SHARIAH IN ISLAMIC FINANCE

MOHD NAZRI CHIK
Shariah Compliance Risk Management
Risk Management Division
Bank Islam Malaysia Berhad
Allah S.W.T. says ...

“And verily, this is My Straight Path, so follow it. And do not follow (other) paths, for they will separate you away from His (Allah) path. This is what He has ordained for you; so that you may become al-Muttaqin (the pious and righteous person who fear Allah much and abstain from all kinds of sins and evil deeds which He has forbidden.)”

(Surah al-An’am: 153)
Khalifah ‘Umar bin al-Khattab RA said to the traders in the Madinah al-Munawwarah’s market:

“O traders! Do not trades in our market for those who not possesses knowledge (of Islamic commercial laws); because he may consume riba willingly or unwillingly (because of the lacks of knowledge).”
Introduction to *Fiqh al-Mu’amalat al-Maliyyah*

- Theory of *Mal* (Property) and *Milkiyyah* (Ownership) in *Shariah*
- General Prohibitions in *Mu’amalat* Contracts
- Theory of ‘*Aqad* (Contract) in *Mu’amalat*
- Types of Shariah Contracts
- Essential Elements (*Arkan*) and Necessary Conditions (*Shurut*) of *Shariah* Contract
WHAT IS SHARIAH?

- **Divinely revealed** principles governing faith, conduct and legal injunctions.

- **Ready made and given guidance**

- In most cases is in the form of general principles:
  - Prohibition of riba
  - Conclusion of contract by consent
  - Obligation of fulfill all obligations
  - Recommendations of having attestation and security/collateral
<table>
<thead>
<tr>
<th><strong>Fiqh</strong></th>
<th><strong>Fiqh al-Mu’amilat</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>➢ End product of jurists’ (fuqaha’) interpretations in legal injunctions matters</td>
<td>➢ Mu’tamalat literally means transactions</td>
</tr>
<tr>
<td>➢ To be constructed, developed or redefined to suit day to day application of Shariah principles</td>
<td>➢ A branch of fiqh i.e. Islamic substantive law that deals with commercial aspect.</td>
</tr>
<tr>
<td>➢ In specific presentation for a specific case.</td>
<td>➢ Deals with:</td>
</tr>
<tr>
<td></td>
<td>✓ Conclusion and revocation/nullification of a contract</td>
</tr>
<tr>
<td></td>
<td>✓ Various forms of contract to achieve a given economic benefit</td>
</tr>
<tr>
<td></td>
<td>✓ Effects of these contracts</td>
</tr>
<tr>
<td></td>
<td>✓ Creation of new contracts to meet the human needs</td>
</tr>
</tbody>
</table>
GENERAL SHARIAH COMPLIANCE

1. The faith and belief (‘aqidah) of the Bank’s personnel.

2. Products and Services of the Bank
   - Initiation of Products and Services
     - Not involving *riba*, *gharar* and *maysir*.
     - Must be approved by the SSC.
   - Documentation of the products
   - Implementation/operation of the products

3. Other activities of the Bank
   - Promotion campaigns, engagement with/ of third parties as marketing or collecting agent, vendor etc are to be always in compliance with *Shariah*.

4. Activities of the Bank staff
   - Basis of IB is the ‘*aqidah* that human beings and the universe are ultimately owned by Allah SWT.
   - Ultimately, they are answerable before Allah SWT on all their activities.
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THEORY OF MAL

1. MUTAQAWWIM & GHAIR MUTAQAWWIM
   - **Mutaqawwim** – thing that can be possessed physically and its benefit is permissible by the Shariah to be enjoyed, like fixed and movable assets and foods.
   - **Ghair Mutaqawwim** - thing that may not be possessed or the benefit of which is prohibited from being enjoyed, like a river, a public property or a pig or wine.

2. SIMILAR & DISSIMILAR
   - **Similar** - thing which can be matched with another in a market without any difference causing a difference in price e.g. a grain of rice.
   - **Dissimilar** - thing which normally cannot be matched with another in a market without any difference causing a difference in piece e.g. a cow, certain land etc.

3. LANDED & MOVABLE
   - **Landed (‘Iqar)**
   - **Movable (Manqul)**

4. PERISHABLE & NON-PERISHABLE
   - **Perishable** - thing which parishes by consumption, like any kind of food.
   - **Non-perishable** - item is a thing which will not destroy with repeated use, like an article of clothing, a car or a house.

**DEFINITION:** Everything that value and guaranteed by whoever damages it
THEORY OF OWNERSHIP (MILKIYYAH)

- Connection between a person and a property recognised by the Shariah
- Preventing another from benefiting from it without his permission
- Permitting its owner to dispose of it in any manner he likes except that which is prohibited by the Shariah.

### 1. FULL OWNERSHIP (Milk al-Tam)

Absolute ownership of a property physically together with its benefit acquired by:

- Acquisition
- Contracts of transfer of ownership ('uqud)
- Inheritance
- Breeding

### 2. PARTIAL OWNERSHIP (Milk al-Naqis)

- Ownership of property only
  - Lessor of a property in Ijarah cannot use his property.
- Ownership of benefit only
  - Lessee of a property in Ijarah does not own the property but he has the right to use the property owned by another for payment of a rental.

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LesseexofxaxpropertyxinxIjarahxdoesxnotxownxthexpropertyxbutxhexhasxthexrightxtoxusexthexpropertyxownedxbyxanotherxforxpaymentxofxaxrental.
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PROHIBITIONS IN MUA’MALAT CONTRACTS

*Prima-facie* free from *PROHIBITIVE LIST:*

<table>
<thead>
<tr>
<th>FEATURE</th>
<th>WHY?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Interest (<em>riba</em>)-free</td>
<td>➢ Money is just a medium of exchange.  &lt;br&gt;➢ It cannot earn more money by itself without putting it into real productive actions.</td>
</tr>
<tr>
<td>2. Uncertainty or lack of knowledge (<em>gharar</em>)-free</td>
<td>➢ Avoid any dispute due to unfairness in dealing caused by the lack of knowledge.</td>
</tr>
<tr>
<td>3. Gambling (<em>maysir</em>)-free</td>
<td>➢ Zero-sum game wherein it just transfers the wealth, not creating new wealth.</td>
</tr>
<tr>
<td>4. Not involved in selling or leasing or partnership in something is impure or not <em>halal</em></td>
<td>➢ Religious and ethical value consideration or public policy.</td>
</tr>
<tr>
<td>5. Not in direct conflict with “established” Shariah principles in <em>mu’amalah.</em></td>
<td>➢ To ensure every contract behaves in its proper context.  &lt;br&gt;➢ This does not negate freedom of contract (<em>hurriyyah al-ta’aqud</em>)</td>
</tr>
</tbody>
</table>
1. PROHIBITION OF RIBA

Comparing *riba* with zakat and charity

Praising zakat and charity - not *riba*

“*That which you lay out for increase through the property of other people (riba), will have no increase with Allah. But that which you lay out for charity (zakat), seeking the Countenance of Allah (will increase). These are who will get a recompense multiplied.*”

(Surah al-Rum: Verse 39)
1. PROHIBITION OF RIBA

- Attaching the practice of *riba* with the Jews.
- Consider the practice of *riba* as an iniquity (*zulm*).

