



# BIBD



## **COMPILATION OF SELECTED BANK ISLAM BRUNEI DARUSSALAM (BIBD) SHARIAH ADVISORY BODY RESOLUTIONS (1993 - 2016)**

### **Editorial Panel**

**DR ABDUL NASIR BIN HAJI ABDUL RANI**

Muhammad TakzimAllah bin Haji Ahmad Sanuddin

Muhammad Abdul Malik bin Haji Matnoor

Muhammad Hafizuddin bin Haji Jamaluddin



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# CONTENTS

<b>Transliteration</b>	iv
<b>Abbreviation</b>	v
<b>Foreword by the Chairman of the Shariah Advisory Body</b>	vii
<b>Preface by the Chief Editor</b>	ix
<b>Introduction</b>	xi
<b>Members of the Shariah Advisory Body (1993 – 2016)</b>	xiii
<b>Glossary of Islamic Finance Terms</b>	xvi
<b>Figures</b>	xix
<b>Transformation of Corporate Identity</b>	xxii

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## **Resolutions by Islamic Bank of Brunei Shariah Advisory Body (1993-2005)**

<b>1</b>	Financing Scheme based on the <i>Bay' Bi Thaman Ājil</i> Concept	1
<b>2</b>	Ownership of the Islamic Bank of Brunei Shares by Non-Muslims	5
<b>3</b>	Investment of the Islamic Bank of Brunei in the Stock Market	7
<b>4</b>	Proposed Joint Ventures using the <i>Al-Mushārah</i> Concept	8
<b>5</b>	Islamic Pawnbroking	10
<b>6</b>	IBB Kredit Berhad	13
<b>7</b>	The Disposal of Interest Money by the International Bank of Brunei Berhad	19
<b>8</b>	Trade Financing Facilities based on <i>Al-Murābahah</i> Concept	20
<b>9</b>	Business Transactions and Cooperation between Islamic and Conventional Financial Institutions	22
<b>10</b>	Direct Bilateral Relations Between Islamic Bank of Brunei Berhad and Conventional Insurance Company	24
<b>11</b>	<i>Bay' Al-Īnah</i> Issue in <i>Bay' Bi Thaman Ājil</i> Product Financing Agreement	27
<b>12</b>	Dividend Payment for Islamic Bank of Brunei Berhad Shares from <i>Sharī'ah</i> Perspective	29
<b>13</b>	Compensation	33

## **Resolutions by Islamic Development Bank of Brunei Shariah Advisory Body (2000-2005)**

<b>14</b>	Islamic Financial Market Mechanism	36
<b>15</b>	IDBB Islamic Credit Card	39
<b>16</b>	Vehicle Financing Scheme using the Concept of <i>Al-Ijārah Thumma Al-Bay'</i>	42
<b>17</b>	Changes on IDBB Islamic Credit Card Concept and the Introduction of Cash Advance Service	46
<b>18</b>	Financing based on the Concept and Structure of <i>Ṣukūk Al-Ijārah Al-Muntahiyah Bi Al-Tamlīk</i>	48

---

## **Resolutions by Bank Islam Brunei Darussalam Shariah Advisory Body (2006-2016)**

<b>19</b>	BIBD Indent Card, Fleet Card and M Card	50
<b>20</b>	Investment Products based on Islamic Trust Fund: Global Equity Fund and Asia Equity Fund	54
<b>21</b>	Islamic Profit Rate Swap and Islamic Cross Currency Swap	57
<b>22</b>	<i>Al-Wadī'ah</i> Savings Account: My Real Savings Account	61
<b>23</b>	Issue of Goodwill for the Calculation of Zakat in Business	62
<b>24</b>	Proposal for <i>Ar-Rahnu</i> Product Package	63
<b>25</b>	Chinese New Year Celebration	64
<b>26</b>	Foreign Exchange Forward Methodology	66
<b>27</b>	Multi-Manager Fund	68
<b>28</b>	Compensation	70
<b>29</b>	<i>Mushārah Mutanāqīshah</i> Concept for Home Financing Products	73
<b>30</b>	Proposal for <i>Ar-Rahnu</i> White Gold and Precious Stone Products	75
<b>31</b>	Interbank Treasury Placement based on <i>Wakālah</i> Concept	76
<b>32</b>	<i>Wa'd</i> Structure in Foreign Exchange Forward and its application in International Business Facilities	77
<b>33</b>	Conversion of <i>Bay' Bi Thaman Ājil</i> Investment Products to <i>Wakālah</i> Concept	79
<b>34</b>	Debit Mastercard Products based on <i>Wakālah</i> and <i>Ujrah</i> Concept	80
<b>35</b>	Bursa Suq Al-Sila' Commodity Trading Platform	82
<b>36</b>	Home Financing Product for Property Under Construction	84
<b>37</b>	<i>Wakālah</i> Deposit Accounts for Savings, Current and Investment	86

38	<i>Murābaḥah</i> Syndicated Financing Participation	88
39	The Implementation of <i>Tawarruq</i> Concept for Bank Islam Brunei Darussalam Financing Products	90
40	Renovation and Upgrading Project for a 5-Star Hotel	92
41	Conventional Insurance Coverage for Financing	93
42	BIBD Corporate Mastercard Credit Card Product	95
43	Issues of Witness in <i>Al-Ijārah Thumma Al-Bay'</i> and <i>Bay' Bi Thaman Ājil</i> Transaction	96
44	Implementation of Transaction Agreement using Modern Communication Devices	97
45	Risk Management In Foreign Exchange Forward using the Commodity <i>Murābaḥah</i> or <i>Wa'd</i> and Commodity <i>Murābaḥah</i> Structure	99
46	Bill Payment Facility for <i>Sharī'ah</i> non-compliant Companies	102
47	Pawnbroking Coverage using Conventional Insurance	106
48	Addressing Problematic <i>Ar-Rahnu</i> Micro Financing Accounts	107
49	<i>Murābaḥah</i> and <i>Bay' Al-Dayn Bi Al-Sila'</i> Structure for the Purchase of Commodity <i>Murābaḥah</i> Financing Asset Portfolio	110
50	Minimum Limit to Participate in Lucky Draw Promotions	114
51	Transactions and Investments Between Islamic and Conventional Financial Institutions	115
52	BIBD Visa Credit Card	117
53	Changes to the Mechanism of Installment Payment from Fixed Rate to Floating Rate	119

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<b>References</b>	121
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# TRANSLITERATION

Arabic Letter	Transliteration	Arabic Letter	Transliteration
ء	'	ض	Ḍ / ḍ
ب	B / b	ط	Ṭ / ṭ
ت	T / t	ظ	Z / ṭ
ث	Th / th	ع	'
ج	J / j	غ	Gh / gh
ح	H / ḥ	ف	F / f
خ	Kh / kh	ق	Q / q
د	D / d	ك	K / k
ذ	Dh / dh	ل	L / l
ر	R / r	م	M / m
ز	Z / z	ن	N / n
س	S / s	ه / ة	H / h
ش	Sh / sh	و	W / w
ص	Ṣ / ṣ	ي	Y / y

## Short Vowels:

Arabic Letter	Transliteration	Arabic Letter	Transliteration
ـَ	A / a	ـُ	U / u
ـِ	I / i		

## Long Vowels:

Arabic Letter	Transliteration	Arabic Letter	Transliteration
ـَـ / ـِـ	Ā / ā	ـُـ	Ū / ū
ـِـ	Ī / ī		

## Diphthongs:

Arabic Letter	Transliteration	Arabic Letter	Transliteration
ـَـ / ـِـ	Aw / aw	ـِـ / ـِـ	Iyy / iyy
ـِـ / ـِـ	Ay / ay	ـُـ / ـُـ	Uww / uww



## ABBREVIATIONS

AAOIFI	Accounting and Auditing Organization for Islamic Financial Institutions
AGM	Annual General Meeting
AITAB	<i>Al-Ijārah Thumma al-Bay'</i>
AMBD	Autoriti Monetari Brunei Darussalam
ATM	Automatic Teller Machine
BBĀ	<i>Bay' Bi Thaman Ājil</i>
BIBD	Bank Islam Brunei Darussalam
BIBDS	Bank Islam Brunei Darussalam Securities
Bil. No.	Number
BND	Brunei Dollar
BSAS	Bursa Suq Al-Sila'
CFI	Conventional Financial Institutions
DST	Datastream Technology Sdn. Bhd.
FCMS	Fleet Card Management System
FCY	Foreign Currency
Forex	Foreign Exchange
IB	Investment Banking
IBB	Islamic Bank of Brunei Berhad
ICAM	IBB Capital Asset Management Sdn. Bhd.
ICCS	Islamic Cross Currency Swap
IDBB	Islamic Development Bank of Brunei
IFI	Islamic Financial Institution
IMBT	<i>Al-Ijārah al-Muntahiyah bi al-Tamlik</i>
IPRS	Islamic Profit Rate Swap
JPD	Jabatan Pengangkutan Darat

## ABBREVIATIONS

KFH	Kuwait Finance House
LIBOR	London Interbank Offered Rate
MCHE	Main Cryogenic Heat Exchange
MICE	Meeting, Incentives, Conference and Exhibitions
MM	<i>Mushārahah Mutanāqīshah</i>
MMF	Multi Manager Fund
MRSA	My Real Savings Account
MRTA	Mortgage Redemption Term Assurance
NPF	Non-Performing Financing
OIC	Organisation of Islamic Cooperation
PIN	Personal Identification Number
RPSIA	Restricted Profit Sharing Investment Account
SAB	Shariah Advisory Body
SAC	Shariah Advisory Committee
SFSB	Syariah Financial Supervisory Board
SMO	Securities Market Order 2013
SMR	Securities Market Regulations 2015
SPV	Special Purpose Vehicle
TAFIS	Treasury Accounting and Financial Information System
TAIB	Tabung Amanah Islam Brunei
USD	United States Dollar
YAPEIM	Yayasan Pembangunan Ekonomi Islam Malaysia
YSHHB	Yayasan Sultan Haji Hassanal Bolkiah



## FOREWORD

### Chairman of the Shariah Advisory Body

السلام عليكم ورحمة الله وبركاته

الحمد لله رب العالمين، وبه نستعين على أمور الدنيا والدين، والصلاة والسلام على سيدنا محمد وعلى آله وصحبه أجمعين،  
أما بعد،

All praises to *Allāh Subhānahu wa Ta'ālā* for His will and blessings, Bank Islam Brunei Darussalam (BIBD) managed to publish this book, *Compilation of Selected Bank Islam Brunei Darussalam (BIBD) Shariah Advisory Body Resolutions (1993-2016)*.

The production of this book is one of the initiatives in supporting His Majesty's, Kebawah Duli Yang Maha Mulia Paduka Seri Baginda Sultan Haji Hassanah Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien, Sultan dan Yang Di-Pertuan Negara Brunei Darussalam's aspiration to make Brunei as one of the International Islamic Financial Hub.

The publication of this book is to serve as an essential guide and reference for those who want to know the development of the Islamic banking and finance industry in the country, primarily for stakeholders in the Islamic finance industry, including *Shari'ah* scholars, academics, legislature, arbitrators, researchers and last but not least, students who are pursuing their studies in the field of Islamic banking and finance at higher education institutions.

This publication is hoped to benefit the public in understanding *Shari'ah* Concepts and how they are integrated into BIBD products.

Hopefully, this initiative will enhance public trust and support for the products offered by BIBD.

On behalf of BIBD, I would like to express our gratitude to all previous and current members of the Shariah Advisory Body (SAB) for fulfilling their responsibilities in helping BIBD achieve success, as can be seen today.

We would also like to express our gratitude, and congratulations to the editors who have devoted their time and efforts to complete and publish this book. We pray that such invaluable efforts will be blessed with great rewards by *Allāh Subḥānahu wa Ta'ālā*.

والسلام عليكم ورحمة الله وبركاته

**DSS HAJI ABDUL AZIZ BIN OKML HAJI YUSSOF**

Chairman

Shariah Advisory Body

Bank Islam Brunei Darussalam

(2018 – 2020)



## PREFACE

Chief Editor

السلام عليكم ورحمة الله وبركاته

الحمد لله رب العالمين، والصلاة والسلام على سيدنا وحبیبنا محمد أشرف الأنبياء والمرسلين وعلى آله وصحبه ومن تبعه بإحسان إلى يوم الدين، أما بعد،

This compilation contains a list of 53 selected resolutions by BIBD SAB since it was first established in 2005 as a result of the merger of two local Islamic banks, namely Islamic Bank of Brunei Berhad (IBB) and Islamic Development Bank of Brunei Berhad (IDBB). This compilation was carried out based on the existing documents that are still well kept by BIBD.

The compilation begins with the introduction chapter, which contains a brief profile of the history of the establishment of BIBD, the Acts related to the Islamic banking operations, appointments and responsibilities of SAB in ensuring the operations of this bank are in full compliance with *Shari'ah* principles.

This compilation also includes the membership lists of SAB of IBB, IDBB, and BIBD from 1993 until 2016 to honour the members and their contributions in strengthening the country's Islamic banking institution.

This compilation is divided into three sections, 13 selected resolutions issued by SAB IBB (1993-2005), 5 selected resolutions issued by SAB IDBB (2000-2005), and 35 selected resolutions of BIBD SAB (2006-2016). Each resolution will present the background of the issues, followed by further details, depending on the existing information kept in BIBD records, such as *modus operandi* and the basis of consideration.

Some parts of the original texts have been modified to ensure that the discussion's message can be presented clearly to the readers, primarily the public. The editorial panel used the symbol “[ ]” to indicate that a word or sentence was added to the original documents' text.

The use of the transliteration system aims to maintain the pronunciation (*Makhraj*) of the Islamic financial terms derived from Arabic words. The lists of abbreviations, glossary of Islamic finance terms, figures, and logos are included to help readers make a quick reference.

It is hoped that the editors' initiatives in collecting, editing, and publishing these resolutions will provide the readers with a clear picture of how an issue is discussed and decided by SAB to ensure that the bank operations are in full compliance with the *Shari'ah* principles. Hopefully, this Compilation of Selected Bank Islam Brunei Darussalam (BIBD) Shariah Advisory Body Resolutions (1993-2016) can benefit everyone.

وبالله التوفيق والهداية  
والسلام عليكم ورحمة الله وبركاته

**DR ABDUL NASIR BIN HAJI ABDUL RANI**

Chief Editor

Member

Shariah Advisory Body

Bank Islam Brunei Darussalam

(2014-2016, 2016-2018, 2018-2020)

# INTRODUCTION

BIBD is an Islamic financial institution established as a result of the merger of IBB and IDBB. It was approved by His Majesty, Kebawah Duli Yang Maha Mulia Paduka Seri Baginda Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien, Sultan dan Yang Di-Pertuan Negara Brunei Darussalam, and was announced on 7 July 2005.

BIBD conducts its banking activities based on Islamic principles. *Shari'ah* compliance is the core and foundation of BIBD's establishment and business operations, as written in BIBD Memorandum of Association and Article of Association.

Adherence to *Shari'ah* principles is clearly stated in the Acts relating to Islamic banking operations as follows:

- 1. Islamic Banking Order 2008;**
- 2. Syariah Financial Supervisory Board (SFSB) Order 2006;**
- 3. Pawnbrokers Order 2002;**
- 4. Hire Purchase Order 2006;**
- 5. Securities Market Order 2013 (SMO); and**
- 6. Securities Markets Regulations 2015 (SMR)**

To meet the requirements set in paragraph 2 of BIBD Article of Association, and in paragraph 3 (i) of the Islamic Banking Order 2008, a body named SAB has been established to advise and ensure that the bank's operations are in compliance with the *Shari'ah* principles. The members of this body are appointed based on the approval of His Majesty, Kebawah Duli Yang Maha Mulia Paduka Seri Baginda Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien, Sultan dan Yang Di-Pertuan Negara Brunei Darussalam.

At BIBD level, SAB is required to provide an annual report to be presented in BIBD Annual General Meeting (AGM) to validate that all BIBD products and services are compliant with the *Shari'ah* principles. Any revenue from *Shari'ah* non-compliant sources will be isolated and put in the Dana Maslahat Fund to be disposed of for charitable purposes.

On the national level, the *Shari'ah*-compliant system is monitored by Autoriti Monetari Brunei Darussalam (AMBD) through the Syariah Financial Supervisory Board (SFSB). SFSB is a board that

was established based on the Syariah Financial Supervisory Board Order 2006. Chapter (3) of the Order authorised the SFSB to supervise financial institutions' administration and business matters regarding Islamic products and any other related matters.

In emphasizing the importance of *Sharī'ah* compliance, BIBD *Sharī'ah* Governance Framework was formed, comprehensively adopting all *Sharī'ah* principles in BIBD Islamic banking system. The BIBD *Sharī'ah* Governance Framework framework serves as a guideline for the SAB and *Sharī'ah* Division. The *Sharī'ah* Division also uses it as guidance, description of functions, tasks, and procedures of its operations in ensuring that the application and implementation of *Sharī'ah* governance are carried out comprehensively.



## MEMBERS OF SHARIAH ADVISORY BODY (1993 – 2016)

BIBD SAB was established as a bank advisory body in determining *Shari'ah* matters to ensure that the business transactions and bank services are in line with the *Shari'ah* principles. It is monitored by the Ministry of Finance through AMBD. Apart from being the referral and advisory body, this body is also responsible for ensuring that all Islamic banking products and services comply with the *Shari'ah* principles.

SAB is composed of local Muslim scholars who are qualified and experienced experts in various fields, mainly in legal legislation and Islamic finance and banking. Therefore, their credibility or qualification will not be questioned in advising and carrying out their duties to the Islamic Financial Institution (IFI).

Based on BIBD records, the members of SAB from 1993 until 2016 are as follows:

### IBB SAB MEMBERS (1993-2005)

No.	Members Name	Year
1.	Yang Dimuliakan Pehin Datu Imam Dato Paduka Seri Setia Ustaz Haji Awang Abdul Hamid bin Bakal	1993 –1995
2.	Yang Mulia Awang Ahmad Zakaria bin Haji Mohammad	1993 – 1994
3.	Yang Mulia Awang Haji Zainasallehen bin Haji Mohd Tahir	1993 – 1996
4.	Allahyarham Yang Dimuliakan Pehin Orang Kaya Lela Raja Dato Seri Laila Jasa Haji Awang Abdul Rahman bin Haji Awang Abdul Karim	1993, 1999 – 2001
5.	Allahyarham Yang Dimuliakan Lagi Dihormati Pehin Orang Kaya DiGadong Seri Diraja Dato Laila Utama Haji Awang Abdul Rahman bin Pehin Orang Kaya Shahbandar Haji Awang Mohd Taha	1993 – 2002
6.	Yang Berhormat Pehin Datu Seri Maharaja Dato Paduka Seri Setia (Dr.) Ustaz Haji Awang Abdul Aziz bin Juned	1993 – 2005
7.	Yang Dimuliakan Pehin Orang Kaya Paduka Setia Raja Dato Seri Setia Haji Awang Suhaili bin Haji Mohiddin	1993 – 2005
8.	Yang Berhormat Pehin Orang Kaya Paduka Seri Utama Dato Paduka Seri Setia Haji Awang Salim bin Haji Besar	1993 – 2005
9.	Yang Mulia Dato Seri Setia Ustaz Awang Haji Metussin bin Haji Baki	1993 – 2005

## COMPILATION OF SELECTED SHARIAH ADVISORY BODY RESOLUTIONS

Bank Islam Brunei Darussalam

10.	Yang Amat Mulia Pengiran Laila Kanun Diraja Pengiran Haji Bahrin bin Pengiran Haji Abbas	1994 – 1996
11.	Yang Mulia Awang Ahmad Basuni bin Haji Abbas	1996
12.	Allahyarham Yang Dimuliakan Pehin Orang Kaya Setia Raja Dato Seri Paduka Haji Awang Mohd Ali bin Haji Awang Mohd Daud	2001
13.	Yang Berhormat Pehin Orang Kaya Seri Kerna Dato Seri Setia (Dr.) Haji Awang Abu Bakar bin Haji Apong	2001 – 2005
14.	Yang Berhormat Pehin Udana Khatib Dato Paduka Seri Setia Ustaz Haji Awang Badaruddin bin Pengarah Dato Paduka Haji Othman	2001 – 2005
15.	Yang Mulia Dato Paduka Awang Haji Mohamad Roselan Bin Haji Mohamad Daud	2001 – 2005

### IDBB SAB MEMBERS (2000-2005):

No.	Members Name	Year
1.	Allahyarham Yang Mulia Dato Paduka Seri Setia Professor Dr Hj Awang Mahmud Saedon bin Awang Othman	2000 – 2002
2.	Yang Berhormat Pehin Datu Seri Maharaja Dato Paduka Seri Setia (Dr.) Ustaz Haji Awang Abdul Aziz bin Juned	2000 – 2005
3.	Yang Berhormat Pehin Orang Kaya Paduka Seri Utama Dato Paduka Seri Setia Haji Awang Salim bin Haji Besar	2000 – 2005
4.	Yang Mulia Dato Seri Setia Ustaz Awang Haji Metussin bin Haji Baki	2000 – 2005
5.	Yang Mulia Pengiran Datin Paduka Hajah Urai binti Pengiran Ali	2000 – 2005
6.	Yang Berhormat Pehin Udana Khatib Dato Paduka Seri Setia Ustaz Haji Awang Badaruddin bin Pengarah Dato Paduka Haji Othman	2004 – 2005
7.	Yang Dimuliakan Pehin Orang Kaya Paduka Setia Raja Dato Seri Setia Haji Awang Suhaili bin Haji Mohiddin	2004 – 2005

**BIBD SAB MEMBERS (2006-2016)**

*(Note: Members are appointed every two years)*

No.	Members Name	Year
1.	Yang Berhormat Pehin Orang Kaya Paduka Seri Utama Dato Paduka Seri Setia Haji Awang Salim bin Haji Besar	2006 – 2008
2.	Yang Mulia Dato Seri Setia Dr. Haji Japar bin Haji Mat Dain@Maidin	2006 – 2008 2016 – 2018
3.	Yang Mulia Dato Seri Setia Ustaz Awang Haji Metussin bin Haji Awang Baki	2006 – 2014
4.	Yang Dimuliakan Pehin Orang Kaya Paduka Setia Raja Dato Seri Setia Haji Awang Suhaili bin Haji Mohiddin	2006 – 2016
5.	Yang Mulia Dato Seri Setia Dr Haji Mazanan bin Haji Yusof	2006 – 2016
6.	Yang Mulia Datin Paduka Dr Hajah Masnon binti Haji Ibrahim	2008 – 2014
7.	Yang Mulia Dato Seri Setia Awang Haji Abdul Aziz bin Orang Kaya Maharaja Lela Haji Yussof	2014 – 2016 2016 – 2018
8.	Yang Mulia Dr Abdul Nasir bin Haji Abdul Rani	2014 – 2016 2016 – 2018
9.	Yang Mulia Dr Haji Noralizam bin Haji Aliakbar	2016 – 2018
10.	Yang Mulia Dr Hajah Rose binti Abdullah	2016 – 2018

## GLOSSARY OF ISLAMIC FINANCE TERMS

Terms	Explanations
<i>Bay' / al-Bay'</i>	Contract of sale
<i>Bay' bi Thaman Ājil</i>	A contract of sale and purchase of an asset in which the payment of price is deferred and paid in installment within a agreed period of time. The selling price includes profit.
<i>Bay' al-Dayn bi al-Sila'</i>	Sale of debt in exchange of commodities
<i>Bay' al-'Īnah</i>	A contract of sale and purchase of an asset whereby the seller sells to buyer at a deferred price and subsequently buys back at a lower cash price.
<i>Bay' al-Naqd</i>	Buying/Selling in cash
<i>Ghabn al-Fāḥish</i>	Fraud in Pricing
<i>Gharar</i>	Element of uncertainty and/or deceit.
<i>Hibah</i>	Gift
<i>Ibrā'</i>	Waiving partially or totally a right to claim a debt.
<i>Ījāb</i>	Offer
<i>Al-Ijārah / Ijārah</i>	A contract between a lessor and a lessee in which the lessor being the owner of the property allows the lessee to enjoy the usufructs of the property at agreed terms on the rental and period of lease.
<i>Ijārah Mawṣūfah fi Dhimmah</i>	Forward Lease / Rental agreement that took place when the property or house is still under construction
<i>Al-Ijārah al-Muntahiyah bi al-Tamlik</i>	Lease ended with full ownership of the goods by the Lessee
<i>Al-Ijārah Thumma al-Bay'</i>	A contract of lease which subsequently followed by a sale contract.
<i>Kafālah</i>	Guarantee

<i>Al-Kafālah bi al-Māl</i>	Commercial or financial guarantee.
<i>Khiyār</i>	Option
<i>Marhūn</i>	Pawned goods
<i>Maṣlaḥah Mursalah</i>	Long-term welfare
<i>Al-Muḍārabah / Muḍārabah</i>	A partnership in profit whereby one party provides capital ( <i>Rab al-Māl</i> ) and the other party provide labour ( <i>muḍārib</i> ).
<i>Muḍārabah Muqayyadah</i>	Profit sharing contract tied with terms
<i>Muḍārib</i>	Entrepreneurs/Labour/Expert of <i>Muḍārabah</i> partnership.
<i>Mumāṭil</i>	Delaying debt payment on purpose
<i>Al-Murābahah / Murābahah</i>	Contract of sale with disclosing the cost of the asset and the profit margin to the buyer
<i>Musāwamah</i>	Price agreed through bargaining.
<i>Al-Mushārahah / Mushārahah</i>	Profit-loss-sharing partnership contract
<i>Mushārahah Mutanāqishah</i>	A form of partnership in which one of the partners promise to buy the equity share of the other partner gradually until the title is completely transferred to him.
<i>Qabūl</i>	Acceptance
<i>Qarḍ</i>	Islamic loan
<i>Al-Qarḍ al-Ḥasan / Qarḍ Ḥasan</i>	Benevolent loan
<i>Rab al-Māl</i>	Investor
<i>Al-Rahnu / Ar-Rahnu / Rahnu</i>	Pledge or collateral
<i>Ribā</i>	Interest
<i>Ribā al-Jāhiliyyah</i>	A rate or any additional benefit that is more than the amount of the loan charged to the borrower due to late payment or failure to pay

<i>Ribā al-Nasī'ah</i>	Interest-based lending. <i>Ribā</i> of delay or usury of debt, due to exchange not being immediate with or without excess on one of the counter-values. Selling or exchanging <i>ribawī</i> goods of the same type by delay (not all at once).
<i>Sad al-Dharāī'</i>	Blocking the means to something forbidden in <i>Sharī'ah</i>
<i>Ṣāhib al-Māl</i>	Capital provider
<i>Sharikat al-'Inān</i>	Capital / property sharing between two or more persons for business purposes
<i>Ṣīghah</i>	Pronouncement of <i>Ījāb</i> and <i>Qabūl</i>
<i>Takāful</i>	A scheme that is characterised by the spirit of helping through providing the participants with financial support if needed and all of them agreed to contribute for such purpose
<i>Tawarruq</i>	An arrangement that involves a purchase of an asset based on <i>musawamah</i> or <i>murabahah</i> and subsequent sale of the same asset to a third party in order to gain cash money.
<i>Ta'wīḍ</i>	Compensation charged to a debtor for late payment.
<i>Ta'zīr</i>	Fine
<i>Ujrah</i>	Wage / Service Fee
' <i>Urf</i>	Custom
<i>Wa'd</i>	Promise
<i>Al-Wadī'ah / Wadī'ah</i>	A guarantee safe keeping contract
<i>Wadī'ah Yad Ḍamānah</i>	Contract of safekeeping with guarantee
<i>Wakālah</i>	A contract where a party authorises another party to act on behalf of the former as long as he is alive.
<i>Al-Wakālah bi al-Ujrah</i>	Contract of paid agency

## FIGURES

Figure	Figure Title	Page
Figure 1	BBĀ Workflow in the Personal Financing Scheme (First Procedure)	2
Figure 2	BBĀ Workflow in the Personal Financing Scheme (Second Procedure)	2
Figure 3	BBĀ Workflow in the Purchase Financing Scheme	3
Figure 4	BBĀ Workflow in the Development Financing Scheme	3
Figure 5	BBĀ Workflow in the Overdraft Financing Scheme	4
Figure 6	Transaction Workflow using the Concept of <i>al-Mushārah</i>	8
Figure 7	Transaction Workflow for Islamic Pawnbroking	11
Figure 8	Transaction Workflow for <i>al-Wadī'ah</i> Saving Account	14
Figure 9	Transaction Workflow for BBĀ General Investment and BBĀ Golden Savers Account	15
Figure 10	Transaction Workflow for <i>al-Muḍārah</i> Investment Account	16
Figure 11	Transaction Workflow for Motor Vehicle Rental Scheme	17
Figure 12	Transaction Workflow for Furniture, Equipment and Machinery Rental Scheme	18
Figure 13	Transaction Workflow for Trade Finance based on the <i>al-Muḍārah</i> Concept	20
Figure 14	Transaction Workflow for Islamic Financial Market based on the <i>al-Muḍārah</i> Concept	37
Figure 15	Transaction Workflow for Islamic Financial Market based on the <i>Wadī'ah Yad Ḍamānah</i> Concept	38

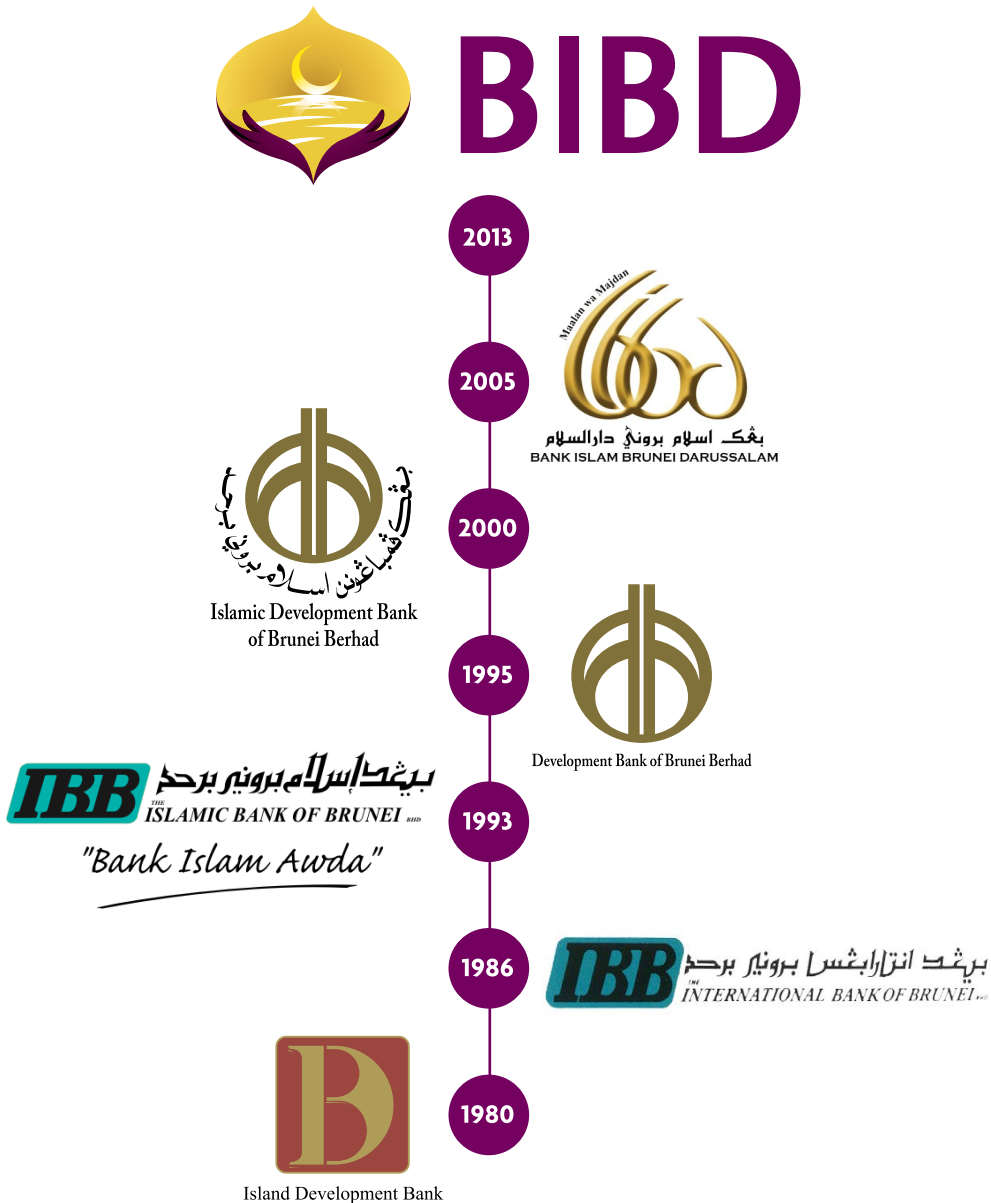
Figure 16	Transaction Workflow for IDBB Credit Card	39
Figure 17	Transaction Workflow for Vehicle Financing Scheme based on AITAB concept	42
Figure 18	Workflow for IMBT-based Financing	48
Figure 19	Workflow for Asset Sales and Purchase	49
Figure 20	Transaction Workflow for Postpaid Payment	51
Figure 21	Transaction Workflow for Prepaid Payment	52
Figure 22	Transaction Workflow for Unit Trust Global Equity Fund and Asia Equity Fund	55
Figure 23	Transaction Workflow for IPRS (First Step)	57
Figure 24	Transaction Workflow for IPRS (Second Step)	58
Figure 25	Transaction Workflow for ICCS (First Step)	59
Figure 26	Transaction Workflow for ICCS (Second Step)	59
Figure 27	Workflow for Foreign Exchange Forward Agreement	66
Figure 28	Transaction Workflow for Multi Manager Fund (MMF) Investment	68
Figure 29	Workflow for Home Financing Products Based on the Concept of <i>Mushārah Mutanāqīshah</i>	74
Figure 30	Transaction Workflow for BIBD Wakalah Agreement as a party ( <i>Muwakkil</i> ) who appoint ABC Bank as an agent BIBD fund Investment	76
Figure 31	Workflow for Foreign Trading Under the <i>Wa'd</i> Concept	77
Figure 32	Workflow for Investment Structure using <i>Wakālah</i> Concept	79
Figure 33	Transaction Workflow for BIBD Mastercard Debit	80
Figure 34	Workflow for BSAS Platform	82
Figure 35	Workflow for BIBD Home Financing Product under the <i>Mushārah Mutanāqīshah</i> Concept	84



Figure 36	Transaction Workflow for <i>Wakālah</i> Concept Products	87
Figure 37	Transaction Workflow for <i>Murābahah</i> Syndicated Financing	88
Figure 38	Workflow for Financing Product Using <i>Tawarruq</i> Concept	90
Figure 39	Workflow for Forex Forward Products based on Commodity <i>Murābahah</i> Concept (A)	99
Figure 40	Workflow for Forex Forward Products based on Commodity <i>Murābahah</i> Concept (B)	100
Figure 41	Workflow for Forex Forward Products based on Commodity <i>Murābahah</i> Concept (C)	100
Figure 42	Workflow for Forex Forward Products based on Commodity <i>Murābahah</i> Concept (D)	100
Figure 43	Workflow for Forex Forward Products based on <i>Wa'd</i> and Commodity <i>Murābahah</i> Concept	101
Figure 44	Workflow for <i>Wakālah</i> Contract	111
Figure 45	Workflow for <i>Muḍārabah</i> Business	111
Figure 46	Workflow for Commodity Acquisition	112
Figure 47	Workflow for BIBD Visa Credit Card	117

# TRANSFORMATION OF CORPORATE IDENTITY

The bank's logos have evolved through the years in line with its conversions, merger and rebranding.



