

THE OBJECTIVES OF AL-RAHN AND THEIR ACHIEVEMENT IN CHARGE/MORTGAGE IN ISLAMIC HOME FINANCING: AN ANALYSIS¹

By

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Abstract

This paper seeks to identify the general objectives of *fiqh al-mu'amalat* and the objectives of *al-rahn* as intended in the divine provisions. Muslims must adhere to these objectives in their dealings, specifically in the present practice of Islamic Banking and Finance. This study intends to analyse the requirement and the practices in Islamic banking transactions, namely, charge or mortgage in home financing as to whether the same objectives have been achieved.

As many existing Islamic home financing products, which are mainly based on *al-bay' bithaman ajil* (BBA), require the customer to charge certain property to the financier, this study will look into the legal provision on charge, documentation and practices of the said requirement. It is observed that certain legal provisions and some Islamic financial institutions might have specified, in a few instances, some general principles of *al-rahn* provided in Shariah. Thus, this study will also examine these instances in order to ensure that the objectives of Shariah could be achieved.

Introduction

The retail Islamic banking at present, offers various schemes of home financing, which typically are based on *al-bay' bithaman ajil* (BBA). Some Islamic financial

¹ This paper is presented at the International Conference on Islamic Jurisprudence and the Challenges of the 21st Century: Maqasid al-Shariah and its Realization in Contemporary Society, 8-10th August 2006, IIUM.

institutions might have also home financing products that are based on *al-ijarah thumma al-bay'* (AITAB), *al-ijarah al-muntahiya bittamlik* (AIMAT) and *al-musharakah al-mutanaqisah* (MM). As these schemes create debt on the customers, bank would normally require them to pledge or charge their property in order to secure the payment or settlement of the debt. This pledge or charge is principally based on the concept of *al-rahn*.

The concept of *al-rahn*² is one of the means provided in Shariah to achieve the main objective of Shariah in *mu'amalat*, namely, to protect and preserve wealth and property of human beings³. In order to achieve such an objective, rules and principles of *al-rahn* have been tailored in a way that could lead to the achievement of *al-rahn*'s own specific objective, which is primarily to protect the wealth of the creditor by ensuring the settlement of the debt. This means, failure to comply with these rules and principles might result failure to achieve *al-rahn*'s objectives. Consequently, it will lead to a non-compliance of the main objective of Shariah in *mu'amalat*.

Realizing the inherent consequences of non-compliance of the rules and principles of *al-rahn*, this study analyses legal provisions on charge as provided by the National Land Code 1965 and the practices of Islamic financial institutions in the creation of charge under their home financing schemes. In pursuing this task, this paper will lay out the basis for the analysis by firstly discussing the objectives of Shariah in *mu'amalat*, objectives and rules related to *al-rahn*. This paper will then look into the existing home financing scheme that might require a creation of charge or mortgage as security and later, highlight relevant legal and Shariah issues on the same, so as to ensure the achievement of the objectives of Shariah.

² *Al-rahn* literally means to pledge, pawn or retain whereas in terminology, it refers to a contract of pledging or depositing a property as a security for a debt so that the debt may be taken from the property should the debtor failed to settle the debt.

³ Yusuf Hamid al-'Alim (1994), *Al-maqasid al-'ammah li al-Shari'ah al-Islamiyyah*, Riyadh: Al-Dar al-'Alamiyyah li al-kitab al-Islami, p. 496.

General Objectives of Shariah for Fiqh Muamalat

The Shariah has laid down four main objectives for *fiqh al- mu'amalat*, they are, firstly, wealth circulation among the people either for the purposes of consumption or investment. Among the means to achieve such an objective are the doctrine on the prohibition of *riba*, hoarding and monopoly of wealth.⁴ This objective is extracted from the following verse,

“ What Allah has bestowed on His Messenger (and taken away) from the people of the townships, belongs to Allah, to His Messenger and to kindred and orphans, the needy and the wayfarer; In order that it may not (merely) make a circuit between the wealthy among you. So take what the Messenger assigns to you, and deny yourselves that which He withholds from you. And fear Allah. For Allah is strict in punishment. [7]”⁵

Secondly, the acquisition of property must be free from any encumbrances and ambiguity in order to avoid disputes among the parties concerned. Thus, it is required of the parties of the contract to have witnesses or reduce the agreement into writing. In the absence of these two, they may pledge certain property to be a security for a debt.⁶ Such command is clearly stated in the verse, well-known as “*ayah al-mudayanah*”, below,