“160 - For the iniquity (*zulm*) of the Jews, We made unlawful for them certain goods and wholesome which had been made lawful for them; and in that they hindered many from Allah’s Way. 161 - That they took *riba*, though they were forbidden; and that they devoured men’s substance wrongfully. And we have prepared for those among them who reject Faith a grievous punishment.”

*(Surah al-Nisa: Verse 160-161)*
1. PROHIBITION OF RIBA

STAGE 1

Prohibiting the practice of charging of double and multiple riba

STAGE 2

STAGE 3

STAGE 4

“O you who believe! Do not devour riba, doubled and multiplied; but fear Allah; that you may (really) prosper.”

(Surah Ali ‘Imran: Verse 130)
1. PROHIBITION OF RIBA

Final revelation on the prohibition of *riba*. Conclusively prohibits all kind of *riba*

“Those who eat *riba* will not stand (on the Day of judgment) except like the standing of Shaitan leading him to insanity. That is because they say: “Trading is only like *riba*,” whereas *Allah has permitted trading and forbidden riba*. So whosoever receives an admonition from his God and stops eating *riba* shall not be punished for the past; his case is for *Allah* (to judge). But whoever returns (to *riba*); such are the dweller of the Fire - they will abide therein.”

(Surah al-Baqarah: Verse 275)
1. PROHIBITION OF RIBA

**Final revelation** on the prohibition of *riba*. Conclusively prohibits all kind of *riba*.

From Jabir RA, he said: “Rasulullah SAW cursed the receiver and the payer of *riba*, the one who records it and the two witnesses to the transaction and said: **they are alike (in guilt).**”

(Narrated by Muslim)
1. PROHIBITION OF RIBA

Definition of Riba

- Literally *(lughatan)* - excess, increase, expansion, growth

- Technically *(istilahan)*:
  - **Definition 1**: Every excess in return of which no reward or equivalent counter value is paid
  - **Definition 2**: Predetermined excess above the loan received by the creditor conditionally in relation to a specified period.
1. PROHIBITION OF RIBA

 TYPES OF RIBA

 RIBA BUYU’ (Riba in trading)

 RIBA DUYUN (Riba in lending and borrowing)

 RIBA FADHL (Exchange of ribawi materials of different weight, numbers)

 RIBA NASI’AH @ RIBA YAD (Payment of ribawi items trading not immediate)

 RIBA QARDH (Imposed from the beginning)

 RIBA JAHILIYYAH (No riba at the beginning, imposed after default)

It is riba either:

- Imposed by the lender on the borrower in the contract; OR
- Promised by the borrower to the lender
1. PROHIBITION OF RIBA

Examples of Riba Duyun:

1. The debtor borrowed money to be paid in certain time, and the amount is more than the amount borrowed - RIBA QARDH

2. A creditor gives a periodic loan and takes monthly interest. The capital sum lasts until the expiration of the period. Upon expiry, if the debtor cannot pay, the period to pay back the capital will be extended and interest will be charged - RIBA QARDH

3. Arising out of exchange contract (‘uqd mu’awadhat), a buyer must pay a consideration. If he failed to settle on time, the period will be extended by increasing the amount (principle + interest) - RIBA JAHILIYYAH or RIBA QARDH based on the agreement.
1. PROHIBITION OF RIBA

Occur out of an exchange between two ribawi materials in the same kind where the necessary rule(s) is (are) not observed

Guided by the saying of Rasulullah SAW:

‘ILLAH (RATIO DECIDENDI) FOR PROHIBITION:

- Gold & silver (and other things serve same purpose) - Medium of exchange (currency)
- Wheat, barley, dates & salt - Staple foods

Ubadah bin al-Samit RA narrated that Rasulullah SAW said: “Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt - like for like, equal for equal, and hand-to-hand (spot); if the commodities differ, then you may sell as you wish, provided that the exchange is hand-to-hand or spot transaction.”

(Narrated by Muslim)
1. PROHIBITION OF RIBA

Riba in Islamic Banking?

Bank  Customer

1) Buy at RM100,000  SELL  at RM120,000
2) Buy at RM100,000  LEASE  at RM120,000

NO riba but BEWARE of gharar


1. PROHIBITION OF RIBA

**Examples of Riba Buyu':**

<table>
<thead>
<tr>
<th>Type</th>
<th>CURRENCY</th>
<th></th>
<th></th>
<th></th>
<th>STAPLE FOOD</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Gold</td>
<td>Silver</td>
<td>USD</td>
<td>RM</td>
<td>Wheat</td>
<td>Barley</td>
<td>Dates</td>
<td>Salt</td>
</tr>
<tr>
<td>CURRENCY</td>
<td>Gold</td>
<td>Gold</td>
<td>Green</td>
<td>Green</td>
<td>Red</td>
<td>Green</td>
<td>Red</td>
<td>Red</td>
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<td>Silver</td>
<td>Silver</td>
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<td>Red</td>
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<td>Green</td>
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</tr>
<tr>
<td>STAPLE FOOD</td>
<td>Wheat</td>
<td>Red</td>
<td>Red</td>
<td>Red</td>
<td>Red</td>
<td>Green</td>
<td>Red</td>
<td>Red</td>
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<td></td>
<td>Barley</td>
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<td>Dates</td>
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<td>Salt</td>
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<td>Red</td>
</tr>
</tbody>
</table>

- On the spot and same amount, quantity or weight (at par)
- On the spot basis only
- Free from the above conditions
# 2. PROHIBITION OF GHARAR

## Definition of Gharar

- **LITERALLY (LUGHATAN):**
  - Deceit/ fraud (*khid’ah*), uncertainty, danger/ risk, and peril/hazard (*khatar*) that might lead to destruction and loss.

