission Malaysia
Mr. Noraizat Shik Ahmad (from 29 April 2019)	Securities Commission Malaysia
Mr. Mohamed Triqui	Bank Al-Maghrib, Morocco
Mr. Ibrahim Sani Tukur (from 29 April 2019)	Central Bank of Nigeria
Dr. Salisu Hamisu (from 29 April 2019)	Nigeria Deposit Insurance Corporation
Mr. Saud Al Busaidi (from 29 April 2019)	Central Bank of Oman
Mr. Ghulam Muhammad Abbasi	State Bank of Pakistan

Mr. Hisham Saleh Al-Mannai	Qatar Central Bank
Dr. Sultan Alharbi	Saudi Arabian Monetary Authority
Mr. Mohammed Hamad Al-Madhi (until 14 March 2019)	Capital Market Authority, Saudi Arabia
Mr. Abdulrahman Al-Hussayen (from 29 April 2019)	Capital Market Authority, Saudi Arabia
Mrs. Somia Amir Osman Ibrahim	Central Bank of Sudan
Mr. Ömer Çekin	Banking Regulation and Supervision Agency, Turkey
Mr. Yavuz Yeter	Central Bank of the Republic of Turkey
Mrs. Ilıc Basak Sahin (until 29 April 2019)	Capital Markets Board of Turkey

***In alphabetical order of the country the member's organisation represents, except international organisations, which are listed first.**

ISLAMIC DEVELOPMENT BANK SHARĪ'AH BOARD

Chairman

Sheikh Dr. Hussein Hamed Hassan

Deputy Chairman

Sheikh Dr. Abdulsattar Abu Ghuddah

Members*

H.E. Sheikh Abdullah Bin Sulaiman Al-Meneea	Member
Sheikh Dr. Mohamed Raougui	Member
Sheikh Mohammad Ali Taskhiri	Member
Sheikh Dr. Muhammad Syafii Antonio	Member
Sheikh Muhammad Taqi Al-Usmani	Member

***In alphabetical order**

SECRETARIAT, ISLAMIC FINANCIAL SERVICES BOARD

Dr. Bello Lawal Danbatta	Secretary-General
Mr. Zahid ur Rehman Khokher (until 31 December 2018)	Assistant Secretary-General
Dr. Jamshaid Anwar Chattha (until 30 August 2019)	Assistant Secretary-General
Mr. Peter Casey	Consultant
Mr. Tarig Mohamed Taha Abdelgadir	Member of the Secretariat, Technical and Research

TABLE OF CONTENTS

ABBREVIATIONS	iii
SECTION 1: INTRODUCTION	1
1.1 Background and Objectives	1
1.2 Scope and coverage	3
SECTION 2: REGULATORY AND MARKET INFRASTRUCTURE	5
2.1 The Need for SLOLR	5
2.2 Preconditions for Effective Provision of SLOLR	6
SECTION 3: OPERATIONAL ASPECTS FOR SLOLR	10
3.1 Eligibility Criteria	10
3.1.1 Systemic provision	10
3.1.2 Standing facilities	11
3.1.3 Standing facilities	13
3.2 Collateral	14
3.3 Haircuts	18
3.4 Indemnity	19
3.5 Punitive Rate	19
3.6 Duration	20
3.7 Events of SLOLR Default	20
3.8 Structures and Contracts	21
3.8.1 <i>Qard</i> mechanism	22
3.8.2 <i>Commodity murābahah transaction (CMT) mechanism</i>	23
3.8.3 <i>Muḍārabah and mushārahah mechanisms</i>	25
3.8.4 <i>Wakālah bi al-istithmār mechanism</i>	27
3.8.5 <i>Islamic repurchase agreements</i>	29
3.9 Operational Guidance on Setting up an SLOLR Facility	30
3.9.1 Considerations when Setting up an SLOLR Facility	30
SECTION 4: SUPERVISORY ACTIONS AND DISCLOSURES	35
4.1 Supervisory Actions	35
4.2 Disclosures by the CB	36
4.2.1 Recommended Qualitative and Quantitative Disclosures by CBs	36

APPENDIX	35
Diagram 1: Transaction Flow of CMT for the SLOLR Mechanism	38
Diagram 2: Transaction Flow of the <i>Muḍārabah</i> SLOLR Mechanism	39
Diagram 3: Transaction Flow of the <i>Wakālah bi al-istithmār</i> SLOLR: Mechanism	40
Diagram 4: Transaction Flow of the interest-free <i>Qarḍ</i> SLOLR Model	41
Diagram 5: .Transaction Flow of the Repurchase Agreement SLOLR Model	42
DEFINITIONS	42

ABBREVIATIONS

AAOIFI	Accounting and Auditing Organization for Islamic Financial Institutions
CB	Central bank
CMT	Commodity <i>murābahah</i> transaction
GFC	Global Financial Crisis
GN	Guidance Note
GN-2	<i>Guidance Note in Connection with the Risk Management and Capital Adequacy Standards: Commodity Murābahah Transactions</i>
HQLA	High-quality liquid assets
IAHs	Investment account holders
IFSB	Islamic Financial Services Board
IFSB-1	<i>Guiding Principles of Risk Management for IIFS (Other than Insurance Institutions)</i>
IFSB-12	<i>Guiding Principles on Liquidity Risk Management for IIFS</i>
IFSB-17	<i>Core Principles for Islamic Finance Regulation [Banking Segment]</i>
IIFS	Institution(s) offering Islamic financial services
LOLR	Lender of last resort
OMO	Open market operation
RSA	Regulatory and supervisory authority
SLOLR	Sharī'ah-compliant lender of last resort
TN-1	<i>Issues in Strengthening Liquidity Management of IIFS: The Development of Islamic Money Markets</i>
UPSIA	Unrestricted profit-sharing investment account
WP-01	<i>Strengthening the Financial Safety Net: The Role of Sharī'ah-Compliant Lender-of-Last-Resort (SLOLR) Facilities as an Emergency Financing Mechanism</i>

Bismillahirrahmanirrahim

Allahumma salli wasallim ‘ala Sayyidina Muhammad wa’ala ‘ālihi wasahbihi

SECTION 1: INTRODUCTION

1.1 Background and Objectives

1. Liquidity availability and smooth functioning of the payments system are considered core objectives of any regulatory and supervisory authority (RSA) for the banking sector. The global financial and economic crisis underscored the importance of well-designed financial safety nets, particularly crisis prevention strategies, as part of a comprehensive regulatory and supervisory framework to ensure the soundness and stability of the financial system. Lender-of-last-resort (LOLR) facilities represent one of the specific instruments and preventive strategies available to central banks (CBs), to allow liquidity to be extended to one or more temporarily “illiquid but solvent”¹ financial institutions, at their discretion and in “exceptional circumstances”. Such provision of liquidity is usually granted against adequate collateral, the provision of which serves partly as evidence that the institution is indeed solvent.

2. A CB may extend emergency facilities to an individual institution or to the market as a whole, and the literature on the subject is divided as to the respective merits of the two approaches. Where liquidity is extended to the market as a whole, the actions and the instruments may overlap with those used by the CB in its more general open market operations (OMOs), undertaken for more general macroeconomic purposes. Some practitioners use the term “lender of last resort” only in relation to the provision of liquidity to specific institutions (so-called “idiosyncratic” support), but this Guidance Note (GN) uses the broader definition in the literature in which LOLR is taken to mean “the discretionary provision of liquidity to a financial institution (or the market as a whole) by the central bank in reaction to an adverse shock that has caused demand to be abnormally higher than supply, and for liquidity which cannot be met from an alternative source”.²

3. LOLR capability has emerged as a key aspect of the crisis prevention supervisory framework, and the concept and its operational mechanisms have been widely addressed in the conventional literature. However, conventional LOLR facilities normally depend on interest-bearing loans or instruments, and therefore cannot appropriately be extended to institutions offering

¹ A bank is solvent if its assets exceed its liabilities, but illiquid if it cannot pay its debts as they fall due. Because banks engage in maturity transformation – that is, they advance money for longer periods, on average, than those in which their depositors or investors can withdraw it – a bank may well be illiquid but solvent. In crude terms, depositors or investors may withdraw cash faster than repayments on financings are received.

² See paragraph 12 below.

Islamic financial services (IIFS). Against this background, it was necessary to consider how Sharī'ah-compliant lender-of-last-resort (SLOLR) mechanisms might be conceived and used

4. The Islamic Financial Services Board (IFSB) has issued several documents with respect to liquidity management and the role of SLOLR, including IFSB-1: *Guiding Principles of Risk Management for IIFS (Other than Insurance Institutions)* (December 2005); IFSB-12: *Guiding Principles on Liquidity Risk Management for IIFS [Excluding Islamic Insurance (Takāful) Institutions and Islamic Collective Investment Schemes]* (March 2012); IFSB-17: *Core Principles for Islamic Finance Regulation [Banking Segment]* (April 2015); and the IFSB's first Technical Note (TN), titled *Issues in Strengthening Liquidity Management of IIFS: The Development of Islamic Money Markets* (March 2008).

5. A report on Islamic finance and global financial stability issued jointly by the IFSB, the Islamic Development Bank and the Islamic Research and Training Institute in April 2010 listed the strengthening of the financial safety net mechanism (i.e. LOLR and deposit insurance) as an important building block in strengthening the foundations of the Islamic financial system. More recently, in April 2014, the IFSB published Working Paper 1 (WP-01): *Strengthening the Financial Safety Net: The Role of Sharī'ah-Compliant Lender-of-Last-Resort (SLOLR) Facilities as an Emergency Financing Mechanism*.³ This paper explored, from a research standpoint, the following questions:

- a. What are the Sharī'ah perspectives and potential issues with regard to LOLR facilities?
- b. What SLOLR mechanisms (if any) are already available for IIFS?
- c. What is the current assessment of the development of SLOLR facilities as a safety net?
- d. How are existing SLOLR mechanisms structured by RSAs?
- e. Have the monetary tools used by RSAs been adapted to cater to the specificities of IIFS?
- f. What are the key challenges and issues that need to be addressed before further developing the SLOLR facilities as a safety net?
- g. How can an SLOLR facility be developed by RSAs?

³ WP-01 is available at <https://www.ifsb.org/download.php?id=4405&lang=English&pg=/sec03.php>.

6. Against this background, the IFSB Council approved the IFSB's Strategic Performance Plan 2019–2021, which includes the development of the present GN with the aim of complementing existing IFSB publications on SLOLR and to offer international benchmark guidelines to RSAs for developing and offering SLOLR facilities as part of the financial safety net arrangement for IIFS in their jurisdictions. The GN aims to cover the following:

- a. preconditions for developing and implementing an SLOLR mechanism, including considerations of moral hazard and achieving a level playing field between the conventional and Islamic systems;
- b. Sharī'ah perspectives on instruments, and operating modalities, for developing SLOLR facilities for IIFS;
- c. supervisory and operational considerations for SLOLR; and
- d. the broader integration of SLOLR within the macroprudential framework and its implications from a monetary policy perspective (if any).

7. The GN is intended to be an operational document to assist RSAs in devising and implementing SLOLR arrangements; therefore, it does not repeat in full the extensive analysis in WP-01, to which readers may refer for further background.

1.2 Scope and Coverage

8. This GN is primarily intended to serve as a benchmark for CBs in establishing and operationalising an SLOLR framework that applies to full-fledged Islamic commercial banks and Islamic commercial banks that are subsidiaries of conventional banks. The application of this GN can be extended to other deposit-taking institutions that offer Islamic financial services, subject to the relevant CB's discretion. The GN is not primarily intended for application to Islamic investment banks and Islamic windows of conventional banks.⁴ However, CBs may, subject to their discretion, include such institutions within their SLOLR ambit in view of local idiosyncratic considerations, such as systemic importance.

