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ABSTRACT

Some exciting Economical developments have taken place in the area of Islamic finance during the preceding two years. There has been a fast expansion in its market share, diversification of products picked up pace and the rapid globalization of the services ensures their future expansion. Commodity murabahah is one of the most commonly used financing contracts in Islamic banking. But of no less consequence may prove, the lurch one finds commodity murabahah in at the close of 2008 **(Hasan 2009)[1].** Commodity Murabaha is clearly the Islamic treasurer's funding product of choice, as it is flexible enough to facilitate many structures for financing, hedging, and currency exchanging. It is time to apply the shari'ah objective of "sa'dd-aldharai" that closes the potential avenues for outwitting the shari'ah objectives and spirit **.**

KEY WORDS

Islamic Economics; commodity *murabahah*; Time share in price; *Shari'ah* objectives; *Bai al Inah*, Commodity Murabahah House (Suq Al-Sila), Commodity Murabahah Program (CMP)[2] , deferred contracts, GCC, IIMM[3], Islamic Banking Scheme (IBS[4]); "*sa'dd-aldharai*"

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[1] A special online report titled "Commodity Murabahah remains in the lurch", by Professor Zubair Hasan, Islamic Finance (Malaysian reserve); January 2009.

[2] Commodity Murabahah Program (CMP) was introduced by Bank Negara Malaysia to facilitate liquidity management and investment purposes. CMP is a cash deposit product which is based on principle of *Tawarruq*. It is

INTRODUCTION

The most pronounced difference between Islamic financing and existing equivalent products is the prohibition of interest. This is based on the principle that it is unacceptable in and of itself for same commodity, including money, to increase in value merely by being lent to another person. However, Shari'ah does not prohibit the making of a return on capital if the provider is willing to share in the risks of a productive enterprise [Hasan Zubair, 2007].

Commodity murabahah is one of the most commonly used financing contracts in Islamic banking. It falls in the same generic category of ***"Bai Al-Amanah***" branched from the major category of "uqud al-mu'awadhat" (exchange contracts) that covers all types of transactions including most sukuk as well.

However, first Sheik Taqi Usmani declared early in the year that bulk of the sukuk issued in the market defied Islamic norms.
On the heels of this pronouncement came some court decisions involving deferred contracts going against Islamic banks in Malaysia.

Basic (True-trade) Murabahah[5]: The bank buys certain tangible asset and sells it to the client, who wants to own this asset.

designed to be the first ever commodity-based transaction that utilizes the Crude Palm Oil (CPO) based contracts as the underlying assets. CMP transaction with Bank Negara Malaysia was first auctioned competitively in the IIMM on 14 March 2007

[3] Islamic Inter-bank Money Market (IIMM) the first short term intermediary market in the world established by Malaysia (January 3, 1994).

[4] For detailed descriptions of the available instruments, refer to http://iimm.bnm.gov.my .

[5] There are several common variations of the Murabahah contract practiced by modern Islamic banks. These include the simple Murabahah, agency Murabahah, Murabahah to purchase order, Tawarruq and Bai al Inah. These variations are widely used for trade and pre-export finance. Agency Murabahah and Murabahah to purchase order are common tools for trade finance.

The developments have put the common man a quandary; it is being increasingly asked: Does commodity murabahah violate Islamic norms? The answer is: in principle it does not. Commodity murabahah falls in the same generic category of "uqud al-mu'awadhat" or exchange contracts that covers all types of transactions Islam allows. In exchange contracts a given quantity of one commodity is traded for a given quantity of another commodity, including money.

USES OF COMMODITY MURABAHAH (Structural Strengths and weaknesses)

Murabahah[6] – Basic price plus profit: A financial institution in Murabahah financing purchases the goods for the customer and re-sells them to the customer on a deferred basis, adding an agreed profit margin.

The customer then pays the sale price for the goods either in installments or on lump sum basis at the end of the period. There are three sub products of this product – Basic (True Trade Murabahah), Commodity Murabahah[7] and "Bai al Inah".