- **TECHICALLY (ISTILAHAN):**
  - Uncertainty and ignorance of the contracting parties over the substance or attributes of the object of sale, or of doubt over its existence and availability at the time of contract (*majlis al-’aqd)*.

### Gharar that causes a contract to be invalid is gharar fahish i.e. major or excessive gharar

### TYPES OF GHRAR

- **Gharar Fahish (Major/excessive gharar)**
- **Gharar Yasir (Minor Gharar)**
- **Gharar La Yumkin Ihtiraz ‘Anhu (Unavoidable Gharar)**

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SHARIAH COMPLIANCE RISK MANAGEMENT, BANK ISLAM
2. PROHIBITION OF GHARAR

- *Gharar* which is so great that it becomes unacceptable, OR
- is so vague that there is no means of quantifying it.

<table>
<thead>
<tr>
<th>RELATING TO...</th>
<th>GHARAR IN THE SALE (BAY’) CONTRACT...</th>
</tr>
</thead>
</table>
| Seller and Buyer | ✿ Not capable of taking responsibilities e.g. not of majority age (*baligh*) or drunk.  
| | ✿ Prohibited from disposing of his property e.g. declared bankrupt  
| | ✿ Coerced |
| Asset | ✿ Does not exist |
| | ✿ Not free from encumbrances  
| | ✿ Not specific or not according to its specifications |
| Price | ✿ Not mentioned in one absolute amount |
| | ✿ Two prices in one contract  
| | ✿ Mention of *ibra’* in absolute amount or percentage of selling price |
| Contract | ✿ Conditioned (in sale/ *bai’*)  
| | ✿ Not expressed in absolute and decisive language e.g. with “shall”, “will” and “agree to”.

Gharar Fahish
2. PROHIBITION OF GHARAR

Objective of the Prohibition of Gharar

To avoid any dispute due to unfairness in dealing caused by the lack of knowledge.

“O believers! Do not eat up your property among yourselves unjustly; except it be a trade amongst you, by mutual consent.”

(Surah al-Nisa’: Verse 29)
2. PROHIBITION OF GHARAR

Riba vs Gharar

**RIBA**
- FIXED in theory and application

**GHARAR**
- NOT FIXED in application as its application changes with the quality of knowledge, legal framework, technology etc.
- Very much dynamic
- Is about mental exercise

“*These are the main challenges that we are facing, especially in our product development efforts*”
3. FREEDOM OF CONTRACT (HURRIYAH AL-TA’AQUD)

Rasulullah SAW said:

أَنَّ الْمُسْلِمِينَ شَرَطَاهُمُ الْحَرَامَ، إِلاَّ شَرَطَةٌ أَحْلَ اِحْلَامًا، أَوْ حَرَمِ حَالًا

“Muslims are bound by the conditions they made; except a condition that legalises impermissible act or invalidates permissible act.”

(Narrated by Imam al-Tirmizī)
4. PERMISSIBILITY AS ORIGINAL STATUS OF MATTERS

Salman al-Farisi narrated that Rasulullah SAW said:

الحلال ما أحل الله في كتابه، والحرام ما حرم الله في كتابه، وما سكت عنه فهو مما عفا عنه

"The halal is which Allah has made Lawful in His Book, and the haram is that which He has forbidden and that which He kept silent about is permitted as a favour to you."

(Narrated by Ibnu Majah & al-Tirmizi)

Fiqh legal maxim (qa’idah al-fiqh) of Shafi’e mazhab:

الأصل في الأشياء الإباحة حتى يدل الدليل على التحريم

“The status of all matters (other than rituals) is permissible; until an evidence is given that a certain matter is prohibited.”
5. CUSTOM IS OF FORCE

Fiqh legal maxim (qa’idah al-fiqh):

العادة محكمة

“Custom is of force.”

In many Shariah commercial contracts, many things become permissible following customs.

6. RATIOCINATION

Many Shariah rulings relating to commercial contracts are based on their rationale, effective causes and benefits. The prohibition or permissibility in each case ceases or continues in accordance with its effective cause.
There are several *fiqh* legal maxim regarding bringing ease and removal of hardship:

1. الأمر إذا ضاق اتسع
   "Where a matter is narrow, it’s become wide."

2. المشقة تجلب التيسير
   “Hardship begets facility.”
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THEORY OF ‘AQAD

Barbati defined “aqad” in his kitab “Inayah ‘ala Fath al-Qadri”:

“Legal relationship created by the conjunction of two declarations, from which flow legal consequences with regard to the subject matter”

Definition defines the essential elements of an ‘aqad:

1. The offer (ijab) and acceptance (qabul) executed are legally binding the parties in the contract;
2. The contracting parties; and
3. The subject matter of ‘aqad on which the aqad gives the effect.

‘Aqad can be translated as “contract”
## FORMS OF ‘AQAD

<table>
<thead>
<tr>
<th><strong>1. VERBAL (Lisan)</strong></th>
<th>Original form of ‘aqad</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2. WRITTEN (Kitabah)</strong></td>
<td>Recommended (sunnah) when a debt is involved.</td>
</tr>
<tr>
<td><strong>3. BY DEED AND WELL KNOWN SIGNS OF A DUMB MAN</strong></td>
<td>Permitted where the items sold does not cost a lot of money.</td>
</tr>
</tbody>
</table>

Known as “bai’ al-ta’ati.”

“O believers! When you contract a debt for a fixed period, write it down. Let a scribe write in down in justice between you. Let not the scribe refuse to write, as Allah has taught him...”