# 01

## FINANCING SCHEME BASED ON THE *BAY' BI THAMAN ĀJIL* CONCEPT

*Bay' Bi Thaman Ājil* (*BBĀ*) refers to a sales and purchase transaction on a deferred payment basis. *BBĀ* transaction involves the process of selling goods with immediate delivery and deferring payment until a specified time or period.

*BBĀ* is deemed permissible in Islam. The terms and conditions for the validity of *BBĀ* are the same as any other sales and purchase agreement.

### FINANCING SCHEME

IBB has introduced four *BBĀ* based financing schemes:

#### 1. Personal Financing Scheme

It is open to individuals who require cash for personal purposes.

#### 2. Purchase Financing Scheme

It is specifically made available for individuals or companies that need money to purchase goods such as vehicles, lands, houses, buildings, shares, and other items of value and worth.

#### 3. Development Financing Scheme

It is offered to property developers (individuals or companies) to develop houses, shops, and other buildings.

#### 4. Overdraft Financing Scheme

Designed to replace the demand loan facility, and is usually given to wholesalers and sometimes to individuals.

### MODUS OPERANDI

The workflow of *BBĀ* in the Personal Financing Scheme is as follows:



FIGURE 1

BBĀ Workflow in the Personal Financing Scheme (First Procedure)

- (a) The customer provides valuable goods to be purchased by the bank;
- (b) The bank will buy the goods in cash;
- (c) The bank will then sell the goods to the customer at the original price plus profits; and
- (d) The customer will pay in instalments to the bank within the agreed period

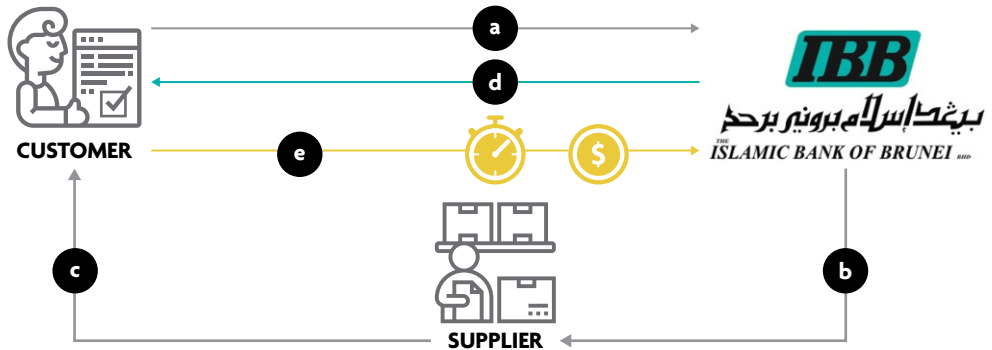


FIGURE 2

BBĀ Workflow in the Personal Financing Scheme (Second Procedure)

- (a) In the first contract agreement, the bank provides the asset or commodity and sell to the customer for instalment payment within the agreed period; and
- (b) In the second contract agreement, the bank buys back the customer's asset or commodity that was initially sold by the bank on spot payment (cash).

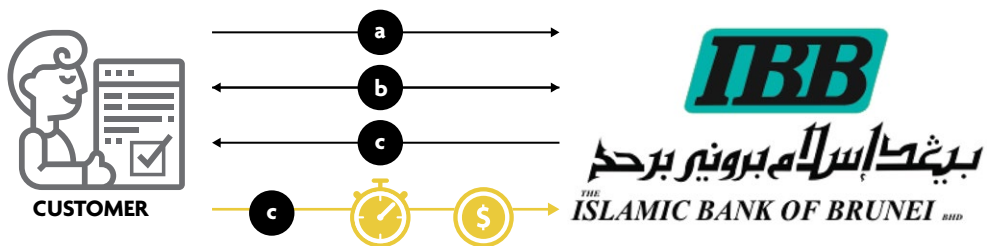
The workflow of *BBĀ* in the Purchase Financing Scheme is as follows:



**FIGURE 3**  
***BBĀ* Workflow in the Purchase Financing Scheme**

- (a) The customer applies to the bank for the purchase financing. The customer will deposit a certain amount of money to the bank;
- (b) The bank will buy the requested goods from the vendor at an agreed price between both customer and vendor;
- (c) The bank will also appoint the vendor as a sales agent to sell and deliver the goods to the customer;
- (d) The bank will sell the goods to the customer at the original price plus profits. The amount is deducted with the money deposited by the customer in advance; and
- (e) The customer will then pay the remaining balance to the bank within the agreed period.

The workflow of *BBĀ* in the Purchase Financing Scheme is as follows:



**FIGURE 4**  
***BBĀ* Workflow in the Development Financing Scheme**

- (a) The customer applies to the bank for development financing. The customer will deposit a certain amount of money to the bank as a deposit;

- (b) The bank will then purchase the customer's land for the amount of financing that the customer requires with the condition that the customer is to build the building on the land itself. The customer is to assign the land ownership to the bank by signing the Power of Attorney and Memorandum of Charge documents;
- (c) The bank will sell the goods to the customer at the original price plus profits. The amount is then deducted with the money deposited by the customer in advance, and the customer will pay the remaining balance within the agreed period.

The workflow of *BBĀ* in the Overdraft Financing Scheme is as follows:

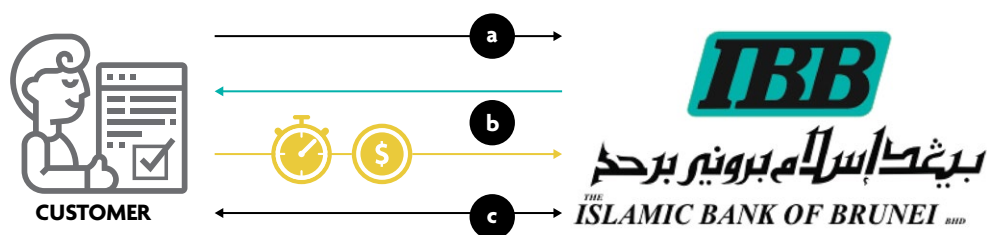


FIGURE 5

*BBĀ* Workflow in the Overdraft Financing Scheme

- (a) The customer applies to the bank for overdraft financing;
- (b) The bank will sell gold to the customer for a deferred payment at the price of the amount required by the customer plus profit. The customer will pay the financing amount at the end of the one year period, and the profit on a monthly basis for a year; and
- (c) The bank will buy back the gold at the price of the amount required by the customer in cash and credit it to a special account. The average balance in the special account will determine the monthly payment that the customer needs to pay to the bank.

In this matter, IBB has consulted its SAB for guidance on the *BBĀ* financing scheme.

### IBB SAB RESOLUTION

In the 1<sup>st</sup> meeting held on 19 Syaaban 1413H/11 February 1993M, regarding the “Financing Scheme Based on the *Bay' bi Thaman Ājil* concept”, IBB SAB has decided that the *BBĀ* concept is not in contradiction with *Shari'ah* principles and can be adopted. SAB further advised IBB to ensure any financing applications involving land purchase should not conflict with Brunei Darussalam Land Code.

# 02

## OWNERSHIP OF THE ISLAMIC BANK OF BRUNEI SHARES BY NON-MUSLIMS

On 13 January 1993, His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan Haji Omar' Ali Saifuddien Sa'adul Khairi Waddien, Sultan and Yang Di-Pertuan of Brunei Darussalam has authorized the conversion of all operations in The International Bank of Brunei to a system based on *Sharī'ah* principles. Following that, the bank is renamed to Bank Islam Brunei Berhad or Islamic Bank of Brunei Berhad (IBB).

Before the conversion, IBB shares were partially held by a non-Muslim company. For future plans, IBB shares are to be offered to the public, including non-muslims.

In this matter, IBB has consulted its SAB for guidance on the partnership and ownership of IBB shares by non-Muslims.

### IBB SAB RESOLUTION

In the 2<sup>nd</sup> meeting held on 14 Ramadhan 1413H / 8 March 1993M, IBB SAB has decided that non-Muslims are allowed to own IBB shares.

### BASIS OF CONSIDERATION

These justifications formed the basis of consideration for the resolution:

- 1) The International Bank of Brunei, formerly IBB, is now a legitimate *Sharikat al-'Inān*, according to the views of the four *madhhab* in Islam.
  - (a) In the book of *Mughnī al-Muḥtāj*, volume 2, page 212 states:

وشركة العنان صحيحة

Meaning: "And *Sharikat al-'Inān* is valid."

- (b) The definition of *Sharikat al-'Inān* according to *Sharḥ al-Maḥallī* in the book of *Qalyūbī wa 'Umayrah*, volume 2, page 333 and 336:

وشركة العنان صحيحة وهي أن يشتركا في مال لهما ليتجرا فيه والربح بينهما على قدر المالين

Meaning: “*Sharikat al-‘Inān* is valid. When two people share their wealth for business purposes, and they split any profit between them in proportion to their assets.”

2) There are five terms and conditions for *Sharikat al-‘Inān*: partners, capital, work or business, profit, and contract.

(a) In the book of *Mughnī al-Muhtāj*, volume 2, page 213:

### وفيها أهلية التوكيل والتوكل

Meaning: “The partners have the authority to represent and receive a representative (they have the power of membership to manage the matters they delegate to others).”

(b) In the book of *al-Fiqh al-Islāmī wa Adillatuh*, volume 4, page 153 explains further that the people who represent and receive representatives must have the power of membership to manage muamalat.

(c) In the book of *Hāshiyah Qalyūbī wa ‘Umayrah*, volume 2, page 155:

### وشرط العاقد الرشد

Meaning: “And the condition of the person who agrees to a contract should be ‘*Rushd*’ (sensible).”

3) Islam is not a requirement for a partner in *Sharikat al-‘Inān*. In the book of *Qalyūbī wa ‘Umayrah*, volume 2, page 334 states:

### وتصح الشركة وإن كرهت كشركة ذمي وأكل الربا ومن أكثر ماله حرام

Meaning: “It is valid to form a company, even when it is makruh to partner with *kāfir dhimmi*, those who partake in *ribā* and those whose property is mostly haram”.



# 03

## INVESTMENT OF THE ISLAMIC BANK OF BRUNEI IN THE STOCK MARKET

A stock market or stock exchanges is a facility where stocks and other financial instruments are traded. The stock market is similar to any existing traditional market, with buyer, seller, and price negotiations.

The stock market's function is to facilitate the transfer of funds between any party that requires funds (company) and any party with funds (investor). It is open to anyone who wants to invest or buy into any publicly listed company's shares.

As an Islamic financial institution, IBB has invested in the stock market since its operation as The International Bank of Brunei. In this matter, IBB has consulted its SAB for guidance on its investment in the stock market.

### IBB SAB RESOLUTION

In the 7<sup>th</sup> meeting held in 1993M, IBB SAB has decided on the following:

1. It is permissible for IBB to invest in the stock market; and
2. Recommend IBB to prepare a guideline for investing in the stock market.

### BASIS OF CONSIDERATION

1. Al-Sharbini al-Khatib in *Mughnī al-Muhtāj* explains that Islam is not a requirement for the validity of a company. This opinion is consistent with the view of *Qalyūbī* in *Ḥāshiyah Qalyūbī wa 'Umayrah* that the company is valid, even when it is makruh to partner with *kāfir dhimmi*, those who partake in *ribā* and those whose property is mostly haram.
2. Allahyarham Yang Dimuliakan Pehin Datu Seri Maharaja Dato Seri Utama Awang Haji Ismail bin Omar Abdul Aziz (*Raḥimahullāh*), the State Mufti of Brunei, wrote in his Fatwa in 1971:

“According to *Madhhab Ḥanafī*, it is permissible for a Muslim to have a contract with those who gamble, partake in *ribā*, or anything prohibited in Islam if the contract is formed in a non-Muslim country and with mutual consent from both parties. However, it is haram and not permissible if the contract with *kāfir dhimmi*, and those who partake in *ribā*, or anything prohibited in Islam, is formed in a Muslim country where Islamic law is practiced as mentioned by Sheikh Faqīh of Egypt al-‘Allāmah al-Sheikh Mohammad Bukhit, State Mufti of Egypt (*Raḥimahullāh*).”

# 04

## PROPOSED JOINT VENTURES USING THE *AL-MUSHĀRAKAH* CONCEPT

IBB intends to offer a new product using the *al-Mushārahkah* concept or contract to meet its customers' needs for joint ventures or partnerships for project implementation.

### MODUS OPERANDI

The transaction workflow for the proposed product using the *al-Mushārahkah* concept or contract is as follows:

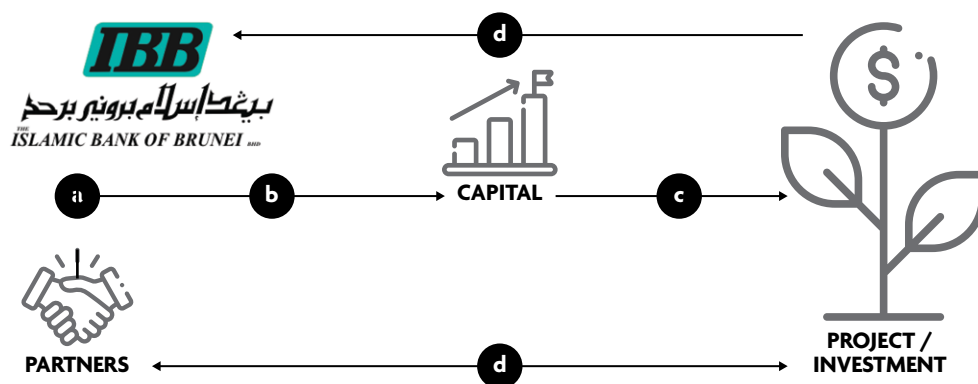


FIGURE 6

Transaction Workflow using the *al-Mushārahkah* concept

**(a) Shareholders (partners):** The partnership will involve at least two parties, namely IBB and shareholders (partners);

**(b) Capital:** Both parties will contribute capital to the project. In this transaction, IBB contributes capital in cash, whereas the shareholder (partner) will provide an asset (land property) as a joint investment. In certain situation, the customer (landlord) is required to contribute fund as additional capital, or IBB will purchase parts of the customer's land and then make it part of the capital;

**(c) Projects/investments:** Proceeds from the combined capital from IBB and the shareholders (partners) will be invested in a mutually agreed project. In this regard, a joint venture

project using the *al-Mushārah* concept to develop properties such as the construction of residential houses, shops, apartments, commercial buildings, and so on; and

- (d) **Ṣiḡḡah (agreement):** The profits will be distributed according to the agreed-upon rate. However, any loss will be borne according to the ratio of their respective capital contribution.

In this matter, IBB has consulted its SAB for guidance on the proposal to introduce a new product using the concept of joint venture under the contract of *al-Mushārah*.

### IBB SAB RESOLUTION

In the 4<sup>th</sup> meeting held on 8 Rabiulakhir 1415H / 14 September 1994M, IBB SAB has decided that the joint venture product using *al-Mushārah* concept is not in contradiction with *Shari'ah* principles.

### BASIS OF CONSIDERATION

These justifications formed the basis of consideration for the resolution:

- 1) *Dalil al-Qur'an* :

(a) *Sūrah al-Nisā'*, verse 12:

فَهُمْ شُرَكَاءُ فِي الثُّلُثِ

Translated: "... they shall (equally) share the third of the estate"

(b) *Sūrah Ṣād*, verse 24:

وَإِنَّ كَثِيرًا مِّنَ الْخُلَطَاءِ لَيَبْغِي بَعْضُهُمْ عَلَى بَعْضٍ إِلَّا الَّذِينَ ءَامَنُوا وَعَمِلُوا الصَّالِحَاتِ

Translated: "...truly many partners (in all walks of life) are unjust to one another; but not so those who believe and do righteous deeds."

- 2) *Ḥadīth Qudsi*

أَنَا ثَالِثُ الشَّرِيكَيْنِ، مَا لَمْ يَخُنْ أَحَدُهُمَا صَاحِبَهُ فَإِذَا خَانَهُ خَرَجْتُ مِنْ بَيْنَهُمَا

Meaning: "I (*Allāh*) make a third with two partners as long as one of them does not cheat the other, but when he cheats him, I depart from them". - Narrated by Abu Daud.

# 05

## ISLAMIC PAWNBROKING

Conventional pawnbroking operation was first known in 1920 following the country's enforcement of The Pawn Act 1920. A general survey found that conventional pawnbroking operation conflicts with *Shari'ah* principles due to interest-bearing loans and the loss of pawned goods when the pawner cannot settle the amount of loan for the value of the pawned assets.

IBB intends to set up *Ar-Rahnu* (Islamic Pawnbroking) counter to expand its existing business and financing facilities. Its main objective is to assist the Muslim community, particularly to offer quick cash lending and to create awareness against *riba* practices.

### SHARI'AH CONCEPT

This product uses the following *Shari'ah* concept:

#### 1. *Al-Rahnu* (Pawnbroking)

Pawnbroking is the pledging of an item of value as security for cash financing. The pawned item should have a value of more or less than or equal to the financing amount.

The pawner (IBB customer) must pay for the safekeeping of the *Marhūn* (pawned item). At the end of the financing term, the pawnbroker (IBB) should issue a notice to the pawner to settle any outstanding balance without selling the pawned item or selling it only to clear the outstanding balance.

Suppose the pawner refuses to pay the outstanding balance using one of the two methods, the court may issue an order to sell the item to settle the unpaid balance, and IBB will return the remaining balance of the item's value to the pawner after deducting all the dues. The pawnbroker should obtain permission from the pawner before selling the pawned item. It is permissible for the pawnbroker to sell the pawned item with the pawner's consent to pay any outstanding balance.

In the event of pawner's death, the pawnbroking agreement remains valid and will be borne by the heir(s).

#### 2. *Wadi'ah Yad Damānah* (Safekeeping with guarantee)

*Wadi'ah Yad Damānah*, safekeeping with guarantee, is an agreement between the pawner and pawnbroker to accept custody of the pawned item and ensure the safekeeping of the item. The agreement guarantees the item against loss, damage, theft, and the like.

The pawnbroker will charge a safekeeping service fee for keeping the pawned item in a designated location. The pawnbroker acts as a guarantor of its safety based on the guarantee (*Ḍamānah*) agreement. Therefore, the pawnbroker will compensate for any damage or loss, whether on purpose or otherwise, with cash equivalent to the value of *Marhūn* as stated in the agreement.

### 3. *Al-Qarḍ al-Ḥasan* (Benevolent loan)

*Al-Qarḍ al-Ḥasan* refers to a loan that a pawnbroker gives to a pawnier without any interest or charge.

## MODUS OPERANDI

The transaction workflow for Islamic Pawnbroking is as follows:

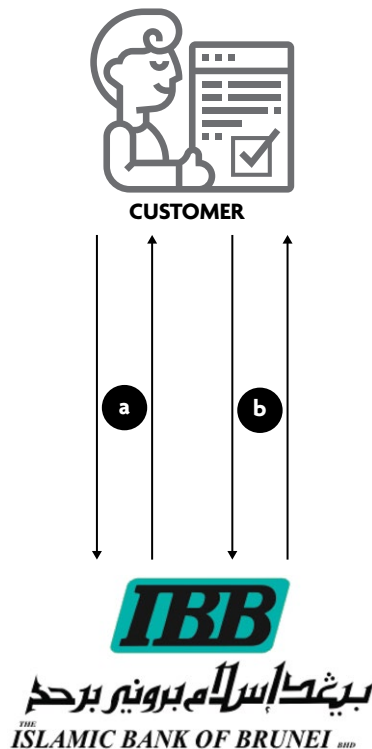


FIGURE 7

Transaction Workflow for Islamic Pawnbroking

- (a) The customer applies for cash financing from IBB by way of *Ar-Rahnu* financing scheme, in which the customer hand over the pawned item (for instance, gold) to the bank for safekeeping by paying the stipulated charge(s) (using the *Wadī'ah Yad Ḍamānah* concept). The bank will offer cash financing of up to 80% of the item's prevailing market value. The financing term is 6 months; and

(b) At the end of the financing term, the customer will redeem the pawned item by settling the outstanding balance for the cash financing and the safekeeping fee. The bank will then return the paid off pawned item to the customer.

In this matter, IBB has consulted its SAB for guidance on the proposed Islamic Pawnbroking and endorsement of its guideline.

### **IBB SAB RESOLUTION**

In the 5<sup>th</sup> meeting held on 11 Ramadhan 1416H / 01 February 1996M regarding “Islamic Pawnbroking”, IBB SAB has decided on the following:

1. IBB Pawnbroking is changed to *IBB Ar-Rahnu* (Islamic Pawnbroking);
2. Acknowledged that *Ar-Rahnu* (Islamic Pawnbroking) is a new product for IBB similar to the other products;
3. Verified that the guideline for *Ar-Rahnu* (Islamic pawnbroking) is not in contradiction with *Shari'ah* principles.

# 06

## IBB KREDIT BERHAD

IBB Kredit Berhad (known as BIBD At-Tamwil Berhad in the present day) is an IBB subsidiary; established under [the Companies Act Order]. Its primary function and objective are to provide *Shari'ah*-compliant products and services such as savings, investment, and financing facilities.

The range of products and services are as follows:

### 1. Savings (and Investment) Facilities

- a) *Al-Wadi'ah* Savings Account;
- b) *BBĀ* General Investment Account;
- c) *BBĀ* Golden Savers Investment Account; and
- d) *Al-Muḍārabah* Investment Account.

### 2. Financing Facilities

- a) *Al-Ijārah Thumma al-Bay'* (*AITAB*) Savings Account; and
- b) *Al-Ijārah*.

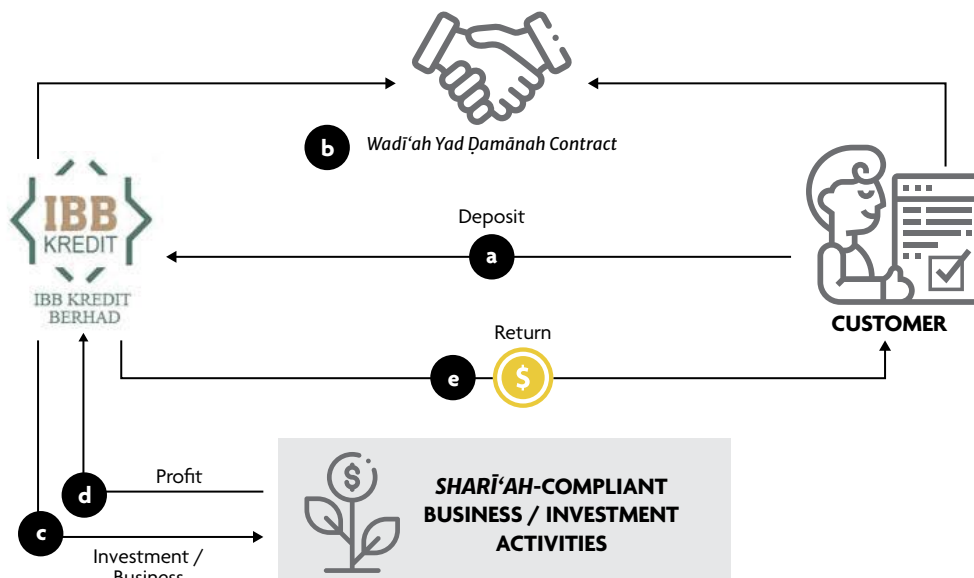
### MODUS OPERANDI

A brief description and transaction workflow for the savings (and investment) facilities are as follows:

#### 1. Savings and Investment Facilities

- (i) *Al-Wadi'ah* Savings Account: Under this concept, the customer consented that the money deposited into the savings account is for safekeeping purposes based on the principles of *Wadi'ah Yad Ḍamānah*. The customer agrees and allows IBB Kredit Berhad to use all or part of the deposited amount for investment, business, management, and other purposes. In this contract, IBB Kredit Berhad guarantees to return all or part of the customer's savings at any time upon demand. The profit and loss from any investment and business deals are the rights and liabilities of IBB Kredit Berhad. However, in these circumstances, any dividends or returns will be distributed at the discretion of IBB Kredit Berhad.

The transaction workflow for *al-Wadī'ah* savings account is as follows:



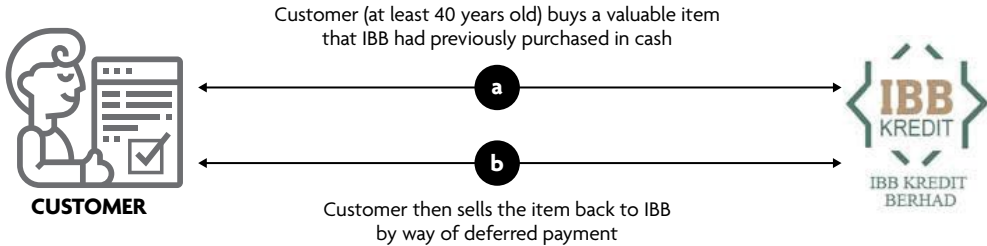
**FIGURE 8**  
Transaction Workflow for *al-Wadī'ah* savings account

- (a) The customer deposits money into a savings account at IBB Kredit Berhad;
- (b) The contract of *Wadī'ah Yad Ḍamānah* is agreed upon and signed by both parties;
- (c) IBB Kredit Berhad uses either part of or all of the customer's savings for investment, business, and any other *Sharī'ah*-compliant profitable deals;
- (d) IBB Kredit Berhad has the sole right to all profits; and
- (e) Any dividends or returns will be given to the customer at the discretion of IBB Kredit Berhad.



(ii & iii) *BBĀ* General Investment Account and *BBĀ* Golden Savers Investment: General Investment Account and Golden Savers Investment Account (for investors aged 40 and above) are designed based on *BBĀ* concept involving a sales and purchase transaction on a deferred payment basis. As an investor, the customer purchases an asset from IBB Kredit Berhad in cash and sells it back to IBB Kredit Berhad in a separate contract at a higher price on a deferred payment basis on a specified date (investment maturity date).

The transaction workflow for *BBĀ* General Investment Account and *BBĀ* Golden Savers Investment Account is as follows:



**FIGURE 9**  
Transaction Workflow for *BBĀ* General Investment Account  
and *BBĀ* Golden Savers Investment Account

- (a) In the first sales contract, the customer, as an investor, buys an asset owned by IBB Kredit Berhad by paying in cash, and then the ownership of the asset will be transferred to the customer (investor); and
- (b) In the second sales contract (separate contract), the customer, as an investor, sells the assets (from the first contract) to IBB Kredit Berhad at the original price plus profits. The deferred payment will be made on a specified date (investment maturity date).
- (iv) *Al-Muḍārabah* Investment Account: Under this concept, IBB Kredit Berhad acts as an entrepreneur (*Muḍārib*), and an investor acts as the capital owner (*Ṣāhib al-Māl*). The profits will be distributed according to the ratio specified and agreed upon in the agreement.