The money value of a commodity is called its price. The delivery of a commodity and the payment of price may be simultaneous (i.e. on the spot or the obligation of one of the parties may be deferred to a future date **.**

Commodity murabahah belongs to the "deferred contracts" group. A client may, for example request his bank to purchase a car for him on a cost plus basis. Cost here refers to the cash payment for the car the bank makes to the dealer and plus implies the addition of a profit margin the customer agrees to allow the bank for late payment.

[6] **Murabahah (المرابحة):** Literally it means a sale on mutually agreed profit.
Technically, it is a contract of sale in which the seller declares his cost and the profit.
This has been adopted by Islamic banks as a mode of financing. As a financing technique, it can involve a request by the client to the bank to purchase a certain item for him. The bank does that for a definite profit over the cost which is stipulated in advance.

[7] **Commodity Murabahah**: The bank buys a certain commodity from a broker and sells it to the client, who does not want to own the commodity, so he sells it to another broker to get cash.

We find the arrangement per se does not contain any element of interest. Islam does not grant a time value for money in contracts if money were exchanged for money that is the basis of banning interest.

However, the addition to cost or markup in commodity murabahah is allowed on the ground that "time has a share in price" (lil zamani hazzun fil thaman).

Indeed, it is this juristic pronouncement that constitutes the justification for allowing the deferring of obligations in Islamic contracts.

Even the courts may not have thrown out the cases alluded to above on pure juridical basis; the structuring of contracts was probably to blame.

It follows that the causes of current discomfiture have to be sought elsewhere.

We need not travel far[8].

"Such permission however, was granted in order to facilitate under difficult circumstances, the figurative turning of the wheels of those institutions when they were few in number (and short of capital and human resources**).**

"It was expected that Islamic banks would progress in time to genuine operations based on the objectives of an Islamic economic system and that they would distance themselves even step by step, from what resembled interest based enterprises.

"What is happening at the present time, however, is the opposite Islamic financial institutions have now begun competing to present themselves with all the same characteristics of the conventional banks, interest-based market place, and to offer new products that march backwards towards interest-based enterprises rather than away from them**".**

[8] There is a candid in the statement of Sheikh Taqi Usmani that I quote him. He wrote:

"Undoubtedly, shari'ah supervisory boards, academic councils and legal seminars have given permission to Islamic banks to carry out certain operations that more closely resemble stratagems than actual transactions".

MISUSES OF COMMODITY MURABAHA

There are two alternative forms of "Murabahah" applied to generate working capital for businesses and consumer credit. These are called *Bai al Inah*[9], which is used in Malaysia, and *Tawarruq (Commodity Murabahah)*[10], which is common in the GCC (Gulf Cooperation Council).

These methods are generally disliked by Islamic scholars, who prefer that businesses and consumers use less contrived methods to finance their activities. These two forms of credit are more clearly parallel to traditional loans and may be structured to have "rate" resets, rollovers and to accommodate late payment recoveries.

"Often times these products are rushed to the market using Ploys that sound minds reject and bring laughter to enemies".

The observation is disquieting. The jurists at all levels must realize what injury one may inflict on the Islamic positions if interpretations of the facility principle rely on stretchy, irreversible presumptions.

Shari'ah scholars sometimes open the cork to let the Jinn out only to lament later that the monster is difficult to put back into the bottle. Efforts are needed to avoid juridical divisions that have already begun to surface on the issue.

The bank managers' eagerness to expand the market fast presumably also contributed to the lapse on the Shari'ah front. Islamic finance is no longer seen much different from other businesses operating in the economy.

The Islamic economic system has social implications related to economic development especially for the fulfillment of basic needs and achieving distributional equity.

[9] The bank sells its asset to the client (on credit), whom immediately sells back the same to the bank (on cash basis) and obtains the sum that he seeks. Bai al Inah only involves two parties while commodity Murabahah involves more than two.

[10] **Tawarruq** = also referred to as "Reverse Murabahah", "Double Murabahah" and "Commodity Murabahah

Islamic banking operations are not contributing to these goals; they are essentially guided by profit considerations.

