



**THE REGULATION FOR THE TAXATION OF INSTITUTIONS OFFERING  
NON-INTEREST FINANCIAL SERVICES IN NIGERIA**

**DRAFT**

**NON-INTEREST FINANCE REGULATIONS NO 1. 2012**

**This Regulation is made by the Board of Federal Inland Revenue Service  
pursuant to section 61 of the Federal Inland Revenue Service  
(Establishment) Act 2007**

**REGULATION NO 1.....**

## ARRANGEMENT OF SECTIONS

### TABLE OF CONTENTS

### PAGE

#### PART I—PRELIMINARY

1. Short Title and Commencement ..... 3
2. Scope of the Regulation.....3
3. Objectives of this Regulation.....

#### PART II—HOME FINANCE

4. Diminishing Musharaka... ..4
5. Murabaha.....5
6. Ijara.....6

#### PART III—PROJECT FINANCE

7. Murabaha.....7
8. Mudarabah.....8
9. Musharakah.....8
- 10.Parallel Istisna.....9

#### PART IV—COMMODITY FINANCE AND VEHICLE ASSET FINANCE (VAF)

- 11.Murabaha under Commodity Finance .....10
- 12.Mudarabah under Vehicle Asset finance.....11
- 13.Ijara Vehicle Asset finance .....12
- 14.Diminishing Musharakah Vehicle Asset finance .....13

#### PART V—DIRECT INVESTMENT

- 15.Mudarabah.....14
- 16.Musharakah.....15

#### PART VI ---- Investment Bond

17. Sukuk.....16
18. Financial Products under Sukuk.....16
19. Interpretation.....17
20. Miscellaneous ..... 18

## **PART I—PRELIMINARY**

### **1. Short Title**

This Regulation may be cited as Non-Interest Finance Regulations NO 1, 2012

### **2. Scope of the Regulation**

This Regulation shall apply to all Non-Interest Financial Institutions operating under the principles of Islamic Commercial Jurisprudence and Non-Interest Banking and Finance on any other established non-interest principle.

### **3. Preamble/Objectives:**

- a.** Whereas the CBN, issued a Regulation on the Scope of Banking Activities and Ancillary Matters, No. 3, 2010 and guidelines for the Regulation and Supervision of Institutions Offering Non-Interest Financial Services in Nigeria.
- b.** Whereas in Compliance with the provisions of the CBN guidelines, certain Financial Institutions are desirous in offering the non-interest banking products and services based on Islamic Commercial Jurisprudence or any other non-interest banking principle to their customers.
- c.** And Whereas the Non-Interest Financial system is not provided for in current tax regimes in Nigeria, hence the need to a make Regulation to accommodate the evolving tax characteristics.
- d.** As a consequence, the Federal Inland Revenue Service pursuant to its powers under the Federal Inland Revenue (Establishment Act) 2007 hereby issues the Regulations hereunder, to provide an enabling framework in compliance with the CBN guidelines on Non-Interest Finance Transactions.
- e.** To ensure that all government agencies are aligned
- f.** To ensure equal treatment between conventional and non-interest bank transactions.

## **PART II—HOME FINANCE**

### **4. Diminishing Musharakah.**

1. This Section shall apply if:
  - a. a Financial Institution acquires a beneficial interest in a house from a vendor on behalf of a customer who also acquires a beneficial interest in the same house.
  - b. the amount contributed by the financial institution to acquire the interest in the house in paragraph (a) shall be treated as an amount loaned to the customer in this Regulation.
  - c. the customer is to make payment to the financial institution amounting in aggregate to the consideration paid for the acquisition of the financial institution's beneficial interest in the house.
  - d. . the customer has the exclusive right to occupy and use the house, and
  - e. thereafter, the customer is to acquire the financial institution's beneficial interest in the house, upon final payment.
  - f. each installment is made up of the capital and rent paid to the financial institution, and the whole amount shall be subject to relevant taxes.
  - g. any agreement executed between the financial institution and the vendor of a house under this section, shall be subject to Stamp Duties.
  - h. any agreement executed between the financial institution and the customer under this section, transferring all interests of the financial institution to the customer as the beneficial owner shall not be subject to Stamp Duties.
  - i. Any proceeds between the financial institution and customer under this section, transferring all interests of the financial institution to the

customer as the beneficial owner, shall not be subject to Value Added Tax.