(Surah al-Baqarah: Verse 282)
<table>
<thead>
<tr>
<th>Agenda</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>o</strong> Introduction to <em>Fiqh al-Mu’amalat al-Maliyyah</em></td>
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</tr>
</tbody>
</table>
SHARIAH CONTRACTS IN ISLAMIC BANKING

SHARIAH CONTRACTS

PARTICIPATING
- Syirah ‘Amal
- Syirkan ‘Inan
- Mudharabah

IMMEDIATE PAYMENT
- Bay’ Dayn
- Bai’ Sarf (FX) & Trading of Gold & Silver

DEFERRED PAYMENT
- Bai’ Murabahah & BBA
- Bai’ Tawliyyah
- Bai’ Salam
- Bai’ Istisna’
- Bai’ Istijrar
- Bai’ Inah
- Ijarah, AITAB/IMB

SUPPORTING
- Rahnu
- Kafalah
- Wakalah
- Wadi’ah
- Qardh
- Hiwalah
- Tabarru’, Waqf & Hibah
- Ibra’ & Muqasah
SHARIAH CONTRACTS ACCORDING TO THEIR PURPOSES

- **TRANSFER OF OWNERSHIP** ('Uqoud Tamlikat)
  - With exchange (Mu'awadhat): All trading contracts & qardh
  - Without exchange (Tabarru'at): hibah, waqf, sadaqah

- **FOR SECURITIES** ('Uqoud Tawthiqat)
  - Rahn (charge)
  - Kafalah & Dhamanah (Guarantee)

- **RESTRICTIONS** ('Uqoud Taqydah)
  - Taliis (Bankruptcy)
  - Hajar (Declaring a person as a prodigal/safih)

- **FOR SAFE CUSTODY** (Hifz) - Wadi'ah

- **SHARED OWNERSHIP** ('Uqoud Ishtirak)
  - Mudharabah
  - Musharakah

- **APPOINTMENT & PERMISSION** ('Uqoud Ilaqaq)
  - Wakalah (Appointment of Agent)
  - Tawliyyah (Appointment of Officer)

- **LETTING GO OF RIGHTS** ('Uqoud Isgaiq)
  - Khasm (Discount)
  - Ibra' (Rebate)
APPLICATION OF SHARIAH CONTRACTS

PROFIT & LOSS

Customer \(\rightarrow\) Revenue \(\rightarrow\) Depositors

\[\text{Bank Islam}\]

\(\leftarrow\) Financing \(\leftrightarrow\) Dividen/Hibah

\(\leftarrow\) Deposit

BALANCE SHEET

<table>
<thead>
<tr>
<th>Assets</th>
<th>Liabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASSET-BACKED TRANSACTIONS</strong>&lt;br&gt;BBA, Murabahah, Ijarah, AITAB, Istisna, Salam, Bai’ Sarf, Bai’ Dayn, Bai’ Inah, Musharakah Mutanaqisah</td>
<td><strong>DEMAND DEPOSIT</strong>&lt;br&gt;Wadi’ah Yad Dhamanah, Qardh, Wadi’ah + Mudharabah</td>
</tr>
<tr>
<td><strong>PROFIT SHARING TRANSACTIONS</strong>&lt;br&gt;Mudharabah/ Musharakah</td>
<td><strong>INVESTMENT ACCOUNTS</strong>&lt;br&gt;Mudharabah Mutlaqah, Wakalah bil-Ujrah</td>
</tr>
<tr>
<td><strong>FEE BASED SERVICES</strong>&lt;br&gt;Wakalah, Kafalah</td>
<td><strong>SPECIAL INVESTMENT ACCOUNTS</strong>&lt;br&gt;Mudharabah Muqayyadah</td>
</tr>
</tbody>
</table>

OFF BALANCE SHEET

| Restricted investments | Direct investors |
SHARIAH CONTRACTS vs ECONOMIC BENEFIT

Product Development

ECONOMIC BENEFIT

HOUSE FINANCING

- Murabahah for the Purchase Orderer OR
- Ijarah or IMB OR
- Diminishing Musharakah OR
- Istisna’ or Parallel Istisna’
o Introduction to *Fiqh al-Mu’amalat al-Maliyyah*

o Theory of *Mal* (Property) and *Milkiyyah* (Ownership) in *Shariah*

o General Prohibitions in *Mu’amalat* Contracts

o Theory of ‘*Aqad* (Contract) in *Mu’amalat*

o Types of Shariah Contracts

o Essential Elements (*Arkan*) and Necessary Conditions (*Shurut*) of Shariah Contract
“To make a contract valid, it must have essential elements (*arkan*) and each essential element (*rukn*) must meet the necessary conditions (*shurut*).”
# 1. CONTRACT OF SALE (BAI’) - MURABAHAH

<table>
<thead>
<tr>
<th><strong>Bai’ Murabahah (Ordinary Murabahah)</strong></th>
<th>Agreement where the seller (Bank) sells the goods that are already owned and available in its possession to a customer at acquisition cost (purchase price plus other direct costs) with the inclusion of an agreed profit margin.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bai’ Murabahah For Purchase Orderer (Murabahah lil-Amir bil Syira’)</strong></td>
<td>Agreement where the seller (Bank) sells goods to a customer at acquisition cost with the inclusion of an agreed profit margin. The goods sold has been purchased and acquired by the seller based on a Promise to Purchase (PP) or order by the customer which can be binding or non-binding PP</td>
</tr>
</tbody>
</table>
| **Bai’ Musawamah** | ➢ General kind of sale where price of the goods to be traded is stipulated between seller and purchaser without any reference to the cost incurred by the seller.  
➢ All other conditions relevant to Murābahah are also applicable for Musāwamah as well. |
| **Bai’ Bithaman Ajil** | BBA is simply a method of payment, i.e. “deferred payment.” It applies to all kinds of sales where the payment is deferred whether on the basis of installments or lump sum payment at the end of the tenure. |
1. CONTRACT OF SALE (BAI’) - MURABAHAH

LEGALITY

1. Permissibility of trading during hajj (pilgrimage):

"There is no sin on you if you seek the Bounty of your God (during pilgrimage by trading). Then when leave ‘Arafat, remember Allah (by glorifying His Praises, i.e. prayers and invocations) at the Masy’ar al-Haram."

(Surah al-Baqarah: Verse 198)

2. Allah Taala legalizes sale:

“Allah has permitted trading and forbidden riba.”