CONCLUSION AND FUTURE OUTLOOK

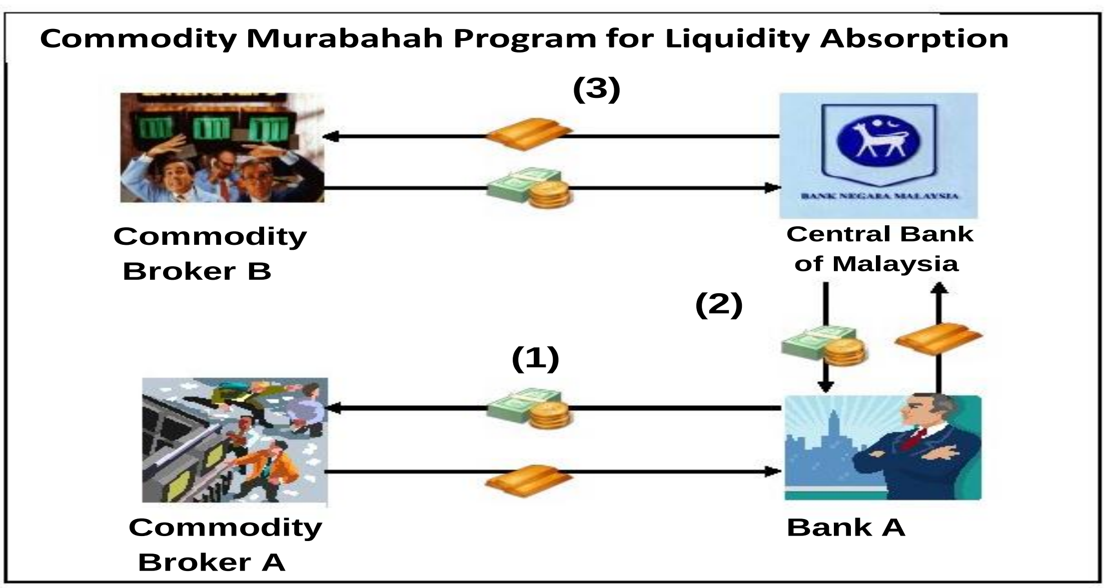
Admittedly, profit is important, rather imperative, but cannot be the sole criterion in evaluating their performance.

Like mainstream banks, they too are diverting the savings of those at the lower rungs of society to the richer classes. Researches in the direction of the uses of funds may prove rewarding. In addition the distribution of earnings between the owners of banks and the depositors especially the smaller ones, may be found much skewed in favor of the former.

Commodity contracts may not individually defy the Shari'ah norms, but their overwhelming use is worrisome. Naturally, debt transactions dominate the scene at the cost of real economy. The use of deferred contracts seems to have already been carried too far. Of late, even Tan Sri Dr Zeti Akhtar Aziz, the illustrious governor of Bank Negara Malaysia has advised Islamic banks to curb the temptations of using fixed return transactions. Presumably it is time to apply the sharia'h objective of ***"sadd-aldharai***" that closes the potential avenues for circumventing the shari'ah: more so its objectives and spirit.

It is not the permissibility of murabahah contracts per se but their indiscreet use and faulty structuring -- guaranteeing in many cases not only a fixed profit rate bench marked on interest but also the return of the principal through buy-back provisions - which is fueling the perception that from Islamic banks interest is out but interest is in; it only walks in an Islamic cloak (Hasan 2009).

YEAR	2007 RM,000	2008 RM ,000	Average%
BBA	6,537.602.00	6,511,849.00	**8.4**
Ijarah	39,763.00	98,984.00	**5.3**
Ijarah Muntahia Bittamlik	307,269.00	216,602.00	**6.2**
Mudarabah	21,994.00	21,316.00	**3.9**
Murabaha	1,102,177.00	5,911,259.00	**50.9**
Musharakah	50,000.00	50,000.00	**7.5**
Bai-Al-Inah cash note	813,672.00	1,061,477.00	**5.1**
Bai-Al-Inah	140,304.00	182,882.00	**8.9**
Istisna'	190,241.00	633,533.00	**3.1**
Others	38,540.00	29,540.00	**2**
Total	9,041,562.00	10,917,462.00	**100%**



Source: [15]

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