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SHARIAH CONTRACT SERIES

SALIHIN ACADEMY SDN BHD

ISLAMIC FINANCE 1ST

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

- Murabahah Contract -
بيع المرابحة

***Editor's Note: For** year 2021, Islamic Finance e-Notes will be sharing series on Shariah Contract. The main reference for the Shariah Contract will be the Shariah standards and guidelines provided by Bank Negara Malaysia (BNM). It is aim to summarize and highlight the important points extracted from the guidelines.*

NATURE OF MURABAHAH

بيوع الأمانات
TRANSACTION BASED ON TRUST

Transaction Based On Disclosure of Cost and Profit/ Loss

- Normal Bargaining Sale (Bay' al-Musawamah)
- Fiduciary Sales (Buyu' al-Amanah)

Bai' al-Murabahah Cost-Plus Sale **مرابحة**	Tawliyyah **تولية**	Wadiah / Hatitah **وضيعة / حطيطة**	Itima **ائتمان**
Sale in which the object is sold at a price covering the purchase price plus a profit margin agreed upon.	Resale at the stated original cost with no profit or loss to the seller.	The seller resells the object at a discount from the original cost at which the object was obtained.	The buyer ask to buy according to what the seller used to sale.

PROOFS

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

"Whereas Allah SWT has permitted trading and forbidden usury." (al-Baqarah: 275)

Some scholars have made Murabahah analogous to a form of sale called Tawliyyah (sale at purchase price without making profit). This is because the Prophet (pbuh) purchased a female camel from Abu Bakr r.a. as transportation to migrate to al-Madinah. Abu Bakr r.a. wanted to give it to the Prophet (pbuh) free-of-charge and the Prophet (pbuh) refused and said, "I will preferably take it at the acquisition price." This Hadith indirectly implied that a commodity can be sold at the cost price and also at the cost price with mark up.

OVERVIEW

In the context of Islamic financial transaction, an IFI perform both roles as a trader and a financier under the Murabahah contract. As a trader, the IFI undertake to acquire a specific asset from the supplier based on the customer's specification and subsequently sells the asset to the customer with full disclosure of the asset's acquisition cost and profit margin. Nonetheless, IFI may appoint the customer as an agent to acquire the asset on its behalf for the purpose of murabahah transaction.

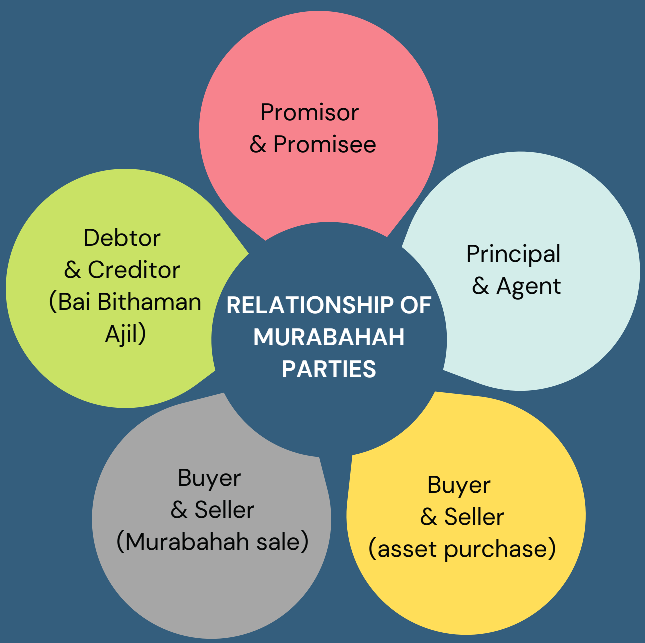
SHARIAH REQUIREMENTS

Murabahah is a sale and purchase contract which is binding in nature. Thus, the contract shall not be terminated unilaterally by any of the contracting parties.

Components of Murabahah

CONTRACTING PARTIES

- *Seller & purchaser*
- *Possess legal capacity*
- *Natural or legal person*
- *May conclude via an agent*
- *Offer and acceptance via accepted methods of customary business practice (`urf tijari)*
- *Other terms or conditions mutually agreed and must not contravene with Shariah shall be binding on the parties*



ASSET

- *Recognised by Shariah, valuable, identifiable and deliverable*
- *In existence and owned by the seller*
- *Tangible/ intangible asset (include intellectual properties & usufructs)*
- *Assets under construction/ having debt nature shall not be traded*

- *Involvement of ribawi asset shall meet the following conditions:*
  (a) the murabahah contract shall not be effected on the ribawi asset within the same type and category
  (b) the murabahah contract shall not be effected on the ribawi asset within the same category but of different type of deferred basis.