9. The GN complements and should be read in line with other IFSB technical and research publications on liquidity management and SLOLR. IFSB-12 highlights the significance of LOLR; the need for supervisory authorities to provide greater clarity of their roles as providers of Sharī'ah-compliant liquidity support; the need for supervisory authorities to have a comprehensive liquidity management framework incorporating LOLR; and the importance of expanding the collateral base in certain circumstances. IFSB-1, on the other hand, emphasises the role of the supervisory authority in establishing SLOLR with clearly defined procedures and requirements in liquidity risk management of IIFS. IFSB-17 also

⁴ Further discussion on the eligibility of Islamic investment banks and Islamic windows for SLOLR support is included in section 3.1 of this GN.

referred to the need for an SLOLR when discussing the preconditions for effective supervision, while the IFSB's TN-1 highlighted existing weaknesses in the Islamic financial system in the absence of transparent LOLR facilities and suggested the development of well-structured LOLR facilities for the effective functioning and development of money markets.

10. This GN, in complementing those publications, aims to highlight the necessary preconditions for running an effective SLOLR framework and for providing operational guidance on the eligibility criteria for institutions to access SLOLR facilities. Furthermore, the GN discusses the establishment of collateral acceptability conditions, general considerations in the setting of penal rates, and Shari'ah-compliant structures and contracts that could be considered by CBs in providing SLOLR facilities, among other matters.

11. The GN also recognises the importance of transparency in an SLOLR framework and recommends disclosures to be made by CBs that promote accountability and fairness, and enable IIFS to fulfil SLOLR requirements when needed.

SECTION 2: REGULATORY AND MARKET INFRASTRUCTURE

2.1 The Need for SLOLR

12. The need for LOLR facilities is premised on the centrality of the banking system to the economy. If banks fail on a significant scale, or if the banking system as a whole is unable to fulfil its normal functions, then other parts of the economic system will suffer, with potentially grave results. Furthermore, the maturity/liquidity transformation inherent in the normal operations of banks means that even institutions that are solvent can be subject to liquidity stresses. A certain level of liquidity stress can be accommodated by any well-managed (and well-regulated) bank. It can liquidate some assets by selling them in the market, or it can obtain wholesale financing from other banks, using those assets as collateral if necessary. However, if the liquidity stress is sufficiently severe, the bank's liquid assets may not be sufficient to meet the demand, or the price they can command in the market may be substantially less than their normal value (the "fire sale" phenomenon). In addition, if either customers or market counterparties have doubts about the financial health of a bank, their incentives are to withdraw funds or to refuse to offer financing (the classic "run on the bank").

13. For all these reasons, it has been generally accepted since the 19th century that CBs should be willing to lend freely at a punitive rate against good collateral. The punitive rate is intended to ensure that this lending is indeed a last

resort, while the ability of a bank to offer good collateral is evidence of solvency. (If a bank is insolvent, this problem cannot be solved by advancing funds that will need to be repaid. Other measures, typically involving the tools of recovery and resolution, will need to be taken.) While thinking – and the tools of LOLR – have advanced since the 19th century, the underlying principles have not greatly changed.

14. The basic financing facility, made available to banks generally, is usually known as “standing facilities” or the “discount window”. It is permanently available on essentially the conditions described above: to any bank that can post appropriate collateral, at a rate higher than the normal market rate. This facility is not discretionary, but it does represent an important element of a CB’s response to the problem of “solvent but illiquid” banks. Without it, the demands on a discretionary facility would be greater. Furthermore, instruments used for this purpose will often be capable of adaptation under discretionary circumstances. This basic facility therefore forms part of the considerations addressed in this GN.

15. However, CBs can respond in other ways when there is an extraordinary shock either to an individual bank or to the system as a whole. A single bank or a few banks may become illiquid as a result of either credit risk concerns or market fragmentation. In such a situation, standing facilities may be inadequate, typically because the bank or banks have insufficient good collateral to post. It is generally accepted that a CB’s response in such a situation should be discretionary and, unlike both OMO and standing facilities, the nature of the need should trigger heightened regulatory oversight. The facts that the bank cannot obtain liquidity in the market, and that it does not have high-quality collateral to post, are both triggers for further investigation and indications that remedial measures will be needed to restore the bank to a state in which its liquidity needs can be managed without recourse to discretionary support.

16. By contrast, in the case of a systemic shock, demand for reserve money increases in total and, in a closed system of reserves supply, only the CB can meet this need. Liquidity will be provided to the market generally, and will flow through normal market mechanisms to the banks that need it. This can be seen as an extension of the CB’s normal OMO activity, and the mechanisms used may well be similar. However, the experience of the Global Financial Crisis (GFC) suggests that some changes may be necessary in areas such as tenor and collateral.

17. Depending on the nature of the shock, the demand may, at times, be for reliably liquid assets rather than for reserve money per se. Liquid securities (notably, treasury securities) that can be used as collateral in market transactions

may meet the demand as effectively as reserve money. Thus, LOLR mechanisms may in principle be of three kinds: standing facilities; discretionary facilities for idiosyncratic support; and discretionary facilities for systemic use. They may be based on reserve money, or on some other form of liquid security. However, in a conventional banking system all of these mechanisms will normally be interest based. Either money will be advanced at interest, or interest-bearing securities will be made available. Furthermore, the types of collateral likely to be acceptable will often also be interest bearing – typically, government securities.

18. Where the banking system, or part of it, is Islamic, such a situation is deeply unsatisfactory as Islamic banks may neither receive nor pay interest. Hence the strong desirability of an SLOLR for any jurisdiction where Islamic banking forms part of the financial system.

2.2. Preconditions for Effective Provision of SLOLR

19. This subsection discusses some of the conditions necessary for an SLOLR facility to be effective. It should be stated at the outset that not all of the theory underlying LOLR, whether conventional or Islamic, is agreed by all central bankers, and even less by all academics. This subsection will therefore present what appear to be the widely accepted attributes of an SLOLR facility, recognising that particular jurisdictions may disagree on specific aspects or give them different weights.

20. It is necessary first to say something about the issue of moral hazard. The fundamental issue here is that, if the state provides banks with some protection against liquidity risk, then banks may be tempted to assume more liquidity risk than they otherwise would. There is no simple solution to this problem. However, there are three generally accepted approaches that can help to limit its impact. The first is the imposition of a credible liquidity regime, so that banks' ability to assume undue liquidity risk is limited. The second approach is the requirement that LOLR support should be expensive. That is, the return required by the CB should be sufficiently high, in relation to market rates, to make use of the facility an economically unattractive option save in case of necessity. This implies the ability to set a rate for the facility, and to set it in relation to market rates. The third approach is to ensure that standing facilities at least are short term, typically overnight, thus limiting the temptation of banks to rely on them too heavily.

21. In a dual system of banking, the rate for the SLOLR facility will need to be closely aligned to that for its conventional counterpart, in order to limit the scope for arbitrage and to maintain a level playing field between them. This will be the case especially where systemic support is given.

22. There is a second hazard that can be viewed as a form of moral hazard applying to CBs: the temptation to use SLOLR facilities to support banks that are fundamentally insolvent. There are many objections to this. First, if the bank has negative net assets, the action will make some creditors worse off; bankruptcy may be deferred, but longer-term unsecured creditors end up as claimants in bankruptcy with a call on a smaller pool of assets. Second, solvency support undermines market discipline by reducing the incentives of market participants to monitor, price and ration for bank riskiness. Also, if it is believed that the CB will not turn away insolvent banks, then a solvent but illiquid bank that uses the SLOLR runs a serious risk, if that fact becomes known, that others may suspect it of being insolvent, thus precipitating a run.

23. For all these reasons and others, it is generally accepted that SLOLR facilities should not be available to insolvent banks. The requirement for good collateral has classically been regarded as the main mitigant for this risk, on the basis that an insolvent bank would already have liquidated any such assets or used them to raise cheaper financing in the market. However, given the amount of leverage in banking, it may still be possible for a bank that is insolvent to have some good collateral available to post.

24. A second risk mitigant lies in the quality of banking supervision, which should give the CB assurance that any bank that seeks SLOLR financing is fundamentally sound.⁵ This supervision should include regular stress tests, since the behaviour of the bank's assets and liabilities under stressed conditions is fundamental to a judgment of its solvency. There will also need to be a credible resolution and recovery regime, so that the CB does not come under pressure to advance liquidity to a fundamentally insolvent bank simply because there is no other way of dealing with it sufficiently quickly. The strength of the supervision regime is also relevant to the point made in the previous subsection – that if SLOLR is made available beyond standing facilities, this should trigger heightened regulatory oversight, not least to ensure that the judgment that the bank is solvent is indeed valid.

⁵ In jurisdictions where the supervisor is not the CB, there should exist an arrangement through which the CB has direct access to IIFS to obtain information relevant for SLOLR assessments. This could necessitate the CB being involved in some aspects of financial regulation and supervision given its role as an SLOLR provider wanting to mitigate its risks through appropriate regulations and supervisory practices.

⁶ Refer to section 4.2 of this GN, which recommends disclosures to be made by the CB and encourages disclosures to the extent that they maintain financial stability and enhance market confidence and consumer protection.

25. Although varying practices exist across jurisdictions in relation to disclosure, it is generally accepted that the CB's policy approach to SLOLR – in terms of which banks will be eligible, the instruments that will be used, the conditions attached, the kind of collateral that will be accepted, etc. – should be publicly known.⁶ This practice also mitigates the risk that the CB's actions in a particular situation will become known and that market participants will draw the wrong conclusions from them – for example, that they will conclude that a bank which has accessed a facility is in a worse financial condition than it is.

26. There are theoretical reasons to prefer systemic liquidity provision over idiosyncratic provision. The principal arguments are that systemic provision allows market mechanisms to operate in its allocation, thus providing an assurance against the liquidity being allocated to fundamentally insolvent firms. However, markets behave imperfectly, especially under stressed conditions, and following the GFC there seem to be few who would argue that systemic provision can be relied upon in isolation.

27. In the case of an SLOLR, of course, a further requirement is that it should be compliant with Sharī'ah rules and principles in line with the Sharī'ah standards adopted by the jurisdiction in question. Whether the mechanisms are to be used for systemic or idiosyncratic support, they should have been formulated in advance of any crisis and approved by an appropriate body of Sharī'ah scholars. Although during the GFC central banks made various ad hoc interventions in the market, it is highly undesirable to be seeking Sharī'ah approval at very short notice. The mechanisms should be publicly known, as should (ideally) be the basis of the Sharī'ah approval; this will allow potential users of the facility to address at an early stage any Sharī'ah issues they may have. As already noted, in a dual system the facility should be able to operate alongside a conventional facility with limited scope for arbitrage. This will imply closely similar tenors, rates, collateral requirements and other conditions.

28. In addition, some jurisdictions reported⁷ having had to amend their CB legal framework to ensure that the CB faces no legal impediments in providing Sharī'ah-compliant emergency liquidity facilities using its chosen mechanism. For example, a CB opting for a qard mechanism for SLOLR would need to ensure that laws governing the CB's mandate authorise the CB to lend, or do not prohibit it from lending, free of interest, while a CB choosing a commodity murābahah structure must have the legal capacity to engage in commodity trading.

⁷ This was reported through a survey that the IFSB Secretariat conducted in March–April 2019 as part of the development process of this GN

29. In summary:

- Preconditions for the effective operation of an SLOLR are a sound framework for banking supervision, including a liquidity regime, capital adequacy, stress testing, and an effective recovery and resolution regime.
- For systemic support, there should be an efficient money market, within which liquidity can be allocated by market mechanisms to the banks that are most in need of it.
- The regime should be defined in advance of need, approved by Sharī'ah scholars and published appropriately.
- The requirements for eligibility, collateral, conditions, etc. should also be defined in advance and published.
- The instruments chosen should be capable of being used over a variety of tenors, but primarily short term (particularly overnight).
- At least one of the instruments should be capable of operating as a standing facility, available on demand to any eligible bank able to post the appropriate collateral.
- It should be possible for each instrument to set a rate higher than current market rates.
- Assets used as collateral should be Sharī'ah-compliant.
- In a dual system, the terms of the SLOLR should be sufficiently close to those of the conventional LOLR to limit arbitrage. This stipulation will be particularly important if some banks can use either facility (e.g. in groups with both conventional and Islamic operations).
- CBs would need to ensure that their legal framework carries no impediments against their provision of SLOLR using their chosen mechanism(s), and that there exists provisions in the law for the resolution of disputes arising from SLOLR.