“O ye who believe! When ye Deal with Each other, In transactions involving future obligations In a fixed period of time, **reduce them to writing** let a scribe write down faithfully As between the parties: let not the scribe refuse to write: As Allah has taught him, so let Him write. Let Him who incurs the liability dictate, but let Him fear His Lord Allah, and not diminish aught of what He owes. If They party liable is mentally deficient, or weak, or unable Himself to dictate, let His guardian dictate faithfully, and **get two witnesses**, out of your own men, and if there are not two men, then a man and two

⁴ Yusuf Hamid al-‘Alim (1994), *op cit*, pp. 497-519, Muhammad al-Tahir Ibn ‘Ashur (1998), *Maqasid al-Shariah al-Islamiyyah*, Al-Basair, pp. 338-345.

⁵ Al-Hashr : 7

⁶ Yusuf Hamid al-‘Alim (1994), *op cit*, p. 521, Muhammad al-Tahir Ibn ‘Ashur (1998), *op cit*, p. 346.

women, such As ye choose, for witnesses, so that if one of them errs, the other can remind her. The witnesses should not refuse when they are called on (for evidence). Disdain not to reduce to writing (your contract) for a future period, whether it be small or big: it is more just in the sight of Allah, more suitable As evidence, and more convenient to prevent doubts among yourselves but if it be a transaction which ye carry out on the spot among yourselves, there is no blame on you if ye reduce it not to writing. But take witness whenever ye make a commercial contract; and let neither scribe nor witness suffer harm. If ye do (Such harm), it would be wickedness in you. So fear Allah. For it is god that teaches you. And Allah is well acquainted with all things. [282]. If ye are on a journey, and cannot find a scribe, **a pledge with possession** (may serve the purpose). And if one of you deposits a thing on trust with another, let the trustee (Faithfully) discharge his trust, and let him fear his Lord. Conceal not evidence; for whoever conceals it, his heart is tainted with sin. And Allah knoweth all that ye do. [283].”⁷

The Shariah also puts the implementation of justice and equality among the people as one of its objectives in commercial dealings. This objective insists on the enactment of rules and procedures in order to acquire, spend and invest property through legitimate ways.⁸

Finally, it is also among the main objectives of Shariah in *mu’amalat* to protect wealth and people’s property from transgression or wrongful appropriation by any party. Thus, it is mandatory on the Muslims to uphold this objective by enforcing the law against wrongful or illegal appropriation of others’ property. In addition to the legal sanction, Shariah also allows the parties of the contract to request for a guarantee or impose a compensation for any non-performance of contractual obligation or breach of contract.⁹ It is clearly stated in the following verse that Muslims would not devour other property wrongfully,

⁷ Al-Baqarah: 282-283

⁸ Yusuf Hamid al-‘Alim (1994), *op cit*, pp. 525-547, Muhammad al-Tahir Ibn ‘Ashur (1998), *op cit*, p. 349.

⁹ Yusuf Hamid al-‘Alim (1994), *op cit*, p. 548, Muhammad al-Tahir Ibn ‘Ashur (1998), *op cit*, p. 246.

“ O ye who believe! Eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual good-will [29] ”¹⁰

Objectives of the Legality of *al-Rahn*

As mentioned earlier, *al-rah*n is one of the means recognized in Shariah that may be used to achieve the objectives of Shariah that are related to protection and preservation of wealth. It is clearly stated in the Quran that Muslims may provide proof and security for a credit transaction in the forms of written document, testimony of witnesses or deposit a property as pledge. These options are meant for none other than protection of creditor’s right to repayment of debt.¹¹ The textual provision for these alternatives has been mentioned above.

The legality of *al-rah*n can also be found in a few provisions of the Sunnah, whereby the Prophet Muhammad (peace be upon him) pledged his property as security for his loan, as follows:

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا قَالَتْ اشْتَرَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ طَعَامًا مِنْ يَهُودِيٍّ
بِنَسِيئَةٍ وَرَهْنَهُ دِرْعًا لَهُ مِنْ حَدِيدٍ¹² □

The Prophet bought some foodstuff on credit from a Jew and pledged an iron armour to him.

عَنْ أَنَسٍ قَالَ لَقَدْ رَهَنَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ دِرْعَهُ عِنْدَ يَهُودِيٍّ بِالْمَدِينَةِ فَأَخَذَ
لِأَهْلِهِ مِنْهُ شَعِيرًا¹³

The Prophet pledged his armour to a Jew in Madinah and took barley grams for his family.