(Surah al-Baqarah: Verse 275)
1. CONTRACT OF SALE (BAI’) - MURABAHAH

MODUS OPERANDI

(1) Customer PP - MPO
(3) Bank Sells & Delivers Asset
(4) Pays Price

(2) Bank Buys & Receives Asset @ Customer Buys as the Purchasing Agent of the Bank - MPO
# 1. CONTRACT OF SALE (BAI’) - MURABAHAH

<table>
<thead>
<tr>
<th>RUKUN</th>
<th>SHARAT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Seller</strong></td>
<td>- Capable of accepting responsibilities - ‘aqil (of sound mind), baligh (of age of puberty), rasyid (of age of majority)</td>
</tr>
<tr>
<td><strong>2. Buyer</strong></td>
<td>- Not prohibited from entering into contract - bankrupt or prodigal</td>
</tr>
<tr>
<td></td>
<td>- No coercion is exerted on either of them</td>
</tr>
<tr>
<td><strong>3. Subject matter of sale</strong></td>
<td>- Must exist at the time of sale</td>
</tr>
<tr>
<td></td>
<td>- Must be pure (halal) according to Shariah</td>
</tr>
<tr>
<td></td>
<td>- Must have use according to Shariah.</td>
</tr>
<tr>
<td></td>
<td>- Must be in the ownership of the seller at the time of sale.</td>
</tr>
<tr>
<td></td>
<td>- Must be capable of being delivered i.e. free from any encumbrances</td>
</tr>
<tr>
<td></td>
<td>- Must be known and specific by address, specification or description</td>
</tr>
<tr>
<td><strong>4. Price</strong></td>
<td>- Must be known currency and absolute amount.</td>
</tr>
<tr>
<td><strong>5. Contract: Ijab &amp; Qabul</strong></td>
<td>- Must be absolute and in definite and decisive language.</td>
</tr>
<tr>
<td></td>
<td>✓ Must be unconditional.</td>
</tr>
<tr>
<td></td>
<td>✓ Must not be fixed to a certain time or limited to certain period</td>
</tr>
<tr>
<td></td>
<td>✓ Must be in present or past tense. Must not be in future tense,</td>
</tr>
<tr>
<td></td>
<td>imperative or with the word “agrees to.”</td>
</tr>
<tr>
<td></td>
<td>- Acceptance must agree with the offer.</td>
</tr>
<tr>
<td></td>
<td>- Executed in one and same meeting (majlis ‘aqd)</td>
</tr>
</tbody>
</table>
2. CONTRACT OF SALE (BAI’) - ISTISNA’

- **Istisna’** literally (لغة) - request to construct.

- Technically (اصطلاحا) - agreement to sell to or buy from a customer a non-existent asset which is to be built according to the ultimate buyer’s specifications and is to be delivered on a specified future date at a predetermined selling price.

**Customer**

1. **Istisna’ 1** - requesting Bank to construct a specified type of asset

2. Undertake to construct the asset & to deliver it in a specific period.

3. **Istisna’ 2/ Parallel Istisna’** - Bank requests sub-contractor to construct the asset & to deliver it in a specific period.

**Contractor**

4. Contractor deliver asset to the Bank

5. Bank deliver the asset

**IFSBI compliant Istisna’ arrangement**
2. CONTRACT OF SALE (BAI’) - ISTISNA’

CURRENT ARRANGEMENT

1. Customer purchases a property under construction from manufacturer/vendor/contractor

(Sale & Purchase Agreement/Contract Agreement)

2. Istisna’ Purchase Agreement (cash)

3. Istisna’ Sale Agreement (deferred)

IFSBI non-compliant Istisna’ arrangement
2. CONTRACT OF SALE (\textit{BAI’}) - \textbf{ISTISNA’}

**LEGALITY**

1. Subsumed under the general Shariah rules that legalizes sale/trading.

2. *Istisna’* is an exception from general rule of sale contract that the asset must be in existence at the time of *‘aqad*. However, it is permissible based on the practice of Rasulullah SAW. It was narrated that the Rasulullah SAW has requested that a pulpit (a platform for preaching/ \textit{mimbar}) and a finger ring be manufactured for him SAW.

3. Principle of *Istihsan* (public interest or good), the general principles of contracts and the objectives of Shariah.

4. The Council of the Islamic Fiqh Academy (\textit{Majma’ al-Fiqh al-Islamiy}) in its 7th meeting held in Jeddah, Kingdom of Saudi Arabia from 9th - 7th May 1992 has post their resolution on *Istisna’* arrangement.
# 2. CONTRACT OF SALE (BAI’) - ISTISNA’

<table>
<thead>
<tr>
<th>RUKUN</th>
<th>SHARAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Seller</td>
<td>Same of <em>Murabahah</em></td>
</tr>
<tr>
<td>2. Buyer</td>
<td></td>
</tr>
</tbody>
</table>
| 3. Subject matter of sale    | Same as *Murabahah* except **it is to be constructed**. Specific *sharat*:
|                              | ➢ Type, quantity and quality must be clearly specified in the contract. |
| 4. Price                     | Same as *Murabahah*                                                   |
| 5. Contract: *Ijab* & *Qabul* | Same as *Murabahah*                                                   |
3. CONTRACT OF SALE (BAI’) - ‘INAH

LEGALITY

SAC of BNM in the Regional Shariah Scholars Dialogue on 29th June 2006 resolved that:

1. The permissibility of bai’ inah and tawarruq is still a matter of juristic disagreement among the Shariah scholars backed by their own basis of justifications.

2. Bai’ Inah contract is still necessary in the context of local Islamic finance development. However market players are required to strengthen and enhance the operational processes and documentation to comply with the features of bai’ inah as permitted; and

3. Since bai’ inah contract is still regarded as a matter of juristic disagreement among the Shariah scholars, it is more desirable that Islamic financial institutions to limit its use in products which face difficulty in structuring them based on other consensually accepted contracts.
3. CONTRACT OF SALE (BAI’) - ‘INAH

Bai Inah must meet the following requirements:

1. There must be two separate contracts properly executed. First the contract of sale by A to B on deferred payment terms. Second the contract of repurchase by A from B on cash terms, or vice versa.

2. The asset must not be a ribawi material in the medium of exchange category (gold, silver or currency) because all payments for purchases are made in money.

3. Each of the two contracts must have the essential elements (arkan) and each of the essential element must meet the necessary conditions (shurut).