SECTION 3: OPERATIONAL ASPECTS FOR SLOLR

3.1 Eligibility Criteria

30. The eligibility criteria to access SLOLR facilities will be generally similar to those applicable for conventional institutions accessing conventional LOLR support, with the added condition of Shari'ah compliance of both the collateral and the mechanism through which the CB provides funds to the IIFS. The following paragraphs discuss eligibility issues relevant to systemic liquidity provision, standing facilities and discretionary facilities. However, as a general principle and in all SLOLR scenarios, the CB will have to ensure that the IIFS in question is solvent – that is, its net assets are positive. This requirement is particularly relevant to the discretionary emergency financing provision. In addition, the CB may require that the IIFS meets certain financial thresholds for a minimum period preceding the SLOLR request, and that it is not in violation of any statutory requirements and does not have unpaid fines.

3.1.1 Systemic provision

31. In the case of systemic liquidity provision, liquidity is provided to the system as a whole, and is available to any institution participating in the money markets in the widest sense. In general, the CB will not transact with all institutions in the market directly. Rather, it will transact directly with a group of larger banks or primary dealers, and rely on them to transmit the liquidity through the banking system by means of normal market mechanisms.

32. It is possible that, in times of systemic stress, these mechanisms may be ineffective if there are widespread doubts about the creditworthiness of other banks with whom the CB does not transact directly. One possible response is to widen the network of those with whom the CB will transact. However, it is difficult to do this without undermining the element of market discipline, which is one of the stronger arguments for use of this mechanism. In addition, if the network is widened, this needs to be done in such a way as not to raise suspicions that any bank participating for the first time is doing so because it is in difficulty. Thus, if a new approach is taken, the new participants need to include strong banks about which there are no doubts in the market.

3.1.2 Standing facilities

33. The issue of eligibility is of most concern in relation to standing facilities. By their nature, standing facilities are not discretionary, so there needs to be a clear statement about which entities are eligible to access them. The minimum eligibility, if the facilities are to do their job, is all systemically significant domestic banks. Exclusion of smaller banks does, however, raise some issues. The implication is that small banks can always meet their liquidity needs in the market, or that they need to manage their liquidity better than larger ones, or that their failure while still solvent is acceptable.⁸ In general, the approach in the conventional sphere is that standing facilities are available to all licensed, domestic, deposit-taking banks, subject to some conditions about their being in good standing (e.g. not in any insolvency procedure, subject to certain kinds of regulatory action, in default on past facilities, in default on other obligations, etc.).

34. All these conditions are equally applicable to SLOLR facilities. If there are Islamic banks that offer unrestricted profit-sharing investment accounts (UPSIs) but not deposits, there will be a strong case for including these, too, because the element of maturity transformation involved will make them subject to comparable risks to deposit takers. In addition, PSIs may be considered more sensitive to withdrawals since, unlike deposits, capital providers would bear losses, if any (in the absence of negligence, misconduct and breach of contractual conditions by the IIFS).

35. There are points at which eligibility may be widened, and on which CBs take different positions. One point concerns investment banks – that is, banks that do not take retail deposits. Views on investment banks normally depend on their systemic significance (and thus the consequences of any failure). However, it appears to be largely common ground that any institution whose eligibility for standing facilities is premised on its systemic significance should be licensed and regulated as a bank.

36. A further issue concerns branches of foreign banks. The argument against allowing these branches to access standing facilities is that, since they are part of the same legal entity as the parent, liquidity has to be considered for the entity as a whole, and the needs met in the parent jurisdiction. The argument in favour of access is that there may be a need for liquidity in the domestic currency, and that if this cannot be freely accessed in foreign exchange markets the only appropriate source may be the CB.

⁸ The GN lays out these arguments in order to allow its users to adopt an approach that is best suited to their unique financial market, and does not necessarily endorse any particular approach.

37. The issue of branches of foreign banks would also be relevant to the overall liquidity risk supervision strategy of the CB and the understanding between the host and home CBs. The home RSA would normally be responsible for performing an overall assessment of the liquidity position of the IIFS on a consolidated basis, including its foreign branches. Such consolidated information should be provided to the host RSA, and the strategy for supervising the relevant branches, including their eligibility for host SLOLR, should be agreed upon by the host and home CBs and RSAs. The status of the branch, as regards systemic importance, and whether any SLOLR funds advanced by the host CB would be passed on to the parent entity in another jurisdiction are two significant considerations for a host CB when determining the eligibility of branches of foreign banks for SLOLR. The host CB and supervisor would be expected to have greater involvement in the liquidity risk assessment of branches of foreign banks where a decentralised structure for liquidity risk management is adopted by the IIFS. Establishing clear agreements, including memorandums of understanding, between the host and home CBs would be essential so as to clearly designate the parties' respective roles and responsibilities in normal times and in periods of stress.⁹ Such agreements should also clearly determine the oversight and sanction powers of the host CB over the branch.

38. Where a conventional bank is a member of a group, there may also be a question as to which members of the group can access the LOLR. In general, the thinking for conventional LOLRs appears to be that any entity within the group that is incorporated within the jurisdiction and licensed as a bank may access it. This approach obviates the need for intragroup transactions, both in liquidity and in the relevant collateral, in order to stream liquidity to the point where it is needed.

39. These group issues become more severe in the case of an SLOLR and a group that may contain both conventional and Islamic banks. In this case, to maintain the separation of the Islamic and the conventional business, it is necessary that any Islamic bank be given access to the SLOLR facility, even if other conventional members of the group have access in parallel to the conventional facility. Similarly, there are strong arguments for giving an Islamic window access to the SLOLR facility.

40. However, if either an Islamic window or an Islamic subsidiary of a conventional bank has access to the SLOLR, while the conventional bank, or a conventional member of the same group, has access to its conventional counterpart, then the penal rates for the two facilities do need to be closely aligned; otherwise, the opportunities for arbitrage will be too great.

⁹ Refer to section 4.6 of IFSB-12 for guidance on home-host and cross-sector supervision of liquidity risk.

41. In determining eligible institutions for SLOLR, CBs would need to consider that different types of financial institutions are closely interlinked and interconnected due to the changing nature of the financial system. This has resulted in higher systemic risk and increased chances of reputational contagion from one type of institution to another. Further, many Islamic investment banks and other specialised Islamic financial institutions are part of a group, and any presumed or actual problems with such institutions can spread to other entities in the group. Keeping this in view, it is necessary for CBs to consider contagion effects when determining the types of institutions eligible for SLOLR access in both normal and stressed times.

3.1.3 Systemic provision

42. Discretionary facilities are, by their nature, subject to the discretion of the CB. It follows that the eligibility criteria can in principle be varied. It can be argued that there is merit in constructive ambiguity as a response to moral hazard; that is, banks have less incentive to run unduly high levels of liquidity risk if they do not know whether the CB will provide liquidity on a discretionary basis. However, because decisions on discretionary provision are likely to have to be made quickly, the CB will need to have established at least an internal policy position on the types of entity to which it might provide liquidity.

43. The minimum set is likely to be those eligible for standing facilities where these exist. Beyond that, the arguments are broadly as above. The CB must also be satisfied that the IIFS requesting idiosyncratic SLOLR support has in fact exhausted all other funding avenues. This could partly be accomplished through the use of an appropriate rate that exceeds market rates. There may be a few additional candidates to consider that are systemically significant – for example, central counterparties or other financial market infrastructures – but there are strong arguments against extending the ambit beyond entities that are prudentially regulated comparably to banks.

44. In this area, most of the considerations are again similar to those for a conventional LOLR. However, if SLOLR had to be given on a discretionary basis to an Islamic subsidiary of a conventional bank, some thought would need to be given to the level at which additional supervisory requirements should be imposed, given that capital adequacy regimes are normally applied at the group consolidated as well as solo level. In this discretionary case, there are strong arguments for the intervention to be at group level¹⁰ (with the probable implication that the group will not allow an Islamic subsidiary of a conventional bank to seek access to discretionary facilities if the group can find means to avoid this).

¹⁰ Where CB intervention is made at group level and liquidity is needed by the Islamic subsidiary, the intragroup transactions that transfer liquidity to the Islamic subsidiary must comply with Shari'ah rules and principles as determined by the relevant Shari'ah body. The same applies where liquidity is needed by an Islamic window and CB intervention is made at the conventional bank level.

this is a strategy to deter excessive risk-taking by banks and to reward those who maintain high-quality portfolios. However, the 2013 IADI Annual Survey Results¹⁷ (responses as of end-2012) indicated significantly more countries mandating risk-based contributions.

45. Similar to standing facilities, it is possible to restrict discretionary SLOLR access to systemically important banks, or to banks within certain domestic regulatory categories that reflect systemic importance or size. This is done on the premise that failure of other banks does not trigger systemic risks. CBs adopting this approach must be satisfied with the parameters of any contagion effects that may emanate from the liquidity strain experienced by the IIFS in question.

46. Home CBs may consider the inclusion of foreign branches or subsidiaries of local banks where it is determined that those foreign operations are critical to domestic systemic stability and particularly where the foreign branch or subsidiary is not within the ambit of SLOLR in its host jurisdiction (perhaps due to non-fulfilment of a host CB's SLOLR eligibility criteria). Home CBs would therefore need to make appropriate and ongoing assessments to identify foreign entities of local banks that are deemed to be important for the domestic system, and to establish appropriate mechanisms and agreements with host supervisors and CBs to channel liquidity facilities when needed. Home CBs may also make assessments to identify potential foreign currency reserves that would be needed to provide SLOLR facilities to foreign branches or subsidiaries of local banks, and to increase existing reserves (in relevant denominations) should the assessment identify possible shortages between current and estimated foreign currency needs for SLOLR purposes.

3.2. Collateral

47. Sharī'ah permits the financing provider to ask for a security from the recipient of financing. (The use of collateral in certain contracts, including *muḍārabah*, *mushārah* and *wakālah*, is restricted to events of negligence, misconduct and breach of contractual conditions.) In SLOLR, the collateral requirement is intended to mitigate risks faced by the CB and can be in many forms, provided that it is a Sharī'ah-compliant asset as determined by the Sharī'ah board whose rulings are adopted by the CB. WP-01 cites several examples of collateral acceptable in Sharī'ah, including property, vehicles, *sukūk*, shares, ornaments or other valuables.

48. For standing facilities, CBs generally require specific good-quality *sukūk*, normally issued by CBs, sovereigns or government-linked companies,

as collateral, and some have been observed to accept in addition precious metals and other valuables that are recognised as liquid assets. In addition, and as part of the survey conducted for the development of this GN, jurisdictions reported using various types of Islamic capital and money market instruments as collateral for SLOLR, including: *sukūk* issued by the International Islamic Liquidity Management Corporation; Sharī'ah-compliant non-government instruments; Islamic instruments of deposit; warehouse receipts; Sharī'ah-compliant instruments that received some form of a "liquidity status" from the CB; and guarantees by other Islamic banks. In jurisdictions where Sharī'ah-compliant collateral is limited, IFSB-12 recommends that CBs should seek to harmonise and expand the eligibility of Sharī'ah-compliant collateral issued in other jurisdictions and currencies. Such harmonisation and expansion could be achieved by establishing mutual recognition processes and agreements to accept *sukūk* issued by public-sector enterprises, major national corporate bodies, multilateral institutions, or other CBs¹¹ and sovereigns.