2. For the purpose of section 5(1) (a) it does not matter if;
  - a. The financial institution acquires its beneficial interest from the customer.
  - b. The customer or another person who is not the financial institution also has a beneficial interest in the house, or
  - c. The financial institution also has a legal interest in it.

## **6. Murabaha.**

1. This Section applies to arrangement when:
  - a. they are entered into between a financial institution and its customer for the purchase of a house for the customer.
  - b. the financial institution purchases a house from a vendor and resells it at a mark-up to the customer.
  - c. the financial institution purchases the house in paragraph b for the purpose of entering into an arrangement within this section.
  - d. all or part of the second purchase price is not required to be paid until a later date other than that of the sale.
  - e. The second purchase price which exceeds the first purchase price and the mark-up equates in substance to the return on an investment of money at interest.
2. For the purposes of Section 6(1).
  - a. The first purchase price shall be treated as the amount of a loan made by the financial institution to the customer.
  - b. The mark-up payable under the arrangement shall be treated as interest payable on the loan.
  - c. The first purchase price in the arrangement in section 6(1) shall be subject to all relevant taxes .
  - d. The second purchase price shall be exempted from Value Added Tax, Stamp Duties and Capital Gains Tax.

3. If under the arrangement provided in 6(1), the whole of the second purchase price is paid at once, the mark-up equals the amount by which the second purchase price exceeds the first purchase price.
4. If under the arrangement in 6(1), the second purchase price is paid by installments, the mark-up equals to the interest which would have been included in the installment on the following conventional assumptions:
  - a. Interest is payable on a loan by the financial institution to the customer of an amount equal to the first purchase price.
  - b. The total interest payable on the loan is equal to the amount by which the second purchase price exceeds the first purchase price.
  - c. The installment is a part repayment of the principal with interest.
  - d. The loan is accounted for under the Generally Accepted Accounting Principles (GAAP).

## **6. Ijarah**

- a. This arrangement shall be treated as a finance lease transaction under the Generally Accepted Accounting Principles and as provided for in the FIRS Information Circular No. 2010/01-Guidelines on the Tax Implications of Leasing.
- b. Any lease agreement for the purchase of a house between a financial institution and a vendor shall be subject to Stamp Duties.
- c. Any transaction for the purchase of a house between a financial institution and a vendor shall be subject to Value Added Tax, Withholding Tax and Capital Gains Tax(where chargeable).
- d. Where the customer acquires the house at the end of the lease period for a nominal value, the agreement executed between the financial institution and the customer shall be exempt from Stamp Duties and Capital Gains Tax.
- e. A customer of the financial institution, under the arrangement provided for in this section, shall for the purpose of computing its income tax, treat the capital portion and mark-up as capital expenditure.

## **PART III----PROJECT FINANCE**

### **7. Murabaha.**

1. This Section applies to arrangement when:
  - a. they are entered into between a financial institution and its customer for the purchase of an asset for the customer.
  - b. the financial institution purchases an asset from a vendor and resells it at a mark-up to the customer.
  - c. the financial institution purchases the asset in paragraph b for the purpose of entering into an arrangement with the customer in this section.
  - d. all or part of the second purchase price is not required to be paid until a later date other than that of the sale.
  - e. The second purchase price which exceeds the first purchase price and the mark-up equates in substance to the return on an investment of money at interest.
2. For the purposes of Section 8(1).
  - a. The first purchase price shall be treated as the amount of a loan made by the financial institution to the customer.
  - b. The mark-up payable under the arrangement shall be treated as interest payable on the loan.
  - c. The first purchase price in the arrangement in section 6 shall be subject to all relevant taxes .
  - d. The second purchase price shall be exempted from Value Added Tax, Stamp Duties and Capital Gains Tax.
  - e. If under the arrangement provided in 8(1), the whole of the second purchase price is paid at once, the mark-up equals the amount by which the second purchase price exceeds the first purchase price.
  - f. If under the arrangement in 6(1), the second purchase price is paid by installments, the mark-up equals to the interest which would have been included in the installment on the following conventional assumptions:
    - g. Interest is payable on a loan by the financial institution to the customer of an amount equal to the first purchase price.
    - h. The total interest payable on the loan is equal to the amount by which the second purchase price exceeds the first purchase price.
    - i. The installment is a part repayment of the principal with interest.

- j. The loan is accounted for under the Generally Accepted Accounting Principles (GAAP).