¹⁰ Al-Nisa’: 29

¹¹ Syeikh Muhammad ‘Ali al-Sayis (n.d.), *Tafsir ayat al-ahkam*, p.170.

¹² Muhammad b. Isma‘il al-Bukhari (t.t.), *Sahih al-Bukhari*. Kitab al-Salam, Bab al-Kafil fi al-Salam, no. hadith 2251.

¹³ Muhammad b. Yazid al-Qazwini b. Majah (t.t.) *Sunan Ibn Majah*. Kitab al-Ahkam, Bab al-Ruhun, no. hadith 2428

Based on the textual provisions mentioned above, it is established that the main objective of *al-rahm* is to secure the repayment of loan or settlement of debt. As the debtor's property is deposited on trust with the creditor, it will encourage him to repay the loan or settle his debt so that the property could be returned to him. Thus, if the debtor failed to settle his debt, the creditor reserves a right to sell the pledged property and utilize the sale price for the settlement of the debt.

The permission to pledge property in order to secure a debt implies that *al-rahm* is also a method that could facilitate the public needs to have transactions on credit, such as, loan, deferred payment sale, *salam* and *istisna'*. On the other hand, it offers a peace of mind to the creditors who are assured that they could possibly get the due money from the pledge property should the debtor is in default.

As the concept of *al-rahm* helps the debtor to fulfil his needs and at the same time assures the creditor with the security in his possession, it encourages Muslims to help each other. Both parties of *al-rahm* contract know that their rights are protected through the provision of the security that will act as a remedy in a case of default. As such, the permissibility of *al-rahm* could generally lead to the achievement of justice and beneficence (*ihsan*) among the mankind.¹⁴

Rules and Principles of *al-Rahn*

In order to realize the above-mentioned objectives of Shariah and objectives of *al-rahm* itself, all pillars of *al-rahm* have been specified with requirements and conditions, just like any other contract permitted in Shariah.

The terms (*sighah*) of the *al-rahm* must satisfy general conditions of terms of contract as required in other contracts.¹⁵ The phrases must be clear, concise and free from

¹⁴ Abu Muhammad 'Izz al-Din 'Abd al-'Aziz b. 'Abd al-Salam al-Silmi (n.d.), *Qawa'id al-Ahkam fi Masalih al-Anam*, vol.2, Dar al-Ma'rifah, pp.58-59.

¹⁵ Syams al-Din Muhammad b. Muhammad al-Khatib al-Syarbini (1997), *Mughni al-Muhtaj*, vol. 2, Beirut: Dar al-Ma'rifah, p. 160., Abu Bakr b. Mas'ud al-Kasani (n.d.), *Badai' al-Sana'i' fi Tartib al-Syarai'*, vol.

any ambiguity. In addition, the offer and acceptance must be consistent and should not in any manner encroach the rights of any parties not it is contradictory to the objectives of *al-rahn*.¹⁶ On the other hand, the parties must be eligible to execute a contract by having attained the age of prudence and having full control over the subject matter of the contract.¹⁷ By having satisfied these conditions, both parties could reduce the risk of being cheated or unduly influenced that could possibly violate their rights and consequently annul the contract.

In order to achieve the objectives of *al-rahn*, the pledged property must fulfil all the conditions of a subject matter of a contract of sale.¹⁸ Meaning, any property that can be sold, can be pledged. The reason is, that the pledged property may be subject to be sold if the debtor is in default in order to settle the debt. Thus, the pledged item must be something that is legal, permissible, valuable, existent and owned by the pledgor (debtor).¹⁹ However, though commercial rights can be considered as tradable assets according to majority of Muslim jurists, these rights cannot become subject matter in a contract of *al-rahn* as such assets could not be delivered or deposited on trust with the pledgee (creditor).²⁰ It is worth to note that it is not a condition, for the validity of *al-*

6, Beirut: Dar al-Kutub al-‘Ilmiyyah, p. 135, Mansur b. Yunus al-Bahuti (1997), *Kasyaf al-Qina’*, vol. 3, Beirut: Dar al-Kutub al-‘Ilmiyyah, p. 376, Abu ‘Abd Allah Muhammad b. Muhammad b. ‘Abd al-Rahman al-Maghribi (well-known as al-Hattab) (1995), *Mawahib al-Jalil Syarh Mukhtasar Khalil*, p. 6, Beirut: Dar al-Kutub al-‘Ilmiyyah, p. 548.