The transaction workflow for *Al-Muḍārabah* Investment Account is as follows:

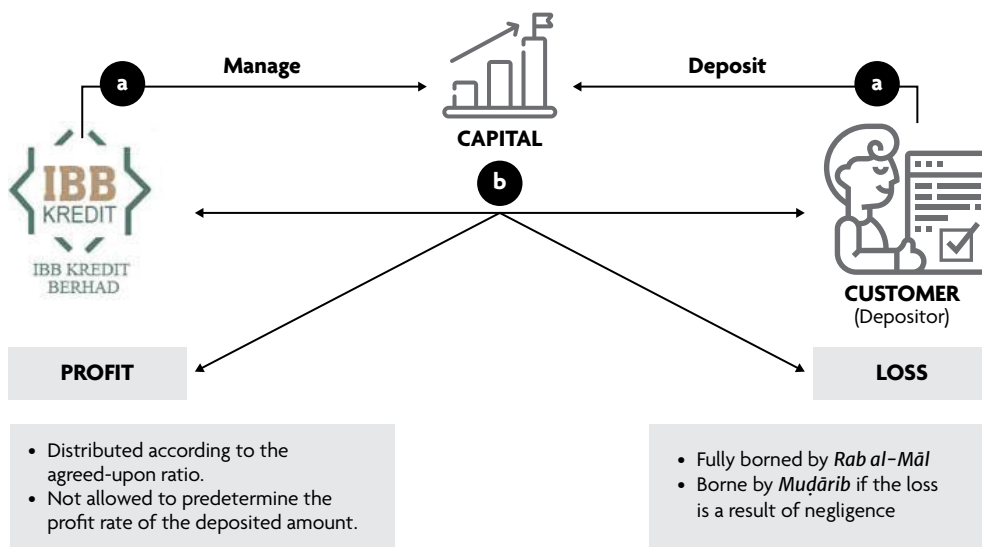


FIGURE 10

Transaction Workflow for *al-Muḍārabah* Investment Account

- As the capital owner, the customer appoints IBB Kredit Berhad as the fund investor (*Muḍārib*) in the *al-Muḍārabah* contract. The funds will then be used in *Shari'ah*-compliant investments; and
- Any profits from the investment will be distributed based on the agreed-upon ratio in the signed *al-Muḍārabah* contract agreement.

### FINANCING FACILITIES

The AITAB financing facilities involve two types of *Shari'ah* contracts: *al-Ijārah* contract (lease) followed by *Bay'* (purchase) contract. In the first contract, the customer rents a car from IBB Kredit Berhad at an agreed rental rate for a specified term. At the end of the term, the customer signs the second contract to buy the car from the owner (IBB Kredit Berhad) at an agreed price.

Assets traded in the AITAB financing facilities are valuable goods such as furniture, equipment, machinery, cars, and vehicles. IBB Kredit Berhad offers two schemes under the AITAB financing facilities:

#### (i) Motor Vehicle Rental

This scheme is open to individuals or companies requiring to rent motor vehicles that can be registered with *Jabatan Pengangkutan Darat (JPD)*. For instance, cars for personal purposes and transportation for business purposes. IBB Kredit Berhad is registered as the car owner (beneficial ownership) with *JPD*.

The transaction workflow for Motor Vehicle Rental is as follows:

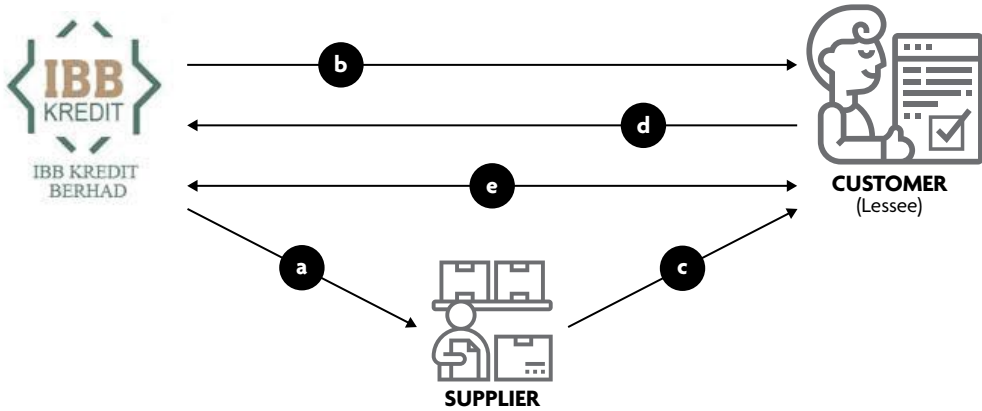


FIGURE 11

Transaction Workflow for Motor Vehicle Rental Scheme

- (a) IBB Kredit Berhad will purchase the vehicle requested by the customer from the supplier;
- (b) IBB Kredit Berhad, as the owner, will let the vehicle to the customer;
- (c) IBB Kredit Berhad will authorise the supplier to represent the company in delivering the vehicle to the customer;
- (d) The customer will pay monthly rent at a specified rate for an agreed period; and
- (e) Under the sales contract, IBB Kredit Berhad will sell the vehicle to the customer at the end of the rental period at a price of at least BND1.00 and will hand-over the Blue Card to the customer as proof of ownership transfer.

**(ii) Furniture, Equipment, and Machinery Rental**

This scheme is specifically for customers requiring to rent goods that cannot or do not need to be registered with JPD. These include furniture, equipment, heavy machinery, and other valuable goods. IBB Kredit Berhad is the owner (beneficial ownership) of the goods by way of the Bill of Sales.

The transaction workflow for Furniture, Equipment, and Machinery Rental is as follows:

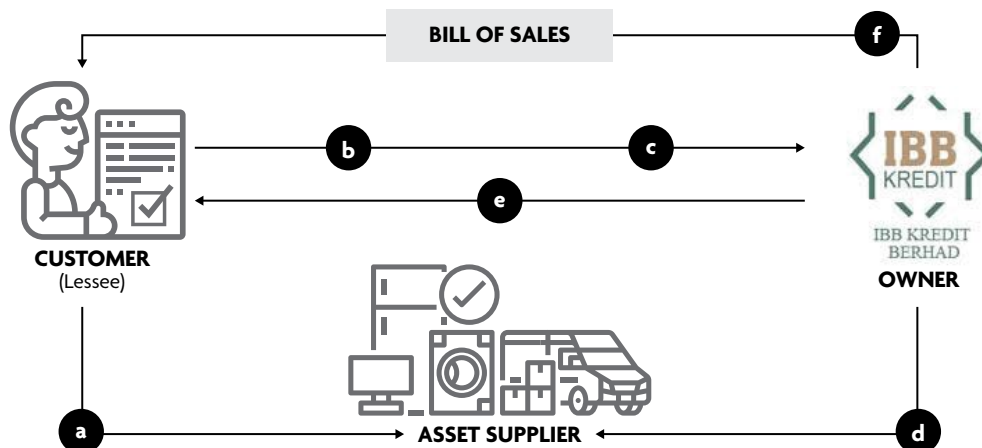


FIGURE 12

Transaction Workflow for Furniture, Equipment, and Machinery Rental Scheme

- (a) The customer will identify the supplier's asset;
- (b) The customer will go to IBB Kredit Berhad to apply for AITAB financing;
- (c) The customer promises to rent the asset at an agreed-upon rental rate and period;
- (d) IBB Kredit Berhad will purchase the asset from the supplier;
- (e) IBB Kredit Berhad, as the owner, will let the asset to the customer at an agreed-upon rental rate and period. [IBB Kredit Berhad will authorise the supplier to represent the company in delivering the asset to the customer]; and
- (f) Under the contract, IBB Kredit Berhad will sell the asset to the customer at the end of the rental period at a price of at least BND1.00 and hand-over the Bill of Sales as proof of ownership transfer.

In this matter, IBB has consulted its SAB for guidance on the abovementioned proposal for savings (and investment), and financing facilities.

### IBB SAB RESOLUTION

In the 6<sup>th</sup> meeting held on 6 Rabiulawal 1419H / 30 June 1998M, IBB SAB has decided that the range of products and services by IBB Kredit Berhad is not in contradiction with *Shari'ah* principles.

# 07

## THE DISPOSAL OF INTEREST MONEY BY THE INTERNATIONAL BANK OF BRUNEI BERHAD

International Bank of Brunei Berhad (IBB) started its operations in 1981 and was known as Island Development Bank (IDB). After operating as a conventional bank for nearly 12 years, the bank announced its migration to be an Islamic bank in 1993 and known as Islamic Bank of Brunei Berhad.

Following the migration, IBB commenced the conversion of all loan contracts to *Shari'ah*-compliant financing contracts. Due to the relatively long conversion process, all interest income earned and collected from the loan contracts was segregated into a special account.

In this matter, IBB has consulted its SAB for guidance on the procedure or method to dispose of the collected interest money.

### IBB SAB RESOLUTION

In the 7<sup>th</sup> meeting held on 25 Rejab 1420H / 4 November 1999M regarding "The Disposal of Interest Money by Islamic Bank of Brunei Berhad (IBB)", IBB SAB has decided on the following:

1. The accumulated interest money will be repurposed to preserve IBB image;
2. The procedure or method to dispose of the interest money should be in line with The Guideline for "The Utilisation of Interest Money" issued and agreed by IBB SAB; and
3. The Guideline for "The Utilisation of Interest Money" was based on the *fatwā* of the Mufti of the Government of Brunei, no. (316) in MKB, 31/1967 pt.3 issued on 13 Rabiulakhir 1404H / 17 January 1984:

"The accumulated interest money becomes *Baitul Māl* property. It is to be utilised for welfare, goodwill, benefits, and aids in upholding Islam and strengthening the Muslim community's position and life in the field of agriculture, business, manufacturing, enterprise, investment, and education. It could also be spent eradicating the widespread poverty among mankind and within the Muslim community, as maintenance funds for poor orphans and assisting Muslim travellers without spending money and other conditions as mentioned by the books of *fiqh*."

# 08

## TRADE FINANCING FACILITIES BASED ON *AL-MURĀBAḤAH* CONCEPT

IBB Trade Financing Facilities currently use a *BBĀ* contract where IBB will sell its assets or commodities to customers on a deferred payment basis, with a minimum term of several months and a maximum of twenty (20) years. [Once the customer owns the asset or commodity, IBB will buy from the customer in cash. In transitioning to a computerised system, IBB proposed to convert the *Sharī'ah* concept for its Trade Financing facilities from *BBĀ* to *al-Murābaḥah*].

Under this *al-Murābaḥah* concept, IBB will purchase the asset or commodity required by the customer. After owning the asset or commodity, IBB will sell it to the customer at cost price plus profits and will receive payment in full within a specified term.

The transaction workflow for the Trade Financing facilities based on *al-Murābaḥah* concept is as follows:

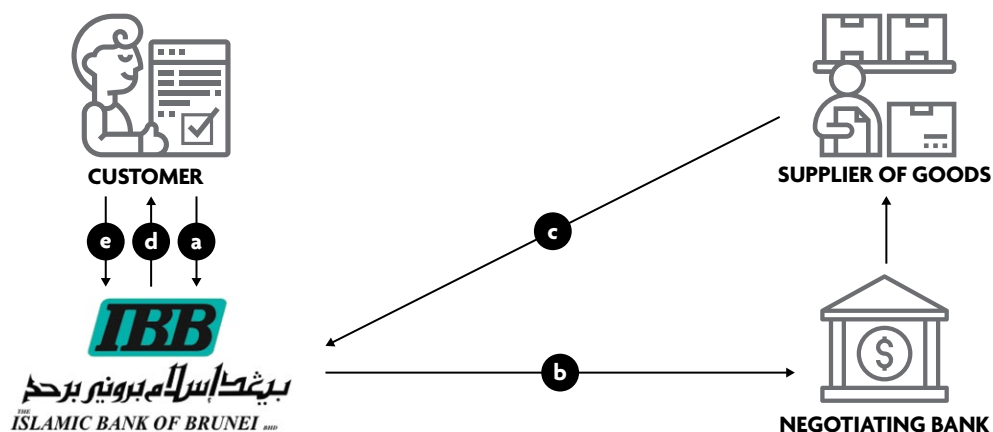


FIGURE 13

Transaction Workflow for the Trade Financing facilities based on *al-Murābaḥah* concept

- (a) The customer applies for the *al-Murābaḥah* Letter of Credit to purchase the required asset or commodity. At the same time, the customer agrees to buy the asset or commodity from the bank;
- (b) IBB issues the Letter of Credit and pays with its fund to purchase the asset or commodity from the supplier via a negotiating bank;
- (c) The supplier hands over the asset or commodity to the bank;
- (d) After owning the asset or commodity, IBB then sells it at an agreed price (cost price plus profits) and hands it over to the customer; and
- (e) The customer then pays in full (lump sum) to IBB within an agreed-upon specified term.

In this matter, IBB has consulted its SAB for guidance on the proposed Trade Financing facilities based on *al-Murābaḥah* concept.

#### **IBB SAB RESOLUTION**

In the 12<sup>th</sup> meeting held on 25 Safar 1423H / 8 May 2002M, IBB SAB has decided that the proposed Trade Financing facilities based on *al-Murābaḥah* concept is not in contradiction with *Sharī'ah* principles.

# 09

## BUSINESS TRANSACTIONS AND COOPERATION BETWEEN ISLAMIC AND CONVENTIONAL FINANCIAL INSTITUTIONS

Brunei Darussalam has three Islamic banking or financial institutions comprising IBB, IDBB, and Tabung Amanah Islam Brunei (TAIB). These three institutions have rapidly progressed over time and gained 35% of the banking industry's total assets in the country.

[In the banking industry, various business transactions and cooperative relationships are held and required among financial institutions. This requirement is not biased to the respective institutions' operational background, whether it is a *Shari'ah* or conventional bank, located within or outside the country. The cooperative relationship or transaction required between Islamic Financial Institution (IFI) and Conventional Financial Institution (CFI) are as follows]:

1. Correspondence bank;
2. Exchange of Cheques;
3. Foreign exchange;
4. Trade Finance via Letter of Credit; and
5. Other [required] business transactions.

In this matter, IBB has consulted its SAB for guidance on the business transactions and cooperation between IFI and CFI.

### IBB SAB RESOLUTION

In the 16<sup>th</sup> meeting held on 25 Safar 1423H / 8 May 2002M, IBB SAB has decided as follows:

1. IFI, particularly IBB, is not allowed to do business with conventional financial institutions unless there is intent on following the *Shari'ah* principles within or outside the country; and
2. In establishing an agreement with conventional financial institutions, it is permissible not to mention the *Shari'ah* principle or concept for the convenience of others. However, the agreement [the content of the contract] must be in line with *Shari'ah* principles.



**BASIS OF CONSIDERATION**

1. The opinion of the Islamic banking association:

والبنك الاسلامي في أي بلد، في مزاولته للعمل المصرفي العادي، سيتلقى شيكات وأوراق تجارية مسحوبة على بنوك ومناطق أخرى وسيجري تحويلات ويصدر شيكات مصرفية وغير ذلك من العمليات، مما يقتضيه بحكم الواقع الفعلي الاتصال والتعامل مع البنوك الأخرى لا نجاز ما يطلبه منه العملاء

Meaning: "Islamic banks, wherever they are, still practice regular bank work as they will receive cheques and business notes issued by other banks and other tasks. They send/exchange money and issue bank cheques, and so forth. In reality, Islamic banks require relations and interactions with those foreign banks in meeting customer's needs."

وفما يختص بأعمال التجارة الخارجية والاعتماد المستندية فلا بد وأن يتعامل مع راسلين وبنوك خارجية وإلا توقف نشاطه في هذه الناحية

Meaning: "Regarding external business activities and other documentation, the bank must appoint an agent and foreign bank; otherwise, activities in this field will cease."

2. The opinion of *Shari'ah* Supervisory Board of Islamic banks in Cairo: It is not permissible for Islamic banks to do business with conventional banks even if the transaction does not have any elements of *ribā* unless there is intent or significant benefits as recognised by *Shari'ah*.

Based on the agreement principles, the Board believes that Islamic banks are not restricted to doing business and transactions with conventional banks as long as they are conducted based on the abovementioned principles and other conditions according to *Shari'ah* principles.

## 10

## DIRECT BILATERAL RELATIONS BETWEEN ISLAMIC BANK OF BRUNEI BERHAD AND CONVENTIONAL INSURANCE COMPANY

One of the conventional insurance companies in Brunei Darussalam intends to open a current account at IBB. Among the objectives of opening the account is to facilitate the company's insurance policyholders (customers) to deposit their premium payment directly into the insurance company or IBB provides premium payment transfer service to facilitate the customer's payment to the insurance company account.

In this matter, IBB has consulted its SAB for guidance on the application to open the current accounts of the said conventional insurance company at IBB and the provision of premium transfer services on behalf of the conventional insurance company.

### IBB SAB RESOLUTION

IBB SAB in its 17<sup>th</sup> meeting dated 27 Rabiulawal 1425H / 17 May 2004M has decided on the following:

1. The opening of a current account for a conventional insurance company is allowed; and
2. IBB may not have a direct relationship in handling any transaction [related to the operations of the conventional insurance company] due to the company's core business [which is not in compliance with] *Shari'ah*.

### BASIS OF CONSIDERATION

1. The permissibility of opening Current Account at IBB for conventional insurance company based on the practices of the Islamic financial institutions that accepts the opinions of the following scholars:
  - a. 'Izzuddin bin Abd Salam mentions:

وإن غلب الحلال بأن يختلط درهم حرم بألف درهم حلال جازت المعاملة

Meaning: "If the permissible money is more, that is, one dirham of prohibited money is mixed with one thousand of permissible money, then the transaction is allowed."

b. Al-Kasani also mentions:

كل شي أفسده الحرام زال الغالب عليه الحلال فلا بأس عليه

Meaning: "Every matter will be ruined by haram (prohibited) matter, but if there are more halal matters, then its permissible to trade with it."

c. Ibnu Taymiyyah also gave the same view on the issue of mixture halal and haram property:

...فإن كان الحلال هو الأغلب لم يحكم بتحريم المعاملة... وإن كان في ماله حلال وحرام واختلط لم يحرم الحلال بل لهان يأخذ قدر الحلال...

Meaning: "...if the halal thing is more, then a transaction is not considered as haram... and if a person's wealth is mixed between halal and haram, then the halal element shall not be deemed haram and whereas the owner is permitted to take on the halal portion."

d. In the book, *Qalyūbī wa 'Umayrah*, volume 2, page 418 states:

وتصح الشركة وإن كرهت كشركة ذمي وأكل الربا ومن أكثر ماله حرام

Meaning: "It is lawful to partner even though it is makruh for example to set up a company with a *kāfir dhimmi*, people who consume *ribā* and those whose wealth are mostly haram."

2. Premium transfer services on behalf of conventional insurance companies.

a. Scholars have made a study and stated that [operation and products] of conventional insurance companies have three elements that are prohibited by *Shari'ah* namely: *ribā*, *gharar* and gambling. In this regard, the benefits from the conventional insurance are considered haram.

Therefore, it is not allowed to make any transactions related to it, especially in providing premium transfer services because it is included in providing assistance or aiding in matters of sin and enmity, and they belong to the group mentioned in a *hadīth* of Rasūlullāh ﷺ:

عَنْ جَابِرِ رَضِيَ اللَّهُ عَنْهُ قَالَ: لَعَنَ رَسُولُ اللَّهِ ﷺ أَكْلَ الرِّبَا وَمُوكَلَّهُ وَكَاتِبَهُ وَشَاهِدَيْهِ وَقَالَ: هُمْ سَوَاءٌ

Meaning: "Narrated from Jabir: The Messenger of Allāh (ﷺ) cursed the one who accepted *ribā* the one who paid it, the one who recorded it, and the two witnesses to it, saying they

were all alike."

b. The *Shari'ah* Legal Maxim mentions:

إِذَا تَعَارَضَ الْمَنَعُ وَالْمُقْتَضِي يُقَدَّمُ الْمَنَعُ

Meaning: "If there is a conflict between the prohibition and order (execution), one should prioritise prohibition."

الْوَكِيلُ قَائِمٌ مَقَامَ الْمُوَكَّلِ فِيمَا وَكَّلَهُ فِيهِ

Meaning: "A person who becomes a representative serves as the person who he/she is representing in any matter he/she was represents for,"

الإِعَانَةُ عَلَى الْمَحْظُورِ مَحْظُورٌ

Meaning: "Providing help to prohibited things is forbidden"

# 11

## BAY' AL-ĪNAH ISSUE IN BAY' BI THAMAN ĀJIL PRODUCT FINANCING AGREEMENT

IBB has received questions from the public about the implementation of the *BBĀ* concept in IBB financing products. The main issue raised is about the *Bay' al-Īnah* element contained in the *BBĀ* product financing agreement whereby the majority of scholars among the sect from *Ḥanafī*, *Mālikī* and *Ḥanbalī* school of thought argued that the *Bay' al-Īnah* contract is considered haram [due to the element of deception on *ribā*].

*Bay' al-Īnah* refers to the transaction of a sale and purchase agreement that takes place between the seller and buyer. The seller sells his assets to the buyer at a deferred cost plus profit, and then the seller repurchases the asset from the buyer at a lower price in cash or at cost price.

### SCHOLARS OPINION ON BAY' AL-ĪNAH

Among the reasons for the prohibition of *Bay' al-Īnah* contract is the purpose and intention of implementation, which is to obtain cash and legalise *ribā*. In short, the opinions of the scholars who did not accept the concept of *Bay' al-Īnah* for the following reasons:

1. *Ḥanafī* school of thought states that this contract is invalid (void) because it does not involve a third party between the seller and buyer of the *Bay' al-Īnah* assets; and
2. The scholars of *Mālikī* and *Ḥanbalī* school of thought consider this contract to be invalid because there is no intention of buying or selling the asset. This school of thought uses the *Sharī'ah Legal Maxim Sad al-Dharā'ī* (سد الذرائع) method, with the aim of restricting practices that lead to prohibited things in the contract because it is similar to *ribā*.

*Shāfi'ī* school of thought argues that the *Bay' al-Īnah* contract is permissible and valid as the pillars of sale and purchase are complete and the first and second sale and purchase contract are implemented separately. As for the intention of both parties to the contract, it is not a condition or determination to the validity of the sale and purchase contract. The arguments of the necessity of *Bay' al-Īnah* is based on the following reasoning:

*Dalīl al-Qur'ān, Sūrah al-Baqarah, verse 275:*

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

Translated: "...Whereas *Allāh* has permitted trading and forbidden usury."

They rely upon the literal meaning of the verse above, of which each sale and purchase transaction is considered valid when all the terms and conditions of sale and purchase are satisfied.

There is no *ribā* in this transaction as it involves exchange of goods with money, and not involves exchanging money with money which may lead to *ribā*.

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، وَعَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللَّهِ ﷺ اسْتَعْمَلَ رَجُلًا عَلَى خَيْبَرَ فَجَاءَهُ بِتَمْرٍ جَنِيْبٍ فَقَالَ لَهُ رَسُولُ اللَّهِ ﷺ " أَكُلُّ تَمْرٍ خَيْبَرَ هَكَذَا " . فَقَالَ لَا وَاللَّهِ يَا رَسُولَ اللَّهِ إِنَّا لَنَأْخُذُ الصَّاعَ مِنْ هَذَا بِالصَّاعَيْنِ وَالصَّاعَيْنِ بِالثَّلَاثَةِ . فَقَالَ رَسُولُ اللَّهِ ﷺ " فَلَا تَفْعَلْ بِعِ الْجَمْعِ بِالدَّرَاهِمِ ثُمَّ ابْتَعْ بِالدَّرَاهِمِ جَنِيْبًا "

Meaning: "Abu Sa'id and Abu Huraira told that *Allāh*'s Messenger appointed a man over Khaibar and he brought him dates of a very fine quality. He asked him whether all the dates off Khaibar were like that, and he replied, "I swear by *Allāh* that they are certainly not, Messenger of *Allāh*. We take a *sa'* if this kind for two, and two for three." So he said, "Do not do so. Sell the lot for dirhams, then buy the very fine dates for dirhams."

This *ḥadīth* indicates that the Prophet ﷺ forbade the representative from Khaybar who changed the measurement of al-Jam' dates to obtain the Janib dates because it is *ribā*. Therefore, the Prophet ﷺ ordered him to sell the al-Jam' dates for dirhams and then use it to buy the Janib dates. This transaction is the Prophet's solution to obtain the Janib dates. This *ḥadīth* also did not specify whether or not the sale and purchase transaction is conducted by the same or different parties. The transaction was not made just for the purpose of sale, but also to obtain the Janib dates.

In this matter, IBB has consulted its SAB for guidance on using the concept of *Bay' al-Īnah*.

### IBB SAB RESOLUTION

In the 18<sup>th</sup> meeting held on 27 Jamadilakhir 1425H / 14 August 2004M, IBB SAB has decided that *Bay' al-Īnah* is a valid contract according to the *Shāfi'i* school of thought in Islamic banking transactions as used by Islamic banks in Malaysia. This opinion is in line with the general situation and well-being of the country and region.

# 12

## DIVIDEND PAYMENT FOR ISLAMIC BANK OF BRUNEI BERHAD SHARES FROM SHARĪ'AH PERSPECTIVE

IBB has been asked by its customer with regards to the payment of profits of IBB shares according to *Sharī'ah* view.

In this matter, IBB has consulted its SAB for guidance on these queries from the customers.

### IBB SAB RESOLUTION

In the 19<sup>th</sup> meeting held on 25 Rabiulawal 1426H / 04 May 2005M, in relation regarding “Dividend Payment for Islamic Bank of Brunei Shares from *Sharī'ah* Perspective”, IBB SAB has decided that the payment of profit (dividend) of shares of IBB are in line with *Sharī'ah* Principles.

### BASIS OF CONSIDERATION

IBB was incorporated on 13 January 1993 based on the provisions of the Islamic Bank Act 1993. As a public company, its operations are under the Companies Act and also the Islamic Banking Act. These Acts provide the Islamic Bank to arrange the appointment of directors, auditors, notice of conduct of meetings and so forth.

The Government reserves the right to control the operation of a bank to maintain and preserve the country's economic stability based on the *Sharī'ah Legal Maxim*:

تَصَرُّفُ الْإِمَامِ عَلَى الرَّاعِيَةِ مَنُوطٌ بِالْمُصْلَحَةِ

Meaning: “The government takes the public welfare into account in carrying out its actions.”

Therefore, the enforcement of laws such as the Companies Act and Islamic Bank Act, is intended to control and preserve the operation of the bank properly. As long as the provisions of this law are not contrary to *Sharī'ah*, then it can be applied because the customs practiced in this country are in accordance with the *Sharī'ah Legal Maxim*:

الْعَادَةُ مُحَكِّمَةٌ

Meaning: “Custom is an arbiter.”

The establishment of this bank requires capital. Capital is sourced from issuers of fund shares, namely from depositors (depositors or investors), loans and other means. Part of the capital is used for the purchase of machines, office equipment and so on. The same goes for the salaries of officers, staff and so on. While the other use of capital is to bring profit.

The bank is controlled and administered by two bodies called the Board and SAB. The Board of Directors are the persons appointed to represent the shareholders. Their role is to manage the bank.

SAB, on the other hand, is responsible for advising, reprimanding and controlling the business and operations of the bank so that it is not in contradiction with *Shari'ah* Principles.

The bank business grows each year. The proceeds are distributed to shareholders, investors, depositors and for bank use to settle building rental debts, administrative and management matters.

The methods of distribution are explained in the Islamic Banking Act, Chapter 168, Section 23(i) (a) namely:

“No Islamic bank shall (a) pay any dividend on its shares until all its capitalized expenditure (including preliminary expenses, organization expenses, share-selling, commission, brokerage, amounts of losses incurred and any other item of expenditure not represented by tangible assets) has been completely written off;”

According to the law, among the rights of the shareholders is the right to receive profits in the form of dividends gained by the company (bank) because the shareholders are considered as the owner of the company (bank). Therefore, shareholders are similar to an entrepreneur. For example, if a man is an entrepreneur, then the profits that he gain will be divided to pay off debts, the price of goods (capital), wages and part of the profits are included in his account as additional capital to grow his business as it is any entrepreneur's dream.

As for dividends, it is called “final dividend”. It can only be declared by the Board Members in the AGM. The Board is responsible for approving resolutions relating to the proposed declaration of dividends, its rates, eligibility dates and payment dates. The dividend rate shall not exceed the rate as declared by the Board.

In other countries, before the Board of Directors endorses the share dividend rate, first, it needs to be verified by a central bank in the country. Its objective is to protect shareholders from the risk of capital loss, ensure the financial stability of the bank, to maintain the bank's capital structure.

In this case, the Board arranges for the distribution of the dividends accordingly. However, what is important for the Board is to think of the bank's survivability for its future in becoming a prestigious bank, both domestically and internationally. The distribution is made after taking into account the circumstances and conditions of the international financial development. The Board's decisions are beneficial to both the bank and shareholders in the long run.

From the *Shari'ah* perspective, Islam encourages planning for the future, including financial planning. This is evidenced through *al-Qur'an*, *al-Sunnah*, scholars' opinions, and the *Shari'ah Legal Maxim*:



In *al-Qur'ān*, the story of the Prophet Yusuf (Peace Be Upon Him) provides a clear lesson on the importance of planning for the future. The Prophet Yusuf (Peace Be Upon Him) made a 15-year plan for facing a drought that was expected to happen.

Allāh said in *Sūrah Yūsuf*, verse 47-49:

قَالَ تَزْرَعُونَ سَبْعَ سِنِينَ دَأْبًا فَمَا حَصَدْتُمْ فَذَرُوهُ فِي سُنْبُلِهِ إِلَّا قَلِيلًا مِمَّا تَأْكُلُونَ (٤٧) ثُمَّ يَأْتِي مِنْ بَعْدِ ذَلِكَ سَعْبٌ شِدَادٌ يَأْكُلْنَ مَا قَدَّمْتُمْ لَهُنَّ إِلَّا قَلِيلًا مِمَّا خُصُّنَّ (٤٨) ثُمَّ يَأْتِي مِنْ بَعْدِ ذَلِكَ عَامٌ فِيهِ يُعَاثُ النَّاسُ وَفِيهِ يَعْرِضُونَ (٤٩)

Translated: “Yusuf answered: “You shall sow for seven consecutive years as usual. But that which you reap leave it in the ear, except a little which you may eat. Then, there shall follow seven hard years (of drought) which will consume all but little of which you have stored (as seeds). Then there will come a year in which the people will have abundant rain, in which they will press (the grapes, olives and oil.)”

Financial planning is considered as Sunnah of the prophets. *Rasūlullāh ﷺ*

قَالَ رَسُولُ اللَّهِ ﷺ لِرَجُلٍ وَهُوَ يَعْطُهُ: "اَعْتَمِ حَمْسًا قَبْلَ حَمْسٍ: شَبَابَكَ قَبْلَ هَرَمِكَ، وَصِحَّتَكَ قَبْلَ سَقَمِكَ، وَعِنَّاكَ قَبْلَ فَقْرِكَ، وَفَرَاغَكَ قَبْلَ شُغْلِكَ، وَحَيَاتَكَ قَبْلَ مَوْتِكَ

Meaning: “The Prophet ﷺ advised to a man “Take advantage of five before five: Your youth before your old age, your health before your sickness, your wealth before your poverty, your free time before you are preoccupied, and your life before your death.

The previous *ḥadīth* advised us to take any opportunity before anything else happens, such as wealth should be used wisely before becoming poor. This advice encourages us to make financial planning.

Regarding the profitability and the profit distribution discussed in the Academic Council of Islamic Jurisprudence held on 1-6 Jamadilawal 1409H / 15-10 December 1958, scholars and *fuqahā* have decided that:

1. The original ruling mentioned in the texts and methods used in *Shari'ah* is to give freedom to mankind to trade and manage their wealth according to the Islamic Principles.