## **8. Mudarabah**

### **1. This Section applies if;**

- a. A customer appoints a financial institution as an agent.
- b. The agent uses money provided by the customer with a view to producing a profit.
- c. The customer is entitled to a specified extent, profit resulting from use of the money.
- d. The financial institution is entitled to any additional profit resulting from the use of the money and (may also be entitled to a management fee paid by the customer).
- e. Payment made because of customer's entitlement to profit shall be deemed in substance, to be the return on an investment of money and interest.
- f. The income earned from the arrangement under this section shall be taxed as provided for under the Companies Income Tax Act (as amended) 2007.
- g. The payments made to the customer by the financial institution as a share of income under this section shall be exempted from Withholding Tax.

## **9. Musharakah**

### **1. This Section shall apply if:**

- a. a Financial Institution acquires a beneficial interest in an asset from a vendor on behalf of a customer who also acquires a beneficial interest in the same asset.
- b. the amount contributed by the financial institution to acquire the interest in the asset in paragraph (a) shall be treated as an amount loaned to the customer in this Regulation.



- c. the customer is to make payment to the financial institution amounting in aggregate to the consideration paid for the acquisition of the financial institution's beneficial interest in the asset.
  - d. the customer has the exclusive right to occupy and use the asset.
  - e. thereafter, the customer is to acquire the financial institution's beneficial interest in the asset, upon final payment.
  - f. each installment is made up of the capital and mark-up paid to the financial institution, and the mark-up shall be subject to relevant taxes.
  - g. any agreement executed between the financial institution and the vendor of an asset under this section, shall be subject to Stamp Duties.
  - h. any agreement executed between the financial institution and the customer under this section, transferring all interests of the financial institution to the customer as the beneficial owner shall not be subject to Stamp Duties.
  - i. Any proceeds between the financial institution and customer under this section, transferring all interests of the financial institution to the customer as the beneficial owner, shall not be subject to Value Added Tax.
2. For the purpose of section 10(1) (a) it does not matter if;
- a. The financial institution acquires its beneficial interest from the customer.
  - b. The customer or another person who is not the financial institution also has a beneficial interest in the asset, or
  - c. The financial institution also has a legal interest in it.

## **10. Parallel Istisna**

This section applies to arrangements where:

- a. A customer who intends to execute a project for the construction/manufacture of a specific order or good/s can approach a financial institution for the financing of the project.

- b. The financial institution agrees with a contractor to construct/manufacture to order, by the customer.
- c. Upon completion of the order, the project is transferred from the financial institution to the customer.
- d. The transaction between the financial institution and the customer in paragraph (b) shall be exempt from Value Added Tax and Withholding Tax.
- e. The transaction between the financial institution and the contractor in paragraph (c) shall be subject to Value Added Tax and Withholding Tax.

## **PART IV---COMMODITY FINANCE & VEHICLE ASSET FINANCE**

### **11. Murabaha under commodity Finance.**

1. This Section applies to arrangement when:

- a. they are entered into between a financial institution and its customer for the purchase of commodities/goods for the customer.
- b. the financial institution purchases commodities/goods from a vendor and resells it at a mark-up to the customer.
- c. the financial institution purchases the commodities/goods in paragraph b for the purpose of entering into an arrangement within this section.
- d. all or part of the second purchase price is not required to be paid until a later date other than that of the sale.
- e. The second purchase price which exceeds the first purchase price and the mark-up equates in substance to the return on an investment of money at interest.

2. For the purposes of Section 12(1).

- a. The first purchase price shall be treated as the amount of a loan made by the financial institution to the customer.
- b. The mark-up payable under the arrangement shall be treated as interest payable on the loan.
- c. The first purchase price in the arrangement in section 12 shall be subject to all relevant taxes .

- d. The second purchase price shall be exempted from Value Added Tax, Stamp Duties and Capital Gains Tax.
5. If under the arrangement provided in 12(1), the whole of the second purchase price is paid at once, the mark-up equals the amount by which the second purchase price exceeds the first purchase price.
6. If under the arrangement in 12(1), the second purchase price is paid by installments, the mark-up equals to the interest which would have been included in the installment on the following conventional assumptions:
  - a. Interest is payable on a loan by the financial institution to the customer of an amount equal to the first purchase price.
  - b. The total interest payable on the loan is equal to the amount by which the second purchase price exceeds the first purchase price.
  - c. The installment is a part repayment of the principal with interest.
  - d. The loan is accounted for under the Generally Accepted Accounting Principles (GAAP).