¹⁶ al-Syarbini (1997), *op.cit.*

¹⁷ al-Syarbini (1997), *op.cit.*, al-Bahuti (1997), *op.cit.* al-Kasani (n.d.), *op.cit.*, Muhammad b. Ahmad b. ‘Arafah al-Dusuqi (1996), *Hasyiyah al-Dusuqi*, j. 4, Beirut: Dar al-Kutub al-‘Ilmiyyah, h. 374.

¹⁸ al-Kasani (n.d.), *op.cit.*, al-Syarbini (1997), *op.cit.*, h. 161, al-Hattab (1995), *op.cit.*, h. 538, al-Bahuti (1997), *op.cit.*, h. 375.

¹⁹ Dr. ‘Abbas Ahmad Muhammad al-Baz (1998), *Ahkam al-Mal al-Haram*, ‘Amman: Dar al-Nafa’is, h. 28-32, al-Syeikh ‘Ali al-Khafif (1996), *Ahkam al-Mu‘amalat al-Syar‘iyyah*, Kaherah: Dar al-Fikr al-‘Arabi, h. 28, Shamsiah Mohamad (2000), *al-Ribh fi al-Fiqh al-Islami: Dawabituh wa Tahdiduh fi al-Muassasat al-Maliyyah al-Mu‘asarah*, Jordan: Dar al-Nafa’is, h. 51.

²⁰ The Muslim jurist unanimously agreed that usufruct cannot be a subject matter of *al-rahn*. However, they differed in allowing debt as a charge asset whereby only the Maliki jurist allowed it. See, al-Dusuqi (1996), *op.cit.*, h. 374, al-Syeikh ‘Abd Allah b. Hijazi b. Ibrahim al-Syafi‘i al-Azhari (1941), *Hasyiyah al-Syarqawi*, j. 2, Kaherah: Matba‘ah Mustafa al-Babi al-Halabi, h. 122, al-Syeikh Ibrahim al-Bayjuri (1994), *Hasyiyah al-Syeikh Ibrahim al-Bayjuri*, j. 1, Beirut: Dar al-Kutub al-‘Ilmiyyah, h. 691, Muwaffiq al-Din b. Qudamah (1994), *op.cit.*, h. 417.

rahn, that the value of the pledged property is equivalent to or higher than the value of the debt.²¹

It is also a requirement that the underlying loan or credit contract that creates the debt must be compliant with principles of Shariah. The legality of the debt will be a validating factor for the contract of *al-rahn* itself. Therefore, the debt must be existent, fixed and binding on the debtor, immediately or in near future.²²

In a case of default, it is only the pledgor has the right to sell the pledged property for the settlement of the debt as he is still the owner of the pledged property. Only the owner of a property is entitled to sell the said property unless he delegates such power to his agent. In this situation, the pledgee could only sell off the property with the consent of the pledgor or in his presence.²³ If the pledgor refused to sell of his property, the pledgee may bring the matter to the court and seek for the court injunction to sell the property.²⁴ The sale price shall be used to settle the debt and if there is any remaining balance, it belongs to the pledgor.²⁵ On the other hand, should the sale price is insufficient to settle the debt, the pledgee is obliged to top up for the full settlement of the debt.

Islamic Home Financing Schemes and the Requirement of Charge

It has been indicated earlier that the existing on-the-shelf home financing schemes offered by the Islamic financial institutions are mainly based on BBA. Briefly, BBA refers to the sale of goods on a deferred payment basis at a price which includes a profit margin agreed by both parties. It is an agreement whereby a bank buys an asset or property and later sells it to a customer at an agreed defined price which the customer has

²¹ al-Zuhayli (1989), *Fiqh al-Islami wa Adillatuh*, j. 5, Damsyiq: Dar al-Fikr, p.268

²² Abu Yahya Zakariyya al-Ansari (1994), *Fath al-Wahhab bi Syarh Minhaj al-Tullab*, j. 1, Beirut: Dar al-Fikr, h. 228, al-Dusuqi (1996), *op.cit.*, h. 375.