49. In jurisdictions implementing the liquidity coverage ratio measure, IIFS assets that have been classified by the relevant RSA as high-quality liquid assets (HQLA) in either Level 1 or Level 2A¹² should ideally be accepted by the CB as eligible collateral for both standing and discretionary facilities (with applicable haircuts, if any). Before qualifying as HQLA, assets in these two HQLA categories would have fulfilled certain criteria, including tradability, liquidity and range of price volatility during periods of significant liquidity stress, and are thereby typically considered good-quality collateral.

50. The CB needs to be aware of the type and quality of assets held by IIFS in its jurisdiction, and thereafter build a profile of collateral instruments that it would deem acceptable in an SLOLR event. In determining acceptable collateral, the CB may need to work closely with the relevant Islamic capital market RSA in order to arrive at an appropriate understanding of the regulatory framework, including business conduct regulations, transparency requirements and supervisory measures applicable to Sharī'ah-compliant securities being considered for inclusion in the CB's list of eligible collateral. This understanding would assist the CB in making appropriate valuations and determining appropriate haircuts¹³ for these Sharī'ah-compliant securities, particularly during times of systemic stress.

¹¹ It is recommended that *sukūk* issued by other CBs be given a low risk weight in order to increase their acceptability as collateral for interbank and CB liquidity support, but always subject to the issue of currency risk.

¹² As defined by the IFSB's GN-6: *Guidance Note on Quantitative Measures for Liquidity Risk Management in IIFS [Excluding Islamic Insurance (Takāful) Institutions and Islamic Collective Investment Schemes]*, available at <https://www.ifs.org/download.php?id=4391&lang=English&pg=/published.php>.

¹³ See section 3.3 of this GN for a discussion on haircuts.

51. An important consideration at this stage is that assets that IIFS hold when requesting idiosyncratic SLOLR access (aside from standing facilities) are likely to be of lower quality, or less liquid, than in normal conditions, since an IIFS would have exhausted all other means of liquidity prior to resorting to CB facilities. The CB should therefore design a collateral framework that appropriately helps the CB mitigate SLOLR risks in line with its risk appetite, while being sufficiently flexible in its eligibility criteria and scope to allow it to effectively fulfil the intended purpose of an SLOLR function. The CB should also be internally prepared to expand its collateral framework as part of its response to unusual liquidity stress conditions without waiving its discretion to intervene.

52. Sharī'ah-compliant collateral may comprise more than one asset, and the collateralised asset(s) have to be legally transferable to the CB and not be encumbered or hindered by other liabilities.

53. The CB should establish appropriate due diligence procedures to verify the existence, eligibility and legal status of the collateral where the need for SLOLR is determined early on. Such due diligence is intended to ensure that information provided by the IIFS regarding the collateral is accurate, particularly when the collateral is financing. Where the SLOLR request is urgent (typically in idiosyncratic situations), the due diligence could be conducted within an appropriate time frame soon after the provision of the SLOLR.

54. A fundamental consideration in SLOLR (and LOLR) is that an institution would need the SLOLR funds fairly quickly, possibly within a day of its request. Collateral must therefore be quickly transferable to the CB after an SLOLR request. It may become apparent, during the development of an SLOLR framework, that some assets fulfilling the CB's collateral eligibility criteria require lengthy processes before they could be transferred. The CB may need to put in place specific measures, customised for each type of acceptable collateral, to facilitate the quick pledging of assets in SLOLR arrangements. For example, IIFS may pre-position collateral with the CB, which allows the latter time to amend standard legal documentation and address any cost and taxation implications of the collateral transfer to ensure smooth transferability and appropriate resolution of any legal disputes.

55. It may be necessary for a CB to examine whether the collateral is originally issued, guaranteed or otherwise supported by a party related to the IIFS requesting the SLOLR. The CB may choose not to accept such a collateral if the issuer and the IIFS are directly or indirectly dependent on each other financially such that a default by the IIFS could degrade the collateral. Alternatively, the CB

may impose an appropriate haircut, or haircut add-on,¹⁴ for such collateral during the valuation process.

56. The CB must also have in place sufficient resources and capacity for collateral valuation. Valuation, and revaluation, of collateral should ideally take place on a daily basis, using available, and reliable, market prices. The use of *sukūk*, for example, as collateral is normally acceptable, with the credit rating and market value of the *sukūk* being important factors in its valuation process (except in those cases where the *sukūk* are issued by the sovereign itself in the domestic currency). In jurisdictions where *sukūk* are not credit rated by an approved credit-rating institution, the CB would have to ensure that it either outsources such an assessment or performs it internally within an appropriate time frame that does not compromise the effectiveness of SLOLR. This requirement applies to other types of collateral, too, including shares. Where market prices are unavailable or unreliable, CBs may use future cash flows of the Sharī'ah-compliant financial securities posted as collateral to estimate its value in line with Sharī'ah rules and principles. Where collateral is not denominated in the currency in which liquidity is being provided, an appropriate haircut add-on should be applied for currency risk.

57. If the value of the collateral(s) posted by the IIFS declines to such an extent that it no longer meets the minimum specified by the CB, the IIFS may be required to post additional Sharī'ah-compliant collateral to satisfy the CB's requirements. Failure by the IIFS to comply with the additional collateral requirement could be deemed an SLOLR default event triggering remedial action by the CB (see section 3.7 below).

58. It is not against Sharī'ah rules and principles to offer receivables as collateral. However, the recipient of the collateral must bear in mind that utilising this collateral, in the event of default by the IIFS, would involve taking over instalment receipts from the underlying customer (i.e. the customer of the IIFS) which can be long term. In applying this scenario to a CB's position as an SLOLR provider, the acceptability of receivables as collateral from an IIFS becomes rather unattractive, but possibly necessary where there is a lack of alternative Sharī'ah-compliant collateral and in order to avoid experiencing and having to address systemic concerns.

59. The valuation of a receivable's credit risk is also more cumbersome than that of a sovereign or credit-rated *sukūk* or, to some extent, shares. CBs accepting receivables as collateral should review the receivables' terms and conditions and data, and satisfy themselves with regard to their rights and possible obligations as owners of the financing. The CB should also ensure that its risk management,

¹⁴ See section 3.3 of this GN on haircuts.

information technology and legal resources are capable of handling financing receivables. A simple approach to valuing a receivable collateral includes the use of the financing's net outstanding value, deducting profit payments (from the IIFS's customers) payable within the SLOLR's term and applying relevant haircuts.

60. CBs, much like commercial banks, must ensure that in idiosyncratic, non-standing-facility situations, concentration limits are in place for each type of collateral and in line with their risk appetite. Standing facilities would generally require good-quality collateral since they are on-demand, and setting concentration limits for collateral would therefore have less significance than in other discretionary SLOLR interventions where collateral quality is expected to be lower.

61. In addition, and as recommended by IFSB-13: *Guiding Principles on Stress Testing for IIFS [Excluding Islamic Insurance (Takāful) Institutions and Islamic Collective Investment Schemes]*, Sharī'ah-compliant collateral must be assessed regularly by the CB under stressed conditions when markets may not be fully functioning. This requirement would be more relevant in longer-term and discretionary SLOLR scenarios.

3.3. Haircuts

62. Haircuts are assigned percentage reductions in the value of assets used as collateral,¹⁵ and are essential means of reflecting future volatility in collateral prices. Haircuts on collateral values would generally be determined using available data, prices and statistical methods to reflect the volatility, liquidity and other risks (and tenor) of each type of collateral. It is likely that higher haircuts would be assigned to collaterals with less frequent valuation, other things being equal (e.g. where market prices are unavailable or updated infrequently). CBs that do not have sufficient data or capacity to undertake a haircut determination exercise could potentially utilise SLOLR haircuts from another jurisdiction with comparable assets and risk characteristics while adjusting for local idiosyncrasies that may include tradability concerns or higher price volatility. CBs determine and (possibly) publish their haircut schedules, but they must also maintain the discretion to impose stricter thresholds and rates, particularly in events where their intervention is necessary and the affected IIFS does not meet some SLOLR criteria. These "stricter" haircuts are known as haircut add-ons and are designed to reflect unique risks of certain collaterals or counterparties that have not been accounted for by the standard haircuts (e.g. where collateral is denominated in certain currencies, or where the CB has concerns regarding the capacity of the IIFS to repay its SLOLR obligations).

¹⁵ From another perspective, haircuts may also be understood as representing the excess of the collateral's value over that of the financing (in this case, the SLOLR financing).

3.4. Indemnity

63. In idiosyncratic situations, the CB could explore obtaining an indemnity from the government should it have concerns regarding the solvency of the IIFS requesting SLOLR, its capacity for timely repayment or its fulfilment of SLOLR criteria, including collateral. Such an arrangement would have to be developed and agreed with the government on a case-by-case basis prior to SLOLR provision, and would unconditionally, and irrevocably, guarantee the CB's funds should any losses arise from its provision of SLOLR support.

3.5. Punitive Rate¹⁶

64. A punitive rate works to ensure that an LOLR facility is utilised only when necessary, by ensuring that banks pay a higher rate than market rates. Thus, as mentioned earlier, the return required by the CB should be higher than market rates, so that banks will find using the facility economically unattractive. At the same time, the rate should not be so high that it becomes counterproductive by placing a burden on banks already facing liquidity shortages.

65. Also highlighted earlier, the rate for the SLOLR facility will need to be closely aligned to that for its conventional counterpart in jurisdictions with dual banking systems, in order to limit the scope for arbitrage between them.

66. The punitive rate, where it is permissible to determine one using a Sharī'ah-compliant mechanism, could be set using various approaches, most of which depend on an underlying benchmark rate. Pricing approaches include, among others:

- a. benchmarking the rate against the overnight policy rate by applying a fixed spread through a Sharī'ah-compliant mechanism;
- b. using the CB's bank or repo rates as a benchmark to be applied through a Sharī'ah-compliant mechanism; and
- c. where SLOLR is provided through *muḍārabah* or *mushārah* mechanisms, using a profit-sharing ratio that favours the CB and allows it, subject to the level of profits generated by the investment, to achieve a particular rate.

67. The approach and rate would be determined periodically, depending on market conditions, by a monetary policy committee (or other appropriate body) of the CB.

¹⁶ See paragraphs 20 and 21 of this GN for the rationale of the punitive rate.

68. CBs in some jurisdictions may use an approach that imposes, at the commencement of LOLR provision, a higher rate that reduces over the facility's duration. While this may be possible for conventional banks, any punitive rate for IIFS (for commodity murābahah transactions and Islamic repurchase agreements) must be fixed throughout the duration of the SLOLR facility in line with Sharī'ah rules.

3.6. Duration

69. Considerations in respect of the duration of an SLOLR facility are not expected to be different from those for a conventional LOLR arrangement. Standing facilities are generally given overnight for up to a week. Other idiosyncratic SLOLR support should generally be provided for the shortest amount of time that would enable the IIFS to overcome its liquidity stress and, as highlighted in section 4.1 below, should come with heightened supervisory oversight that would include agreeing a funding plan with the IIFS.

70. In order to allow themselves flexibility in addressing a variety of circumstances, and as a matter of general policy, CBs could prefer to retain discretion regarding the maximum duration for idiosyncratic SLOLR facilities rather than setting a predetermined maximum period. However, providing idiosyncratic support to an IIFS for longer than needed could elevate moral hazard risks and point to deeper issues at the IIFS than liquidity stress, whereas a maximum duration that is too short could restrict the CB's ability to ease the liquidity pressures that SLOLR facilities were designed to address. It is therefore encouraged that CBs develop and communicate policies implying a limited duration for idiosyncratic SLOLR, and which may subject the IIFS to increasing supervisory enforcement and monitoring should it request rollovers beyond the duration initially agreed. Once a CB and an IIFS enter into an SLOLR transaction, the duration of the particular arrangement will of course be known by both parties.