- *Transfer of ownership shall take effect by the seller disposing of the right of ownership (takhliyah) resulting in the purchaser having access to the asset (tamkin) and assuming its risk based on Shariah or 'urf tijari*
- *Can be physical possession (qabd haqiqi) or constructive possession (qabd hukmi).*
- *Multiple Murabahah contracts on the same asset shall not be entered into simultaneously.*
- *Murabahah contract may conlcude on a group of assets between the same contracting parties at the same time*

PRICE

- *Mutually agreed*
- *Disclosure of acquisition cost (may include direct expenses, not indirect expenses) & added mark-up (with reference rate adopted) with agreed currency*
- *Cash or deferred payment basis.*
- *Can reschedule the payment with additional securities from the purchaser*
- *In the event of default, the seller may purchase whole/ part of asset from the defaulting purchaser in cash at a mutually agreed price (on the basis of set-off (muqassah)).*
- *Asset may be leased to the purchaser on the basis of lease which ends with acquisition of ownership of the asset (ijarah muntahia bi al-tamlik).*

Risks in Murabahah Contract:

- ***Operational Risk:*** *Arising from the asset ownership,*
- ***Market Risk:*** *Potential losses in the value of the asset owned by IFI*
- ***Credit Risk:*** *Losses associated with the potential failure of the customer to settle the outstanding debt obligation.*

ARRANGEMENT OF MURABAHAH WITH OTHER CONTRACT OR CONCEPT

Arrangement of Murabahah with Wa'd (Murabahah to the Purchase Orderer) المرابحة للآمر بالشراء

Murabahah to the purchase orderer (MPO) refers to an arrangement whereby the purchase orderer (purchaser) promises (wa`d) to purchase an identified and specified asset from a seller on murabahah terms upon the latter's acquisition of the asset.

Arrangement of Murabahah with Kafalah

A guarantee may be arranged to guarantee the purchase of the Murabahah asset in the case of default by the purchase orderer upon its acquisition by the seller. A guarantee may also be arranged to guarantee the payment of the outstanding debt amount of the Murabahah sale in the case of default by the purchaser.

Arrangement of Murabahah to the Purchase Orderer with Wakalah

The seller may appoint the purchase orderer as its agent (purchasing agent) to purchase the asset from the supplier on behalf of the seller as the principal (muwakkil).

Arrangement of Murabahah with Takaful

Upon entering into the contract, the seller may require the purchaser to contribute to a takaful coverage to guarantee the payment of the debt obligation under murabahah contract in the event of loss of legal capacity by the purchaser.

Arrangement of Murabahah with Hamish Jiddiyah

The seller may require the purchaser to place a security deposit (hamish jiddiyyah) to secure the undertaking to purchase the asset. The security deposit may be used to compensate against actual loss where the purchaser fails to purchase the asset from the seller.

Arrangement of Murabahah with Rahn

The collateral in murabahah contract shall be utilised to recover payment of the outstanding debt amount.

***Hamish Jiddiyyah** : An amount paid by the orderer of the purchase upon a request from the purchaser. If the orderer declines to purchase the asset, the actual damage incurred by the purchaser should be reimbursed from hamish jiddiyyah.*

The purchaser would deduct the actual amount of the loss incurred only, if there is an excess amount, it will be returned to the orderer.

***Urbun:** An amount of money paid in advance to the seller. In the case of urbun, the purchaser takes the full amount of the urbun whether it is more or less than the damage.*

OPERATIONAL REQUIREMENTS

Principle 1	*IFI must establish comprehensive internal policies and procedures to ensure Murabahah transaction comply with Shariah and are conducted based on sound practices as well as within proper oversight arrangement (inclusive of Board of Director, SC and Senior Management's responsibilities)*
Principle 2	*IFI must identify and establish legal documentation, policies and procedures to ensure the transaction is valid and implemented in accordance with Shariah (from the acquisition of asset, sale of asset and inventory management.*
Principle 3	*IFI shall provide relevant information to enable relevant stakeholders understand Murabahah transaction*
Principle 4	*IFI must institute and implement sound risk management system to effectively manage risks associated with murabahah contract (inclusive of risk management policies, risk identification, risk management, risk control and mitigation, risk monitoring and reporting*

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