²³ al-Syarbini (1997), *op.cit.*, h. 176

²⁴ *Ibid.*, h. 176, al-Kasani (t.t.), *op.cit.*, h. 148, Muwaffiq al-Din b. Qudamah (1994), *op.cit.*, h. 488. al-Dusuqi (1996), *op.cit.*, h. 406

²⁵ Muwaffiq al-Din b. Qudamah (1994), *op.cit.*, h. 488

to pay on a deferred basis or by instalments. The customer must settle the payment for the price within the period and in a manner agreed by the bank and the customer.²⁶

In practice, the customer does not need to be the registered owner of the property to be able to sell it to the bank under BBA. Similarly, the bank does not have to register its purchase of the property from the customer as required by section 206 of the National Land Code 1965. As the customer has executed a sale and purchase agreement with the vendor, it is deemed that the customer has the right to 'sell' the property to the bank by executing a Property Purchase Agreement (PPA) with the bank. Subsequently, the bank re-sells the property to the customer by executing the Property Sale Agreement (PSA). Under the PSA, the bank sells the property to the customer at an agreed price that will be paid by the customer on deferred basis. In pursuant to the PSA, the bank requires the customer to execute a registrable charge in favour of the bank in order to secure the payment of sale price.²⁷ This registrable charge acts similar as a pledge that will be registered under the virtue of section 241 of the National Land Code.

Besides BBA, Islamic financial institutions might also offer home financing scheme based on other concepts, such as, *al-ijarah thumma al-bay'* (AITAB) and *al-ijarah al-muntahiya bittamlik* (AIMAT). AITAB refers to two different but consequential contracts, *al-ijarah* and *al-bay'*. As a normal lease contract, under the first contract, *al-ijarah*, the customer leases the asset from the bank, which is the owner of the asset, at an agreed rental for a specified period. However, under this scheme, the bank is giving the option to the customer to purchase the asset at the end of the tenure. Upon expiry of the leasing period, both customer and the bank will execute the second contract, *al-bay'* whereby the customer purchases the asset from the bank at an agreed price.²⁸ Similarly, in a scheme which is based on AIMAT, the customer and the bank will firstly execute *al-*

²⁶ Halsbury's Law of Malaysia (2002), vol.14, Malayan Law Journal Sdn. Bhd., p. 299, Nik Norzrul Thani, et al (2003), *Law and Practice of Islamic Banking and Finance*, Sweet & Maxwell Asia, pp. 38-39.

²⁷ Saiful Azhar Rosly et al, "The Role of Khiyar al-'Ayb in al-Bay' Bithaman Ajil Financing", *International Journal of Islamic Financial Services*, vol. 2 no. 3 at <http://islamic-finance.net/journals/journal7/art1.pdf>

²⁸ Halsbury's Law of Malaysia (2002), op cit., p. 300, Nik Norzrul Thani, et al (2003), op cit, pp. 48-49.

ijarah contract but in this scheme, the bank will give to the customer the right to own the asset by making a promise to give it as a gift.²⁹

Looking at the structure and concept used for the schemes that are based on AITAB and AIMAT, it is not possible for the bank to request the customer to charge the financed property as a security for the payment of rental throughout the tenure. Although *al-ijarah*, according to Muslim scholars, is a binding contract, thus the debt created has satisfied the conditions mentioned above, the asset under this contract is owned by the lessor, in which under the scheme would be the bank. It is not possible for the bank to require the customer to charge the said asset, as it cannot be a security for the settlement of the debt. In practice however, the bank is still putting the condition on the customer to charge the financed asset since the title for the said is registered under the customer's name. Further, the rental paid by the customer on monthly basis is deemed as a partial payment for the purchasing of the leased property at the end of the tenure.

Moving forward, many Islamic financial institutions now are having a deep interest in introducing home or property financing scheme that is based on *musharakah mutanaqisah*. At the moment, this concept has been used to finance working capital or projects.³⁰ In the US, Pakistan and UK however, the Islamic financial institutions have successfully offered home financing schemes based on *musharakah mutanaqisah* or a combination of *al-ijarah* and *musharakah mutanaqisah*.³¹ Under these schemes, the bank and the customer will jointly acquire a property and share the ownership of the property at a different percentage. The customer later, gradually redeems the bank's share at an agreed portion periodically. Besides receiving the payment for the redemption, the bank is also able to charge the customer with periodic rental for the using of its share of the property. This rental will be shared by the bank and the customer based on the percentage of their share holding.³²

²⁹ Nik Norzrul Thani, et al (2003), op cit, pp. 48-49.

³⁰ Nik Norzrul Thani, et al (2003), op cit, p. 56.

³¹ Ahamed Kameel Mydin Meera et al (2006), "Musharakah mutanaqisah and al-bay' bithaman ajil contracts as means for home ownership: A conceptual comparison", unpublished paper, pp.12-14.