![Diagram showing 1. Property Sale Agreement (cash) and 2. Property Purchase Agreement (deferred)]
3. CONTRACT OF SALE (BAI’) - ‘INAH

SHARIAH ADVISORY COUNCIL OF BANK NEGARA MALAYSIA’S RULING ON BAI’ INAH:

Bai’ Al-‘Inah merujuk kepada satu urusniaga yang mana penjual menjualkan hartanya kepada pembeli dengan suatu harga yang dipersetujui. Kemudiannya pembeli menjual kembali harta tersebut kepada pemilik asal dengan suatu harga yang dipersetujui bersama. Harga bagi kedua-dua ‘aqad adalah berbeza. Antara ciri-ciri yang perlu ada dalam satu urusniaga Bai’ Al-‘Inah adalah seperti berikut:

1. Pembiayaan Bai’ Al-Inah perlu mempunyai dua kontrak yang jelas, iaitu kontrak penjualan harta oleh penjual/ pemilik kepada pembeli dan kontrak penjualan semula harta tersebut kepada pemilik asal.

2. Pembayaran harga dalam salah satu urusniaga atau kontrak mestilah dilakukan secara tunai bagi mengelakkan penjualan/ pembelian hutang dengan hutang.

3. Barangan yang digunakan dalam urusniaga jual dan beli balik bukan barangan ribawi.

4. Kedua-dua urusniaga ini mestilah melibatkan penyerahan hak milik yang sah dari sudut Syara’ dan diterima pakai berdasarkan adat perniagaan semasa (uruf; tijari).

5. Pembiayaan Bai’ Al-‘Inah yang dijalankan ini mestilah memenuhi syarat –syarat Bai’ Al-Inah yang diterima oleh mazhab Syafie.

6. Penentuan harga dan harta yang terlibat dalam kontrak juga mestilah dengan sebenar dan berdasarkan harga yang munasabah atau berdasarkan pasaran.

4. CONTRACT OF SALE (BAI’) - DAYN

The requirements of Shariah concerning *Bai Dayn* are:

1. A debt must have been created through a contract of deferred payment sale of goods or service.
2. The goods must have been delivered or the service must have been rendered *(dayn thabit)*.
3. The trading of the debt must be on cash terms.
5. CONTRACT OF *IJARAH*

- *Ijarah* is a lease whereby lessor buys and then leases out an asset required by lessee for an agreed rental amount and period in exchange for the benefits resulting from the use of the asset.

- Types of Ijarah:
  - *Ijarah* - Operational lease. Does not conclude in a transfer of the leased assets to the lessee.
  - *Ijarah Muntahiah Bittamleek/ Ijarah Thumma Bai’ (AITAB)/ Ijarah wa Iqtina* - Financial lease. Offers the lessee an option to own the asset at the end of the lease period either by (a) gift or (b) a sale at a specified consideration.
# 5. CONTRACT OF IJARAH

<table>
<thead>
<tr>
<th>RUKUN</th>
<th>SHARAT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Lessor</strong></td>
<td>Same as Seller and Buyer in <em>Bai’ Murabahah</em></td>
</tr>
<tr>
<td><strong>2. Lessee</strong></td>
<td></td>
</tr>
<tr>
<td><strong>3. Property/Leased Asset</strong></td>
<td>- Must be owned by the lessor.</td>
</tr>
<tr>
<td></td>
<td>- Must be ready for use (Otherwise, future <em>Ijarah</em> or <em>Ijarah mawsufah bil-dzimmah</em>).</td>
</tr>
<tr>
<td></td>
<td>- Must be delivered to the lessee.</td>
</tr>
<tr>
<td></td>
<td>- Must be specific by address, description or specification.</td>
</tr>
<tr>
<td><strong>4. Benefit</strong></td>
<td>- Must be permissible.</td>
</tr>
<tr>
<td></td>
<td>- Can be fixed in value.</td>
</tr>
<tr>
<td></td>
<td>- Lessor has the power and capability to lease the property.</td>
</tr>
<tr>
<td></td>
<td>- Must be specified including the period of leasing.</td>
</tr>
<tr>
<td><strong>4. Rental</strong></td>
<td>- Must be known currency and absolute amount.</td>
</tr>
<tr>
<td><strong>5. Contract: <em>Ijab &amp; Qabul</em></strong></td>
<td>Same as <em>Bai’ Murabahah</em>.</td>
</tr>
</tbody>
</table>
5. CONTRACT OF IJARAH

SHARIAH ADVISORY COUNCIL OF BANK NEGARA MALAYSIA’S RULING ON AITAB:

Kontrak AITAB perlu mempunyai ciri-ciri berikut:

1. Modus Operandi AITAB hendaklah mengandungi dua akad yang berasingan iaitu ‘aqad sewa (Ijarah) untuk sepanjang tempoh sewaan dan ‘aqad jualbeli (Bai’) selepas tamat tempoh sewaan;

2. Harga jualan selepas tempoh sewaan sebaik-baiknya adalah jumlah amaun sewaan terakhir bagi Ijarah;

3. Sebaik-baiknya institusi kewangan Islam hendaklah melantik pelanggan/ penyewa sebagai ejen/ wakil kepada institusi kewangan Islam tersebut SEBELUM urus niaga jualbeli kenderaan dilaksanakan;

4. Surat cara AITAB perlu memasukkan klausa “akan jual kenderaan tersebut” pada akhir tempoh sewaan dan klausa penebusan bagi penyewa yang membuat bayaran balik awal;

5. Deposit yang dibayar oleh pelanggan kepada penjual kenderaan adalah dianggap sebagai bayaran pendahuluan yang perlu dibayar oleh pihak institusi kewangan Islam dan akan diambil kira dalam penentuan sewaan;

6. Mengikut prinsip Ijarah, institusi kewangan Islam sebagai tuanpunya aset harus menanggung risiko yang munasabah;

7. Institusi kewangan Islam perlu menggalakkan pelanggan AITAB menyertai skim Takaful am dan keluarga dengan memasukkan pengendali Takaful sebagai panel dalam senarai panel insuran mereka; dan

8. Bagi kes-kes pembiayaan semula, penyewa perlu menamatkan kontrak AITAB terlebih dahulu SEBELUM memasuki perjanjian AITAB yang baru.
6. CONTRACT OF MUSHARAKAH

- A contract between two or more parties to contribute capital in a partnership.
- Profits generated by the partnership are shared in accordance with the terms of *musharakah* contract.
- Losses are shared in proportion to the respective contributor’s share of capital.