## **12. Murabaha under Vehicle Asset Finance**

1. This Section applies to arrangement when:

- a. they are entered into between a financial institution and its customer for the purchase of a vehicle for the customer.
- b. the financial institution purchases a vehicle from a vendor and resells it at a mark-up to the customer.
- c. the financial institution purchases the vehicle in paragraph b for the purpose of entering into an arrangement within this section.
- d. all or part of the second purchase price is not required to be paid until a later date other than that of the sale.
- e. The second purchase price which exceeds the first purchase price and the mark-up equates in substance to the return on an investment of money at interest.

2. For the purposes of Section 13(1).

- f. The first purchase price shall be treated as the amount of a loan made by the financial institution to the customer.

- g. The mark-up payable under the arrangement shall be treated as interest payable on the loan.
- h. The first purchase price in the arrangement in section 6 shall be subject to all relevant taxes .
- i. The second purchase price shall be exempted from Value Added Tax, Stamp Duties and Capital Gains Tax.
- j. If under the arrangement provided in 13(1), the whole of the second purchase price is paid at once, the mark-up equals the amount by which the second purchase price exceeds the first purchase price.
- k. If under the arrangement in 13(1), the second purchase price is paid by installments, the mark-up equals to the interest which would have been included in the installment on the following conventional assumptions:
  - (i) Interest is payable on a loan by the financial institution to the customer of an amount equal to the first purchase price.
  - (ii) The total interest payable on the loan is equal to the amount by which the second purchase price exceeds the first purchase price.
  - (iii) The installment is a part repayment of the principal with interest.
  - (iv) The loan is accounted for under the Generally Accepted Accounting Principles (GAAP).

### **13. Ijara under Vehicle Asset Finance**

- f. This arrangement shall be treated as a finance lease transaction under the Generally Accepted Accounting Principles and as provided for in the FIRS Information Circular No. 2010/01-Guidelines on the Tax Implications of Leasing.
- g. Any lease agreement for the purchase of a vehicle between a financial institution and a vendor shall be subject to Stamp Duties.

- h. Any transaction for the purchase of a vehicle between a financial institution and a vendor shall be subject to Value Added Tax and Capital Gains Tax.
- i. Where the customer acquires the vehicle at the end of the lease period for a nominal value, the agreement executed between the financial institution and the customer shall be exempt from Stamp Duties and Capital Gains Tax.
- j. A customer of the financial institution, under the arrangement provided for in this section, shall for the purpose of computing its income tax, treat the capital portion and mark-up as capital expenditure.

#### **14. Diminishing Musharakah under Vehicle Asset Finance**

1. This Section shall apply if:

- a. a Financial Institution acquires a beneficial interest in a vehicle from a vendor on behalf of a customer who also acquires a beneficial interest in the same vehicle.
- b. the amount contributed by the financial institution to acquire the interest in the vehicle in paragraph (a) shall be treated as an amount loaned to the customer in this Regulation.
- c. the customer is to make payment to the financial institution amounting in aggregate to the consideration paid for the acquisition of the financial institution's beneficial interest in the vehicle.
- d. . the customer has the exclusive right to use the vehicle.
- e. thereafter, the customer is to acquire the financial institution's beneficial interest in the vehicle , upon final payment.
- f. each installment is made up of the capital and mark-up paid to the financial institution, and the mark-up shall be subject to relevant taxes.

- g. any agreement executed between the financial institution and the vendor of a vehicle under this section, shall be subject to Stamp Duties.
  - h. any agreement executed between the financial institution and the customer under this section, transferring all interests of the financial institution to the customer as the beneficial owner shall not be subject to Stamp Duties.
  - i. the transaction in paragraph (h) shall be subject to Value Added Tax.
3. For the purpose of section 15(1) (a) it does not matter if;
- a. The financial institution acquires its beneficial interest from the customer.
  - b. The customer or another person who is not the financial institution also has a beneficial interest in the house.
  - c. The financial institution also has a legal interest in it.

## **PART V---DIRECT INVESTMENT**

### **15. Mudarabah**

1. This Section applies if;
- a. A customer appoints a financial institution as an agent.
  - b. The agent uses money provided by the customer with a view to producing a profit.
  - c. The customer is entitled to a specified extent, profit resulting from use of the money.
  - d. The financial institution is entitled to any additional profit resulting from the use of the money and (may also be entitled to a management fee paid by the customer).
  - e. Payment made because of customer's entitlement to profit shall be deemed in substance, to be the return on an investment of money and interest.
  - f. The income earned from the arrangement under this section shall be taxed as provided for under the Companies Income Tax Act (as amended) 2007.

g. the payments made to the customer by the financial institution as a share of income under this section shall be exempted from Withholding Tax.