Allāh said in *Sūrah al-Baqarah*, verse 29:

هُوَ الَّذِي خَلَقَ لَكُمْ مَا فِي الْأَرْضِ جَمِيعًا ثُمَّ أَسْتَوَىٰ إِلَى السَّمَاءِ فَسَوَّاهُنَّ سَبْعَ سَمَاوَاتٍ وَهُوَ بِكُلِّ شَيْءٍ عَلِيمٌ (٢٩)

Translated: “It is Him (*Allāh*) Who has created for you all that the earth contains, then He turned to the heaven with His will and fashioned it into seven heavens. And He is All-Knowing of all things.”

2. There is no profit rate that entrepreneurs can make. It all depends on the conditions of the trade generally, and the conditions of the traders and goods, while taking *Shari'ah's* manners into account, such as compassion, satisfaction, tolerance, and convenience.
3. Many *Shari'ah* texts forbid the prohibited things in any transaction such as treachery, cruelty, and all forms of deception, misappropriation of profit and monopoly.
4. The ruler cannot interfere in determining the price unless there are things that affect the stability of marketing and pricing due to fabricated factors. In this situation, the ruler can interfere justly in eradicating all factors and causes of damages, inflation, and *Ghabn al-Fāhish* (غبن الفاحش)

Taking into account all the above facts and propositions, then the opinion made by the Board of Directors (arranging the appropriate distribution of dividends) is based on the knowledge and practices made by other banks as the adoption of such practices can be held in accordance with the rules *Shari'ah* Legal Maxim as follows:

الْحَقِيقَةُ تُتْرَكُ بِدَلَالَةِ الْعَادَةِ

Meaning: "The actual situation is obtained from the proofs in the custom."

إِسْتِعْمَالُ النَّاسِ حُجَّةٌ يَجِبُ الْعَمَلُ بِهَا

Meaning: "Customary usage amounts to evidence (of rights and obligations) and shall be abided by."

# 13

## COMPENSATION

The IBB management proposed to impose compensation (*Ta'wīd*) on customers either individuals or corporate companies if they are found to be refusing to pay their debts or deliberately delay in making their financing payments which results in bank losses.

As for the process or steps implemented previously is to hold negotiations between IBB and customers. However, the method or procedure did not have any positive impact. Therefore, IBB has arranged the following steps:-

1. Inform through newspapers for customers involved to make outstanding payments immediately within three (3) months;
2. After the expiration of the 3 months, IBB will declare the names of customers who do not pay in the newspaper; and
3. Legal actions will be taken.

In this matter, IBB has consulted its SAB for guidance on the proposal to impose the compensation (*Ta'wīd*) on customers who refuses or deliberately delay their financing payment.

### IBB SAB RESOLUTION

In the 20<sup>th</sup> meeting held on 8 Zulkaedah 1426H / 10 December 2005M, IBB SAB has decided as follows:

1. **The ruling for people who refuse to settle their debt:**
  - a. It is haram (prohibited) for people who do not pay off his debts. It is considered as committing a great sin. The majority of scholars said that act could fall into *fāsiq* category if more than 10 dirhams, compared to the cutting off of hands for theft;
  - b. It is not permissible to impose financial or physical compensation on the debtor when it is too late to settle his debts whether or not the compensation rate is mentioned or not, and whether compensation comes from lapsed income (lost) or due to the changes or differences in the value of the currency;
  - c. As a rule of law, it is not allowed to demand punishment for the debtor who refuses to settle his debt by paying financial “compensation” in cash or physically (goods) due to late payment of debts. However, in order to uphold the importance of *Maqāṣid al-Sharī'ah* in maintaining “property trust” through Islamic banking should be taken care

of. Some examples of Islamic banks in the Middle East have practiced “compensation” charges for those who refuse to pay such as Faisal Bank (Egypt) and (Bahrain), al-Barakah Bank (America) and so forth;

- d. The mechanism of the compensation is based on the actual cost (reality) of the losses suffered by the bank such as the cost equal to the profit rate earned by the bank. The calculation is not allowed to be based on interest;
- e. The debtor who refuses to settle the debt will be liable to pay for the court fees as demanded by the bank to recover his actual debt;
- f. The bank has the right to sell its collateral just as as the bank has the right to require the collateral to be sold to enable the payment of its debt without referring to a court decision;
- g. Bank may also include a term whereby if the debtor is late in paying their installment, they will have to pay all of their installment;
- h. If the goods sold remain the same, but the buyer refuses to pay the price, then in this case the bank reserves the right to take back the goods for fear that the buyer will go bankrupt; and
- i. It is permissible to allocate a clause in the debt contract such as *al-Murābahah*, by which the debtor who refuses to settle the debt is obliged to pay the debt voluntarily with a certain amount or rate provided that all collection are paid for the welfare of the community and should be consistent with the views of the bank’s *Shari’ah* Supervisory Body.

## **2. With regards to the position of the guarantor:**

- a. The Bank is allowed to claim from the guarantor in accordance with the requirements of *Shari’ah* law. The Bank reserves the right to claim from any party (debtor or guarantor), and it is not required to make a claim from the debtor first; and
- b. If the guarantor refuses to pay the debt of the guaranteed person, while he is capable of doing so, then the same ruling applies to him as in Paragraph (a) above.

## **3. Regarding the position of the wholesaler or contractor:**

It is allowed to charge compensation in building construction contracts, booking contracts, or import of goods contracts. Wholesalers or contractors may be liable for damages and allowed to reduce the amount as agreed upon by the contractor.

## **4. On penalties for people who delay the payment of the debt:**

The bank reserves the right to publish the names of those who refuse to pay off their debts (blacklist).

**5. Other rulings:**

- a. The Bank reserves the right to monitor the affairs of people who refuse to settle their debts and financial transactions. This is the duty of the bank;
- b. There is no restriction or barriers for the bank to receive any additional payment from those who refuse to settle their debt, but provided that there is no provision in the agreement between the bank and the borrower whether in the form of writing, utterance, promise, custom, or agreement of both parties; and
- c. The Bank is allowed to impose conditions in the debt contract where it is found that the person refuses to settle his debt, the bank reserves the right to collect the payment either through his current or investment account without his permission. If it is collected from someone else's account, the bank is obliged to limit its financial transactions with the consent of both parties.

**6. Methods of convicting people who refuse to pay debts:**

“A person who refuses to pay his debt is convicted when the debtor refuses to settle his debt within the agreed period after being required to pay, and the debtor still refuses to settle his debt within the agreement period. Then the bank claims again for the second time and then calls the person either to settle his debt or request for deferred payment for specific reasons.”

# 14

## ISLAMIC FINANCIAL MARKET MECHANISM

The financial market plays a vital role in strengthening the structure of Islamic banking operating institutions. Its main function is to facilitate the transfer of investment funds from those who have excess funds to those who require funds to meet their needs and liquidity management for short and long terms.

In this regard, IDBB intends to conduct Islamic financial market transactions for local and international financial markets needs using the following *Sharī'ah* principles:

1. *Muḍārabah* concept
2. *Wadī'ah Yad Ḍamānah* concept

### MODUS OPERANDI

#### 1. The *Muḍārabah* Concept

*Muḍārabah* is a partnership agreement in which the owner of the capital (*Rab al-Māl*) provides the funds, and the manager (*Muḍārib*) acts as an administrator and manages the investment of the fund.

The profits will be shared based on the agreed percentage, while the losses will be borne fully by the capital owner.

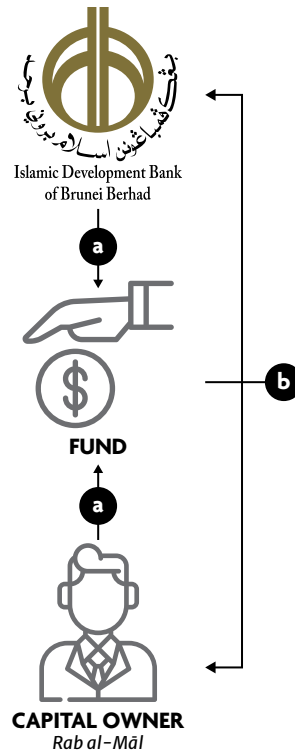


FIGURE 14

Transaction Workflow for Islamic Financial Market based on the *al-Muḍārabah* concept

- Using the concept of *Muḍārabah*, customers will provide the funds as *Rab al-Māl* whereas the bank will act as *Muḍārib*, managing the investment of the fund; and
- The profits of the fund will be shared based on the agreed percentage while the loss however will be borne entirely by the capital owner.

## 2. The *Wadī'ah Yad Ḍamānah* concept

*Al-Wadī'ah* means a contract in which the owner of a property agrees to hand over his property or entrust the property to a particular person or party for the purpose of safekeeping and safeguarding his security.

In today's context, *al-Wadī'ah* is widely practiced in Islamic finance or Islamic Banking and is one of the products or instruments in the Islamic banking system. Under the *al-Wadī'ah* contract, the property owner (depositor) is allowed to withdraw part or all the funds at any time. Whereas the person who receives the fund (fundholder) is obliged to fulfil the requirement. During the safekeeping term, the fundholder may use the funds under his or her custody for investment, and all benefits or profits earned are the absolute right of the fundholder. However, at the discretion of the fund holder, profits can be shared with the owner under the basis of *Hibah* (gift).

The transaction workflow for the Islamic financial market using the *Wadī'ah Yad Ḍamānah* structure is as follows:

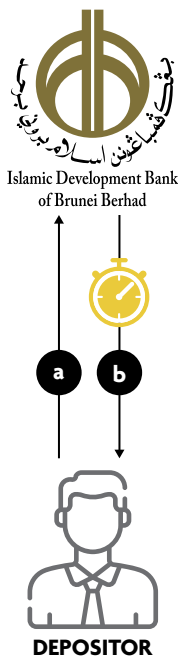


FIGURE 15

Transaction Workflow for Islamic Financial Market based on the *Wadī'ah Yad Ḍamānah* concept

- (a) Customers will deposit their funds to the bank using the concept of *Wadī'ah Yad Ḍamānah*, whereas the bank will keep and guarantee the safekeeping of the fund; and
- (b) After a period of time, the bank, at its discretion, will provide *Hibah* (gift) to the customer as a token of appreciation.

In this matter, IDBB has consulted its SAB for guidance on the proposed use of both *Sharī'ah* principles namely *Muḏārabah* and *Wadī'ah Yad Ḍamānah* as Islamic financial market mechanisms.

**IDBB SAB RESOLUTION**

In the 2<sup>nd</sup> meeting held on 20 Jamadilakhir 1421H / 19 September 2000M in relation to Islamic financial market mechanisms, IDBB SAB has decided that the proposed use of the concepts of *Muḏārabah* and *Wadī'ah Yad Ḍamānah* as Islamic financial market mechanism is acceptable and are not against the *Sharī'ah* principles.



# 15

## IDBB ISLAMIC CREDIT CARD

Credit cards are introduced as one of alternative payment methods for cardholders to purchase goods or services from all parties who accept the credit card without making a cash payment (immediately) as it contains a payment guarantee from the party making the payment.

Credit cards are issued by the card issuer (bank) to any particular individuals or parties (such as organisations, companies, and so forth) under a contract between the bank and customer.

To meet the customer's needs and as an initiative to further diversify the products offered, IDBB introduced a credit card called IDBB Islamic Credit Card. It is a credit card based on the *Shari'ah* concept using the concepts of *Qarḍ al-Ḥasan*, *Al-Wakālah bi al-Ujrah*, and *Al-Kafālah bi al-Māl*.

### MODUS OPERANDI

The transaction workflow for IDBB Credit Card using the concepts of *Qarḍ al-Ḥasan*, *Al-Wakālah bi al-Ujrah*, and *Al-Kafālah bi al-Māl* is as follows:

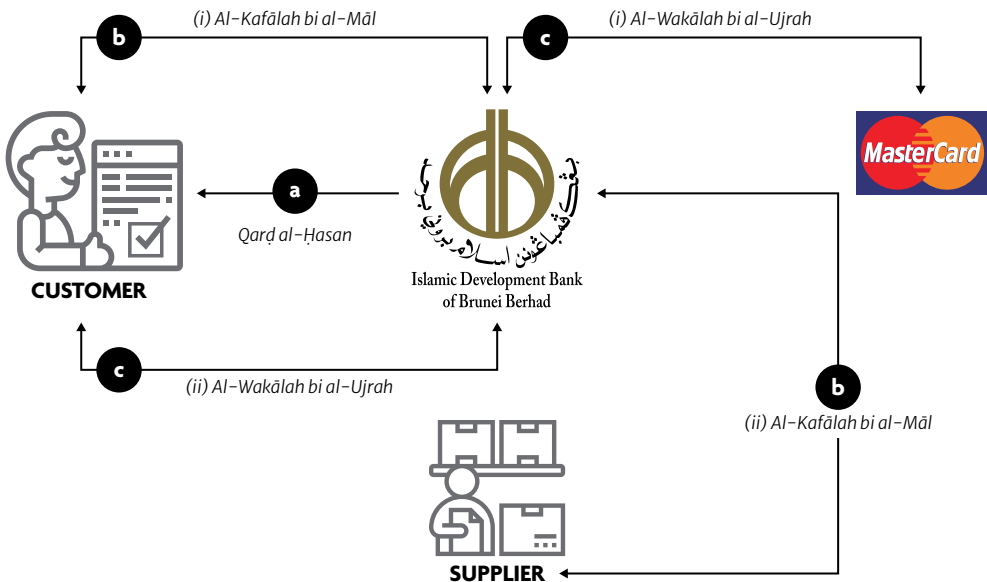


FIGURE 16  
Transaction Workflow for IDBB Credit Card

**a. Qard al-Ḥasan**

The financing agreement between IDBB and the customer is based on the concept of *Qard al-Ḥasan*. IDBB will provide financing to customers with a fixed amount as agreed by both parties.

The customer and IDBB will enter into an agreement, in which the customer agrees to pay the financing at an agreed time and date. If the customer makes the full payment of the financing used on the specified date, the customer will not be charged an additional cost.

**b. Al-Kafālah bi al-Māl**

IDBB and the customer will enter into an agreement based on the concept of *Al-Kafālah bi al-Māl*.

- i. The customer agrees to pay IDBB the amount utilize in the credit card, including the joining fee and annual fee; and
- ii. IDBB guarantees to pay the merchants for all purchases made on behalf of the customer.

**c. Al-Wakālah bi al-Ujrah**

- (i) IDBB will make an agreement with the credit card firm (Mastercard) to use the firm's brand or logo, and IDBB will also pay for the membership fee; and
- (ii) IDBB will also act on behalf of customers to administer their payments to the merchants and manage the customers' card account by charging a certain fee.

To manage IDBB Islamic Credit Card transactions from engaging in transactions that violate *Sharī'ah* principles, restrictions have been made through the Commodity Code, in which the use of the credit card is limited to only authorised goods and services. There are 8 categories of non-halal goods and services in which the use of the credit card is restricted through specific codes, namely:

- 5816 - Drinking place
- 5973 - Religious goods store
- 7273 - Dating & Escort
- 7298 - Health & beauty spa
- 5921 - Liquor
- 7261 - Funeral service and crematories
- 7297 - Massage parlours
- 7997 - Gambling

Any form of latest goods that are categorised as illegal to use in accordance to *Sharī'ah* will be notified and discussed in the IDBB SAB meeting to obtain confirmation, and restrictions will then be made.

**IDBB SAB RESOLUTION**

IDBB SAB in its 5<sup>th</sup> meeting held on 26 Zulkaedah 1423H / 9 February 2002M regarding "IDBB Islamic Credit Card", has decided as follows:

1. SAB agreed to approve IDBB in introducing and carrying out IDBB Islamic Credit Card transactions using concepts of *Qarḍ al-Ḥasan*, *Al-Wakālah bi al-Ujrah*, and *Al-Kafālah bi al-Māl*; and
2. The meeting also agreed with IDBB's proposal to use the "Commodity Code" in its credit card in which spending or utilization of the credit card is limited to items that are not in violation of *Shari'ah* principles.

# 16

## VEHICLE FINANCING SCHEME USING THE CONCEPT OF AL-IJĀRAH THUMMA AL-BAY‘

IDBB proposed to introduce a vehicle financing scheme using the *AITAB* concept. The objective for the introduction of the scheme is as an alternative option in diversifying existing products for customers who wish to own a vehicle through *Shari‘ah*-compliant financing.

In short, the concept of *AITAB* is a lease contract (*Ijārah*), and is followed by a sale contract (*al-Bay‘*). There are two separate contracts in the *AITAB* concept, namely a lease contract in which the customer leases the asset from the bank at an agreed amount throughout the lease period. At the end of the lease period, the customer will enter into a contract of sale to purchasing the asset from the bank at a fixed price.

### MODUS OPERANDI

The transaction workflow for the vehicle financing scheme using the *AITAB* concept can be seen in the following illustration:

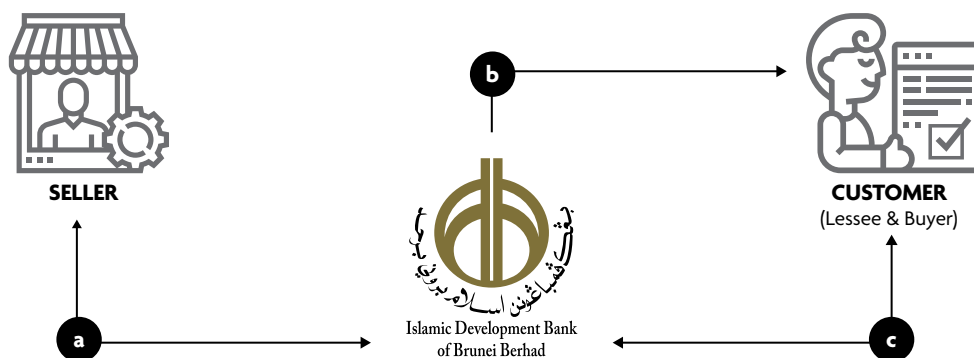


FIGURE 17

Transaction Workflow for Vehicle Financing Scheme based on *AITAB* concept

- (a) The bank purchases the vehicle requested by the customer from a car dealer using its own funds;
- (b) The bank then leases the vehicle to the customer at an agreed lease rate and period (for example: BND500 monthly for 72 months); and

- (c) Once the lease period has expired and the monthly rent is fully paid and settled, the sale and purchase contract will be executed between the bank and the customer for the transfer of ownership of the vehicle.

In this matter, IDBB has consulted its SAB for guidance on the proposed introduction of the vehicle financing scheme using the *AITAB* concept.

### **IDBB SAB RESOLUTION**

In the meeting held on 15 Rabiulawal 1423H / 28 May 2002M, IDBB SAB has decided and agreed to use the *AITAB* concept for the vehicle financing scheme.

### **BASIS OF CONSIDERATION**

The Islamic Fiqh Academy resolution no.7/1998 regarding lease that ends with ownership: The most important thing is to change the method of the lease that ends with ownership to another method as an alternative, the two method are as follows:

1. Sale and Purchase in installments by obtaining sufficient guarantee; and
2. To establish a lease contract with the owner and gives the lessee the choice after end of the financing period of all rental installments that should be paid during the lease period with one of the following options:
  - i. Extending the lease period; or
  - ii. Terminate the lease contract and return the leased goods to the owner; or
  - iii. Selling goods at the current market price by taking into account the previous lease payments.
3. The Islamic Fiqh Academy resolution and recommendation no.110 (4/12) in 2000 concerning lease that end with ownership and rental payment issued by the Council of the Islamic Fiqh Academy in the 12<sup>th</sup> conference in Riyadh, Saudi Arabia (1412H/2000):

#### **First:**

Method of prohibited and permissible forms:

#### **a. Prohibited method**

There are two different contracts that are conducted simultaneously on the same goods within the same period.

#### **b. Permissible method**

- i. There are two separate contracts between each other in terms of time, meaning the sale and purchase contract is made after the lease contract or a promise to transfer ownership at the end of the lease term. *Khīyār* (option) balances the promises on the rulings;

- ii. The lease should be clear and not a sale and purchase transaction;
- iii. The liability for collateral of the leased goods is charged on the owner, not on the lessee. The owner will be held responsible for the goods except for intentional or negligence acts of the lessee. If the benefit of the goods no longer exist, the lessee is not responsible for anything;
- iv. If the lease contract includes insurance coverage on the lease item, then the insurance must be an Islamic insurance, and it is borne by the owner, not the lessee;
- v. To carry out the lease contract that ends with ownership in accordance with the rulings of lease throughout the lease period and the rulings of purchase when transferring the ownership of the item; and
- vi. Maintenance expenses, other than the expenses for operating the machines/goods, shall be charged to the owner, not the lessee, throughout the lease period.

**Second:**

Forms of prohibited contract:

- a. The lease contract ends with the ownership of the leased goods in return for the rent paid by the lessee over a period of time, without entering into a new contract, whereby at the end of the lease period it will automatically become a sale;
- b. Leasing an item at a certain rental price in addition to the contract of sale, depending on whether or not the lessee fully paid the rental during the lease period or in the future; and
- c. An actual lease contract that comes with a sale through *Khiyār* on the condition made for the welfare of the lessor (the owner of the item) and the sale is delayed for a longer period (until the end of the lease period).

**Third:**

Forms of permissible contract:

- a. Lease agreements that allow the lessee to benefit from the leased item in return for the rent paid for a certain period of time, along with the contract of *Hibah* of the leased goods for the lessee, subject to completing payment of all rents or an agreement on *Hibah* after completing all rent payments;
- b. A lease agreement in which the owner gives the lessee the right to choose (*Khiyār*) to purchase the leased good at market price as soon as the lease period ends and the rental instalments are entirely settled;

- c. A lease agreement that allows the tenant to benefit from the leased good in return for a certain rent for a certain period. The agreement includes a promise to sell the leased good to the lessee after paying all rents, as agreed by both parties; and
- d. A lease agreement that allows the tenant to benefit from the leased good, in return for certain rent payments for a certain period. The lessor (owner) gives the lessee the right to choose to purchase the leased goods at any time he or she wishes, provided that the sale occurred at that time, along with a new contract. The goods are sold at market price.

# 17

## CHANGES ON IDBB ISLAMIC CREDIT CARD CONCEPT AND THE INTRODUCTION OF CASH ADVANCE SERVICE

The IDBB proposed to use two concepts only: *Al-Kafālah bi al-Māl and Al-Wakālah bi al-Ujrah*, [whereas the concepts of *Qarḍ Ḥasan and Ta'wīḍ* were removed based on the advice and opinion given by IDBB SAB in the previous meeting].

IDBB also proposed to replace the *Ta'wīḍ* concept used in the IDBB Islamic Credit Card with an administration fee only. The intended administration fee is as follows:

1. It is based on the operational cost for handling a credit card and capital cost for credit card business such as expenses incurred in purchasing a computer system and license fees from Mastercard; and
2. IDBB will use the business's capital cost to calculate the administration fee charged by the bank for a rate of not more than 1.5% per month. These payments will change over time, according to the business capital earned each month.

If the bank suffers capital losses, the bank will continue to charge the rate of 1.5%, and the bank will bear the losses. If the bank makes a profit, then a rate lower than 1.5% will be charged to the customer.

IDBB intend to offer Cash Advance Service in IDBB Islamic Credit Card as almost 99% of these services apply to the credit and debit cards domestically or internationally through Automatic Teller Machine (ATM) service around the world.

Following our research, Cash Advance Service is one of the basic foundation or main attractive features of IDBB Islamic Credit Card.

Based on that, IDBB would like to streamline the functions of the Cash Advance Service in IDBB Islamic Credit in line with *Shari'ah* principles based on the following justifications:

1. Making it one of the services in IDBB Islamic Credit Card as what has been offered by financial institutions that issue credit and debit cards to ensure positive competition; and
2. Safety assurance or in case of emergency to the IDBB Islamic Credit Card users who need instant cash either domestically or abroad.



**IDBB SAB RESOLUTION**

In the 7<sup>th</sup> meeting held on 20 Muharam 1424H / 23 March 2003M regarding the “Changes on IDBB Islamic Credit Card concept and the introduction of Cash Advance Service”, IDBB SAB has decided as follows:

1. SAB agreed to use two concepts only in IDBB Islamic credit card: “*Al-Kafālah bi al-Māl*” and “*Al-Wakālah bi al-Ujrah*”. The concept of “*Qarḍ Ḥasan*” was removed based on the discussion and summary of previous SAB 8<sup>th</sup> meeting;
2. SAB agreed that the use of *Ta’wīḍ* removed and replaced with an Administration Fee in IDBB credit card;
3. SAB also agreed with the way calculations are made in determining the payment of “Administration Fee” are based on the administration and operation costs of implementing this credit card that changes every month, as well as the rates that will be implemented, and whether a subsidy from the bank is needed (if the rate is above 1.5%) or vice versa; and
4. SAB has no objection to the implementation of Cash Advance Service in IDBB credit card and agreed to implement the flat service fee for the service, following the decision and summary made by the international councils of Muslim scholars, such as Islamic Fiqh Academy, Organisation of Islamic Cooperation (OIC) and Accounting & Auditing Organisation for Islamic Financial Institutions (AAOIFI).

# 18

## FINANCING BASED ON THE CONCEPT AND STRUCTURE OF *ŞUKŪK AL-IJĀRAH AL-MUNTAHIYAH BI ĀL-TAMLĪK*

ABC Company requires fund to finance an equipment replacement project called Main Cryogenic Heat Exchange (MCHE), by using the concept and structure of *Şukūk Al-Ijārah al-Muntahiyah bi al-Tamlīk* (IMBT).

To obtain the fund, ABC Company has identified an asset, MCHE, and shall sell it to a *Şukūk* issuer which is a Special Purpose Vehicle (SPV). Once ABC Company enters into the sale transaction of the asset, the *Şukūk* issuer (SPV Company) will lease the asset to ABC Company and the rent will be paid within the agreed period.

The asset sale and lease transactions will be securitised. Investors can subscribe and purchase to the certificate. The proceeds from the subscription will be used to purchase the asset. The investor does not own the asset but has the the beneficial right on the lease payment from the lease transaction between ABC Company and SPV Company until the end of the lease period.

At the end of the lease period, ABC Company will purchase the asset at face value or the unit value of the certificate. The investor will redeem the lease certificate and will receive the face value of the unit listed in the certificate.

### MODUS OPERANDI

The workflow for the financing facilities under the concept and structure of IMBT is as follows:

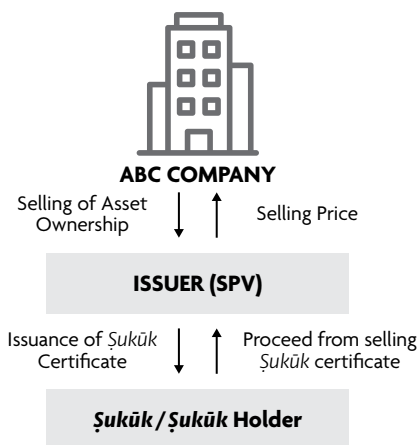
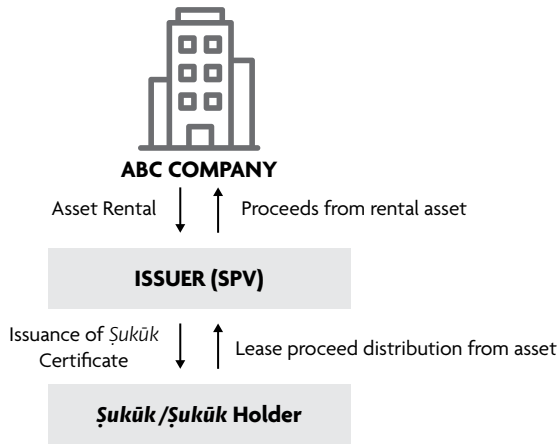


FIGURE 18  
Workflow for IMBT-based Financing

**First Phase: Asset Purchase and Sale**

IDBB will establish a SPV Company that will be responsible for managing the transaction of purchasing MCHE from ABC Company.



**FIGURE 19**  
Workflow for Asset Sales and Purchase

**Second Phase: Asset Lease**

SPV Company will then lease MCHE to ABC Company for six years. ABC Company will pay the lease to SPV Company.

**Third Phase: Distribution of the Şukūk Certificate**

The Şukūk Certificate will be distributed by SPV company for the local investors to purchase and they will issue a dividend payments (lease) to the member of the Şukūk holder at a time specified by IDBB. Once ABC Company completes the lease payment and the lease period matures, the ownership of MCHE will be transferred back to ABC Company as per the *IMBT* concept.

In this matter, IDBB has consulted its SAB for guidance on the financing facility under the concept and structure of *IMBT*.

**RESOLUSI BPS IDBB IDBB SAB RESOLUTION**

In the 12<sup>th</sup> meeting held on 9 Muharram 1426H / 18 February 2005M, IDBB SAB has approved the financing facility using the instrument of Şukūk *IMBT*.

## 19

BIBD INDENT CARD, FLEET CARD  
AND M CARD

BIBD has introduced a payment system known as Fleet Card Management System (FCMS). This system was introduced to clients from government departments, private corporations, and the public as an alternative to cash payments for fuel purchases at gas stations across the country by using postpaid or pre-paid cards.

Among the objectives of the FCMS is to assist the management of the annual budget for fuel purchases and providing accurate information on fuel expenses. It also provides security in terms of reducing the occurrence of misappropriation, in which the fuel usage can be limited to drivers through volume control, type of fuel, number of car registrations, gas station locations, and others as well as to issue expenditure statements (payment receipts, weekly invoices, and monthly account statements).

There are specialised terms used in FCMS:

1. **Indent Card:** Exclusively for customers from government department;
2. **Fleet Card:** Exclusively for commercial consumers from local companies and multi-national companies, such as Datastream Technology Sdn. Bhd. (DST), B-Mobile, Telbru and local banks; and
3. **M Card:** Exclusively for public (private).

The *Shari'ah* concepts used by the all of the above three cards are:

1. ***Al-Kafālah bi al-Māl:*** BIBD will guarantee the payment of each customer who uses the card for every fuel purchase. The customer agrees to pay joining fee and annual fee to the bank as a guarantee for the payment that will be made by the bank to the petrol stations; and
2. ***Al-Bay'*:** is used for prepaid cards upon reloading a certain amount to the card.

### MODUS OPERANDI

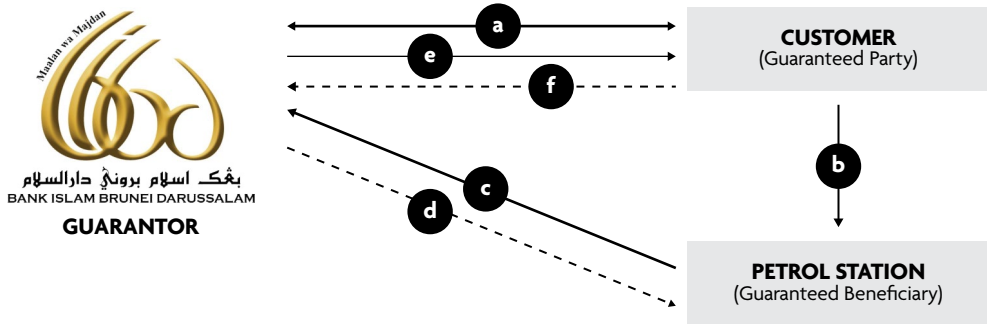
BIBD offers two payment options to customers:

#### 1. Postpaid payments

The customer agrees to pay BIBD for the card usage, before or on the payment due date at the end of each month. The payment due date will be set at the end of each month for every monthly statement issued by the BIBD, which is on the 8<sup>th</sup> of every month.

