

ISLAMIC FINANCE 1ST

Islamic Finance 1st is a Monthly Islamic Finance e-Notes published by SALIHIN Academy

- Bai al-Sarf -

DEFINITION

- An exchange contract of money for money of the same or different type.
- Money is a medium of exchange that can be in the form of currency, gold, silver, or other forms accepted by Shariah.
- For the purpose of this e-notes, bai` al-sarf refers to a contract of exchange of the same or different currency.

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

...whereas Allah SWT has permitted trading and forbidden usury...

الذَّيْبُ بِالذَّيْبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْبُرُّ بِالْبُرِّ وَالشَّعِيرُ بِالشَّعِيرِ وَالتَّمْرُ بِالتَّمْرِ وَالْمِلْحُ بِالْمِلْحِ مِثْلًا بِمِثْلٍ سَوَاءٌ بِسَوَاءٍ يَدًا بِيدٍ، فَإِذَا اِخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إِذَا كَانَ يَدًا بِيدٍ

"[Exchange of] gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, or salt for salt [shall be] in equal quantities and hand to hand (spot). If they differ in type, you may trade them as you wish provided it is hand to hand (without deferment on either side)"

CURRENCY EXCHANGE MODUS OPERANDI

Seller sells the commodity for RM40 million.

BUYER

SELLER

Buyer paid the commodity on the spot in \$10 million.

SPOT EXCHANGE IN CURRENCIES

Currency	USD	MYR
USD	1. On the spot 2. At par	1. On the spot 2. At prevailing/ agreed rate
MYR	1. On the spot 2. At prevailing/ agreed rate	1. On the spot 2. At par

ARRANGEMENT OF BAI' AL-SARF WITH IJARAH AL-KHADAMAT (SERVICES CONTRACT)

- Transfer of money (remittance) in a different currency;
- Cash withdrawal in a different currency; and
- Other related services such as the service of counting coins.

Bai` al-sarf and ijarah al-khadamat may be combined in one document.

ARRANGEMENT OF BAI' AL-SARF WITH PROMISE (WA'D)

The parties may provide:

- A unilateral binding (wa'd) to another party
- Two separate unilateral promises (wa'dan) to each other
- Bilateral binding promise (muwa'adah) to execute bai` al-sarf in the future.

ARRANGEMENT OF BAI' AL-SARF WITH AGENCY (WAKALAH)

May appoint an agent to execute bai` al-sarf and to take possession or deliver the currency on their behalf.

COMPONENTS

CONTRACTING PARTIES

- Seller & buyer.
- Natural person or a legal entity with legal capacity.
- Any party may enter through an agent.

OFFER (IJAB) & ACCEPTANCE (QABUL)

- Ijab & qabul (sighah) represent the mutual consent of the contracting parties.

SUBJECT MATTER

- Known currency & delivered during contract session.
- Determined and mutually agreed currency at the time of contract execution.

DIFFERENT CURRENCY

- When the exchanged currencies are different, the transaction may be done at the prevailing currency rate or any mutually agreed rate at the time of the contract execution.

SAME CURRENCY

- In the event that the exchanged currencies are the same, the transaction shall be done at par.

DELIVERY OF CURRENCY

- Take place in full before the end of contract session.
- Earnest money (urbun) and conditional option (khiyar al-shart) shall not apply in bai` al-sarf.

POSSESSION OF CURRENCY

- Shall be in the form of physical possession (qabd haqiqi) or constructive possession (qabd hukmi).
- The buyer shall take possession of the exchanged currency upon delivery of the currency by the seller to the buyer.
- The seller shall continue to have responsibility to effect delivery, and bear the risk of the exchanged currency prior to the buyer taking physical or constructive possession of the exchanged currency.