³² Ahamed Kameel Mydin Meera et al (2006) , op cit, p. 6, Nik Norzrul Thani, et al (2003), op cit, p. 56.

Looking at the structure of the scheme that is based on *musharakah mutanaqisah*, it seems that there is no need for the bank to require from the customer to charge the financed property that they jointly own. Should the customer is in default, the bank could easily sell of the property and later share the sale price with the customer according to their percentage of share holding.

Selected Legal and Shariah Issues in Achieving the Objectives

Comparing the rules and principles of *al-rahn* with the legal provisions of charge in the National Land Code (NLC), generally, both sets of rules aim to secure the rights and interests of both parties, the chargor (debtor) and the chargee (creditor). As the rules of *al-rahn* allow the debtor to pledge his property with the creditor as a security for the payment of debt, sections 241-242 of the NLC also give the same right to the chargor to charge his land to secure the repayment of debt using Form 16A. This charge shall then be registered and the registration will so appear in the title document.³³

The registration that takes place upon the creation of the charge does not forbid the chargor from creating a subsequent charge of the same property, provided that he had first obtain the consent of the chargee.³⁴ Similarly, the chargee is deemed to have given an implied consent to the chargor to lease the said property to others.³⁵ These are among the instances and provisions of charge that are in line with the principles of *al-rahn*, which are certainly to ensure the protection of rights and interests of the chargor.

Referring to the requirement to charge under the BBA home financing scheme, both the bank and the customer execute Form 16A for the creation and registration³⁶ of charge of the financed property. In effect, it will appear in the title of the property that a charge is created on the property to secure the repayment of principal sum (as it is written in Malay language, “Gadaian bagi menjamin wang pokok”). However, under such

³³ Sec. 243 of National Land Code (Act No 56 of 1965).

³⁴ Sec. 246 of National Land Code (Act No 56 of 1965).

³⁵ Sec. 251 of National Land Code (Act No 56 of 1965).

³⁶ Sec. 242-243 of National Land Code (Act No 56 of 1965).

financing scheme, when the customer is in default, the bank used to demand from the customer the selling price as mentioned in the PSA, which consists of the financed principal sum and a profit margin. Although the bank may, at its discretion, grant a rebate to the customer by offsetting certain portion of the profit, it may be construed that the charge is used to redeem the whole selling price. As a result, the customer might have to pay an additional sum of money as the charged property's value usually equivalent to the value of the principal sum and not to the selling, which is considered as the 'agreed' debt owed by the customer.

Foreseeing this issue, perhaps, the financial institution in practice would ensure that the value of the charged property, i.e. the financed property would be much more higher than the financed sum.³⁷ Thus, banks usually would finance any acquisition of a property to a maximum amount that is equivalent to 90 percent of the forced sale value of the pledged property. Although there is no specification of the value of the pledged property stated under the principles of *al-rahn*, this specification in practice is still in line with the principles since the purpose is to ensure the protection of the bank's right to the debt.

Conclusion

There are many similarities in terms of rules and procedures between *al-rahn* and the charge as provided by the NLC. Some resemblances, which have not been mentioned above, are the power to sell the charged property may only vested in the chargee once he applied and granted with a court's order³⁸ and Land Administrator's (LA) order to sale.³⁹ The LA would hold an enquiry requesting the presence of the chargee and the chargor before he could issue an order to sale the charged property.⁴⁰ In addition, there is also a provision granting the chargor the right to the residue of the sale price of the charged

³⁷ Nik Norzrul Thani, *et al* (2003), *op cit*, p. 60.

³⁸ Sec. 256 of National Land Code (Act No 56 of 1965).

³⁹ Sec. 260 of National Land Code (Act No 56 of 1965).

⁴⁰ Sec. 262 of National Land Code (Act No 56 of 1965).

property.⁴¹ It is observed that the rules under charge have duly catered for the protection of both chargor and chargee.

Notwithstanding certain legal and Shariah issues discussed above, the main objective of *al-rahn* and charge to secure repayment of a debt could be achieved as long as the parties abide by the rules and procedures. As taking *riba* out of the debt is forbidden under *al-rahn*, the legal provisions of charge also indicate that no interest is charged unless the banks opt to impose it. With this position, the creation of charge under home financing would further enhance the achievement of the objectives of Shariah in protecting and preserving the wealth and property of mankind from any kind of transgression and their rights and interests from any form of deprivation.

⁴¹ Sec. 268 of National Land Code (Act No 56 of 1965).