3.7. Events of SLOLR Default

71. With regards to SLOLR provided to IIFS, CBs must lay out clear criteria for scenarios that constitute events of SLOLR default on the part of the IIFS and which would trigger the CB issuing a default notice or taking other actions to recover its SLOLR funds. In general, events of default could include the following, among others:

- a. The IIFS fails to maintain acceptable collateral as prescribed by the CB.
- b. The IIFS fails to make a payment when such payment is obligatory as per the SLOLR terms and conditions and in line with Sharī'ah rules and

principles.¹⁷

- c. The IIFS makes representations or provides information deemed materially inaccurate at the time they are made or provided.¹⁷
- d. The IIFS, or the guarantor (if applicable), fails to communicate its inability or unwillingness to perform its obligations under the SLOLR terms and conditions.
- e. The Islamic banking licence or authorisation of the IIFS is suspended or withdrawn.
- f. The IIFS is suspended or prohibited from participating in any local payment system or securities exchange, or is prohibited from dealing in securities, by any government or RSA.
- g. The IIFS ceases to carry on its business, enters into any reorganisation or special arrangement with its creditors, or becomes insolvent and unable to pay its debts as they become due.
- h. A liquidator, receiver, trustee, custodian or administrator is appointed, or notice is given of their appointment, in respect of the IIFS, the IIFS's parent, any subsidiary of the IIFS or the IIFS's guarantor (where applicable), or in respect of all or a substantial amount of the assets of the IIFS, the IIFS's parent, any of the IIFS's subsidiaries or the IIFS's guarantor.
- i. A court of law makes a winding-up order in respect of the IIFS, any of its subsidiaries or its parent under the relevant insolvency Act.
- j. The IIFS ceases to meet the SLOLR eligibility criteria set by the CB.
- k. The IIFS is engaged in a transaction that, at the discretion of the CB, is deemed to weaken its creditworthiness. Such transactions may include the IIFS (i) acquiring, or being acquired by, any person(s) or entity; (ii) being involved in a merger with another entity or entities; or (iii) altering its capital structure by the issuance of new capital.

72. The CB should disclose to IIFS, in line with its disclosure policy and as highlighted in section 4.2 below, events it considers to constitute default.

3.8. Structures and Contracts

73. Several Sharī'ah-compliant mechanisms that CBs could utilise to provide SLOLR are discussed below. This subsection does not seek to be exhaustive in its coverage of potential SLOLR mechanisms, nor does the GN indicate any preference among the structures and contracts described.

¹⁷ See sections 3.8.3 and 3.8.4 for a discussion on default in muḍārabah, mushārahah and wakālah contracts.

74. In addition to a brief description of the steps involved in the execution of each contract, this subsection evaluates the suitability of these structures against essential features of an SLOLR mechanism, including the setting of a punitive rate, whether collateral can be posted, suitability for overnight financing and rollover, and identification of SLOLR default events.

3.8.1. *Qard mechanism*

75. *Qard*, or “loan”, in the context of Islamic finance, is defined as “the payment of money to someone who will benefit from it provided that its equivalent is repaid”. It is a loan where the borrower is contractually obliged to repay only the amount borrowed. Sharī’ah rules and principles do not allow the settlement of a loan with added value or benefit, unless the borrower has undertaken to advance such an addition or benefit voluntarily at the time of settlement and without it being stipulated in the contract. If a fixed period for repayment is stipulated in the contract, the borrower is liable to pay back the amount to the lender on or before the agreed date. Where a repayment date/period is not stipulated in the contract, it becomes binding upon the borrower to make a repayment of the amount to the lender on demand.

76. The CB provides SLOLR funds to the IIFS under a *qard* contract and in return receives eligible collateral for the duration of the SLOLR. The CB may also choose to accept Sharī’ah-compliant third-party guarantees¹⁸ while taking into consideration any issues around collection against the guarantees. The IIFS is obligated to repay the CB the amount borrowed in addition to any administration fee charged by the CB. Any such fee should cover no more than the actual and direct administrative costs incurred by the CB in making available SLOLR funds, and CBs may not receive additional benefit/profit from such fees.

77. The *qard* mechanism is straightforward, which makes it suitable for overnight liquidity support. The CB’s funds are guaranteed by the IIFS, and the transaction can be completed quickly in the absence of other impediments such as those related to the collateral valuation and solvency assessments. The occurrence of any of the default events described in section 3.7 above, including failure of the IIFS to repay the CB the SLOLR amount within the agreed time frame, would be treated as a default triggering the CB’s rights to liquidate the collateralised assets. CBs may impose a commitment on the IIFS to make a charitable donation in the event of wilful default, with the CB acting as an agent in the disbursement of these funds to charitable activities with the knowledge of the centralised Sharī’ah board (if any). The IIFS may choose to settle the SLOLR arrangement early, and this should create no additional financial implications for

¹⁸ Accepting third-party guarantees for a fee is not Sharī’ah-compliant unless the fee is based on actual and direct costs..

either party. The CB and IIFS may also agree to roll over the SLOLR funding using a standard clause to that effect in the qard agreement, without an increase in the *qard* amount.

78. CBs wishing to use a qard contract for SLOLR must be mindful that they would not be able to set a predetermined punitive rate, and would essentially provide return-free loans for IIFS. This would create unequal treatment in jurisdictions where conventional banks are made to pay certain rates to access the LOLR facility. A CB using a qard mechanism may therefore utilise qualitative means to partially mitigate risks arising from IIFS accessing loans that are essentially free of financial cost. Such measures might include restricting the payment of bonuses to the IIFS's management and imposing dividend distribution constraints.¹⁹ However, while such measures could be imposed in idiosyncratic support scenarios, they may not be suitable for standing facilities. A qard mechanism is therefore simple to execute, but the implications of its low financial cost to IIFS could render it unsuitable for SLOLR (and particularly for standing facilities). However, it could be necessary to utilise such a mechanism in idiosyncratic situations in the absence of alternative structures.

3.8.2. Commodity murābahah transaction (CMT) mechanism

79. One mechanism that CBs can utilise to provide SLOLR is CMT. The IFSB's GN-2: Guidance Note in Connection with the Risk Management and Capital Adequacy Standards: Commodity Murābahah Transactions²⁰ defines CMT as a murābahah-based purchase-and-sale transaction of Sharī'ah-compliant commodities, whether based on cash or deferred payment terms. In the context of SLOLR, the IIFS makes an SLOLR request and a binding promise to purchase commodities from the CB, which subsequently buys Sharī'ah-compliant commodities on a spot basis in cash and takes possession of these commodities either physically or constructively. The CB then sells these commodities on a deferred payment basis, and at cost plus mark-up, to the IIFS using a murābahah contract. The IIFS sells these commodities to a third party at a spot price and obtains liquid funds. The net outcome of this transaction is that the IIFS obtains cash and has a financial obligation towards the CB (comprising the price at which it purchased the commodity from the CB). The CB would receive eligible collateral²¹ in lieu of the commodity's sale price, and the IIFS would make payments to the CB according to the agreed SLOLR terms. The collateral would still be considered as owned by the IIFS, and any profits generated by the collateral during the SLOLR period would belong to the IIFS. However, both parties could agree to utilise any such profits in the repayment of SLOLR debt.

¹⁹ See section 4.1 of this GN on supervisory actions.

²⁰ GN-2 is available at <https://www.ifsb.org/download.php?id=4387&lang=English&pg=/published.php..>

²¹ The CMT (*tawarruq*) structure described here, which includes the provision of collateral, is sometimes referred to as collateralised commodity *murābahah*.

80. The use of CMT enables a CB to set a predetermined punitive rate through the mark-up component of the *murābahah* contract. The establishment of a CMT-based SLOLR facility may necessitate the presence of an active commodities market in a jurisdiction. However, in the absence of such markets in local jurisdictions, CBs could execute such transactions in foreign commodity markets and using foreign currency. CMT processes may appear to be lengthy because of the use of multiple contracts. The suitability of this arrangement for overnight SLOLR support will hinge on the level of document standardisation and commodity market development. CBs should also be mindful of any brokerage fees associated with executing CMT, and factor these in appropriately when determining profit mark-ups (penal rates).

81. In jurisdictions without ready access to commodity markets appropriate for Islamic banking transactions, CMT may become a cumbersome and time-consuming process not suited for overnight facilities. This would render CMT more appropriate to meet idiosyncratic, rather than systemic, SLOLR requests. Jurisdictions with well-established commodities markets are more likely to utilise a CMT mechanism, as it addresses regulatory arbitrage and “level-playing field” concerns through the use of predetermined mark-up as a punitive rate. Depending on the size of the commodities market, which must of course be capable of handling transactions on a scale commensurate with the possible demands for liquidity, such jurisdictions may face less of a challenge in introducing system-wide SLOLR facilities. CBs opting for CMT as an SLOLR mechanism should ensure that they have appropriate risk management tools that address potential risks arising from CMT, including market or price risk (particularly in the event the counterparty fails to fulfil their promise to purchase the commodity, resulting in the CB holding the commodity for longer than expected), foreign exchange risks where transactions are conducted in foreign commodity markets, and liquidity risk (given Sharī’ah restrictions on the sale of debt), among others.²²

82. An IIFS would be deemed to have defaulted should any of the default events described in section 3.7 above, or as determined by the CB, materialise, including where the IIFS fails to pay the purchase price of the commodity to the CB as agreed, thereby triggering the CB’s right to liquidate collateralised assets. Similar to the treatment described for qard, CBs may impose a commitment on an IIFS to make a charitable donation in the event of wilful default, with the CB acting as an agent in the disbursement of these funds to charitable activities with the knowledge of the centralised Sharī’ah board (if any).

83. Rollover of the facility may be executed through a clause in the CMT contract that allows an extension of the CMT term subject to the agreement of

²² See Section 3 of GN-2 for further details on prudential risks and risk management in CMT.

both parties and without increase in the amount of profit to be paid by the IIFS. Rolling over the CMT SLOLR funding while allowing the CB to earn a profit for the new period would require going through a Sharī'ah-compliant "re-financing" arrangement: a new CMT contract would be executed with a similar amount to that provided in the first contract, with the IIFS using the new amount to repay the debt from the first contract and thereby allowing the CB to apply a punitive rate (profit mark-up) for the second contract and period. (The new profit mark-up must be similar to the profit mark-up stipulated in the first contract.) (However, rolling over the CMT SLOLR through a new contract must not be stipulated in the original CMT contract, while the utilisation of the new funds in the repayment of the original CMT debt must not be a condition in the new or original CMT contracts.)

84. On the other hand, the IIFS may choose to settle the SLOLR debt earlier than planned. The CB, in such an event, may at its own discretion offer a partial rebate, the amount of which would be unilaterally determined by the CB, on the profit portion of the sale price. This partial rebate should, however, be entirely discretionary and not stipulated in the contract.

3.8.3. *Muḍārabah and mushārah mechanisms*

85. Another mechanism that could be used for SLOLR provision is *muḍārabah*, which refers to a contract between a capital provider (*rabb al-māl*) and a second party (*muḍārib*) in which the former contributes capital and the latter contributes effort in managing the business. The parties will share the business profit according to an agreed ratio. The CB, as a capital provider, may enter into either a restricted or an unrestricted *muḍārabah* with the IIFS (as the *muḍārib*), and may agree with the IIFS a profit-sharing ratio that, to the CB's assessment, would result in an overall profit rate at par with the LOLR rate set for conventional banks in its jurisdiction. However, in Sharī'ah, profits from *muḍārabah* investments are uncertain and cannot be guaranteed. While the profit-sharing ratio could be determined with a predetermined punitive rate in mind, the outcome of the *muḍārabah* would be dependent on the performance of assets in which the *muḍārabah* funds were invested. The ownership of such assets lies with the capital provider. The provision of guarantees or collateral by the *muḍārib* against the *muḍārabah* funds is restricted to events of negligence, misconduct or breach of contractual conditions by the *muḍārib*. Third-party guarantees may be used, but can only cover the *muḍārabah* capital and CBs should consider the processes, and time, involved in realising guarantees prior to determining their acceptability for SLOLR purposes.