For every purchase that uses the card, BIBD will pay the petrol stations the next day after the petrol stations make an automatic payment claim. The amount of financial exposure or total purchase is subject to the amount of financing limit approved by BIBD.

The transaction flow for postpaid payments under the concept of *Al-Kafālah bi al-Māl* is as follows:

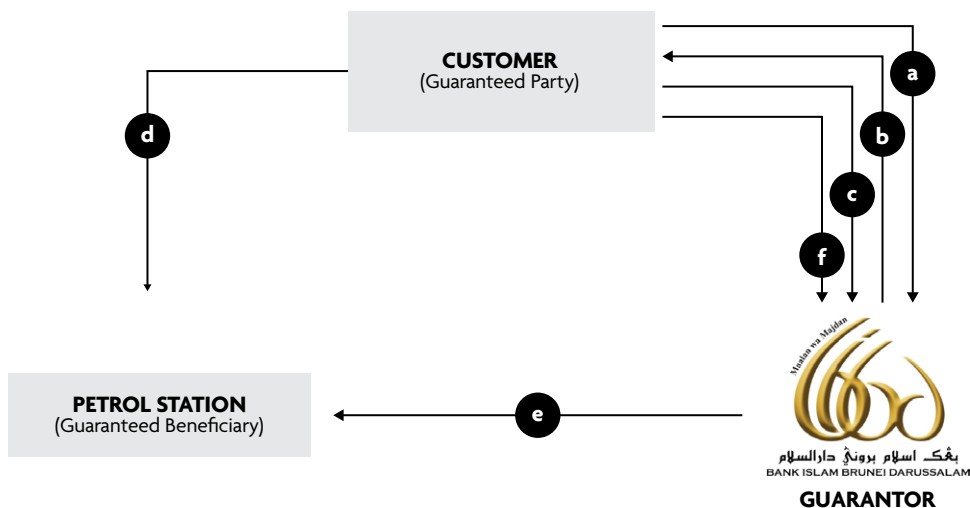


**FIGURE 20**  
Transaction Workflow for Postpaid Payment

- BIBD guarantees the payments for customer who uses the cards (Indent, Fleet, and M). The customer agrees to pay the joining fees and the annual fee for the provided guarantee;
- The customer uses the cards (Indent, Fleet, and M) for fuel purchases;
- The petrol station will submit a claim bill to BIBD for the customer's transaction;
- BIBD will settle the payment to the petrol stations;
- BIBD will invoice the government/customers; and
- The government/customers will pay through the Treasury Accounting and Financial Information System (TAFIS).

## 2. Prepaid payment

The cardholder will make an advance payment to BIBD to obtain the card. BIBD will deduct from the card account for every fuel purchase using the card. The cardholder will be able to reload or top-up the card limit from time to time. The payment does not cause any financial exposure to BIBD. The transaction flow for prepaid payment under the *al-Bay'* concept is as follows:



**FIGURE 21**  
Transaction Workflow for Prepaid Payment

- (a) Customer applies for the card to the bank;
- (b) The bank will process the application. Upon approval, the card will be issued to the customer with zero balance;
- (c) The customer will then fill the card limit by purchasing reload or top-up;
- (d) The customers may use the card for fuel purchases at petrol station by swiping and entering the Personal Identification Number (PIN). Upon completion, the purchase receipt will be given;
- (e) The bank will make payment to the petrol station on the following day; and
- (f) Once the card limit balance has already been used up, the customer can re-fill the card limit by reload or top-up.

In this matter, BIBD has consulted its SAB for guidance and *Shari'ah* approval regarding the proposal for the three cards mentioned above.

**BIBD SAB RESOLUTION**

In the 1<sup>st</sup> and 3<sup>rd</sup> meeting, held respectively on 16 Rejab 1427H / 10 August 2006M and 21 Rabiulawal 1428H / 9 April 2007M regarding “BIBD Indent, Fleet, and M Card”, BIBD SAB has decided as follows:

1. BIBD Indent, Fleet, and M Card are not in contradiction with *Shari'ah* principles under the following concepts:

**a) *Al-Kafālah bi al-Māl***: BIBD will guarantee the payment of each customer who uses the card for every fuel purchase. The customer agrees to pay joining fee and annual fee to the bank; and

**b) *Al-Bay'***: is used for prepaid cards upon reloading a certain amount to the card.

2. Agrees to charge an administration fee of 1.5% for both Fleet and M Cards to all customers (flat service fee) as per the resolution and suggestion made in the AAOIFI *Shari'ah* Standard, Chapter 2, Paragraph 4/5/2 stating that:

“It is permissible for the institutions issuing the card to charge a flat service fee for cash withdrawal, proportionate to the service offered, but not a fee that varies with the withdrawal amount”.

# 20

## INVESTMENT PRODUCTS BASED ON ISLAMIC TRUST FUND: GLOBAL EQUITY FUND AND ASIA EQUITY FUND

BIBD has two investment products based on Islamic Unit Trust: Global Equity Fund and Asia Equity Fund. Both investment products were introduced in 1996 and managed by the bank's subsidiary, IBB Capital Asset Management Sdn. Bhd. (ICAM).

Islamic Unit Trust (also known as mutual fund) is an investment scheme that pools money from many investors who share the same financial goals. As an exchange for the investors' money, the fund will issue units to the investors ("unitholders"). Unitholders can resell (redeem) their units to the fund or buy (and sell) other units. The funds are managed by a group of professional managers known as "Syarikat Unit Amanah", which will invest the accumulated money in the portfolio such as stocks, *Ṣukūk*, and money market instruments or other authorised securities to meet the fund's objectives.

Due to the large pool of money, fund managers can diversify their investments, thus minimizing the investment risk.

The total assets of the fund will determine the value of the fund and the price to be paid by the unitholder or the amount they will receive when they redeem the unit. The unit trust funds typically earn income from various investments in the form of dividends or capital gains. This income is then distributed to the shareholders in proportion to their unit holdings in dividends or bonus units if the shareholder withdraws from the Unit Trust.

### MODUS OPERANDI

The transaction workflow for BIBD Global Equity Fund Unit Trust and BIBD Asia Equity Fund Unit Trust is as follows:



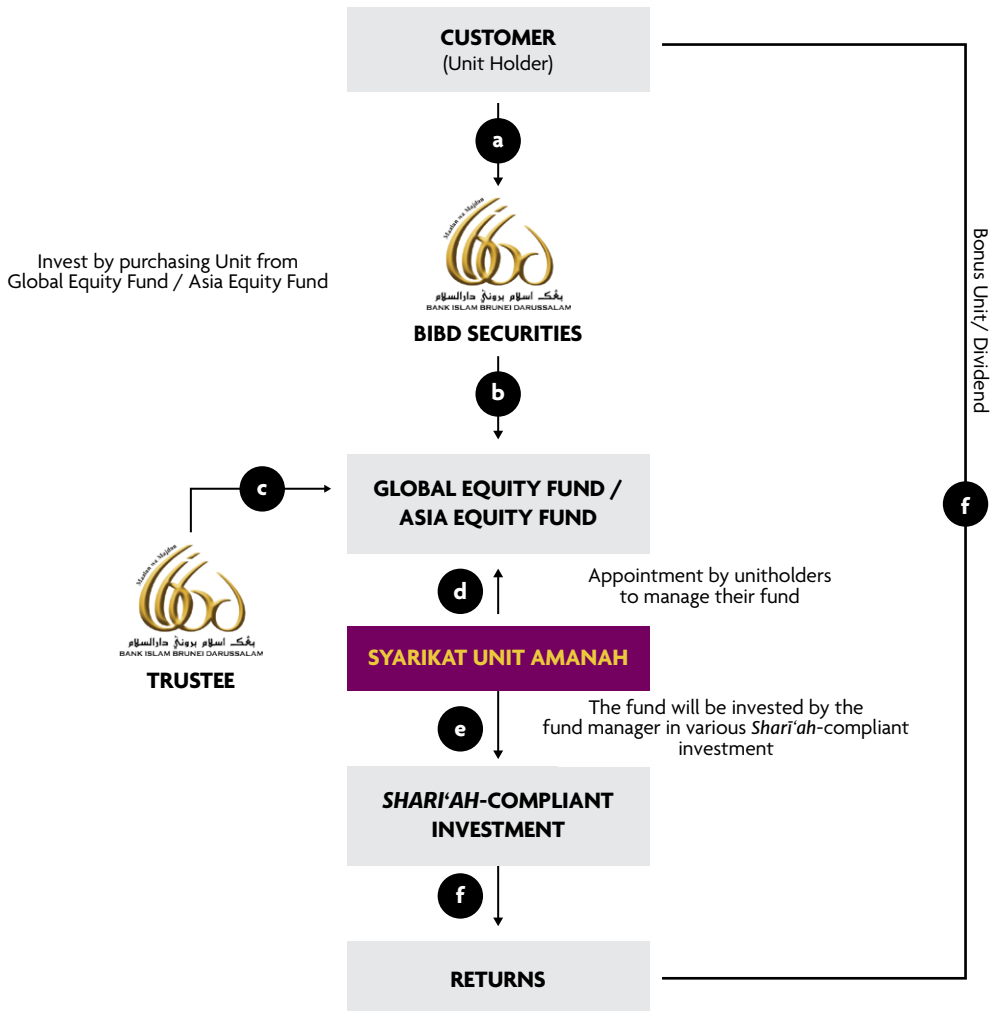


FIGURE 22

## Transaction Workflow for Unit Trust Global Equity Fund and Asia Equity Fund

- Customer will invest by buying units in the Global / Asia Equity Fund via BIBD Securities (BIBDS);
- BIBDS will act as a selling agent, registrar and broker for the stock exchange market;
- BIBD acts as a trustee and financial manager as well as the custodian of assets invested by investors including cash investment;
- The equity fund will be managed by experts in fund management known as 'Syarikat Unit Amanah';

(e) Syarikat Unit Amanah will invest the equity funds into a variety of *Sharī'ah*-compliant investments; and

(f) Any returns from the investment will be distributed to the trustee as their dividend.

The *Sharī'ah* contracts used in these Equity Funds are as follows:

**1. *Bay' al-Naqd***

It means buying and selling in cash. From the perspective of unit trusts offered by BIBD, this concept is applied to the contract of sale and purchase of the unit trusts between fund managers and investors, paid in cash via BIBDS as the selling agent.

**2. *Al-Wakālah bi al-Ujrah***

The unitholders authorise the fund managers to manage the accumulated funds in return for *Ujrah* (wage).

Therefore, the unitholders for BIBD Global Equity Fund and the Asia Equity Fund will authorise BIBD as their representative and fund manager and earn management fee.

**3. *Mushārah***

The relationship among the unitholders is based on the *Mushārah* concept, in which they share the ownership of the fund. Any returns or capital gains or losses will be shared according to their respective capital contributions.

Given the legal requirements, regulations, and directives from the Ministry of Finance authorities, both of these products need to be re-registered and submitted to BIBD SAB to get *Sharī'ah* approval.

**BIBD SAB RESOLUTION**

In its 4<sup>th</sup> meeting held on 14 Rabiulakhir 1428H / 29 Jun 2007M, BIBD SAB has decided that the two products, Global Equity Fund and Asia Equity Fund, under the concept of *Bay' al-Naqd*, *Al-Wakālah bi al-Ujrah* and *Mushārah* are not in contradiction with *Sharī'ah* principles.

# 21

## ISLAMIC PROFIT RATE SWAP AND ISLAMIC CROSS CURRENCY SWAP

BIBD is always on the lookout for ways to control or reduce investment risk in the Islamic Money Market. One of the instruments for hedging is swap.

Generally, swap is used for hedging or reducing the risks faced by financial institutions or organisations by protecting the asset's value from being exposed to market volatility. Technically, a swap can be defined as a bilateral agreement in which both parties agree to make periodic payments together to exchange two different flows of funds.

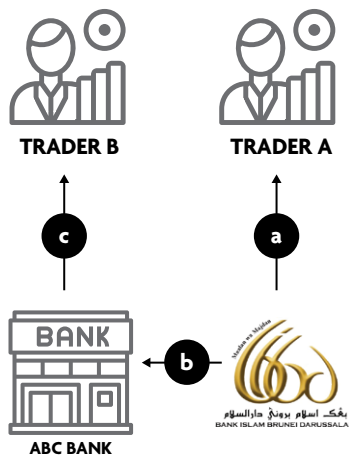
BIBD wishes to use a swap instrument that is already available in the market which is Islamic Profit Rate Swap (IPRS) and Islamic Cross Currency Swap (ICCS). Both of these instruments are under the concept of *Tawarruq* which uses the commodity metal as the asset for transactions.

IPRS is a bilateral agreement between two parties to make fixed payments to one another within an agreed timeframe.

This instrument is used to hedge against adverse profit rate movements, generally by changing the cash flow from fixed to floating or vice versa in the same currency. Commodity transactions will be used on every settlement date. The amount and duration between fixed payments can be adjusted based on the needs of the customers and the bank.

The transaction workflow for IPRS is as follows:

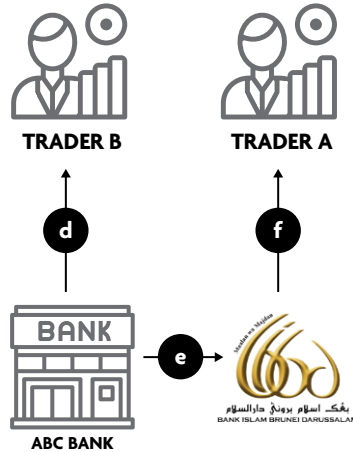
**First step:**



**FIGURE 23**  
Transaction Workflow for IPRS (First Step)

- (a) BIBD buys a commodity from Trader A through ABC Bank (as their buying agent) in cash;
- (b) BIBD will then sell the commodity to ABC Bank at cost-plus profit; and
- (c) ABC Bank sells the commodity to Trader B in cash.

**Second step:**



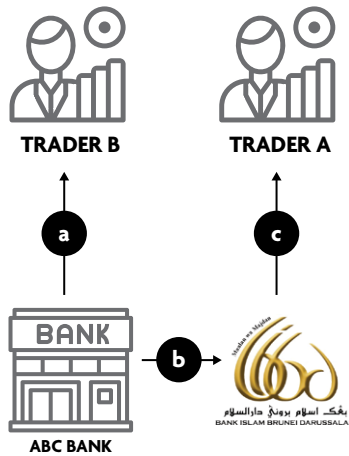
**FIGURE 24**  
Transaction Workflow for IPRS (Second Step)

- (d) ABC Bank buys a commodity from Trader B in cash;
- (e) BIBD buys the commodity from ABC Bank at a cost-plus London Interbank Offered Rate (LIBOR); and
- (f) BIBD sells the commodity to Trader A in cash.

ICCS is a bilateral agreement between two parties to make fixed payments to one another within an agreed time frame but in two different currencies. ICCS is used as a risk management tool to hedge foreign currencies and profit rate risks. Commodity transactions will be used on each settlement date.

The transaction workflow for ICCS is as follows:

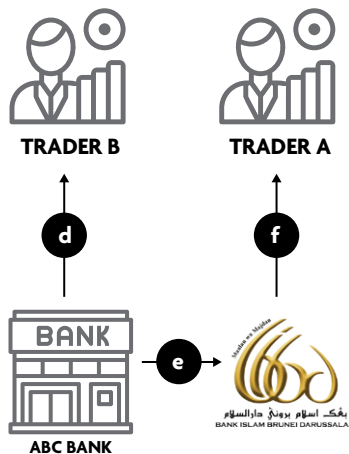
**First Step:**



**FIGURE 25**  
Transaction Workflow for ICCS (First Step)

- (a) ABC Bank buys commodity from Trader B in cash;
- (b) BIBD will then purchase the commodity from ABC Bank at cost-plus profit in USD; and
- (c) On behalf of BIBD, ABC Bank sells the commodity to Trader A in cash.

**Second Step:**



**FIGURE 26**  
Transaction Workflow for ICCS (Second Step)

(d) BIBD buys a commodity from Trader A through ABC Bank as their agent;

(e) ABC Bank buys the commodity from BIBD at cost-plus LIBOR floating rate in BND;

(f) ABC Bank sells the commodity to Trader B in cash.

BIBD has consulted its SAB for guidance on the proposal for IPRS and ICCS based on the concept of *Tawarruq* [to protect the asset's value from being exposed to market volatility in Islamic money market investments].

### **BIBD SAB RESOLUTION**

In its 6<sup>th</sup> meeting held on 19 Syawal 1428H / 31 October 2007M and [also in the 1<sup>st</sup> meeting held on Jamadilawal 1429H / 7 May 2008], regarding Islamic Profit Rate Swap and Cross Currency Swap, BIBD SAB has decided that IPRS and ICCS under the concept of *Murābaḥah*, *Tawarruq* and *Wa'd*, along with the traded assets in the form of metal commodity, is not against the *Sharī'ah* principles.

# 22

## AL-WADĪ'AH SAVINGS ACCOUNT: MY REAL SAVINGS ACCOUNT

BIBD At-Tamwil Berhad has an existing savings product based on the concept of *al-Wadī'ah*. To encourage customers who have financing with BIBD At-Tamwil Berhad to save for future emergencies and fulfil the vision of the Ministry of Finance in encouraging the people of this country to cultivate the habit of saving money systematically.

BIBD At-Tamwil Berhad proposed to introduce two types of savings products: *al-Wadī'ah*-based My Real Savings Account (MRSA) and *al-Wadī'ah* -based 2-in-1 MRSA.

As an attraction, BIBD At-Tamwil Berhad will provide a more attractive profit rate with tiered profit rate by calculating the amount in stages or multi-tier. In general, the profit rate or return (dividend) given each month will increase based on the amount of savings in the account.

The terms for depositing and withdrawing money into both savings products are as follows:

- 1) *Al-Wadī'ah* -based My Real Savings Account is open to the public who do not have financing with BIBD At-Tamwil Berhad and want to save money systematically. Customers can withdraw their money at any time with a minimum balance of BND50 in their account; and
- 2) *Al-Wadī'ah* - based 2-in-1 MRSA is open to any customers that has financing with BIBD At-Tamwil Berhad. Customers cannot withdraw their money except for emergency reasons or needs. The minimum balance in the account is BND50.

In this matter, BIBD has consulted its SAB for guidance on the proposal by BIBD At-Tamwil Berhad to introduce the *al-Wadī'ah* savings account.

### **BIBD SAB RESOLUTION**

In the 3<sup>rd</sup> meeting held on 28 Rejab 1429H / 31 July 2008M, regarding the *Al-Wadī'ah* My Real Savings Account, BIBD SAB has decided that the implementation of both *al-Wadī'ah* MRSA and *al-Wadī'ah* 2-in-1 MRSA is in line with *Shari'ah* principles.

# 23

## ISSUE OF GOODWILL FOR THE CALCULATION OF ZAKAT IN BUSINESS

During the merge of IBB and IDBB, an accounting method was implemented for the merging process known as Goodwill. It is one of the accounting terms used to indicate the value of a company that does not refer to its assets and liabilities. Goodwill is also known as intangible assets. To explain further, the following is an example of what is meant by Goodwill:

“Company A was valued at approximately BND10 million, including its properties and profits. When Company B is interested to buy Company A, it sells or buys it for BND11 million (not at the valued price). The difference in BND1 million will be the Goodwill to Company B.”

In this matter, BIBD has consulted its SAB for guidance on the inclusion of Goodwill in the calculation for business zakat.

### **BIBD SAB RESOLUTION**

In the 6<sup>th</sup> meeting held on 26 Syawal 1429H / 27 October 2008M, regarding the “Issue of Goodwill in the calculation of corporate zakat,” BIBD SAB has decided that Goodwill property is not included in the zakat calculation.

### **BASIS OF CONSIDERATION**

The basis for the resolution mentioned above is based on the following arguments:

1. AAOIFI does not explicitly discuss the types of properties that require to pay zakat, but most debates touched on tangible assets. In this case, Goodwill is categorised as intangible assets, not tangible assets;
2. Based on the guideline for zakat calculation on the website [www.zakaah.com](http://www.zakaah.com) stated that Goodwill is not included in the zakat calculation; and
3. Based on the accounting practices, it is stated that physical Goodwill is a value rather than a profit that goes into the income of the affiliated companies as no withdrawals were made even though the value of the company will increase.



# 24

## PROPOSAL FOR AR-RAHNU PRODUCT PACKAGE

BIBD *Ar-Rahnu* intends to enhance and make some changes to BIBD *Ar-Rahnu* financing product as follows:

1. Changes in the existing terms for *Ar-Rahnu* financing due to current conditions and market prices, including the increment in gold prices, paper prices and *Takāful*; and
2. Adding financing services for items other than gold such as diamonds, white gold, and precious stones which shall be known as *Ar-Rahnu* Financing (*Al-Jauhar*).

In this matter, BIBD has consulted its SAB for guidance on the proposal to enhance and change the *Ar-Rahnu* financing products as mentioned above.

### **BIBD SAB RESOLUTION**

In its 7<sup>th</sup> meeting held on 30 Zulkaedah 1429H / 28 November 2008M, regarding “*Ar-Rahnu* Product Package Proposal”, BIBD SAB has decided on the following:

1. The existing *Ar-Rahnu* financing for collaterals consisting of yellow gold is named *Ar-Rahnu* Financing (*Az-Zahab*). However, the *Ar-Rahnu* financing for collaterals comprised of diamonds, white gold, and precious stones shall be called *Ar-Rahnu* Financing (*Al-Jauhar*); and
2. The terms for *Ar-Rahnu* Financing (*Az-Zahab*) and *Ar-Rahnu* Financing (*Al-Jauhar*) services to be changed and added as specified.

# 25

## CHINESE NEW YEAR CELEBRATION

Every year both the Government and private sectors are given special holidays (public holidays) for their religious celebrations, such as 'Eid Al-Fitr' and 'Eid Al-Adha' for Muslims, Chinese New Year for the Chinese community and Christmas for Christians.

Since a big portion of BIBD customers are of Chinese society and to maintain the existing close relationship, BIBD management intends to appreciate their customers by sending them Chinese New Year's greeting cards and red envelopes.

In this matter, BIBD has consulted its SAB for guidance on the above-mentioned proposal.

### BIBD SAB RESOLUTION

In a series of meetings (the 8<sup>th</sup> meeting held on 11 Muharram 1430H / 8 January 2009M, the 8<sup>th</sup> meeting held on 20 Safar 1432H / 25 January 2011M, and the 2<sup>nd</sup> meeting held on 20 Rabiulawal 1434H / 1 February 2013M), BIBD SAB has concluded and decided as follows:

1. Chinese New Year celebration contains the elements of [culture and] religion. However, in the context of the bank, it is only intended for courtesy, preaching and maintaining community relations in accordance with the views of scholars: *Faḍīlat al-Sheikh* Dr Ali Jum'ah, the Grand Mufti of the Arab Republic of Egypt, Muzakarah of The Fatwa Committee of The National Council in Malaysia, and the Council of Indonesian Ulama; and
2. Based on the scholars' views, BIBD may send new year's greetings to their Chinese customers either by giving congratulatory remarks or sending greeting cards in conjunction with their celebration. Provided that the speech does not recognise, praise, or glorify the non-Muslim religion and does not use any of their religious symbols in the greeting cards.

### BASIS OF CONSIDERATION

These justifications formed the basis of consideration for the resolution:

1. Giving gifts, visiting each other, congratulating non-Muslims are good deeds, as *Allāh Subḥānahu wa Ta'ālā* commanded us to say and do good things to each other without distinction of any kind. *Allāh Subḥānahu wa Ta'ālā* said in *Sūrah al-Baqarah*, verse 83, and *Sūrah al-Naḥl*, verse 90:

وَقُولُوا لِلنَّاسِ حُسْنًا

Translated "...and speak kindly to the others."

## إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ

Translated: “*Allāh* enjoins justice and kindness...”

Islam teaches and encourages its followers to speak kindly and to be fair without any biases when dealing with Muslims or non-Muslims. In fact, Islam encourages the reciprocation of the good deeds with something better or at par.

2. Islam is a peaceful and tolerant religion in social and community matters. However, it is resolute and strict in maintaining and defending its faith.

In the case of muamalat, for example, Muslims are commanded to be kind when dealing with non-Muslims as long as they are not fighting against Islam and as long as the transaction does not harm one’s islamic faith and does not justify the haram or prohibit the halal. *Allāh Subhānahu wa Ta’ālā* said in *Sūrah al-Mumtaḥanah*, verse 8:

لَا يَنْهَىٰكُمْ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِنْ دِيَارِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ (٨)

Translated: “*Allāh* does not forbid you to be kind and equitable to those who have neither made war on (your) religion and nor driven you out of your homes. Indeed, *Allāh* loves those who are equitable.”

# 26

## FOREIGN EXCHANGE FORWARD METHODOLOGY

BIBD Treasury & Global Market and Corporate Banking Division intend to introduce a new instrument or product: Foreign Exchange (Forex) Forward. The objective of introducing Forex Forward as one of the hedging mechanisms is to reduce the risk of loss in an investment or depreciation of an asset as buying and selling is made in foreign currencies besides marketing the product to BIBD customers, thus protecting the customers from exchange risk exposure.

Foreign exchange transactions for future agreements are transactions between two parties, in which one party purchases the required foreign currency at a promised rate and date. These transactions use the *Wa'd* concept, which is used as an agreement to hold a buy and sell at a currency exchange rate and at the future date determined and agreed upon by both parties on the spot.

### MODUS OPERANDI

The workflow for the Foreign Exchange Forward Agreement is as follows:

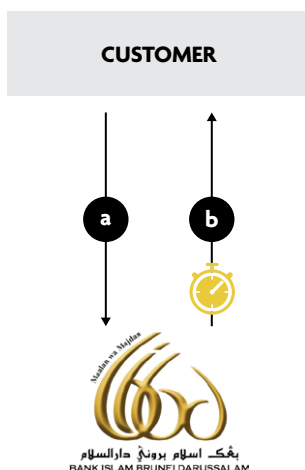


FIGURE 27

Workflow for Foreign Exchange Forward Agreement

- (a) Current: Agreement made by one party for foreign exchange transactions at a promised (*Wa'd*) rate and date; and
- (b) Specified date: Implementation of currency exchange at the promised rate.

As an example, purchasing an imported car from Europe. In this case, the car agent will work with the bank to buy Euros (foreign exchange transaction) to purchase the car. Therefore, an agreement (*Wa'd*) will be made between the car agent and the bank on the spot to buy Euros in the future with a specified date and rate. On the agreed date, a transaction (currency exchange) will be made to buy Euros at the promised rate.

The sale process will be able to control and reduce uncertainty and risk on the car payment price because during the delivery of the car, there will be an increase or decrease in the currency used.

In this matter, BIBD has consulted its SAB for guidance on the use of *Wa'd* in the Forex Forward method in the above-mentioned proposal.

#### **BIBD SAB RESOLUTION**

In the 9<sup>th</sup> meeting held on 4 Safar 1423H / 31 January 2009M, regarding "Foreign Exchange Forward Methodology", BIBD SAB has decided to approve and endorse that the proposed method to use *Wa'd*-based contract is in line with *Shari'ah* principles.

# 27

## MULTI-MANAGER FUND

BIBD Investment Banking Division (IB) is in the process of introducing an investment fund using the concept of the Multi-Manager Fund (MMF).

The MMF investment concept is a concept that involves the main fund. Under this fund, there are groups of funds known as sub-funds. BIBD IB will manage the main fund, while the investment of each sub-fund offered to investors will be managed by the appointed international fund advisers according to the investment mandates given by BIBD IB.

The MMF establishment enables investors to gain exposure to international equity investments that will provide competitive returns over the long term and gives them the opportunity to save and invest money progressively.

### MODUS OPERANDI

The concept of *Shari'ah* contract and the transaction flow of this investment are as follows:-

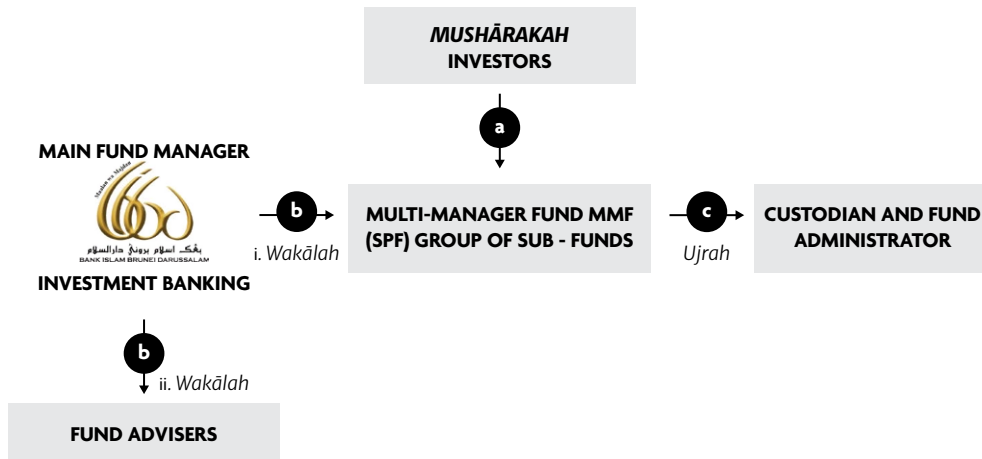


FIGURE 28

Transaction Workflow for Multi-Manager Fund (MMF) Investment

- (a) The concept and contract of *Mushārah* : The investors will partner in the MMF;
- (b) The concept and contract of *Wakālah* :
  - (i) The Main Fund Manager for MMF is BIBD IB; and
  - (ii) BIBD IB will appoint international fund advisers to manage each sub-fund based on the investment mandates.
- (c) The concept and contract of *Ujrah* : MMF appoints a custodian and fund administrator for the management and administration of the fund assets.

In this matter, BIBD has consulted its SAB for guidance on the proposal to introduce an investment fund using the concept of Multi-Manager Fund or MMF.

### **BIBD SAB RESOLUTION**

In its 10<sup>th</sup> meeting held on 23 Rabiulawal 1430H / 20 March 2009M regarding the “Multi-Manager Fund”, BIBD SAB has decided and advised as follows:

1. Multi-Manager Fund (MMF) is not in contradiction with *Shari'ah* principles;
2. The investment process procedures shall be done according to the investment screening guideline as approved by BIBD SAB; and
3. Consult BIBD SAB if there is any doubt on the Islamic ruling for the investment operations or activities.

# 28

## COMPENSATION

BIBD *Shari'ah* Division has submitted a research paper on compensation (*Ta'wīd*) to BIBD SAB. The objective of the study was to get insights and decisions from BIBD SAB regarding the ruling for *Ta'wīd* that will be imposed on the customers who refuse to make or [intentionally] delay their financing payment. This matter has been discussed at the IBB SAB meeting in 2005, but there is no decision or consent given by IBB SAB in this regard.

The results of the study revealed three views or opinions on *Ta'wīd* :-

1. Permissible to impose a penalty in the form of cash;
2. Permissible to impose a penalty in the form of cash, but it must be given to charity; and
3. The Imposition of penalty is not permissible at all.

The main factor that prompted BIBD to impose *Ta'wīd* was due to the losses incurred by BIBD, mainly when the outstanding debt involves millions of dollars. Another factor is that there are cases of non-performing financing among financially capable customers.

In addition, some BIBD customers who subscribe to conventional banks prioritise or prefer paying off their loan debt at those banks to avoid being fined with penalty or interest in comparison to the consequences of outstanding debt payment to BIBD where no fines or penalties were imposed.