## **16. Musharakah.**

1. This Section shall apply if:
  - a. a Financial Institution acquires a beneficial interest in an asset from a vendor on behalf of a customer who also acquires a beneficial interest in the same asset.
  - b. the amount contributed by the financial institution to acquire the interest in the asset in paragraph (a) shall be treated as an amount loaned to the customer in this Regulation.
  - c. the customer is to make payment to the financial institution amounting in aggregate to the consideration paid for the acquisition of the financial institution's beneficial interest in the asset.
  - d. the customer has the exclusive right to use the asset.
  - e. thereafter, the customer is to acquire the financial institution's beneficial interest in the asset, upon final payment.
  - f. each installment is made up of the capital and mark-up paid to the financial institution, and the mark-up shall be subject to relevant taxes.
  - g. any agreement executed between the financial institution and the vendor of a house under this section, shall be subject to Stamp Duties.
  - h. any agreement executed between the financial institution and the customer under this section, transferring all interests of the financial institution to the customer as the beneficial owner shall not be subject to Stamp Duties.
  - i. the transaction in paragraph (h) shall be subject to Value Added Tax.
2. For the purpose of section 17(1) (a) it does not matter if;
  - (a) The financial institution acquires its beneficial interest from the customer.

(b) The customer or another person who is not the financial institution also has a beneficial interest in the asset.

(c) The financial institution also has a legal interest in it.

## **PART IV--- Investment Bond**

### **17. Sukuk**

1. This part applies to an arrangement:

- a. If a financial institution agrees to pay a sum of money to a customer and
- b. They identify assets or a class of assets which the customer will acquire for the purpose of generating income or gains, directly or indirectly.
- c. They specify a period at the end of which the assets shall cease to have effect.
- d. The customer undertakes under the arrangements-
  - i. To dispose the asset at the end of the bond term
  - ii. To make a repayment of the capital to the financial institution during or at the end of the bond term.
  - iii. To pay to the financial institution additional amounts during or at the end of the bond term.
- e. the customer undertakes to arrange for the management of the bond assets with a view to generating income sufficient to pay the redemption payment and additional payment.
- f. The bond assets may be property of any kind, including rights in relation to property owned by someone other than the customer.
- g. The coupon/gains arising out of any arrangement under this section shall be treated as interest accruing to the financial institution and subject to the provisions of the Companies income Tax Act.
- h. Sukuk shall be treated as bonds for the purposes of tax.

### **18. Financial products under Sukuk**

The arrangement under Section 17 can also be financed through;



- a. Mudarabah
- b. Musharakah
- c. Murabaha
- d. Ijarah
- e. Istisna
- f. Salam
- g. Manfa'a

## 19. Interpretation of terms

“*Mudarabah*” (partnership) – investment partnership where a party bring capital and another brings expertise.

“*Musharakah*” (joint venture) – investment partnership where parties share equity and expertise.

“*Murabahah*” (purchase at mark-up) – sale of an asset by the financial institution to a customer at cost plus a profit margin. It is also called ‘purchase and resale at a markup’

“*Ijara*” (Islamic Finance lease) – a lease agreement for the use of an asset with a definite rent.

“*Salam*” (deferred delivery) – purchase contract with delivery (usually agric produce) at a later date while payment is made at the time of contract.

“*Istisna*” (build-to-order) – manufacturing/construction order contract which allows cash payment in advance and future delivery.

“*Sukuk*”(Islamic Bonds) – certificate of equal value representing undivided share in an underlying asset.

“*Wakala*” (agency) – fee based agency contract.

“*Manfa'a*” - (assets usufruct selling) or a hybrid of Islamic finance contracts used in sukuk.

Non Financial Institution – a bank or other financial institution which transacts banking business and provides financial products and services in accordance with any established non-interest banking principles.

Mark-up-predetermined income or profit on capital or cost

First purchase price – sales value between the financial institution and the vendor/owner

Second purchase price – sales value between the financial institution and the financial institution’s customer.

## **20. Miscellaneous**

The Board of the Federal Inland Revenue Service may amend or repeal the provisions of this Regulation.

This Regulation is made this.....day of .....2012 by the Board of Inland Revenue Service.

---

Chairman, Federal Inland Revenue Service Board