86. The nature of the *muḍārabah* contract is such that any losses not resulting from the *muḍārib*'s negligence, misconduct or breach of contractual conditions will have to be borne by the capital provider – this is referred to as capital impairment risk. In a scenario where the IIFS incurs a loss in utilising the funds provided by the CB as part of the SLOLR arrangement, and in the absence of negligence, misconduct or breach of contractual conditions on the part of the IIFS, the CB will have to bear the full loss. This scenario may create equal-treatment issues, as conventional banks are not normally offered a standard LOLR facility requiring the lender to bear any losses. To counter this issue, the CB could consider the use of a *mushārah* (partnership) structure, which has the same theoretical underpinnings as the *muḍārabah* mechanism, except that the funds are made available for investment by both the CB and the IIFS, and any losses are shared according to their proportionate contribution to the capital of the partnership, thereby providing an incentive for the IIFS to ensure a profitable outcome of the investment. However, a drawback of using *mushārah* for SLOLR purposes is that the IIFS would be expected to provide some form of capital at a time when its liquidity position could potentially allow little to no contribution. In addition, the profit-sharing ratio depends on the valuation of the assets contributed by each party; this implies that the assets contributed by the IIFS, in particular, will need to be ones that can readily be valued at a time when markets may well be turbulent.

87. Therefore, while events of defaults described in paragraph 71 would be applicable to a *muḍārabah* or *mushārah* contract, item 71(b) would require special consideration. Failure of the IIFS, as a *muḍārib* or partner, to generate profit from its use of the *muḍārabah* or *mushārah* funds is not regarded as a default event in Sharī'ah, as these contracts are intended to encourage entrepreneurship and risk sharing. In the absence of default events other than described in paragraph 71(b) or as determined by the CB, a default in *muḍārabah* and *mushārah* in an SLOLR arrangement occurs when: (i) the IIFS fails to bear a loss resulting from its own negligence, misconduct or breach of contractual conditions; or (ii) the *muḍārabah* or *mushārah* arrangement is concluded and the IIFS fails to return the CB's funds (after deducting the IIFS's share of profits). The CB's funds at the conclusion of the arrangement may comprise the CB's full capital plus its share of profits, only the CB's capital, diminished capital of the CB, or no funds, depending on the outcome of the investment.

88. *Muḍārabah* or *mushārah* contracts may not be suitable for an overnight financing arrangement, since the calculation of profit and the investment of the funds are usually undertaken over a longer period. These modes are therefore more appropriate for longer-term liquidity provision (e.g. 30 days and above). Early settlement of SLOLR by the *muḍārib* or partner would not alter the profit-sharing

ratio, and the IIFS would share with the CB any profits that have been generated from the underlying investments up to the settlement date.

89. The rollover of liquidity facilities based on *muḍārabah* or *mushārah* would require the use of “constructive liquidation” at the end of the ongoing *muḍārabah* or *mushārah* arrangements. Constructive liquidation enables the IIFS and the CB to determine the *muḍārabah* or *mushārah* funds, profits and their allocation at the end of a *muḍārabah* or *mushārah* term, and then to agree on the principal (whether it includes the CB’s profits from the earlier term or only the principal) for the new term and contract without having to go through an actual liquidation process for the *muḍārabah* or *mushārah* assets.

90. The use of *muḍārabah* and *mushārah* generally assumes that the funds extended are to be used in profit-generating activities. This may not be true in SLOLR circumstances, as IIFS in stress are likely to need SLOLR support to meet fund-withdrawal requests and other obligations, rather than to satisfy credit demand. The use of the *muḍārabah* or *mushārah* mechanisms for SLOLR can nevertheless be effected if the IIFS is exposed to pressure from investment account holders (IAHs) wishing to withdraw their funds. In this scenario, the CB replaces the IAHs in the investment pool and can be assigned a weighting higher than other IAHs in the pool, representing the punitive rate imposed on the IIFS.

3.8.4. *Wakālah bi al-istithmār mechanism*

91. *Wakālah bi al-Istithmār* is another structure that CBs could consider in providing SLOLR. *Wakālah* is an agreement in which one party (*muwakkil*) appoints another party (*wakīl*) to act on its behalf to accomplish certain specified services or activities (particularly investment activities). Profits generated by any such activity are distributed to the *muwakkil* less the *wakālah* expenses and the *wakīl* fee, in accordance with the terms of the *wakālah* agreement. If the contract includes a “target” profit rate on the investment, the *wakālah* contract can stipulate that, in addition to a pre-agreed flat fee, the *wakīl*’s remuneration may be either any gain in excess of the “target” profit rate, or a certain share of profit.

92. In an SLOLR context, the CB (*muwakkil*) appoints the IIFS (*wakīl*) as its agent to invest in Sharī’ah-compliant assets on its behalf. This could be done through either a restricted or an unrestricted *wakālah* contract. The IIFS as the *wakīl* will notify the CB of the target profits upon contract execution. Profits (if any) exceeding the quoted target profits may be retained by the IIFS as a performance incentive if contractually agreed upon by both parties. Similar to *muḍārabah*, the CB, as principal, shall bear all risks associated with the transaction except for those

risks resulting from the IIFS's negligence, misconduct or breach of contractual conditions and for which the CB may require a Sharī'ah-compliant collateral.

93. The *wakīl* is generally entitled to a pre-agreed flat fee irrespective of whether the actual profit is less than, equal to or greater than any target profit, and also in the event of a loss. This fee is agreed at any amount by both parties, and can be a token amount, which would be relevant in the context of SLOLR.

94. Some characteristics of *wakālah* are similar to some features of *muḍārabah*. For example, a *wakālah* contract may not be suitable for overnight liquidity support. It also does not facilitate the determination of a punitive rate, creating issues of regulatory arbitrage. CBs that choose the *wakālah* mechanism have to ensure that the SLOLR facilities are used in profit-making activities only. Similar to *muḍārabah* and *mushārah* mechanisms, the use of *wakālah bi al-Istithmār* for SLOLR can be effected if IAHs wish to withdraw their funds from the investment pool. In this scenario, the CB would appoint the IIFS as a *wakīl* to invest the funds based on unrestricted *wakālah*. The *wakīl* would then invest the CB's funds in the investment pool from which the IAHs withdrew their funds. Consequently, the CB replaces the IAHs in the investment pool with a higher weighting representing the punitive rate imposed on the IIFS.

95. Also similar to *muḍārabah*, failure of an IIFS to generate profit from the *wakālah* agreement, or loss of part (or all) of the *wakālah* capital, does not automatically constitute default on the part of IIFS. The *wakālah* contract would make the IIFS liable to the CB only in the event of negligence, misconduct or breach of contractual conditions, or in the event that the IIFS wilfully does not remit to the CB capital and/or profit amounts generated from the investment. The *wakīl* may provide collateral against SLOLR funds, but liquidation of any such collateral is restricted to events of negligence, misconduct or breach of contractual conditions by the *wakīl*.

96. Treatment of early termination or settlement by the *wakīl* may result in the *wakālah* fee being pro-rated to the actual duration of the arrangement up to its termination, and the IIFS would liquidate *wakālah* investments and pass on any profits (or losses) generated up to the *wakālah* termination date to the CB. The rollover of a *wakālah* contract, much like *muḍārabah*, would require carrying out constructive liquidation of the investment to ascertain the value of capital and profits (if any) belonging to the CB and IIFS, after which the new term of the *wakālah* contract may commence using capital as determined and agreed upon during the constructive liquidation process.

3.8.5. Islamic repurchase agreements

97. In addition to the mechanisms described above, CBs may also utilise an Islamic repurchase agreement (Islamic repos) for the purposes of SLOLR provision. CBs may prepare these agreements according to the relevant Sharī'ah standard issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) on repurchase agreements, or ensure that these agreements fulfil Sharī'ah requirements as stipulated by relevant Sharī'ah boards in their jurisdiction should the relevant AAOIFI standard not be implemented there.

98. In an SLOLR context, an Islamic repo transaction can be effected as follows: The IIFS requesting SLOLR would sell an identified Sharī'ah-compliant instrument to the CB on a spot basis, thereby receiving the liquidity it requires. The CB would take ownership of the instrument, assuming all rights and obligations associated with such ownership. The IIFS would simultaneously, and in a separate document, unilaterally undertake, using a promise (*wa'd*), to repurchase the security from the CB at a later date using a price agreed upon by both parties at that time. Such a unilateral promise would be binding on the IIFS, while the CB, as the promisee, must not be under an obligation to resell the security. On the agreed date, the repurchase transaction could then be executed in a separate contract and using the agreed price stipulated in the contract. Payment by the IIFS of the repurchase price must be done on a spot basis.

99. A repurchase agreement, as described above, would allow the CB to obtain a security in exchange for liquidity (purchase price), which would help mitigate the CB's risk in the event of default by the IIFS. Repurchase agreements would also typically allow the CB to agree the sale and repurchase prices with the IIFS in a manner that effectively achieves a particular rate.

100. An IIFS would be deemed to have defaulted should any of the default events described in section 3.7, or as determined by the CB, materialise, including where the IIFS fails to repurchase the Sharī'ah-compliant security on the agreed date and at the price agreed then. The CB could then choose to liquidate the security in the secondary market. In that event, and if the CB sells the security in the secondary market for a price lower than its purchase price (the amount of liquidity provided to the IIFS), the CB would have recourse to the IIFS to recoup the difference. However, recourse to the IIFS would not be applicable in comparing the secondary market price against the IIFS's promised repurchase price, as that would not represent "actual loss" suffered by the CB.

101. “Rollovers” of a repurchase transaction may take place during the “*wa’d*” portion of the transaction. Should both parties agree to postpone the repurchase date, a new binding promise would be made by the IIFS, detailing the new repurchase date.

3.9. Operational Guidance on Setting up an SLOLR Facility

102. Table 3.9.1 provides relevant considerations for a CB when setting up an SLOLR facility using the contracts and structures highlighted above. The table assumes that the preconditions for the development of an effective SLOLR, highlighted in section 2.2 above, are present in the CB’s jurisdiction.

Table 3.9.1 Considerations when Setting up an SLOLR Facility

The CB would:	<i>Qarḍ</i> (without interest)	CMT	Muḍārabah	Mushārakah	Wakālah	Islamic repurchase agreements
develop internal guidelines on the manner in which it assesses solvency	√	√	√	√	√	√
outline clear eligibility criteria for accessing SLOLR facilities (for standing facilities, systemic support and idiosyncratic SLOLR provision)	√	√	√	√	√	√
establish a structure outlining the SLOLR application process, the time of day during which SLOLR applications should be received, officers of the IIFS who are authorised to send in SLOLR requests, the steps involved in executing the Sharī’ah-compliant contract, the role of relevant parties in each step (the CB, the IIFS, and any commodity agents/ brokers), the duration of the facility	√	√	√	√	√	√

The CB would:	<i>Qarḍ</i> (without interest)	CMT	Muḍārabah	Mushārahah	Wakālah	Islamic repurchase agreements
establish relationships and agreements with commodities brokers/ agents (if any) so that they stand ready to fulfil any orders at short notice		√				
satisfy itself that the commodities market has the capacity to fulfil orders up to the maximum SLOLR limit (if any)		√				
ensure that commodity agents/brokers (if any) are aware of, and are able to meet, Sharī'ah requirements during the transfer of the ownership of commodities		√				
prepare standardised commodity murābahah documentation, including the contracts to be used throughout the transaction and the commodities to be utilised		√				
prepare standardised documentation, including the contracts to be used throughout the transaction and their terms and conditions	√		√	√	√	√
ensure that IIFS have the necessary capacity and systems to determine overnight profit levels			√	√	√	