In this matter, BIBD has consulted its SAB for guidance on the proposal to impose *Ta'wīd* on the customers who refuse to make or intentionally delay their financing payment.

### **BIBD SAB RESOLUTION**

In its 13<sup>th</sup> and 14<sup>th</sup> meetings held on 18 Ramadhan 1430H / 8 September 2009M and 25 Syawal 1430H / 14 October 2009M respectively, BIBD SAB has decided as follows:-

1. Agrees to impose compensation (*Ta'wīd*) on the customers who refuse to make or intentionally delay their financing payment to safeguard the Bank's interest. [BIBD needs] to inform the affected customers first, and all [copies] of the correspondence shall be given to their guarantors. The compensation (*Ta'wīd*) should be based on [the actual losses and costs involved in handling customers' outstanding accounts];
2. Customers who are [struggling] and unable to pay their debt due to job loss or or the like, then this matter is left to the discretion of BIBD by taking into account the customer's situation at that time; and



- [Any] proceeds from the compensation [*Ta'wīd*] [shall] be donated to the Dana Maslahat Umum (Fund for Public Interest) or donation [fund] for charitable purposes.

## BASIS OF CONSIDERATION

- Maṣlaḥah Mursalah* and the act of imposing compensation is permissible to prevent the public from mocking Islamic banks by not paying or delaying payment purposely even when they have money. This is called *Mumāṭil* which was mentioned by the Prophet Muhammad ﷺ :

مَطْلُ الْغَنِيِّ ظُلْمٌ

Meaning: “Procrastination (delay) in paying debts by a wealthy man is injustice.”

لِي الْوَاجِدِ ظُلْمٌ يُجِلُّ عِرْضَهُ وَعُقُوبَتُهُ

Meaning: “Delay in payment on the part of one who possesses the means, makes it lawful to dishonour and punish him.” – Narrated by al-Bukhari, Abu Daud, al-Nasai, Ibnu Majah, Bayhaqi, Ahmad and al-Tabrani

Both of the *ḥadīth* above show that it is prohibited for a capable person to delay repayment of debt because it is considered an act of injustice that should be punished.

- Qiyās* (allegorised) as the punishment for usurping someone’s property. If a person steals, usurps, or refuses to return his victim’s property, the victim is given the right to seize any property that belongs to the thief, usurper, or keeper to restore his stolen rights. They are also responsible for the victim’s property during that period. Therefore, any losses incurred by the victim will also be claimed from the thieves, usurpers, and keepers. This is equivalent to a customer who promises to pay off their bank debt over a certain period but violates their agreement. As a follow up action, the bank is allowed to impose penalties such as the punishment for usurpers. The ruling for imposing *Ta’zīr* (fine) on the offenders such as rich people who purposely delay the debt repayment, depends on the *Ijtihād* (independent reasoning) of a judge or ruler, without being limited to certain forms of punishment, which can be in the form of financial fines and others [including imprisonment].
- In the book, *al-Ma’āyir al-Shar’iyyah* AAOIFI (AAOIFI *Shari’ah* Standard) *Murābaḥah* was mentioned:

يجوز أن ينص في عقد المداينات: مثل المراجعة على التزام المدين عند المماثلة بالتصديق بمبلغ أو نسبة أن يصرف ذلك في وجوه البر

Meaning: “It is permissible to include any debt contract such as *Murābaḥah*, whereby if a person delays paying his debt even though he possesses the means, the person has to pay an amount of money or a certain percentage, provided the amount is given for [the purpose of] welfare.”

4. The concept of *Ṣadaqah* [as] a compensation (*Ta'wīd*) for the charities or poor people is made based on the concept of *Illizām al-Tabarru'i* as mentioned by Imam Malik *Raḍiallāhu 'Anhu* :-

والمعروف من أوجه على نفسه لزمه

Meaning: "...whoever promises to do good deed (*ma'rūf*), he is obliged to fulfill it"

This implies that all customers commit to settling their debt, but if they fail to do so within an agreed time, they promise to do *ṣadaqah* and appoint the bank to distribute it.

5. *Ribā* will only occur when the lender is taking the penalty due to late payments. These *Ribā* are usually known as *Ribā al-Jāhiliyyah* and *Ribā al-Nasī'ah*. However, [when] the amount of the penalty is given to a third party for [the] purpose of welfare, it will no longer be [ruled as] *ribā*.

# 29

## **MUSHĀRAKAH MUTANĀQIŞAH CONCEPT FOR HOME FINANCING PRODUCTS**

The *BBĀ* concept is a *Sharī'ah* concept used in BIBD Home Financing products. The implementation of this *BBĀ* concept is based on a sale and purchase agreement whereby BIBD sells its commodity assets to the customer at a fixed price with a deferred payment and then repurchases the asset from the customer in a separate agreement in cash.

This *BBĀ* payment procedure is made at a fixed rate throughout the financing period as agreed by both parties.

As a measure and strategy to obtain a floating rate, BIBD product management proposes to introduce and use the concept of *Mushārahah Mutanāqīşah (MM)*.

Apart from that, the purpose of this *MM* concept is as an effort or alternative to reduce the use of *BBĀ* concept.

There are three *Sharī'ah* agreements used in this *MM* concept, namely:

1. *Mushārahah Mutanāqīşah Contract:*

BIBD and the customer buy a house, whereby the relationship between the two is as a partnership. The purchase is intended for renting the house to the customer. During the *Mushārahah* contract period, the customer will buy the bank's share portion of ownership in the house. With the monthly payment, the bank's share of the home ownership will decrease, while the customer's share of ownership will continue to increase.

2. *Ijārah Contract:*

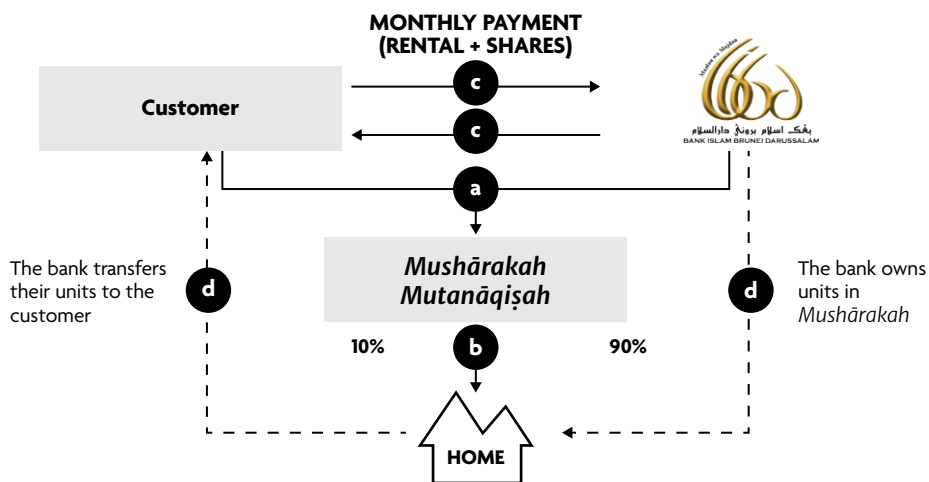
BIBD will lease the bank's share of ownership of the house to the customer.

3. *Wakālah Contract:*

BIBD has appointed customers as BIBD representatives to manage all payments related to financing of the house. The customer will also be responsible to ensure that all matters related in the construction of the house are done properly as they should.

**MODUS OPERANDI**

The workflow of home financing products using the *MM* concept is as follows:-



**FIGURE 29**  
Workflow for Home Financing Products Based on the Concept of *Musharakah Mutanāqishah*

- (a) The customer and the bank enters into a *Musharakah* contract to purchase a house applied by the customer;
- (b) The purchase of the house will be done with a ratio of 10:90 where the customer will provide 10 percent of the original price of the house while the bank will provide the rest. The house will then be jointly owned by customers and bank in accordance to their respective capital ratio rates;
- (c) The bank will lease the ratio of the bank's house ownership to the customer. At the same time, customers will also buy a portion of the bank's ratio of the house ownership. Both Payment of rental and purchase of the ownership ratio will be made monthly; and
- (d) With the monthly payment, the bank's ratio in the ownership of the house will decrease. On the other hand, the customer ownership ratio will continue to increase until the house is fully owned by the customer at the end of the rental period.

In this matter, BIBD has consulted its SAB for guidance on the proposed use of the *MM* concept for BIBD Home Financing products.

**BIBD SAB RESOLUTION**

BIBD SAB in its 2<sup>nd</sup> meeting dated 03 Jamadilakhir 1431H / 17 May 2010M in relation to the "Concept of *Musharakah Mutanāqishah* for Home Financing Products" has decided that the *MM* Concept for the product is *Shari'ah* compliant.

# 30

## PROPOSAL FOR AR-RAHNU WHITE GOLD AND PRECIOUS STONE PRODUCTS

BIBD *Ar-Rahnu* intends to introduce a new product package using white gold and precious stone as a collateral with financing conditions that are different from the existing *Az-Zahab Financing* and *Al-Jauhar Financing*.

The purpose for the introduction of these products aimed to add and diversify the existing products.

In this matter, BIBD has consulted its SAB for guidance in determining the appropriate name and to give *Shari'ah* endorsement on the proposed white gold and precious stone products.

### **BIBD SAB RESOLUTION**

BIBD SAB in its 2<sup>nd</sup> meeting dated 03 Jamadilakhir 1431H / 17 May 2010M in relation to "Proposal for *Ar-Rahnu* White Gold and Precious Stone Products" has decided and agreed that the name for *Al-Jauhar* products be retained with the addition of pawned goods, including white gold and precious stones or any other valuable items.

## 31

## INTERBANK TREASURY PLACEMENT BASED ON WAKĀLAH CONCEPT

BIBD Treasury and Market Department has presented a proposal to conduct treasury placement transactions with the concept of *Wakālah* (interbank *Wakālah* placement) with Islamic banking institutions in Malaysia.

### MODUS OPERANDI

The transaction workflow as stated in the *Wakālah* agreement is as follows:

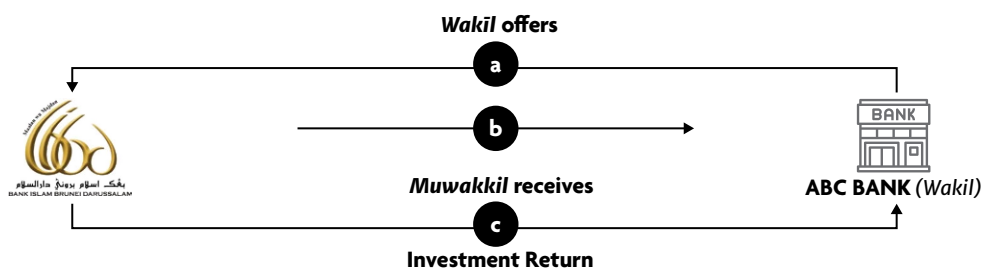


FIGURE 30

Transaction Workflow for BIBD *Wakālah* Agreement as a party (*Muwakkil*) who appoints ABC Bank as an agent in BIBD fund investment.

- ABC Bank will offer a contract to BIBD on the investment procedures to be made by ABC Bank together with the required funds and maturity date for the investment;
- BIBD will evaluate the offer and will accept and make a transaction if the proposal meets the condition required by BIBD;
- On maturity date, ABC Bank will provide or return BIBD investment funds (principal plus profit) and take payment or commissions on the services provided.

BIBD has consulted its SAB for guidance on the proposal from the BIBD Treasury and Market Department to make treasury placements using the *Wakālah* concept with Islamic banking institutions in Malaysia.

### BIBD SAB RESOLUTION

BIBD SAB in its 3<sup>rd</sup> meeting dated 20 Rejab 1431H / 03th July 2010M in relation to "Inter-bank treasury placement based on *Wakālah* Concept" has decided that the Interbank *Wakālah* Placement conducted by BIBD Treasury and Market Department is *Shari'ah* compliant.

# 32

## WA'D STRUCTURE IN FOREIGN EXCHANGE FORWARD AND ITS APPLICATION IN INTERNATIONAL BUSINESS FACILITIES

BIBD Treasury and Markets Department and the Corporate Banking Division intends to use the *Wa'd* concept and structure to cater for its customer needs for international business facilities (import-export).

The *Wa'd* concept that has been previously approved by BIBD SAB will be applied for international business facilities (import-export) with a slight difference in terms of setting the date of transaction which in international business facilities, the date of arrival of imported goods or receipt of import documents is not set 100 percent, but can only be estimated. This is due to external factors such as weather, public holidays, customs and so on that can affect the date of arrival of imported goods. Therefore, a one-way or one-sided agreement to obtain foreign currency from the bank at a pre-determined rate, will only be made based on the expected date of arrival of the imported goods (based on a specified period).

### MODUS OPERANDI

The workflow for foreign exchange transactions using *Wa'd* concept and structure as described above is as follows:

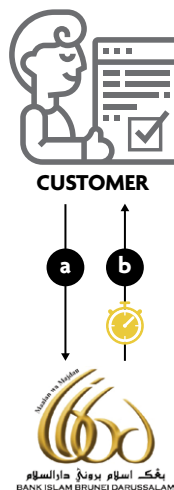


FIGURE 31

Workflow for Foreign Currency Trading Under the *Wa'd* Concept

- (a) Current: One-way/one-sided agreement for foreign exchange transactions at the promised rate and date (*Wa'd*).
- (b) Specified Date: Execution of currency exchange at the promised rate.

One-way foreign exchange agreements will be made in writing whereby the customer promises to exchange the currency at the current set rate whereas the date is when the payment is to be made to the supplier (when the imported goods have arrived) within the stipulated period.

The period set for payment is from one date to another (for example from 1<sup>st</sup> July to 7<sup>th</sup> July). Payment is either in the form of periodic or made in bulk based on the needs of the importer. If the imported goods arrive past the stipulated period, the extended period can be received with a written application from the customer and subject to BIBD's agreement, any damages (if any) will be borne by the customer. Currency exchange shall be for the payment to the supplier only and any claims to for an exchange without complete and valid import documents shall not be processed to avoid currency speculation activities. Cancellation of either partial or full exchange amounts must meet the conditions set by BIBD and any loss arising from the cancellation (if any) will be borne by the customer.

BIBD has consulted its SAB for guidance on using the *Wa'd* Structure in Forex Forward and its application in international business facilities (import-export).

### **BIBD SAB RESOLUTION**

BIBD SAB in its 4<sup>th</sup> meeting dated 13 Ramadhan 1431H / 24 August 2010M on "*Wa'd* Structure in Forex Exchange Forward and Its Application in International Business Facilities" has decided as follows:

The concept of *Wa'd* in Forex Forward is based on its structure and modus operandi, the period set for payment to be made on a specific date (open date or broken date) is *Shari'ah* compliant based on the following factors:

- (a) Payment must be made periodically i.e. either in stages or partial shipment; and
- (b) It is found that imported goods are slow to arrive due to technical matters and unavoidable conditions such as shipping problems, insufficient supply, weather factors and so on.



# 33

## CONVERSION OF *BAY' BI THAMAN ĀJIL* INVESTMENT PRODUCTS TO *WAKĀLAH* CONCEPT

BIBD has two investment products with the concept of *BBĀ*, namely *BBĀ* Investment General and Foreign Currency Investment Account Products.

BIBD has been trying to find alternatives to other *Shari'ah* concepts to replace the *BBĀ* concept with a better concept for its investment product which is the *Wakālah* concept.

### MODUS OPERANDI



FIGURE 32

Workflow for Investment Structure Using *Wakālah* Concept

- The investor appoints BIBD as a representative / agent to manage his investment activities;
- As an investment manager, BIBD is given the task of performing *Shari'ah* based activities as agreed upon by both parties. BIBD will inform investors of the expected return on investment during the investment period agreed upon during the investment; and
- Any investment which exceeds the expected rate of return, BIBD will keep it as its management fee (*Ujrah*).

BIBD has consulted its SAB for guidance on the proposal to use the *Wakālah* concept to replace the *BBĀ* concept in existing BIBD investment products.

### BIBD SAB RESOLUTION

BIBD SAB in its 6<sup>th</sup> meeting dated 28 Syawal 1431H / 7 October 2010M in relation to “Conversion of *BBĀ* Investment Products to *Wakālah* concept” has decided that the use of *Wakālah* concept to replace *BBĀ* concept in BIBD investment products is *Shari'ah* compliant.

# 34

## DEBIT MASTERCARD PRODUCTS BASED ON WAKĀLAH AND UJRAH CONCEPT

Product Management intends to introduce a new card called “BIBD Debit MasterCard”. It is a new facility based on the principles of *Sharī’ah*, *Wakālah* and *Ujrah*.

Debit means deducting or subtracting. The use of debit cards is subject to the amount contained in the customer / cardholder’s account. A debit card is a quick and easy transaction between the merchant and the personal account of the customer or cardholder.

BIBD Debit MasterCard is a piece of plastic card which provides payment alternatives when making any purchase transaction. It is more like a credit card or ATM card but operates like cash or personal cheque. When the card is used, the money will be withdrawn directly through the customer’s bank account associated with the card.

The use of BIBD Debit MasterCard is also accepted worldwide by merchants who display the “Mastercard” logo.

Apart from that, this card also provides for cash withdrawal transactions like any other function of ATM cards. Cash withdrawals are also subject to the prescribed daily usage limit.

### MODUS OPERANDI

The workflow for this product is as follows:



**FIGURE 33**  
Transaction Workflow for BIBD Debit MasterCard

(a) Customer/cardholder appoints BIBD as their agent to manage the customer/cardholder payment to the merchant (*Wakālah*);

- (b) BIBD will charge a fee to the customer / cardholder in exchange for the services provided (*Ujrah*). In addition, customers / cardholders will also be charged for the use of services provided in connection with debit cards including the withdrawal of cash from other bank ATMs either locally or abroad;
- (c) Merchant will make a claim to BIBD for each payment made by the customer using the debit card;
- (d) BIBD will deduct the amount from the customer / cardholder's account and will pay to the merchant.

In this matter, BIBD has consulted its SAB for *Shari'ah* approval and confirmation of Debit MasterCard products with the concept of *Wakalah* and *Ujrah*.

### **BIBD SAB RESOLUTION**

BIBD SAB in its 11<sup>th</sup> meeting dated 19 Zulhijjah 1431H / 26 November 2010M in relation to "BIBD Debit MasterCard Debit product using the concept of *Wakalah* and *Ujrah*" has decided that this product is *Shari'ah* compliant.

# 35

## BURSA SUQ AL-SILA' COMMODITY TRADING PLATFORM

BIBD intends to use the Bursa Suq Al-Sila' (BSAS) platform for the convenience of structuring financing products, deposit and investment products, foreign exchange transactions and hedging. In addition, it is an initiative of BIBD to develop products to replace the concept of *BBĀ* or *Bay' al-Īnah*, which is widely used in BIBD products.

BSAS is a commodity trading specialized platform to facilitate Islamic liquidity management and financing made by Islamic customers or banks. The flow of transactions made by BSAS is based on the concept of Commodity *Murābahah* (*Tawarruq*).

This exchange trading platform operates fully electronically where it facilitates the trading and settlement of commodity transactions by using crude palm oil as the underlying asset for liquidity management.

### MODUS OPERANDI

The workflow for this product is as follows:

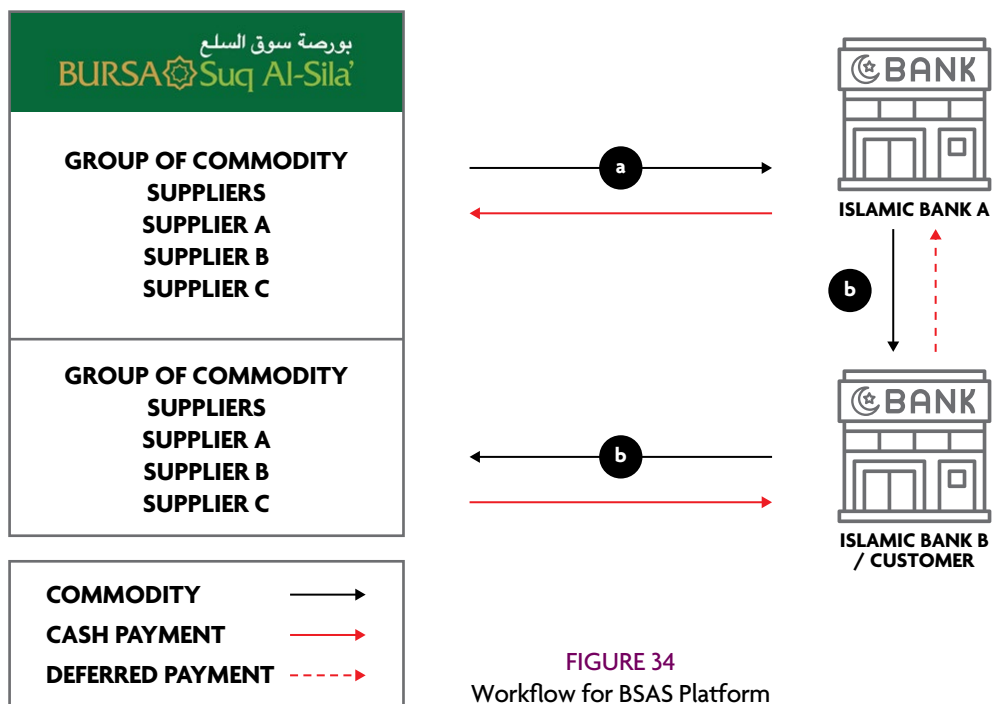


FIGURE 34  
Workflow for BSAS Platform

- (a) Islamic Bank A buys commodity (crude palm oil) from supplier A in the commodity market through the BSAS Commodity Trading Platform;
- (b) After owning the commodity, Islamic Bank A sells to the customer / Islamic Bank B for a profit [using a contract under the concept of *Murābahah*] on deferred payment basis (installments); and
- (c) [After owning the commodity resulting from the *Murābahah* contract], the customer / Islamic Bank B reserves the right to take the commodity if he intends to keep it.

However, since the customer / Islamic Bank B wants to get cash, the customer / Islamic Bank B can directly sell the commodity to BSAS (if the customer is a member of Bursa Malaysia Islamic Services) or appoint Islamic Bank A as a representative to sell the commodity to BSAS (if the customer is not a member of Bursa Malaysia Islamic Services). Islamic Bank A acts as a customer representative selling commodities to BSAS at cash prices and subsequently BSAS sells commodities to the market at random.

BIBD has consulted its SAB for guidance on the proposal to use the BSAS commodity platform:

### **BIBD SAB RESOLUTION**

BIBD SAB in its 10<sup>th</sup> meeting dated 20 Rabiulakhir 1432H / 25 March 2011M has decided that the BSAS commodity platform is *Shari'ah* compliant and agrees with the proposal to use the platform [for financing, deposit, and investment transactions, foreign exchange and hedge transactions (hedging) facilities.

### **BASIS OF CONSIDERATION**

1. BSAS transactions are conducted on a contract basis *Tawarruq*, *Murābahah* and *Musāwamah*;
2. Crude palm oil which is used as an underlying asset meets the conditions of goods for sale and purchase transactions due to:
  - a) Crude palm oil exists and can be identified [physically];
  - b) Can be owned before sale;
  - c) Quality can be determined based on the specifications set in terms of essence, standards and values;
  - d) Crude palm oil sold is free from any encumbrance; and
  - e) Crude palm oil can be delivered and delivered to buyers.
3. The proposed operating structure of *Bursa Suq Al-Sila'* (Commodity *Murābahah* House) was approved by the *Shari'ah* Advisory Council of the Securities Commission of Malaysia on 5 February 2008.

# 36

## HOME FINANCING PRODUCT FOR PROPERTY UNDER CONSTRUCTION

BIBD intends to expand the application of its home financing product with the concept of *Mushārahah Mutanāqīshah* (MM) which has been approved by BIBD SAB previously to home financing that is still under construction.

The same contract is used in this product which is the contract *Mushārahah*, *Ijārah* and *Wakālah* with some changes or additions in *Ijārah* [components] namely:

1. *Ijārah Mawṣufah fī Dhimmah* (forward lease): A lease agreement that takes place when the property or house is still under construction; and
2. *Wakālah* : Appointment of customer as agent who manages and monitors the construction of the house.

### MODUS OPERANDI

The transaction workflow for BIBD home financing product with MM concept specifically for houses that are still under construction using *Ijārah Mawṣufah fī Dhimmah* contract and *Wakālah* contract:

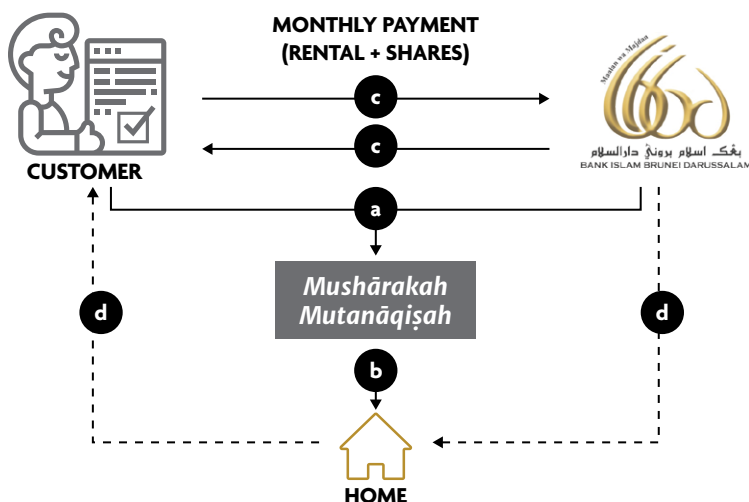


FIGURE 35

Workflow for BIBD Home Financing Product under the *Mushārahah Mutanāqīshah* Concept

- (a) The customer and the bank enter into a *Mushārah* contract for the purchase of a house under construction applied by the customer;
- (b) The purchase of the house will be implemented with a ratio of 10:90 where the customer will provide 10 percent of the original price of the house and the bank will provide the rest. The house will then be jointly owned between the customer and the bank in accordance to their respective capital ratio rates;
- (c) The bank appoints the customer to monitor the construction project under the Project Management Agreement for under Construction. The Bank will also appoint the customer as its agent to pay for the major maintenance costs and *Takāful* under the *Wakālah* Agency Services Agreement agreement;
- (d) While the rental asset is still under construction, the bank will lease its ownership portion of the house to the customer through the *Ijārah Mawṣufah fī Dhimmah* agreement. The customer will pay the rent every month whereby part of the total rental payment is also the payment to the purchase of shares owned by BIBD. Once the house is completed, the customer will continue to pay the monthly rent under the *Ijārah* contract as well as the purchase of the bank's ownership portion to the house. With the monthly payment, the bank ownership ratio of the house will gradually decrease while the ratio of customer ownership will continue to increase until the house is fully owned by the customer at the end of the financing period.

BIBD has consulted its SAB for guidance on the use of the MM concept for home financing products that are still under construction with the addition of *Ijārah Mawṣufah fī Dhimmah* contract while the real estate or house is still under construction and *Wakālah* contract which appoints customers as agents to manage and monitor the construction.

### **BIBD SAB RESOLUTION**

BIBD SAB in its 15<sup>th</sup> meeting dated 25 Ramadan 1432H / 26 August 2011M and its 9<sup>th</sup> meeting which convened on 23 Syaaban 1433H / 13 July 2012M has decided as follows:

- 1) The use of the MM concept as well as the *Ijārah Mawṣufah fī Dhimmah* agreement for home financing products that are still under construction is *Sharī'ah* compliant; and
- 2) The provisions in the MM contract, *Ijārah contract*, *Ijārah Mawṣufah fī Dhimmah* contract and *Wakālah* contract are not in contradiction with *Sharī'ah* principles.

## 37

**WAKĀLAH DEPOSIT ACCOUNTS  
FOR SAVINGS, CURRENT AND  
INVESTMENT**

BIBD intends to introduce new products based on the *Wakālah* concept. The main objective of this proposal is to replace the current Savings Account products, Current Account products and existing Investment Account products based on the concepts of *Wadī'ah*, *Muḍārabah* and *BBĀ*.

One of the main factors for BIBD to introduce deposit products based on the *Wakālah* concept is because the existing deposit products do not offer flexible dividend rate and/or tiered dividend to the customer. In addition, the replacement also aims to streamline a range of products as a result of the merger of the two banks [IBB and IDBB] that have the same characteristics but provide different rates of return [or dividends].

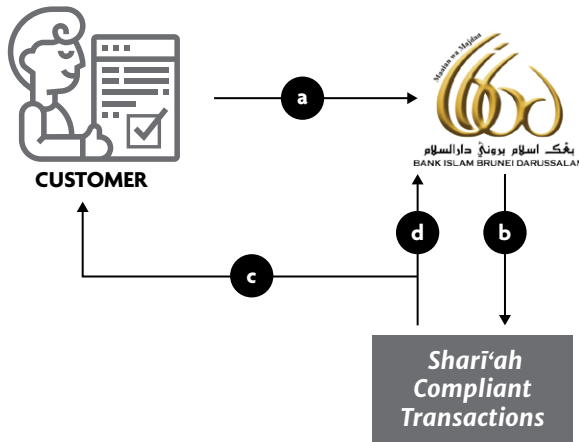
The list of new products proposed using the *Wakālah* concept are:

- 1) Savings Account
  - a. Multi-Tiered Savings Account;
  - b. Purpose Saver Savings Account;
  - c. Tabung Hāji Savings Account;
  - d. Foreign Currency Savings Account; and
  - e. Easy Saver Savings Account.
- 2) Current Account
  - a. Multi-Tiered Current Account Current Account;
  - b. General Current Account; and
  - c. Foreign Currency Current Account
- 3) Fixed Term Deposit Account
  - a. Brunei Dollar (BND) *Wakālah* Fixed Term Deposit Account; and
  - b. Foreign Currency (FCY) *Wakālah* Fixed Term Deposit Account



## MODUS OPERANDI

In short, the transaction workflow for the above *Wakālah* concept can be seen and understood through the following illustrations:



**FIGURE 36**  
Transaction Workflow for *Wakālah* Concept Products

- The customer (depositor) enters into a *Wakālah* agreement with BIBD by depositing a sum of money (deposit) into BIBD;
- BIBD uses customer deposit funds to invest into profitable *Shari'ah* compliant transactions and aim to gain profits;
- Depositors will receive back their deposited funds along with returns or profits based on the expected rate that have been set after deducting *Wakālah* fees; and
- If the actual return or profit generated from the investment exceeds the expected return or profit, the bank reserves the right to retain the excess return as an incentive to the bank on the performance of the investment made after deducting the total *Wakālah* fee. If otherwise, the depositor is entitled to the income after deducting the *Wakālah* fee and BIBD will not retain any amount as an incentive.

BIBD has consulted its SAB for guidance on the proposed new products with the *Wakālah* concept to replace the existing Consumer Banking products with the concept of *Wadī'ah*, *Muḍārabah* and *BBĀ*.

## BIBD SAB RESOLUTION

BIBD SAB in its 16<sup>th</sup> meeting dated 01 Zulkaedah 1432H / 30 September 2011M and the 17<sup>th</sup> meeting dated 12 Zulkaedah 1432H / 10 October 2011M, has decided and confirmed that the products for the Savings Account, Current Account and Investment Account under the *Wakālah* concept are *Shari'ah*-compliant.

# 38

## MURĀBAḤAH SYNDICATED FINANCING PARTICIPATION

Islamic SPV Company has offered BIBD [investment opportunities] by participating in *Murābahah* Syndication Financing for foreign corporate institutions abroad.