![Diagram of Musharakah Contract]

**Bank (Partner)**
- **Capital**
  - **Investment**
  - **Profit** shared in accordance with pre-agreed ratio (x:y)
- **Profit & Loss**

**Customer (Partner)**
- **Capital**
  - **Investment**
  - **Loss** shared in accordance to capital contribution.
- **Profit & Loss**

**Diagram Notes:**
- Y %
- X %
6. CONTRACT OF MUSHARAKAH

LEGALITY

1. Quranic verse on the conduct of partners in businesses - “al-khulata” means “al-shuraka’”/ partners:

\[
\text{وَإِنْ كَيْراَمَنْنَا مَخْطَأً لَبَغِّي}
\]

بعضهم على بعض إلا الذين عملوا الصلاححت وقليل ماهم

“...And, truly, many partners (in a business) who oppress one another, except those who believe and work deeds of righteousness, and they are few...”

(Surah Saad: Verse 24)

2. Hadith Qudsi:

قال الله عز وجل: أنا ثالث الشركين ما لم يكن أحدهما صاحبه، فإذا خانه خرجت من بينهما

“Allah SWT said: I am the third of two partners so long as a partner does not betray his companion. If one of the partners betrays the other, I cease to be a partner of them.”

(Narrated by Abu Dawud & Al-Hakim)
## 6. CONTRACT OF MUSHARAKAH

<table>
<thead>
<tr>
<th>RUKUN</th>
<th>SHARAT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Partners</strong></td>
<td>Same as Seller and Buyer in <em>Bai’ Murabahah</em> and:</td>
</tr>
<tr>
<td></td>
<td>- Capable of appointing agents and be appointed as agent.</td>
</tr>
<tr>
<td><strong>2. Capital</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Any asset valued in money</td>
</tr>
<tr>
<td></td>
<td>- Not debt</td>
</tr>
<tr>
<td></td>
<td>- Specific amount</td>
</tr>
<tr>
<td></td>
<td>- From all partners</td>
</tr>
<tr>
<td></td>
<td>- Paid into capital fund</td>
</tr>
<tr>
<td><strong>3. Business</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Must be permissible (<em>halal</em>).</td>
</tr>
<tr>
<td></td>
<td>- Managed by all partners</td>
</tr>
<tr>
<td><strong>4. Profit/ loss sharing</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- According to proportion of shares or according to agreement in fraction, ratio or percentage, not in absolute amount.</td>
</tr>
<tr>
<td></td>
<td>- Loss born by all partners according to proportion of shares</td>
</tr>
<tr>
<td><strong>5. Contract: Ijab &amp; Qabul</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Same as <em>Bai’ Murabahah</em>.</td>
</tr>
</tbody>
</table>
7. CONTRACT OF MUDHARABAH

- An agreement between a capital provider (rabbul mal) and an entrepreneur (mudharib) whereby the rabbul mal would contribute capital to the business which is to be managed by the mudharib.

- Profits generated by the business are shared accordance with the terms of the mudharabah agreement whilst losses to be borne solely by the rabbul mal unless the losses are due to the customer’s misconduct, negligence or breach of contracted terms.
7. CONTRACT OF MUDHARABAH

LEGALITY

1. Rasūlullāh SAW himself travelled to Syām to trade with other people’s money including that of Sayyidatunā Khadijah binti Khuwailid RA

2. Suhayb narrated that Rasulullah SAW said:

“There is blessing in three transactions: credit sales, silent partnership (i.e. muqāradhah or mudhārabah), and mixing wheat and barley for home, not for trading”

(Narrated by Ibnu Majah)
### 7. CONTRACT OF MUDHARABAH

<table>
<thead>
<tr>
<th>RUKUN</th>
<th>SHARAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Capital Provider</td>
<td>Same as Seller and Buyer in <em>Bai’ Murabahah</em> and:</td>
</tr>
<tr>
<td></td>
<td>- Capable of appointing agents and be appointed as agent.</td>
</tr>
<tr>
<td>2. Entrepreneur</td>
<td></td>
</tr>
<tr>
<td>3. Capital</td>
<td>- Money only</td>
</tr>
<tr>
<td></td>
<td>- Not debt</td>
</tr>
<tr>
<td></td>
<td>- Specific amount</td>
</tr>
<tr>
<td></td>
<td>- From <em>rabbul mal</em> only</td>
</tr>
<tr>
<td></td>
<td>- Paid into <em>mudharib</em></td>
</tr>
<tr>
<td>4. Business</td>
<td>- Must be permissible (<em>halal</em>).</td>
</tr>
<tr>
<td></td>
<td>- Managed by all partners</td>
</tr>
<tr>
<td>5. Profit/loss sharing</td>
<td>- According to agreement in fraction, ratio or percentage, not in absolute amount.</td>
</tr>
<tr>
<td></td>
<td>- Loss born by <em>rabbul mal</em> only.</td>
</tr>
<tr>
<td>5. Contract: <em>Ijab &amp; Qabul</em></td>
<td>Same as <em>Bai’ Murabahah</em>.</td>
</tr>
</tbody>
</table>
## 8. CONTRACT OF RAHN (PLEDGE)

<table>
<thead>
<tr>
<th>RUKUN</th>
<th>SHARAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Pledgor</td>
<td>Same as Seller and Buyer in <em>Bai’ Murabahah</em>.</td>
</tr>
<tr>
<td>2. Pledgee</td>
<td></td>
</tr>
</tbody>
</table>
| 3. Obligation or right to a claim (debt) | ➢ The debt must have been established.  
➢ The debt must be known. |
| 4. Pledge (property pledged) | Anything that can be bought and sold and:  
➢ Must be in existence  
➢ Must be pure (*halal*)  
➢ Must be of use according to Shariah  
➢ Must be owned by the pledgor  
➢ Must be capable of being delivered - must be free from any encumbrances  
➢ Must be known and specific by address, specification or description. |
| 5. Contract: *Ijab & Qabul* | ➢ The offer and acceptance must be absolute and in definite and decisive language.  
➢ The acceptance must agree with the offer. |
8. CONTRACT OF RAHN (PLEDGE)

Other Feature Related To The Pledged Property:

1. One pledge may be exchanged for another.
2. It is lawful to increase the debt that is secured by the pledge.
3. One pledge can be taken as security for two different debts from two different creditors.
4. A borrowed property can be used as a pledge.
5. The pledgee has a right to possession of the pledge until its redemption.
6. A pledge does not become necessary to be returned when the debt is partly paid off. The pledgee has a right to hold it until the debt is paid in full.
7. It is invalid for the pledgor or pledgee to sell or pledge a pledged property without the others’ consent.
8. The pledgor is forbidden from uplifting the pledge.
9. The pledgee may on his own accord, release the property from the pledge.
10. On maturity of the debt and the pledgor refuses to make payment, the pledgee may apply to the court to compel the pledgor to sell the pledge in order to pay the debt. If the pledgor still refuses to make payment the court may sell the pledge to pay the debt.
9. CONTRACT OF KAFALAH (GUARANTEE)

- **DEFINITION:**
  - A contract where a person guarantees any claims, debts or obligations that should be fulfilled by a debtor, supplier, or contractor. In the event that the debtor, supplier or contractor fails to fulfill his obligations, the guarantor is responsible to fulfill such obligations.