The CB would:	<i>Qarḍ</i> (without interest)	CMT	Muḍārabah	Mushārahah	Wakālah	Islamic repurchase agreements
produce a list of eligible collateral that it is willing to accept in exchange for liquidity support. (This could follow a thorough study of assets held by IIFS in its jurisdictions and the assets IIFS are likely to hold when requesting SLOLR support.) This collateral could be used to cover:						
the CB's principal and profit		√				
the SLOLR capital only	√					
losses realised from negligence, misconduct or breach of contractual conditions by the IIFS			√	√	√	
produce a list of eligible Sharī'ah-compliant securities that it is willing to accept in exchange for liquidity support						√
calculate and adopt haircuts for each type of acceptable collateral or Sharī'ah-compliant security	√	√	√	√	√	√
ensure that it has systems capable of processing and valuation of collateral and Sharī'ah-compliant securities	√	√	√	√	√	√

The CB would:	<i>Qarḍ</i> (without interest)	CMT	Muḍārabah	Mushārahah	Wakālah	Islamic repurchase agreements
lay out what it considers to be events of default and the actions it would take should these events occur	√	√	√	√	√	√
set appropriate Sharī'ah-compliant measures for early settlement of SLOLR contracts	√	√	√	√	√	√
where relevant, establish an agreement with the government for the provision of indemnities	√	√	√	√	√	√
establish a disclosure policy outlining the information to be disclosed to IIFS in its jurisdiction (both ex-ante and ex-post)	√	√	√	√	√	√
outline alternative plans for possible operational contingencies – for example, in the event that technical difficulties in the payment and settlement systems used for SLOLR provision prevent SLOLR access, collateral prepositioning, or settlement of SLOLR by the IIFS	√	√	√	√	√	√

The CB would:	<i>Qarḍ</i> (without interest)	CMT	Muḍārabah	Mushārahah	Wakālah	Islamic repurchase agreements
obtain the approval of the CB's relevant Sharī'ah board on all steps, processes, documentation, commodities (if any), Sharī'ah-compliant securities (if any) and terms and conditions of the facility, and the role of each party in the execution of the transaction	√	√	√	√	√	√
ensure it has appropriate risk management tools and internal governance structures and committees, with clear roles and responsibilities; and	√	√	√	√	√	√
make necessary disclosures as per its disclosure policy.	√	√	√	√	√	√

SECTION 4: SUPERVISORY ACTIONS AND DISCLOSURES

4.1 Supervisory Actions

103. Discretionary idiosyncratic SLOLR provision would normally result in heightened supervisory oversight of affected IIFS, which includes the preparation of a funding plan for the said IIFS that typically projects the IIFS's assets and liabilities for a year, outlining the anticipated demand for financing and maturity of deposits, *sukūk* and other Sharī'ah-compliant securities and interbank financing. The plan should be updated regularly in light of new and relevant information, and projections should be accompanied with their underlying assumptions, such as behavioural maturity of deposits and other stress assumptions. The IIFS would also be expected to provide intraday liquidity reports to the CB and the supervisor (if they are separate entities) to enable early identification of potential liquidity pressures or other weaknesses in the IIFS's financial condition. The format of these reports is to be determined by the supervisor.

104. The supervisor should have the power to impose certain conditions on the IIFS in order to ensure that the latter stays within the funding plan. To ensure a level-playing field, such conditions should be similar to those typically imposed on conventional banks availing themselves of idiosyncratic LOLR facilities, at similar penal rates and for similar terms, and include, among others:

- a. requiring the IIFS to implement an asset-sale program;
- b. imposing dividend distribution constraints;
- c. restricting non-contractual payments of bonuses or staff salary increases;
- d. restructuring the IIFS;
- e. imposing restrictions on the IIFS's growth plans
- f. requiring the IIFS to raise a particular category of capital (e.g. common equity tier 1); and/or;
- g. changing the IIFS's management.

105. The supervisor should ensure that SLOLR funds are utilised in the IIFS's core business, rather than in riskier investments, and that the IIFS's payment of obligations takes place at maturity, rather than earlier, in order to ensure that the use of SLOLR funds prioritises financial stability over business efficiency targets.

4.2. Disclosures by the CB

106. CB transparency is an important element of governance for administering an effective SLOLR framework. It promotes fairness and accountability, and helps to ensure the sustainability of CBs' independence. Table 4.2.1 contains a non-exhaustive list of items recommended for disclosure by the CB to IIFS in its jurisdiction, which would assist IIFS in fulfilling the SLOLR eligibility requirements when the need arises.

Table 4.2.1 Recommended Qualitative and Quantitative Disclosures by CBs

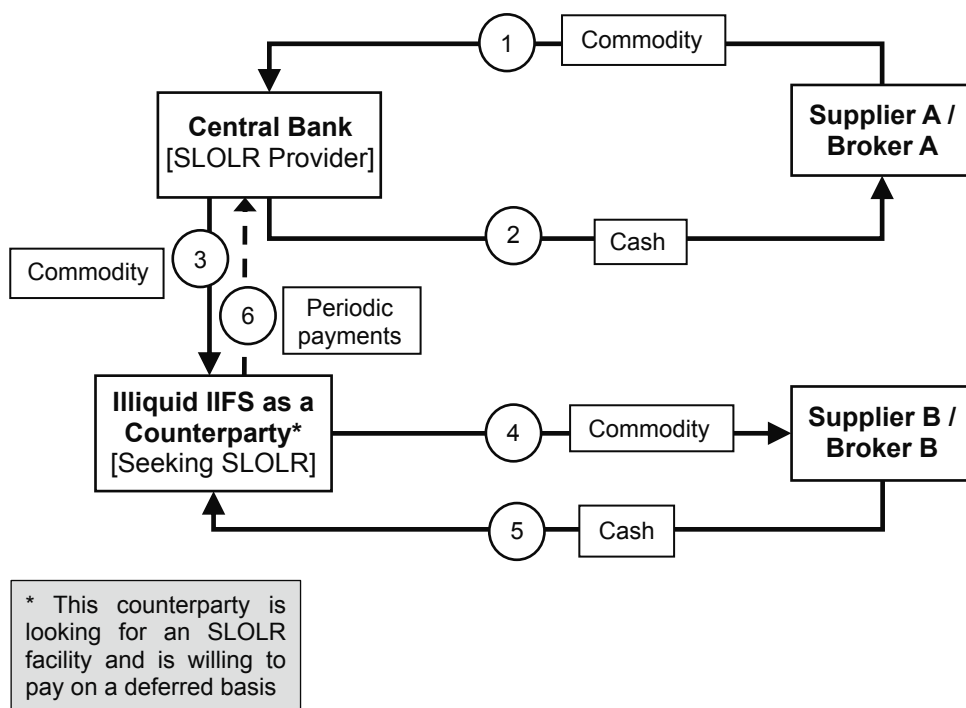
1.	Eligibility criteria for IIFS to access SLOLR, including solvency assessment processes and any financial performance requirements.
2.	The fact that SLOLR (apart from any standing facility) is solely at the CB's discretion.
3.	The SLOLR application process.
4.	Penal rates.
5.	Clear criteria on types of eligible collateral, including, but not limited to: <ul style="list-style-type: none"> ○ whether there are any collateral maturity restrictions and what these restrictions are (e.g. sukūk maturity); ○ acceptable level of investment grade/credit rating; ○ types of financing (e.g. some countries allow only non-consumption financing), and any performance requirements; ○ SLOLR duration for each collateral type (which could be linked to collateral maturity); and ○ whether it is necessary to inform affected IIFS customers if their financing is used as SLOLR collateral.
6.	Collateral haircuts and factors affecting their determination (e.g. collateral maturity, liquidity, currency, etc.).
7.	Potential haircut add-on situations.
8.	The manner in which collateral is valued.
9.	Where guarantees are accepted, eligible guarantors and any associated financial performance requirements.
10.	SLOLR caps (if any).
11.	The applicability of heightened supervisory oversight to discretionary SLOLR scenarios.
12.	Events constituting default.
13.	Remedial action taken by the CB in the event of IIFS default.

107. CBs have traditionally been conservative in making ex-post disclosure on LOLR usage, with most central bankers perceiving such disclosures to be potentially destabilising for the system and, where names are disclosed, a source of reputational risk for banks.

However, in the light of public awareness and accountability concerns, there have been greater calls for disclosure of emergency liquidity provision. Should CBs consider making information on SLOLR utilisation available on an ex-post basis, they can determine an appropriate time to make such disclosure. Revealing bank names publicly is generally not recommended as it may create stigma and render SLOLR ineffective. For example, some CBs make disclosures on LOLR usage with a lag, and averaged across counterparties. A transparent SLOLR framework, coupled with appropriate internal governance processes at the CB, would establish checks and balances to prevent SLOLR from being misused to bail out insolvent IIFS. A CB committee tasked with contributing to the CB's financial stability objective may approve the general approach and scope of the SLOLR framework, periodically review its design and operations, and be consulted on material changes to SLOLR facilities that would aid its effective functioning. Issues within the purview of this committee may include the ex-post disclosure policy of the CB. Accordingly, CBs would need to strike the right balance between providing information in line with accountability principles, and ensuring that IIFS are comfortable enough with the CB's disclosure policy to make an approach for emergency liquidity when needed and in line with the CB's financial stability objectives.

APPENDIX

Diagram 1: Transaction Flow of CMT for the SLOLR Mechanism



(CMT structures of different central banks may vary in detail from that shown here.)²³

Source IFSB GN-2

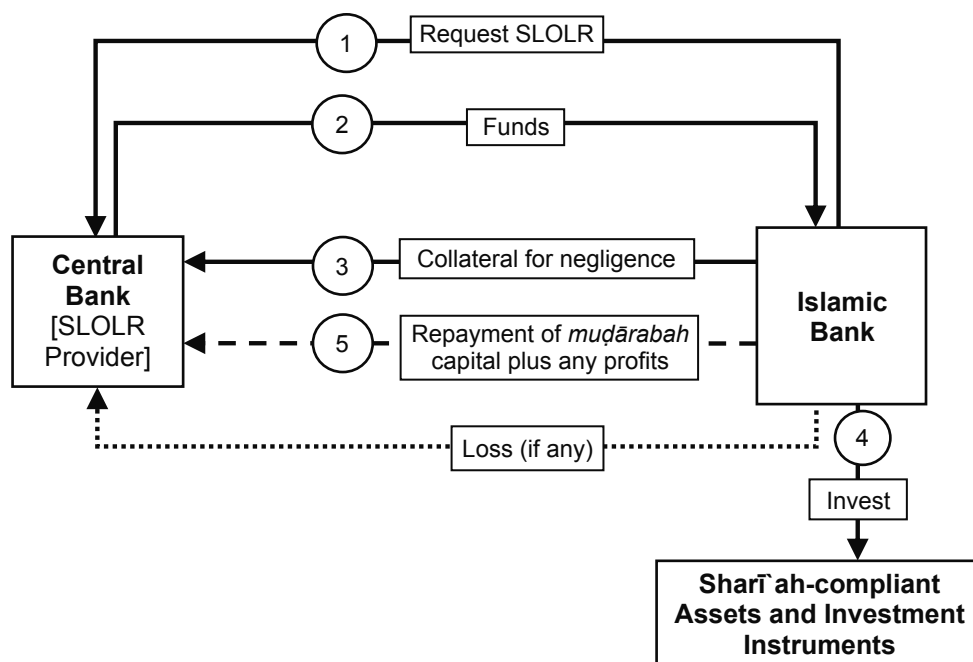
Activities:

1. After a request for an SLOLR facility is received from an illiquid IIFS, the CB buys Sharī'ah-compliant commodities on a spot basis from Supplier A/ Broker A.
2. The CB pays cash on a spot basis to Supplier A/Broker A for the Sharī'ah-compliant commodities and takes possession of these commodities constructively or physically.
3. The CB sells the Sharī'ah-compliant commodities to the counterparty using a *murābahah* contract (i.e. cost plus profit basis) on a deferred payment basis.

²³ This transaction can be executed in another way by adding agent(s) into the structure. Further, the practice of buying and/or disposing of the CMT items varies between jurisdictions, due to their respective Sharī'ah supervisory board's opinions on CMT. For instance, in some countries, CMT items are bought/ disposed of by the CB/IIFS to a third party (i.e. without involving the agents in the transaction); while in other jurisdictions, institutions act as agents on behalf of the counterparty to buy and/or sell the CMT items to a third party.