The objective of this syndicated financing is to import crude oil and petroleum products that have been refined from suppliers at cost price and sell them to buyers (corporate institutions abroad) through *Murābahah* with deferred payment.

The concept and structure of *Shari'ah* used is based on the concept and structure of *Muḍārabah* and *Murābahah*. Under the *Muḍārabah* contract, BIBD and other financial institutions as capital provider (*Rab al-Māl*) will channel funds to Islamic SPV Company as *Muḍārib* (managers). Meanwhile, the *Murābahah* contract is implemented between Islamic SPV Company and the importer.

### MODUS OPERANDI

The transaction workflow for *Murābahah* syndication financing can be seen through the illustration below:

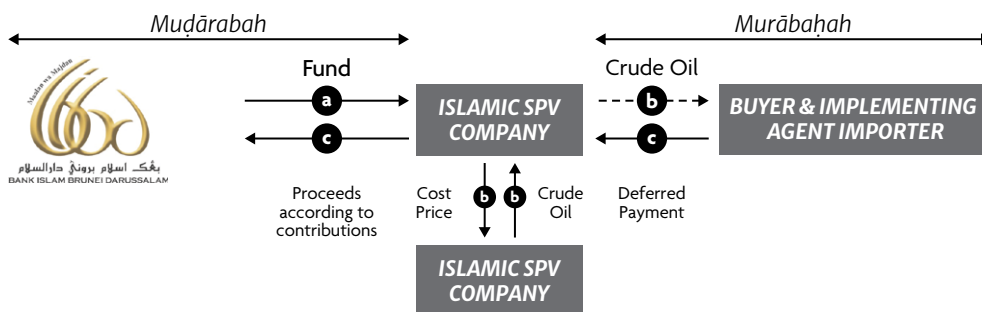


FIGURE 37

Transaction Workflow for *Murābahah* Syndication Financing

(a) *Muḍārabah* contract is implemented between Islamic SPV Company as Manager (*Muḍārib*). BIBD as one of the investors (*Rab al-Māl*) who will provide funds to the Islamic SPV Company to be used in the *Murābahah* financing.

(b) *Murābahah* contract will be implemented between Islamic SPV Company and importers [i.e. corporate institutions abroad]. The Islamic SPV Company will buy crude oil and refined

petroleum products from suppliers at cost price and subsequently sell the [commodity] to the buyer [by *Murābaḥah*] with deferred payment.

(c) Islamic SPV Company will collect the deferred payment (cost price plus profits) from the buyer and all proceeds will be distributed to the investor [including BIBD according to the contribution of their respective divisions].

In this matter, BIBD has consulted its SAB for guidance on the proposal to participate in the *Murābaḥah* syndicated financing for foreign corporate institution abroad.

### **BIBD SAB RESOLUTION**

BIBD SAB in its 2<sup>nd</sup> meeting dated 03 Rabiulawal 1433H / 27 January 2012M and its 15<sup>th</sup> meeting dated 15 Muharram 1434H / 29 November 2012M has decided that the proposal to participate in the *Murābaḥah* Syndicated Financing [based on] *Muḍārabah* and *Murābaḥah* [for external institutions states abroad] is *Sharī'ah* compliant, but subject to the following conditions:

1. BIBD needs to negotiate with [corporate institutions abroad] to participate in *Sharī'ah*-compliant coverage, namely *Takāful* or Islamic insurance companies to protect the financing; and
2. If there is no *Takāful* or Islamic insurance company which is able to meet the required standard requirements, then [the foreign corporate institution] can participate in conventional insurance provided that the insurance premium is fully borne by [the corporate institution].

# 39

## THE IMPLEMENTATION OF TAWARRUQ CONCEPT FOR BANK ISLAM BRUNEI DARUSSALAM FINANCING PRODUCTS

BIBD intends to introduce the concept of *Tawarruq* [or known as Commodity *Murābahah*] in its financing products.

The main objective of this *Tawarruq* concept introduced is to replace the *BBĀ* concept used in most existing BIBD financing products namely: Personal Financing Products, Education Financing Product, *At-Tarbiyyah* Financing Product, Home Financing Products, *Naqd* Facility Products and Claim-based Financing Products.

[The implementation of the *Tawarruq* concept has to do with the previous BIBD proposal paper which is the use of the BSAS commodity platform].

### MODUS OPERANDI

The workflow for *Tawarruq* financing product is as follows:

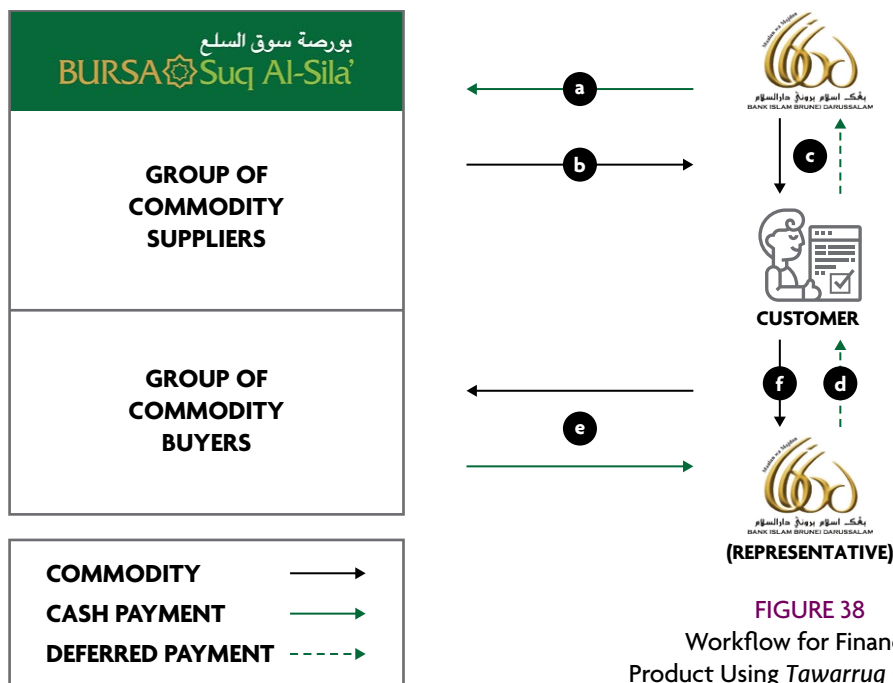


FIGURE 38

Workflow for Financing Product Using *Tawarruq* Concept

- (a) BIBD buys commodities on spot (cash) from supplier A;
- (b) The commodity is now the property of BIBD;
- (c) The bank sells the commodity to the customer at the cost price plus profits by deferred payment;
- (d) The customer is then given the choice of either taking the commodity itself or appointing BIBD as an agent to sell the commodity to the market. If the customer agrees to appoint BIBD as their agent, then the customer will enter into a *Wakālah* contract with BIBD;
- (e) BIBD sells the commodity to BSAS at cost price; and
- (f) BIBD then credits the proceed from the sale into the customer's account.

BIBD has consulted its SAB for guidance on the proposed use of the *Tawarruq* correctly for BIBD financing products.

### BIBD SAB RESOLUTION

BIBD SAB in its 3<sup>rd</sup> meeting dated 09 Jamadilawal 1433H / 02 March 2012M regarding “The implementation of *Tawarruq* Concept for BIBD Financing Products” has decided as follows:

1. The concept of *Tawarruq* using BSAS which will be applied to BIBD financing products is *Shari'ah* compliant; and
2. *Murābahah* contract in the sale of commodities in deferred payment to customers who wish to obtain personal financing is *Shari'ah*-compliant.

### BASIS OF CONSIDERATION

The basis for considering the above decision is based on the propositions and views are related to the necessity of *Tawarruq* as follows:

1. *Allāh Subhānahu wa Ta'ālā* said in *Sūrah al-Baqarah*, verse 275:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

Translated: “...Whereas *Allāh* has permitted trading and forbidden usury.”

*Shari'ah* Legal Maxim which reads:

الْأَصْلُ فِي الْمَعَامَلَاتِ الْإِبَاحَةُ، إِلَّا مَا دَلَّ الدَّلِيلُ عَلَى حُرْمَتِهِ

Meaning: According to the original method of ruling, mu'amalah is permissible, except when there is a provision prohibiting it.”

## 40

## RENOVATION AND UPGRADING PROJECT FOR A 5-STAR HOTEL

BIBD Corporate Banking Division has received Islamic financing application for the renovation and upgrading of a 5-star hotel in Singapore owned by BIBD Corporate client.

The upgrading work will involve the renovation of the third floor of the hotel which will be completely transformed into conference facilities and exhibition halls with the concept of open kitchen and private rooms. By providing these facilities, the BIBD corporate client hopes to increase returns from the “MICE” business or known as “Meetings, Incentives, Conferences & Exhibitions” which usually requires a suitable and attractive conference venue. The expenditure required for this renovation and upgrade works is estimated at around SGD30 million. The proposed structure to finance this renovation uses the *Tawarruq* concept based on commodity *Murābahah* transactions which have been approved by BIBD SAB in the previous meetings.

BIBD has consulted its SAB for guidance if BIBD Corporate Banking Division is allowed from *Sharī'ah*'s perspective to finance the renovation project and upgrading of the hotel enterprise.

### BIBD SAB RESOLUTION

BIBD SAB in its 4<sup>th</sup> meeting dated 23 Rabiulakhir 1433H / 16 March 2012M in relation to “Financing Project Renovation and Upgrading of 5-Star Hotel Enterprise in Singapore” has decided to allow financing to renovate and upgrade the hotel enterprise and use *Tawarruq* concept based on commodity *Murābahah* transaction.

### BASIS OF CONSIDERATION

The basis of the above decision is based on the *Sharī'ah* Legal Maxim, namely:

أَنَّ الْمَعَامَلَاتِ عَلَى الظَّوَاهِرِ وَالْمَعْلُومِ الْبَاطِنِ خَفِيٍّ لَا يُعَلَّقُ عَلَيْهِ الْحُكْمُ

Meaning: “The ruling in muamalat is based on external factors and internal factors, however the ambiguity cannot be use to bring about ruling.”

Since the financing application is on the core business of the hotel as a hotelier then the other activities are not in question.

# 41

## CONVENTIONAL INSURANCE COVERAGE FOR FINANCING

Every financing product offered by BIBD, especially for home financing products, requires Mortgage Redemption Term Assurance (MRTA) protection from Islamic insurance companies or *Takāful* companies to protect their financing until the end of its tenure.

*Takāful* coverage is compulsory to cover the customer's financing risk exposures. Applications for protection must be scrutinized and approved first by the *Takāful* company before the financing application is approved and before the money is credited into the customer's account.

An Islamic insurance company or *Takāful* company will instruct the customer to do a health check [in advance] to determine his/her health status. If the result of the health check following the examination is found to be unsatisfactory, the cost [*Tabarru'* contribution] of the coverage is likely to be increased based on the policy of the Islamic insurance company or *Takāful* company where the cost [of the contribution] usually involves a very high amount.

In cases whereby the customer's health result does not directly meet the standards of the Islamic insurance company or a *Takāful* company, the coverage application for the financing will be rejected and this will affect the process further for approval of the customer's financing. Due to the rejection, there are some customers who appeal for coverage from conventional insurance companies which are able to provide protection while offering cheaper and competitive costs.

In this matter, BIBD has consulted its SAB for guidance and approval if BIBD customers are allowed to use conventional insurance coverage as a form of protection for BIBD financing after Islamic insurance companies and *Takāful* companies are unable to provide such protection.

### **BIBD SAB RESOLUTION**

In its 5<sup>th</sup> meeting dated 07 Jamadilawal 1433H / 30 March 2012M, BIBD SAB has temporarily agreed and decided for BIBD to implement home financing products with conventional insurance companies coverage, especially for those certain customers who do not get *Takāful* coverage facilities from Islamic insurance companies Islam or *Takāful* company [due to factors and] health risks.

## BASIS OF CONSIDERATION

These justifications formed the basis of consideration for the resolution:

1. The customer [has] no other choice except to take up conventional insurance because the Islamic insurance company or *Takāful* company is not [able] to provide coverage [due to] certain risks. By allowing the customers to use the conventional insurance coverage, the bank will be able to save the customer from taking up home loan at conventional banks and at the same time saving them from being involved with *ribā*.
2. Based on the *Sharī'ah* legal maxim as follows:

الْحَاجَةُ تُنْزِلُ مَنْزِلَةَ الضَّرُورَةِ

Meaning: "Need is treated like necessity."

إِذَا تَعَارَضَ مَفْسَدَتَانِ رُوْعِيَّيْنِ أَعْظَمُهُمَا ضَرَرًا بَارِتَكَابٍ أَحْفَهُمَا

Meaning: "If two harms coincide, then avoid the greater harm and choose a lesser harm."



# 42

## BIBD CORPORATE MASTERCARD CREDIT CARD PRODUCT

BIBD Corporate Banking Division intends to expand its network of customer groups by introducing BIBD Corporate MasterCard Credit Card facility products to its corporate customers. Currently, the existing BIBD Mastercard Credit Card facility is only offered to customers of the Consumer Banking Division. The concept of *Shari'ah* and any other *Shari'ah* requirements in terms of operations and [others] is similar to the MasterCard products offered by BIBD at this time which is under the concept of *Al-Kafālah bi al-Māl* and *Wakālah bi al-Ujrah*. The differences are only found in the features of the product to meet the needs of the targeted customer group.

BIBD has consulted its SAB for guidance on the proposal to introduce the BIBD Corporate MasterCard Credit Card facility.

### **BIBD SAB RESOLUTION**

BIBD SAB in its 11<sup>th</sup> meeting dated 23 Syaaban 1433H / 13 July 2012M has decided that the proposal to introduce BIBD Corporate MasterCard Credit Card product to its corporate customers is *Shari'ah*-compliant.

### **BASIS OF CONSIDERATION**

The mechanism and application of the concept of *mu'amalah* in this product is similar to the existing BIBD MasterCard product and has already been approved by IDBB SAB in its 5<sup>th</sup> meeting, Working Paper: BPS/IDBB 15-3/2002, whereby the concept of *Shari'ah* applied was *Al-Kafālah bi al-Māl* and *Wakālah bi al-Ujrah*.

# 43

## ISSUES OF WITNESS IN AL-IJĀRAH THUMMA AL-BAY' AND BAY' BI THAMAN ĀJIL TRANSACTION

In the 2<sup>nd</sup> IDBB SAB meeting dated 25 Rabiulawal 1421H / 28 June 2000 discussed the agenda on “BBĀ -based Investment Account”. The meeting has decided that [in executing BBĀ -based investment transactions] it shall require two witnesses consisting of the bank staff. Due to the lack of gender specification for witnesses when AITAB and BBĀ transactions are made, there are concerns about the criteria or characteristics of witnesses present whether they meet the legal requirements of the contract or not.

In this matter, BIBD has consulted its SAB for guidance and advice from *Shari'ah* perspective on the gender position of the person who is being a witness when carrying out the AITAB or BBĀ *aqad*.

### BIBD SAB RESOLUTION

BIBD SAB in its 8<sup>th</sup> meeting dated 12 Syawal 1433H / 31 August 2012M, has decided as follows:

1. The ruling of bringing witnesses in a muamalat transaction is *sunat* and it is not included in the pillars or conditions of sale and purchase; and
2. After considering the legal and implementation aspects in the bank, the presence of a witness is allowed [without gender specification] and [it] is sufficient to support an agreement, especially when the transaction involves a large amount of financing.

# 44

## IMPLEMENTATION OF TRANSACTION AGREEMENT USING MODERN COMMUNICATION DEVICES

A contract has a significant role in a transaction, whether in financial matters, marriage, and so forth. Following the practices and operations performed by Islamic banks, all products offered by BIBD are using contracts that are *Sharī'ah*-compliant. The customer must attend the *Majlis 'Aqd* to sign (and agree to) establish the contract agreement according to the pillars of buying and selling, which is *Ījāb and Qabūl* (Offer and Acceptance). To facilitate the operation and implementation of financing products and services transaction agreements, BIBD intends to use modern communication tools such as telephone, e-mail, and fax to offer products and services to customers more conveniently and efficiently.

In this matter, BIBD has consulted its SAB for guidance on the proposal.

### **BIBD SAB RESOLUTION**

In the 1<sup>st</sup> meeting held on 23 Safar 1434H / 4 January 2013M, BIBD SAB has decided as follows:

1. For contract agreements between two parties with distant locations via modern communication tools, the same ruling applies when executing contracts in the same location.
2. Verified that the implementation of BIBD transaction contracts using modern communication tools are *Sharī'ah*-compliant;
3. Contracts between two absentees (no attendance and physical communication between one another) but only through writing, letter or messenger, therefore the same ruling applies as if the relationship is made using telegram, telex, fax, and internet. In this case, the contract is established when the offer reaches the intended person and when it was accepted; and
4. The contract is considered completed between the two parties, even though both parties are at two separate locations. This ruling also applies to telephone and wireless communications. An agreement between parties who are present by telephone and wireless communication is regarded as a contract when both parties are present in a *Majlis 'Aqd* as it has met the original rulings set by *Fiqh* Scholars.

### **BASIS OF CONSIDERATION**

The resolution by BIBD SAB was made on the following basis:

1. Taking into account the development in the field of communication and its widespread use as well as the easy implementation in holding sales contracts and transactions;
2. Taking into account the *Fuqahā's* views on contracts verbally, in writing, sign language and by messenger; and
3. Considering the method or principle, the contract between both parties must be present at the same ceremony (*Majlis 'Aqd*) except for the will contract and *al-Īṣā* contract (guardianship). A sequence between offer and acceptance must be present, and both parties must agree on what is stated in the contract. Acceptance and offer should be continuous according to '*Urf* (custom).

# 45

## RISK MANAGEMENT IN FOREIGN EXCHANGE FORWARD USING THE COMMODITY *MURĀBAḤAH* OR *WA'D* AND COMMODITY *MURĀBAḤAH* STRUCTURE

Foreign exchange is a necessary transaction, especially when it involves international trades. In certain circumstances, currency fluctuation will cause a business to be exposed to currency risks such as increased expenses or reduced profit margin received by a business or trade.

As such, hedging can be used as one of the main solutions, and it uses the concept or structure of Commodity *MurābaḤah* or *Wa'd* and commodity *MurābaḤah*. BIBD Treasury and Global Market Division will use hedging to control and manage the transaction risk in Foreign Exchange Forward, also known as Forex Forward.

### MODUS OPERANDI

The workflow for Forex Forward based on commodity *MurābaḤah* structure is as follows:

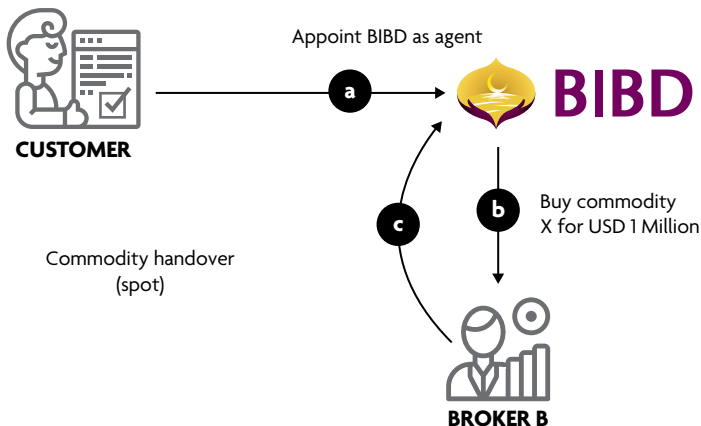


FIGURE 39

Workflow for Forex Forward Products based on Commodity *MurābaḤah* Concept (A)

The customer appoints the bank to act as an agent to purchase commodity X worth USD1 million from Broker B at a deferred price, to be paid at a future date (date Y). Commodity handover is made on the spot;

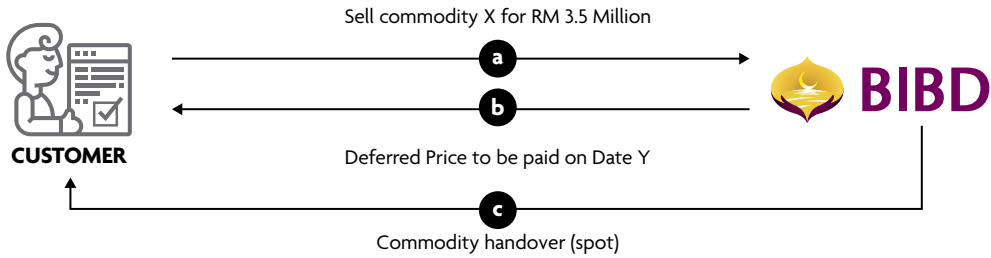


FIGURE 40

Workflow for Forex Forward Products based on Commodity *Murābahah* Concept (B)

The customer then sells commodity X to the bank for RM3.5 million at a deferred price to be paid by the bank on date Y. Commodity handover is also made on the spot;

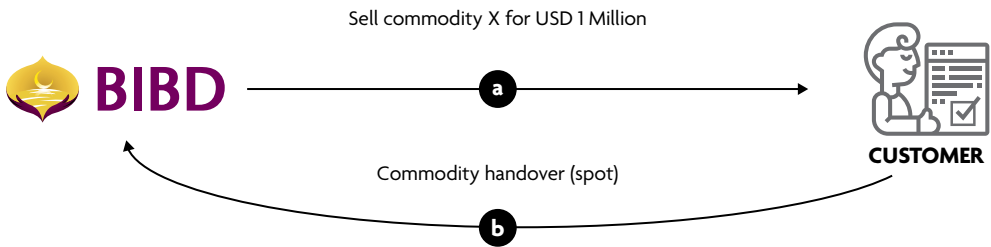


FIGURE 41

Workflow for Forex Forward Products based on Commodity *Murābahah* Concept (C)

The bank will then sell commodity X to Broker A for a deferred payment of USD1 million to be made on date Y. Commodity X will also be handed over to Broker A on the spot;

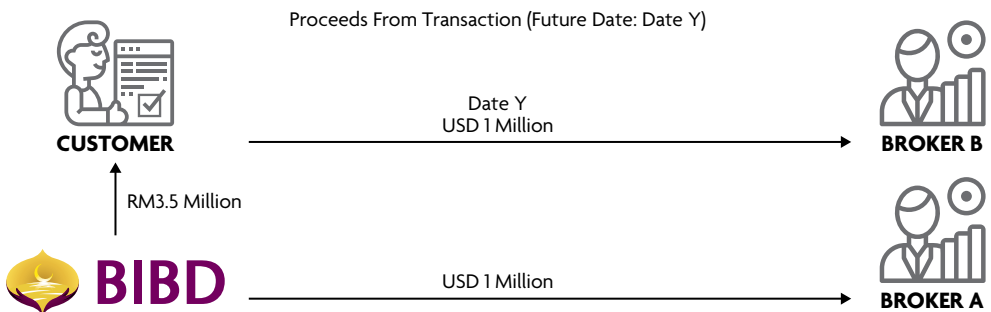


FIGURE 42

Workflow for Forex Forward Products based on Commodity *Murābahah* Concept (D)

Upon maturity (date Y), the customer will pay USD1 million to Broker B and receive payment of RM3.5 million from the bank. The bank received a payment of USD1 million from Broker A. The customer can then hedge USD1 million with a value of RM3.5 million on a future date (date Y).

2. The process flow for Forex Forward based on *Wa'd* and Commodity *Murābahah* structure is as follows:

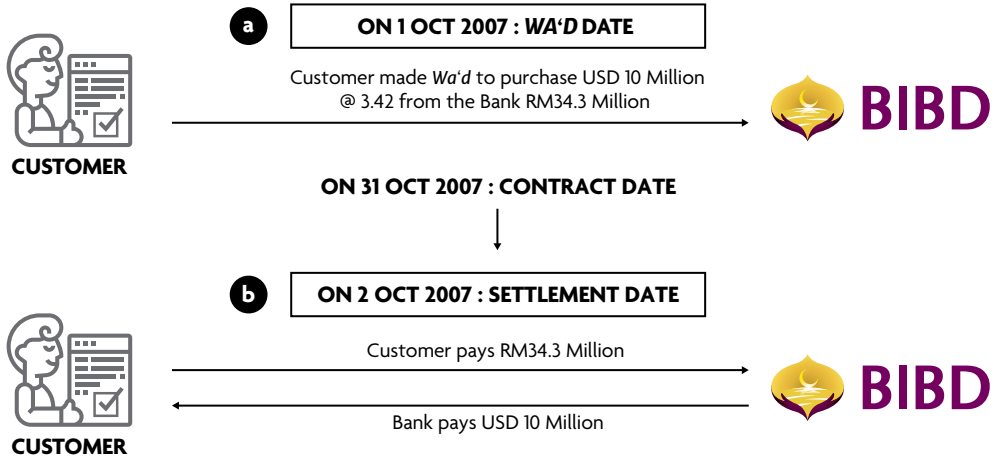


FIGURE 43

Workflow for Forex Forward Products based on *Wa'd* and Commodity *Murābahah* Concept

The *Wa'd* agreement (from one party) and commodity *Murābahah* agreement will be implemented in two separate conditions (subject to rate) where:

**First:** BIBD promised (*Wa'd*) to buy commodities in a particular currency and sell it to the customer in a different currency according to the agreement of both parties on a set date if the first exchange rate (spot rate) is lower than the second exchange rate (forward rate); and

**Second:** The customer promised (*Wa'd*) to buy commodities in a particular currency and sell it to BIBD in a different currency according to both parties' agreement on a set date. If the first exchange rate (spot rate) is higher than the second exchange rate (forward rate).

BIBD has consulted its SAB for guidance on the concept or structure of Commodity *Murābahah* or *Wa'd* and commodity *Murābahah* to be used by BIBD Treasury and Global Market Division to control and manage the risk of Forex Forward transactions.

### BIBD SAB RESOLUTION

In the 11<sup>th</sup> meeting held on 3 Ramadhan 1434H / 12 July 2013M regarding "The Management of Risk for Forex Forward using commodity *Murābahah* or *Wa'd* and Commodity *Murābahah* Structure", BIBD SAB has decided that it is a *Sharī'ah*-compliant transaction.

# 46

## BILL PAYMENT FACILITY FOR *SHARĪ'AH* NON-COMPLIANT

Prior to the availability of payment facility, customers make their payments by making a deposit into the account or making a fund transfer transaction to the payee account.

Such payment method has caused complication to both parties (payers and payees) due to the limitations in making bill reconciliation.

Payee companies that have a BIBD account are also not charged for applying the bill payment facility. As a whole, it brings benefits to both parties as the payer can manage payment in a disciplined and prompt manner. The payee will benefit from the reconciliation process as the BIBD bill payment facility provides daily reports and interface files.

With BIBD Bill Payment Facility, customers can make payments to registered companies or apply for this facility and be able to pay their bills easily at any time and place by using the following facilities:

1. Branch banking which, includes e-branch and counter services;
2. Phone banking via call / contact center, online banking; and
3. Mobile banking.

The list of available bill payments:

1. BIBD Credit Card;
2. BIBD At-Tamwil Berhad;
3. DST;
4. B-Mobile (known as Progresif in present day);
5. Telbru (known as Imagine in present day);
6. Kristal Astro;
7. Department of Water Services' water bill;
8. Department of Electrical Services' electricity bill;
9. Pengiran Muda Al-Muhtadee Billah Fund;
10. Rental payments for Yayasan Sultan Haji Hassanal Bolkiah (YSHHB) complex and others.



*Sharī'ah* issue raised is regarding conventional insurance company in the country displayed and listed as a registered payee in the BIBD bill payment services.

Another related issue is the action of BIBD in preparing a record of monthly payment statements transferred to the accounts of conventional insurance companies concerned.

In this matter, BIBD has consulted its SAB for guidance on the above-mentioned issues.

### BIBD SAB RESOLUTION

In the 13<sup>th</sup>, 1<sup>st</sup> and 5<sup>th</sup> meeting held on 3 Safar 1435H / 6 December 2013M, 22 Rabiulawal 1435H / 24 January 2014M and 2 Rejab 1435H / 2 May 2014M respectively, BIBD SAB has decided as follows:

1. The bank's action in providing bill payment services to the conventional insurance company or other companies with a *Sharī'ah* non-compliant business by displaying said companies name under the list of account payee in BIBD bill payment service payee list as well as providing these company a monthly account payment statement records for reconciliation is conflicting with *Sharī'ah* principles. Such activities indicate that the bank directly assists or contributes to activities involving *ribā*, *maysir*, and *gharar* by helping the conventional insurance company receive premium payments from its customers. Such decision was also made by IBB SAB in the past and also based on *fatwā* sources from Kuwait Finance House (KFH); and
2. It is allowed if BIBD customer themselves seek to make payment personally to the conventional insurance company or other companies with a *Sharī'ah* non-compliant business by withdrawing cash from their account and depositing it into the said company account, either through cash deposit machines (CDM), cheque deposit machines or through mobile banking or online banking channels.

### BASIS OF CONSIDERATION

1. *Allāh Subḥānahu wa Ta'ālā* said in *Sūrah al-Mā'idah*, verse 2:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ (٢)

Translated: "Help one another in furthering virtue and God-consciousness, and in what is wicked and sinful. And remain conscious of *Allāh*, for He is stern in retribution (to those who disobeyed His orders)."

2. *Ḥadīth of Rasūlullāh ﷺ*, narrated by al-Imam Muslim:

عَنْ جَابِرِ رَضِيَ اللَّهُ عَنْهُ قَالَ: لَعَنَ رَسُولُ اللَّهِ ﷺ أَكَلَ الرَّبَا وَمُوكَلَّهُ وَكَاتِبَهُ وَشَاهِدَيْهِ وَقَالَ: هُمْ سَوَاءٌ

Meaning: Narrated from Jabir: “The Messenger of *Allāh* (ﷺ) cursed the one who accepted *ribā*, the one who paid it, the one who recorded it, and the two witness to it, saying they were all alike.”

رَوَى الْخَلَّالُ بِإِسْنَادِهِ عَنْ عَطَاءٍ قَالَ: نَهَى النَّبِيُّ ﷺ عَنْ مُشَارَكَةِ الْيَهُودِيِّ وَالنَّصْرَانِيِّ،  
إِلَّا أَنْ يَكُونَ الشِّرَاءُ وَالْبَيْعُ بِيَدِ الْمُسْلِمِ

Meaning: “*Al-Khalal* has narrated based on the narration of *Ata*; he said: *Rasūlullāh* (ﷺ) has forbidden (Muslims) to share a business with Jews and Christians unless the trading is under the supervision of Muslims.”

The *ḥadīth* above shows that *Rasūlullāh* (ﷺ) allows Muslims to deal with non-Muslims by *Mushārakah* even if their source of funds is doubtful, provided that all the business or trading dealings are under the supervision of Muslims.

Some scholars also state that *Rasūlullāh* (ﷺ) does not owe money to Jews who will gain surplus (interest). On the other hand, *Rasūlullāh* (ﷺ) conducted transactions by deferred payment and using it as collateral.

This is stated in the following narration:

“From ‘*Aisyah* that (when) *Rasūlullāh* (ﷺ) passed away, his armour was still pawned to a Jew because *Rasūlullāh* (ﷺ) owed 30 *ṣa‘* (a type of measurement) of wheat from him.

### 3. The *Sharī‘ah* Legal Maxim

الإِعَانَةُ عَلَى الْمَحْظُورِ مَحْظُورٌ

Meaning: “Providing help to prohibited things is forbidden.”