- Majority of fuqaha’ (فقهاء) view that the terms kafālah is similar with dhamanah (ضمانة).

- **MODUS OPERANDI:**
  - *Kafālah relates to debts* (كفالة بالدين) e.g. the issuance of personal/ corporate guarantee in favour of the Bank to secure the payment of financing given to an individual or a company.

  - *Kafālah relates to properties* (كفالة بالعين) and the delivery of an object of a contract (كفالة بالتسليم) e.g. performance guarantee.
9. CONTRACT OF KAFALAH (GUARANTEE)

**LEGALITY**

1 Quranic verse indicates permissibility of the kafalah contract. ‘Abdullah bin ‘Abbas RA states that za’im is another word for kāfil i.e. guarantor:

> قالوا: أنفق صواء الملك وَلِمَن جاء به جمل بعير وآنيه زعيم

“They said: We have lost the (golden) bowl of the king and for him who produces it is (the reward of) a camel load and I will be bound by it (za’im).”

*(Surah Yusuf: Verse 72)*

2 Al-Bukhari narrated that Salamah bin al-Akwa’ said:

> كنا جلوساً عند النبي صلى الله عليه وسلم إذ أتى بجنازة. فقالوا: صل عنها يا رسول الله، قال: هل ترك شيء؟ قالوا: لا، قال: فهل عليه دين؟ قالوا: ثلاثة دنانير، قال: صلوا عليه صاحبكم، قال أبو قتادة: صل عن

“We were with the Rasulullah SAW when a deceased person was brought. They said: “Ya Rasulullah, perform prayers on him?” He said: “Has the deceased left anything?” They said: “No”. He said: “Is he in debt?” They said: “Three dinars.” He said: “Perform prayer on him” (while Rasulullah SAW did not perform the prayer). Abu Qutadah said: “Perform prayers on him Ya Rasulullah and I guarantee for his debt.” Then Rasulullah SAW performed prayers on him.”
# 9. CONTRACT OF **KAFALAH** (GUARANTEE)

<table>
<thead>
<tr>
<th><strong>RUKUN</strong></th>
<th><strong>SHARAT</strong></th>
</tr>
</thead>
</table>
| 1. Guarantor *(Kāfil)* | - Must be capable of taking responsibility  
|                  | - Must not be prohibited from dealing with his property.                   |
| 2. Creditor *(Makful Lahu)* | - The debt must be known to the guarantor                                |
| 3. Debtor *(Kafīl)*   |                                                                           |
| 4. Debt *(Makful Bihi)* | - Debt must have been established and certain  
|                  | - Must be obligatory i.e. an obligation by the debtor                    |
|                  | - Must be known in amount                                                |
| 5. Contract: *Ijab & Qabul* | - Must be absolute and in definite and decisive language.                |
## 10. CONTRACT OF WAKALAH (AGENCY)

<table>
<thead>
<tr>
<th>RUKUN</th>
<th>SHARAT</th>
</tr>
</thead>
</table>
| 1. Principal (Muwakkil)   | ➢ Must be capable of taking responsibility  
➢ The principal must be competent and have the right to do in person what he authorises his agent to do  
➢ The agent must himself be capable of doing on his own account what he is appointed to do for another |
| 2. Agent (Wakil)          |                                                                                                                                                                                                                     |
| 3. Business or Work       | ➢ The property or right must belong to the principal  
➢ The business or work may be performed by another person  
➢ The property, right, business or work must be known                                                                                   |
| (Muwakkal Bihi)           |                                                                                                                                                                                                                     |
| 5. Contract: Ijab & Qabul | ➢ Must be absolute and in definite and decisive language.                                                                                                                                                        |
10. CONTRACT OF WAKALAH (AGENCY)

1. Types of Wakalah contract
   i. Property, right, business or work concerning which the agent is to perform may be general or specific. If specific, it must be specified in the contract.
   ii. An agent may receive fees for his services.

2. Duties of an Agent
   An agent is a safe custodian for the things that is entrusted to him before delivery to the principal or a third party.
11. CONTRACT OF IBRA’ (REBATE)

Ibraa’ arises out of a deferred payment sale where the buyer makes an early redemption.

<table>
<thead>
<tr>
<th>RUKUN</th>
<th>SHARAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Creditor (Seller)</td>
<td>Same as Bai’ Murabahah</td>
</tr>
<tr>
<td>2. Debtor (Buyer)</td>
<td></td>
</tr>
<tr>
<td>3. Debt</td>
<td>As selling price, the debt must be:</td>
</tr>
<tr>
<td></td>
<td>- Absolute in amount</td>
</tr>
<tr>
<td></td>
<td>- Known currency</td>
</tr>
<tr>
<td>4. Ibra’</td>
<td>Two ways of dealing with ibra’</td>
</tr>
<tr>
<td></td>
<td>- Must not be stated in absolute amount or percentage in the asset sale agreement; or</td>
</tr>
<tr>
<td></td>
<td>- It may be stated in the ASA in an absolute amount and a known currency. When this is done there will be two prices in the contract and the seller (creditor) is entitled to the lesser of the prices only. It is then invalid and forbidden for the seller to withdraw the ibraa’</td>
</tr>
<tr>
<td>5. Contract: Ijab &amp; Qabul</td>
<td>The contract is incorporated in the ASA. It must be absolute and in definite and decisive language.</td>
</tr>
</tbody>
</table>
MOHD NAZRI CHIK
Shariah Compliance Risk Management Department
Risk Management Division
BANK ISLAM MALAYSIA BERHAD
3rd Floor, Darul Takaful, Jalan Sultan Ismail 50250 Kuala Lumpur.
(Tel) +603-2616 8242 (E-mail) mnazric@bankislam.com.my