4. The counterparty (IIFS) sells on a spot basis Sharī'ah-compliant commodities to Supplier B/Broker B to obtain funds.
5. The IIFS receives cash from Supplier B/Broker B against those Sharī'ah-compliant commodities.
6. The IIFS pays the amount of the *murābahah* profit plus the original investment through periodic payments²⁴ to the CB as agreed by both parties in the contract.

Diagram 2: Transaction Flow of the *Muḍārabah* SLOLR Mechanism



Source: IFSB WP-01

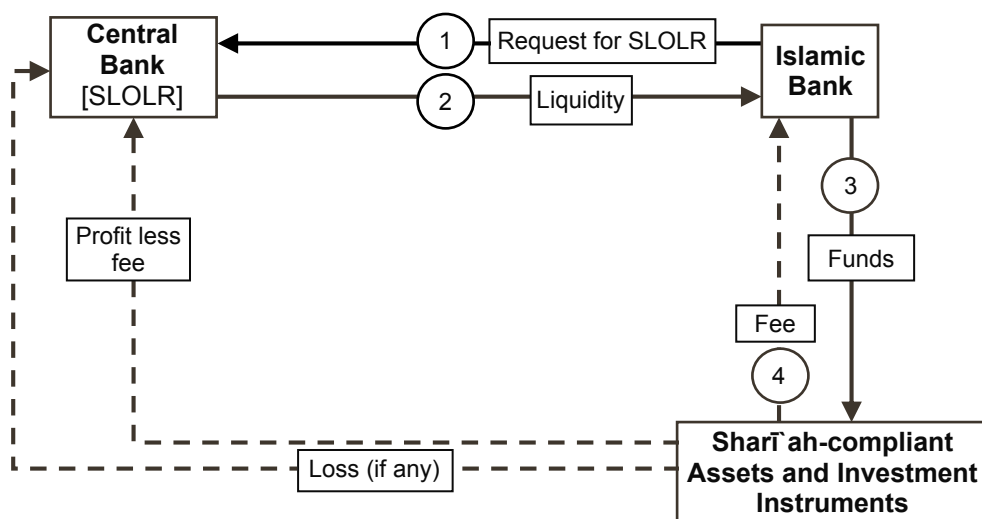
Activities:

1. An illiquid IIFS (Islamic bank) requests an SLOLR facility from the CB.
2. The CB (*rabb al-māl*) injects liquidity under a *muḍārabah* contract (where the capital provider shares profits and bears losses) with the IIFS (*muḍārib*) into a pool of funds mixed (or commingled) with the funds of other *rabb al-māl* (IAH or PSIA).
3. The IIFS provides good collateral, in the form of a Sharī'ah-compliant asset, to the CB for any negligence, misconduct or breach of contractual conditions. payment basis.

²⁴ The appropriate periodic payments frequency will be determined by the CB, depending on the size of the SLOLR.

4. The IIFS invests the pool of funds in the Sharī'ah-compliant investment instruments and assets.
5. The IIFS repays the principal amount plus profit earned to the CB as per the agreed profit-sharing ratio. Accordingly, the collateral taken to guarantee against cases of negligence, misconduct or breach of contractual conditions is released by the CB. Any loss will be passed on to the CB.

**Diagram 3: Transaction Flow of the *Wakālah bi al-istithmār*
SLOLR Mechanism**

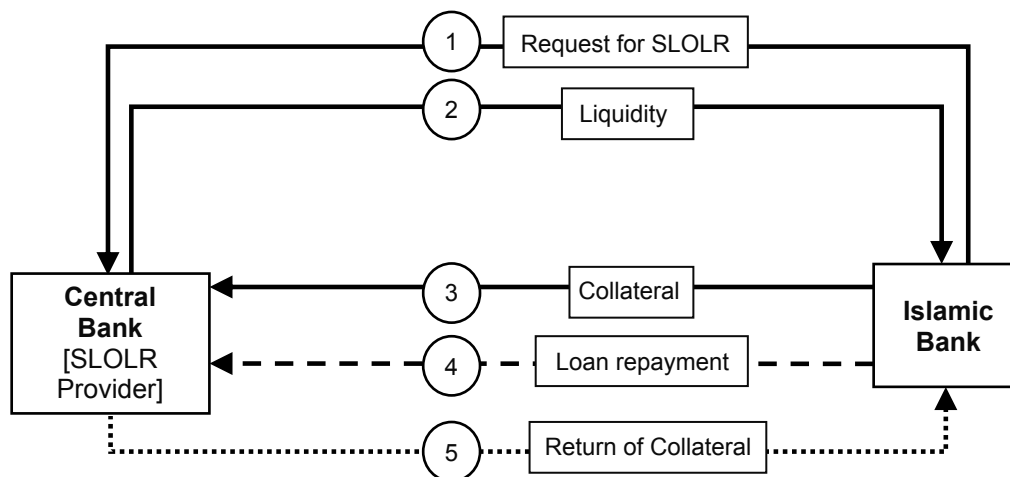


Source: IFSB WP-01

Activities:

1. An illiquid Islamic bank (IIFS) requests an SLOLR facility from the CB.
2. The CB (*muwakkil*) appoints the IIFS (*wakil*) as its agent to invest in Sharī'ah-compliant transactions on its behalf.
3. The IIFS, as the *wakil*, notifies the CB of the target profits to be generated upon placement of funds and then invests the pool of funds in the Sharī'ah-compliant investment instruments and assets.
4. Profits generated from the investment are transferred by the IIFS to the CB. Both parties may agree that any profits exceeding the quoted target profits can be retained as an incentive by the IIFS. Any loss will be passed on to the CB. The IIFS also draws an agency fee (even if a token amount) regardless of the outcome of the investment.

Diagram 4: Transaction Flow of the interest-free *Qarḍ* SLOLR Model

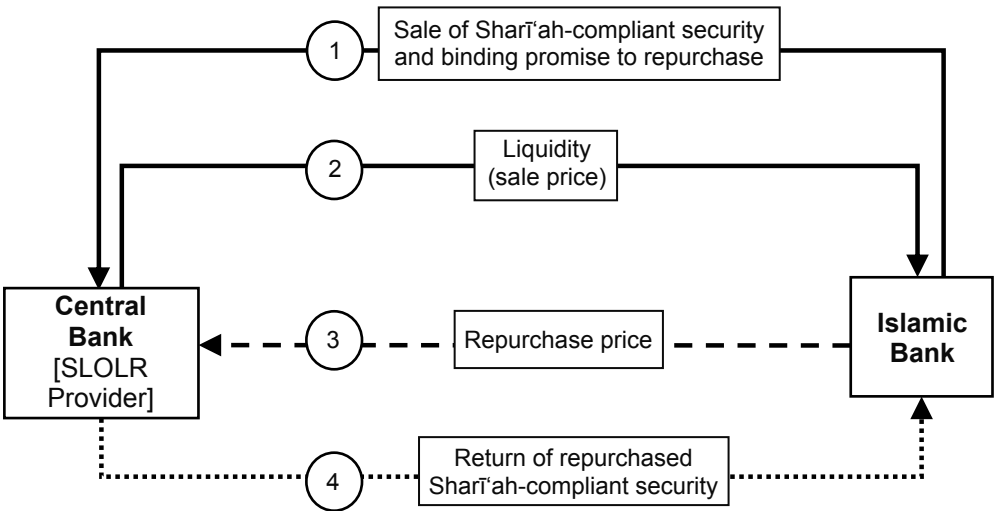


Source: IFSB WP-01

Activities:

1. An illiquid Islamic bank (or IIFS) requests an SLOLR facility from the CB.
2. The CB lends (or injects liquidity) under a *qarḍ al-hasan* contract to the IIFS.
3. The IIFS provides good collateral, in the form of a Sharī'ah-compliant asset, to the CB.
4. The IIFS repays the amount to the CB upon maturity, along with the administration fee charged by the CB to cover its incurred actual and direct administrative costs.
5. Accordingly, the collateral is released by the CB.

Diagram 5: Transaction Flow of the Repurchase Agreement SLOLR Model



Source: IFSB Secretariat

Activities:

1. The IIFS requesting SLOLR sells an identified Sharī'ah-compliant instrument to the CB on a spot basis.
2. The IIFS simultaneously, and in a separate document, unilaterally undertakes to repurchase the security from the CB at a later date using a price agreed upon by both parties at that point in time.
3. On the agreed date, the repurchase transaction could be executed in a separate contract and using the price agreed at that time. Payment by the IIFS of the repurchase price must be done on a spot basis.
4. Ownership of the repurchased Sharī'ah-compliant instrument is transferred back to the IIFS.

DEFINITIONS

The following definitions are intended to give a general understanding of some terms used in this document. The list is by no means exhaustive

Commodity <i>murābahah</i>	A <i>murābahah</i> transaction based on the purchase of a commodity from a seller or a broker and its resale to the customer on the basis of deferred <i>murābahah</i> , followed by the sale of the commodity by the customer for a spot price to a third party for the purpose of obtaining liquidity, provided that there are no links between the two contracts.
-------------------------------	--

Islamic window	That part of a conventional financial institution (which may be a branch or a dedicated unit of that institution) that provides both fund management (investment accounts) and financing and investment that are Sharī'ah-compliant, with separate funds. It could also provide takāful or retakāful services.
Liquidity risk	The risk of potential loss to the institution arising from its inability either to meet its obligations or to fund increases in assets as they fall due without incurring unacceptable costs or losses.
<i>Muḍārabah</i>	A partnership contract between the capital provider (<i>rabb al-māl</i>) and an entrepreneur (<i>muḍārib</i>) whereby the capital provider would contribute capital to an enterprise or activity that is to be managed by the entrepreneur. Profits generated by that enterprise or activity are shared in accordance with the percentage specified in the contract, while losses are to be borne solely by the capital provider unless the losses are due to misconduct, negligence or breach of contracted terms.
<i>Murābahah</i>	A sale contract whereby the institution sells to a customer a specified asset, the selling price of which is the sum of the cost price and an agreed profit margin. The <i>murābahah</i> contract can be preceded by a promise to purchase from the customer.
<i>Mushārahah</i> (<i>Sharikat al-'Aqd</i>)	A partnership contract in which the partners agree to contribute capital to an enterprise, whether existing or new. Profits generated by that enterprise are shared in accordance with the percentage specified in the <i>mushārahah</i> contract, while losses are shared in proportion to each partner's share of capital.
<i>Qarḍ</i>	The payment of money to someone who will benefit from it provided that its equivalent is repaid. The repayment of the money is due at any point in time, even if it is deferred.
<i>Restricted investment accounts</i>	Accounts whose holders authorise the investment of their funds based on <i>muḍārabah</i> or <i>wakālah</i> agency contracts with certain restrictions as to where, how and for what purpose these funds are to be invested.
<i>Sharī'ah</i>	The practical divine law deduced from its legitimate sources: the Qur'ān, Sunnah, consensus (<i>ijmā'</i>), analogy (<i>qiyās</i>) and other approved sources of the Sharī'ah.
<i>Sukūk</i>	Certificates that represent a proportional undivided ownership right in tangible assets, or a pool of tangible assets and other types of assets. These assets could be in a specific project or specific investment activity that is Sharī'ah-compliant.
<i>Wa'd</i>	An undertaking by someone to perform an act in the future related to someone else.
<i>Wakālah</i>	An agency contract where the customer (principal) appoints an institution as agent (<i>wakīl</i>) to carry out the business on his behalf. The contract can be for a fee or without a fee.

ISBN 978-967-5687-11-2



Islamic Financial Services Board

Level 5, Sasana Kijang, Bank Negara Malaysia,
2, Jalan Dato' Onn, 50480 Kuala Lumpur, Malaysia
Telephone: +60 3 9195 1400, Fax: +60 3 9195 1405
Email: ifsb_sec@ifsb.org Website: www.ifsb.org