### 4. The Fatwa Committee from Kuwait Ministry of Awqaf and Islamic Affairs issued fatwas on the issue raised by KFH as follows:

A commercial facilities company provides services to purchase cars to the public in installments by charging “interest” based on its original price. Additional “interest” will also be charged on delayed installment payments past the due date. In addition, this company also provides personal loans by stating the amount of “interest” agreed in advance. The company has an account with one of KFH branches, and some KFH customers requested that KFH pay the installments on their behalf, either in the form of car purchases or personal loans. These customers often inform KFH about the transaction between them and the company concerned...”

“...KFH employees deduct - based on the customer’s instructions - the installment amount from the customer’s account and deposit the installment payment into the

interest-bearing financing company account. Are such actions considered aiding or contributing to *ribā* activities? Is the employee who committed the action sinful? Is it possible for KFH to issue a confirmation letter KFH stating that KFH will transfer the money from their customer account to the financing company's account? What is the previous transaction law of the *ribā*-based debt installment repayment that KFH continues to do?"

The Fatwa Committee from Kuwait Ministry of Awqaf and Islamic Affairs answered:

"The act of KFH employees deducting the installment payment from the customer's account and depositing it into the account of the commercial facilities company is considered as assisting in the payment of *ribā* if the employee is aware that the payment is a *ribā*-based debt payment and not a regular transaction (debt that does not involve *ribā*). This is because Muslims' obligation to pay a *ribā*-based debt payment is not recognized by *Shari'ah*. However, assuming the customer withdraws their money and pays the installment amount by themselves. The KFH employee's action is not wrong even though he knows that the money is used to pay the debt. This is because the employee is only returning the money to its owner (customer)..."

"...On this basis, KFH is not allowed to provide guarantees for transferring money from the customer's account to the *ribā*-based financier's company account to enable the customer to get a *ribā*-based loan. For past transactions, the KFH employee is not guilty if he is not aware of the *ribā*-based transactions. However, he is guilty if he is aware that the past transactions are *ribā*-based. Therefore, the worker should repent and seek forgiveness from *Allāh Subhānahu wa Ta'ālā*."

# 47

## PAWNBROKING COVERAGE USING CONVENTIONAL INSURANCE

BIBD has set rules and policies that every financing product, especially home financing products, should use MRTA from any *Takāful* or Islamic insurance companies. Due to these rules and policies, several customer financing applications had to be delayed. They were more likely to choose a conventional insurance company because *Tabarru'* contributions set by *Takāful* or Islamic insurance companies are more expensive than conventional insurance companies' premium rate.

In this matter, BIBD has consulted its SAB for guidance on *Shari'ah* view regarding the use of MRTA from conventional insurance companies to protect every financing product, especially BIBD home financing products.

### **BIBD SAB RESOLUTION**

In the 10<sup>th</sup> meeting held on 12 Safar 1436H / 5 December 2014M, BIBD SAB has decided and suggested as follows:

1. The use of conventional insurance to cover Islamic financing cannot be considered. SAB advises BIBD to continue and ensure customers to use *Takāful* or Islamic insurance plan as protection for financing products, in line with the bank own policies; and
2. Exceptions are only granted if the *Takāful* and Islamic insurance companies reject the customer's application and cannot provide coverage for certain reasons. It is as per the decision made at BIBD SAB 5<sup>th</sup> meeting dated 30 March 2012M regarding "Conventional Insurance Coverage for BIBD Financing".

# 48

## ADDRESSING PROBLEMATIC AR-RAHNU MICRO FINANCING ACCOUNTS

In March 2014, BIBD *Ar-Rahnu* changed its pricing policy for *Ar-Rahnu* micro-financing products to address or reduce the rate of problematic financing accounts or Non-Performing Financing (NPF). However, the improvement rate is still slow and unsatisfactory as the outstanding financing accounts are continuously increasing.

BIBD *Ar-Rahnu* has identified [several factors contributing to this issue]:

1. The fluctuation in gold prices in the market has affected customers' eligibility within the total financing limit. Gold prices continued to decline throughout 2013 [until] 2014 and are expected to decline in 2015. Gold prices are expected to stabilize in the fourth quarter (end of 2015); and
2. The decline in gold prices has also affected customers whose outstanding financing has exceeded the value of gold mortgaged as collateral.

When their financing period matures, and before making contract renewal (extending the period), these customers are required to make a cash deposit to cover the shortfall, which results in them having short-term cash flow problems.

BIBD *Ar-Rahnu* provides two proposed procedures for dealing with problematic customer accounts [which are]:

1. By restructuring problematic financing or accounts through remortgage. It provides new financing based on the current value or amount of the gold price. The new financing's proceeds based on the current gold price valuation will then be used to pay the existing (outstanding) financing debt. Any shortfall from such payments is still borne by the customer; and
2. Transferring the customer's outstanding debt or selling the customer's mortgaged gold to the customer's family members or friends based on current gold value. All payments received are considered partial payments if the value of gold is lower than the customer's debt. If there is a shortfall in payments made, BIBD *Ar-Rahnu* will demand the difference from the customer (original gold owner).

BIBD has consulted its SAB for guidance on the proposed procedures by BIBD *Ar-Rahnu* in dealing with problematic (outstanding) financing accounts.

### BIBD SAB RESOLUTION

In the 2<sup>nd</sup> meeting held on 11 Jamadilawal 1436H / 2 March 2015M, BIBD SAB has confirmed and approved BIBD *Ar-Rahnu* proposed procedures and strategies in dealing with problematic *Ar-Rahnu* micro-accounts or NPF. Additionally, the proposed procedures and strategies are *Shari'ah*-compliant.

### BASIS OF CONSIDERATION

1. The first procedure or method is remortgaging by refinancing based on the current value or amount of the gold price. The financial proceeds obtained will then be used to pay the existing (outstanding) financing debt, according to *Ar-Rahnu* (Islamic Pawnbroking) guideline. The guideline has been approved and verified in IBB SAB working paper, reference BPS 17/3-95, and by the practice in Malaysia by the Malaysian Islamic Economic Development Foundation (YAPEIM) and *Ar-Rahnu* Islamic Bank.

This procedure has also become the current market practice in the implementation of Islamic pawnshops (*Ar-Rahnu*), and the *dalil* for its necessity is as per the *Shari'ah* Legal Maxim:

الْعَادَةُ مُحْكَمَةٌ

Meaning: "The custom is an arbiter."

إِنَّمَا تَعْتَبَرُ الْعَادَةُ إِذَا اطَّرَدَتْ أَوْ غَلَبَتْ

Meaning: "The custom that is considered (as the basis of judgment) is just a custom that is continuous or common practice."

2. The second procedure or method of surrendering or transferring gold or selling gold from BIBD *Ar-Rahnu* deposit to family members or friends is supported by an argument based on AAOIFI *Shari'ah* Standards "Mortgage and its Contemporary Applications".

#### a. Para 3/1/4

"The mortgagee has the right to stipulate a condition that the mortgagor should appoint him or his representative as an agent who can sell the mortgaged asset and repay the debt out of its value in case of default without resorting to the judiciary. The mortgagor does not have the right to retreat from such agency once agreed upon."

#### b. Para 3/1/6

"The mortgage contract is no longer valid when the mortgaged asset perishes unless compensation for it is obtained (through solidarity insurance, for instance). The mortgage contract can also cease to be valid for other reasons such as termination of the contract by the mortgagee, settlement of or relief from the debt, or relinquishment

of the mortgage right. Furthermore, the validity of the mortgage contract can also expire as a result of transfer of the ownership of the mortgaged asset (through sale, gift or will) on permission of the mortgagee; unless the new owner accepts to keep the mortgage contract.”

**c. Para 3/4/1**

“With due consideration to item 3/1/4, the mortgagee has the right to claim the sale of the mortgaged asset in case of default. After repayment of the mortgagee’s debt the remaining value of the mortgaged asset should be given to the mortgagor by virtue of the mortgage contract. If the sale value of the mortgaged asset happened to be less than the due debt, the difference shall be subject to Sharia rulings on normal debt, and the mortgagee should have the right of recourse on the mortgagor for settlement of such difference.”

The above standards clearly show that mortgaged goods (*Marhūn*) can be sold or transferred to family members. In the event that the mortgaged goods are sold, any shortfall in sales proceed that is lower than the value of debt incurred, such deficit or difference is considered as a liability or debt to the customer (original owner of *Marhūn*).

3. The bank’s [previous] action by eliminating deposit fee for problematic accounts is a commendable action which indirectly assists customers who are in need, as *Allāh Subhānahu wa Ta’ālā* said in *Sūrah al-Baqarah*, verse 280:

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ (٢٨٠)

Translated: “But of the debtor is in a hard time, grant him a delay until he can pay his debt. But if you remit the debt as alms, it is better for you, if only know (the generous reward that you will receive).”

## 49

## MUḌĀRABAH AND BAY' AL-DAYN BI AL-SILA' STRUCTURE FOR THE PURCHASE OF COMMODITY MURĀBAḤAH FINANCING ASSET PORTFOLIO

In 2012, [ABC Bank] has provided financing for the sum of RM1.5 billion to [XYZ Company] based on the commodity *Murābaḥah* concept with a deferred payment period of 7 years (82 months). Two years later, [ABC Bank] plans to sell a portion of its [XYZ Company] financing asset portfolio and has invited BIBD to purchase it for the sum of SGD50 Million.

To achieve BIBD's purpose of investment and for [ABC Bank] to obtain cash liquidity, [ABC Bank] recommended BIBD to use one of their existing special investment products, "Restricted Profit Sharing Investment Account" (RPSIA). RPSIA is a *Muḏārabah*-based concept investment product that aims to expose RPSIA investors to *Sharī'ah*-compliant financing assets to obtain existing returns.

To avoid *Sharī'ah* issues regarding the purchase of existing financing portfolios using cash, [ABC Bank] has proposed to BIBD to use *Bay' al-Dayn bi al-Sila'* mechanism. It is whereby [ABC Bank] (as *Muḏārib*) in *Muḏārabah* transaction, will distribute BIBD investment funds (as *Rab al-Māl*) in the form of commodities in RPSIA to purchase parts of the financing assets portfolio [XYZ Company] that it owns. From the transaction, the *Muḏārabah* investment return in the RPSIA account is the returns of [XYZ Company] Commodity *Murābaḥah* financing assets (*Murābaḥah* Receivable Asset). The returns will then be distributed to RPSIA special investment account during the remaining Commodity *Murābaḥah* financing period to [XYZ Company], which is expected to reach maturity in 2019.

### MODUS OPERANDI

There are three stages of transactions that will be implemented to achieve BIBD investment objectives, namely:

#### 1. The *Wakālah* Agreement:

BIBD will appoint [ABC Bank] as an agent to purchase crude palm oil commodity worth SGD50 million from BSAS.



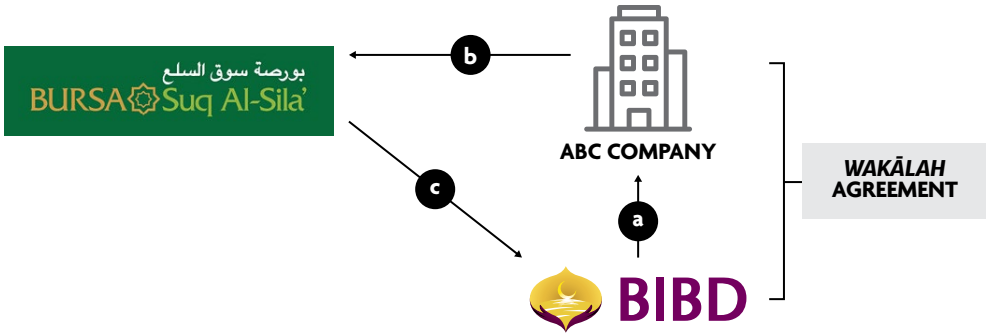


FIGURE 44  
Workflow for *Wakālah* Contract

- a) BIBD will deposit SGD50 million of its investment money to [ABC Bank];
- b) [ABC Bank], as BIBD agent will use the money to purchase crude palm oil commodity from BSAS for SGD50 million; and
- c) Once the transaction is completed, BIBD will own the crude palm oil commodity worth SGD50 million.

## 2. *Muḍārabah* Business

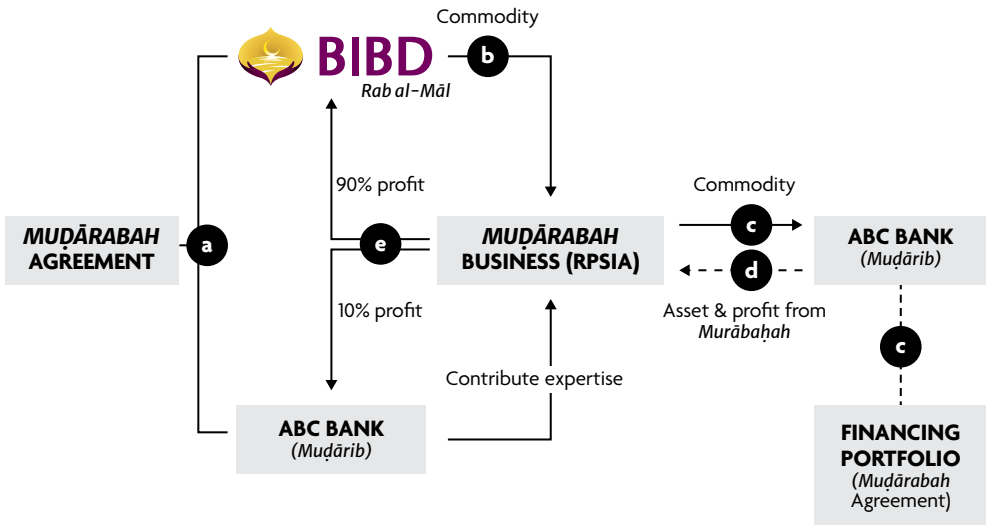


FIGURE 45  
Workflow for *Muḍārabah* Business

- a) BIBD and [ABC Bank] will enter into the *Muḍārabah* agreement (using [ABC Bank] existing special investment product, RPSIA). BIBD's role is to act as an investor (*Rab al-Māl*), while [ABC Bank] is to act as Capital Manager (*Muḍārib*).
- b) BIBD will contribute SGD50 million worth of capital in crude palm oil commodity into RPSIA special investment account. Meanwhile, [ABC Bank] will contribute its expertise in managing and investing the capital.
- c) [ABC Bank] will use RPSIA funds in the form of crude palm oil commodity as payment for the purchase of part of [ABC Bank] financing asset portfolio to [XYZ Company];
- d) Once the transaction completed, the RPSIA special investment account will have a portfolio of financing assets that will provide a *Murābaḥah*-based return on investment for four (4) years (remaining maturity or expiration of [ABC Bank] Commodity *Murābaḥah* financing contract to XYZ Company); and
- e) The profits of BIBD's RPSIA special account with [ABC Bank] will be divided according to the profit ratio of 90:10 as agreed by both parties. BIBD will receive 90%, while [ABC Bank] will receive 10%.

### 3. Commodity acquisition from [ABC Bank]

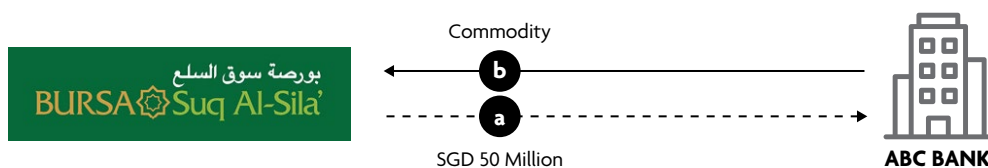


FIGURE 46  
Workflow for Commodity Acquisition

- a) Returns or payment from the sales transaction of [XYZ Company] financing asset portfolio in the second stage shown above, [ABC Bank] will own crude palm oil commodity worth SGD50 million; and
- b) [ABC Bank] is free to sell its crude palm oil commodity to BSAS with a value of SGD50 million to obtain the desired cash liquid.

From the above's investment work structure, both BIBD and [ABC Bank] will achieve their respective financial objectives. BIBD will earn investment profits while [ABC Bank] will obtain cash liquidity from its own Commodity *Murābaḥah* financing asset portfolio.

In this matter, BIBD has consulted its SAB for guidance and approval for investment structures and transactions to be made by BIBD to [ABC Bank] through *Muḍārabah*-based concept venture into a special investment account, "RPSIA and utilizing RPSIA investment funds in

the form of commodities for the purchase of Commodity *Murābahah* financing assets (*Murābahah* receivable assets / financial debt) owned by [ABC Bank] using the *Bay' al-Dayn bi al-Sila'* mechanism.

### BIBD SAB RESOLUTION

In the 5<sup>th</sup> meeting dated 12 Rejab 1436H / 1 May 2015M, BIBD SAB has decided to approve the investment proposal using the *Muḍārabah* and *Bay' al-Dayn bi al-Sila'* structures for the purchase of *Muḍārabah*-based commodity financing asset portfolio (*Muḍārabah* receivable asset) owned by [ABC Bank]. The transaction is concluded as *Sharī'ah*-compliant.

### BASIS OF CONSIDERATION

1. The investment transaction made between BIBD and [ABC Bank] by way of cooperating with each others is deemed as a commendable practice and encouraged as stated by *Allāh Subḥānahu wa Ta'ālā* in *Sūrah al-Mā'idah*, verse 2:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ (٢)

Translated: “Help one another in furthering virtue and God-consciousness, and not in what is wicken and sinful. And remain conscious of *Allāh*, for He is stern in retribution (to those who disobeyed His orders).”

2. *Bay' al-Dayn bi al-Sila'* mechanism is a new and innovative Islamic bank transaction mechanism for purchasing financial debt in exchange of commodities. Contemporary financial scholars allow and adopt it as decided by the *Sharī'ah* Advisory Council (SAC) of Bank Negara Malaysia as follows:

“In the 117<sup>th</sup> meeting dated 19 October 2011M, SAC has approved a new mechanism for the purchase of debt by using commodities as means of exchange.

3. The *Muḍārabah* contract in the proposed investment structure is in the form of “*Muḍārabah Muqayyadah*” (Restricted *Muḍārabah*), which is in line with AAOIFI standards.

# 50

## MINIMUM LIMIT TO PARTICIPATE IN LUCKY DRAW PROMOTION

BIBD Marketing Division in the past has held several lucky draw promotions. Questions have been raised concerning the rules on setting minimum purchases to qualify customers to participate in any lucky draw promotion, for example, participating by using a BIBD credit or debit card.

In this matter, BIBD has consulted its SAB for guidance and advice in conducting any lucky draw promotions.

### **BIBD SAB RESOLUTION**

In the 7<sup>th</sup> meeting dated 19 Ramadhan 1436H / 6 July 2015M, BIBD SAB has decided that BIBD should not impose a minimum participation limit for every customer participating in any form of lucky draw promotions.

### **BASIS OF CONSIDERATION**

The decision is based on the Fatwa of State Mufti of Brunei in 2000 titled “Lucky Draw”:

“If a company gives the prizes, either in the form of goods or cash to its customers, who purchase goods from the company where the customer does not suffer any losses due to the purchase, then the prize can be accepted, as it is not a gambling-based profit. Among the gambling elements is when one party gains profit while the other party, that is, the buyer or customer will bear the loss or be exposed to the risk of loss.”

If, for example, a company requires a minimum payment of goods at BND10 (ten dollars) as a condition to obtain the prizes offered, even though the buyer will get the purchased goods without incurring any losses, those requirements are feared to lead to gambling as well, or at least fall in the *shubhah* category. The *shubhah* mentioned is that the buyer makes their purchases intending to obtain the prize. It is safer for a company not to set a minimum number of purchases or payments. Scholars are not in favour of a person who buys goods intending to get the prize.

“Meanwhile, if a person whose real intention is to get the prize offered and not to purchase the goods, then such action is deemed as a way of or a form of gambling.

A safe purchase is a purchase that is free from *shubhah* or safe from any form of gambling. The buyer is purchasing the goods, not intending to get the prize. When such purchases occur, no issues of buyer incurring loss should the buyer not get the prize.

“That is the way Islam controls human welfare, up to the point of their spiritual and emotional feelings. Therefore, when a company offers any prizes, they should not set the terms of purchase with a certain amount or minimum purchase.”

# 51

## TRANSACTIONS AND INVESTMENTS BETWEEN ISLAMIC AND CONVENTIONAL FINANCIAL INSTITUTIONS

BIBD Treasury and Global Market Division intends to make transactions and investments such as Interbank Money Market with conventional bank / financial institutions that do not offer Islamic financial products and services (Full-Fledge Conventional Bank). Among the main challenges and reasons for the proposed transaction and investment made with conventional bank / institution is due to:

1. Most Islamic banks / institutions have a lot of liquidity, that is, excessive funds. Therefore, BIBD Treasury and Global Market Division has no opportunity to make any transactions or investments with them unless they have the need to;
2. Some of the conventional banks / financial institutions that have Islamic Window or Islamic Subsidiary have ceased their *Shari'ah*-compliant investment activities and transactions; and
3. The low-profit rate offered by other Islamic financial institution partners resulted in the bank not recovering the cost on its investment funds and cannot provide competitive returns to their customers.

In this matter, BIBD has consulted its SAB for guidance and approval on BIBD Treasury and Global Market Division's proposal to make transactions and investments such as Interbank Money Market with conventional banks / financial institutions that do not offer Islamic financial products and services (Full-Fledge Conventional Bank).

### **BIBD SAB RESOLUTION**

In the 8<sup>th</sup> meeting held on 4 Zulhijjah 1436H / 18 September 2015M, regarding "Proposed Transactions and Investment between Islamic Bank / Financial Institutions and Conventional Bank / Financial Institutions", BIBD SAB has decided as follows:

1. Acknowledged that BIBD has an excessive volume and with the current financial market situation whereby BIBD Treasury and Global Market Division face tremendous challenges and risks to manage and invest safely. Among the challenges are as follows:

- a. Counterparties from other Islamic financial institutions also have excessive liquidity, which causes them to refuse to accept money or investment from BIBD;
  - b. Other Islamic financial institution counterparties offer low profit rates that results in BIBD not offsetting (covering) the cost of its investment funds thus restraining BIBD from providing competitive returns to its customers.
  - c. Strict credit risk control that can be made with business partners to control and curb the potential loss of BIBD investment has limited BIBD opportunities to make large investments.
  - d. Numerous large and well-established conventional financial institution “subsidiary” and “Islamic window” operations have closed their operations. This has resulted in limiting investment opportunities with such partners.
2. Based on the current situation, challenges faced by BIBD investment, as well as current financial market conditions, BIBD Treasury and Global Market Division is allowed to negotiate and make investment transactions with conventional banks or financial institutions subject only to the following activities:- Investment transactions into the Interbank Money Market;
  3. Hedging transactions; and
  4. To ensure that any investment and hedging transactions that will be carried out are using *Sharī'ah*-compliant structures and documents/agreements based on Commodity *Murābahah* (*Tawarruq*) and *Wa'd* concept only.

### **BASIS OF CONSIDERATION**

The above-mentioned permission is based on the following considerations:

1. There is a need (*Hājah*) to ensure that BIBD will continue to invest its liquidity safely and in a controlled risk environment and provide competitive returns to customers. This is in line with the following *Sharī'ah* Legal Maxim:

الْحَاجَةُ تَنْزِلُ مَنْزِلَةَ الضَّرُورَةِ

Meaning: “Need is treated like a necessity.”

2. To avoid greater harm if BIBD's excessive liquidity cannot be managed effectively and safely. This is in line with the following *Sharī'ah* Legal Maxim:

الضَّرُّ يَزَالُ

Meaning: “Harm is to be eliminated.”

# 52 BIBD VISA CREDIT CARD

BIBD intends to introduce credit card facilities using the Visa brand or business logo to BIBD customers and the general public. The main objective is to improve the quality of service and meet customers' needs.

### MODUS OPERANDI

The proposed Visa credit card uses the same *Shari'ah* concept and mechanism as BIBD Mastercard Credit Card previously approved by IDBB SAB:

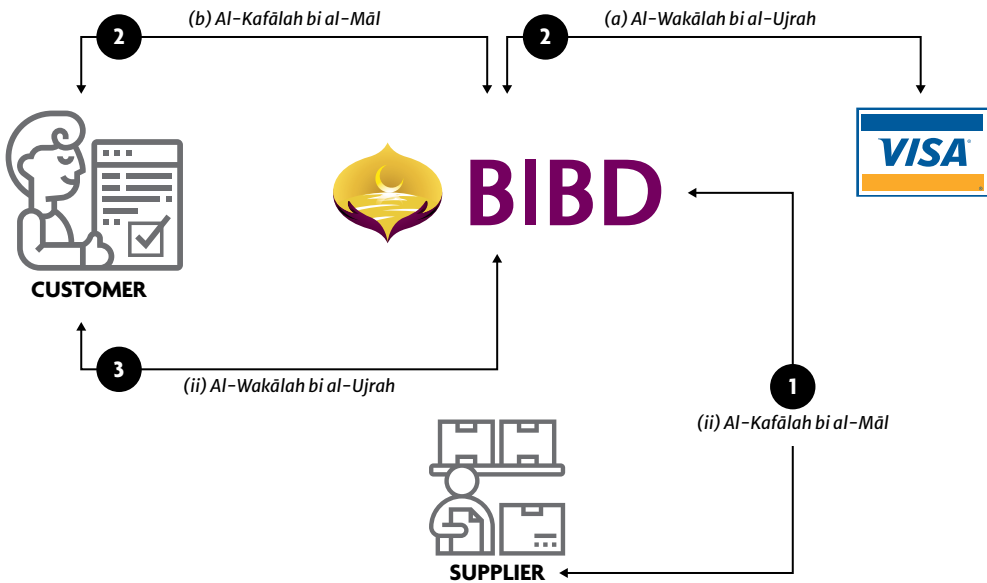


FIGURE 47

Workflow for BIBD Visa Credit Card

1. **Al-Kafālah bi al-Māl:** BIBD guarantees to pay the merchants all transactions made on behalf of BIBD customers;
2. **Al-Wakālah bi al-Ujrah:** An agreement between BIBD and credit card firm (Visa / MasterCard) to use firm's brand or business logo and BIBD also pays the entry fee as a member;

***Al-Kafālah bi al-Māl***: An agreement between BIBD and the customer in which the customer agrees to pay BIBD the amount used in the credit card; and

- Al-Wakālah bi al-Ujrah***: BIBD will also act on behalf of customers to administer their payments to merchants and manage card accounts by imposing set fees.

BIBD has consulted its SAB on guidance for the proposal to offer and introduce BIBD credit cards using the Visa brand or business logo.

### **BIBD SAB RESOLUTION**

In the 8<sup>th</sup> meeting held on 4 Zulhijjah 1436H / 18 September 2015M, BIBD SAB has decided that BIBD Visa Credit Card under *Al-Kafālah bi al-Māl* and *Al-Wakālah bi al-Ujrah* concept is *Sharī'ah*-compliant.

### **BASIS OF CONSIDERATION**

These justifications formed the basis of consideration for the resolution:

- In the 5<sup>th</sup> meeting held on 26 Zulkaedah 1422H / 9 February 2002M, IDBB SAB through its Working Paper ref: BPS/IDBB 15-3/2002 titled "Credit Card Proposal" has approved the use of IDBB Islamic Credit Card;
- In the 9<sup>th</sup> meeting held on 20 Muharram 1424H / 23 March 2003M, IDBB SAB through its Working Paper ref: BPS/IDBB 22-9/2003 titled "Islamic Development Bank of Brunei Islamic Card" has agreed for the use of two concepts in IDBB credit card, namely *Al-Kafālah bi al-Māl* and *Al-Wakālah bi al-Ujrah*.



# 53

## CHANGES TO THE MECHANISM OF INSTALLMENT PAYMENT FROM FIXED RATE TO FLOATING RATE

Currently, BIBD financing products are based on the *Tawarruq* concept, which is using the fixed rate mechanism. [This means] customers will pay their monthly installment on a fixed amount based on Commodity *Murābahah* selling price, which has been agreed upon signing the contract until the end of the financing period. However, BIBD cannot manage the bank's risks effectively and efficiently with the usage of fixed-rate mechanism. This is because BIBD cannot align the profit rate in line with the movement of the bank's prime rate or cost of funds. It is one of the causes for BIBD potential losses based on the current economic market, especially when the bank's prime rate or cost of funds increases.

In the event of an increase, BIBD cannot change the financing asset's profit rate as the profit rate has been set based on Commodity *Murābahah* selling price, which has been agreed upon signing the contract by fixed-rate calculation.

Therefore, BIBD will incur losses, especially with long term financing products such as Home Improvement Financing (financing period up to 10 years) and Consolidation Financing Scheme (financing period up to 15 years). On the other hand, if the bank's prime rate or cost of funds decreases, the customer will face losses as the customer will pay a higher price according to the market rate.

To prudently manage these bank risks, the usage of the floating-rate mechanism without affecting Commodity *Murābahah* selling price under the *Tawarruq* concept has been seen as a way out and a solution to the challenges BIBD faces at present.

The floating rate mechanism under the *Tawarruq* concept is by using *Ibrā'* (waiver) in determining the repayment amount by the customer on the Commodity *Murābahah* selling price. *Ibrā'* is the relinquishing of rights granted by one person over another person's liability to him. In the context of Islamic finance, *Ibrā'* refers to relinquishing the rights to collect payment due by only claiming some parts of it.

Through the *Tawarruq* contract agreement, the floating rate application is how customers and banks enter the commodity sales transaction by *Murābahah*, whereby the bank selling price will be calculated using the fixed rate as the ceiling rate.

This ceiling rate is the highest rate to establish customer payment liability obligation on the sale price in a deferred manner. At any time, customer responsibility to the bank is on the overall liability of the total selling price, which has been agreed upon when both parties enter Commodity *Murābahah* sale under the *Tawarruq* contract. However, as the owner of the right to the sale price, the bank can waive a portion of its rights over the sale price based on discretion and volunteerism. This waiver is known as *Ibrā'* in Islamic financial practice. The application of this waiver mechanism or *Ibrā'* is also known as floating rate application under the contract based on the generally fixed transactions to a mechanism that has floating effects and characteristics.

BIBD has consulted its SAB for guidance on BIBD's intention to apply the floating rate in determining customer monthly installments through *Ibrā'* mechanism.

### **BIBD SAB RESOLUTION**

In the 7<sup>th</sup> meeting held on 18 Safar 1438H / 18 November 2016M, BIBD SAB has decided as follows:

1. Acknowledged that the changes to the mechanism of determining the installment terms for BIBD financing products based on *Tawarruq* concept from a fixed rate to floating rate is to manage BIBD business risks;
2. Acknowledged that the floating rate application that will be used on BIBD *Tawarruq* based products have been structured by applying the *Ibrā'* mechanism by BIBD to customers in accordance to the effective rate calculation based on the variable formula to be determined by BIBD;
3. Verified that the mechanism of granting *Ibrā'* by BIBD as the owner of Commodity *Murābahah* sale price on deferred payment through *Tawarruq* contract based on floating rate is *Shari'ah*-compliant and hereby approved; and
4. BIBD must ensure at all times that it complies with the following for the implementation and operation process of BIBD *Tawarruq* based products at floating rates:
  - a. Customer should be given a clear and adequate explanation of the floating rate mechanism for *Tawarruq* based products prior to customers subscribing;
  - b. The specified ceiling rate which has been set must be constant and remain unchanged; and
  - c. If there are changes to the effective rate, customers must be notified before implementing any changes.

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