

DAB Bank- Murabaha Product Guide

Murabaha Product Guide

| Policy | Person / Function |
|-----------------------|----------------------------------|
| Accountable Executive | Islamic Banking Division |
| Policy owner | Head of Islamic Banking Division |

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| Approved by DAB Governor : | Date | DAB Board Secretary |
|-------------------------------|---------------|------------------------------|

DAB Bank- Murabaha Product Guide

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Introduction

1.1 Purpose

- 1.1.1 This Murabaha Product Guide ("the Guide") is an integral part of the overall Shariah Governance Framework ("SGF") developed by the Islamic Banking Division ("the IBD") of Da Afghanistan Bank ("DAB"), the Central Bank of the Islamic Republic of Afghanistan and sets out guidance for the application of Murabaha contract to various products and services for use by any Islamic Finance Institution ("IFI"), Islamic Window Operation or an Islamic Unit operating in Islamic Republic of Afghanistan collectively referred to as "the Bank" in developing products and services using the Murabaha contract.
- 1.1.2 The Guide shall, however, be read in conjunction with other related internal and external policies, manuals and guidelines and specific/general transaction documentation issued by DAB from time to time.
- 1.1.3 All relevant staff in the Bank are expected to be familiar with the policy and understand their roles and responsibilities with respect to application of the Murabaha contract to various products and services.

1.2 Review and Update of Policy

- 1.2.1 This Guide shall be reviewed periodically by the Head of the IBD of DAB to ensure that it is in line with the leading industry practices and caters to the customer requirements as well as ensure that the Guide is in line with other applicable changes introduced by DAB and other regulatory authorities.
- 1.2.2 Amendments to the Guide may be required as a result of one or more of the following reasons (not exhaustive):
- i. Changes in laws and regulations
 - ii. Changes in functions and activities of the Banks in the Islamic Republic of Afghanistan
 - iii. Changes in business processes
 - iv. Changes in the organizational structure of the Bank
 - v. Changes in job roles, duties, and descriptions

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- vi. Any other change, where the management deems necessary to update the Bank's policies and procedures
- vii. Any significant modifications arising out of the review shall be recommended by the Head of IBD reviewed by the Supreme Council of DAB and presented to the DAB Shariah Supervisory Board (the "SSB") for their approval.

2 Objectives and Scope of Application

2.1 Objectives

- 2.1.1 The objective of this Guide is to describe the features and the characteristics of the Shariah contract of Murabaha to be referred to by DAB to assist Banks in developing and offering Shariah compliant products which adopt the underlying Islamic contract of Murabaha and its various forms including, amongst others, Commodity Murabaha.
- 2.1.2 The Guide is a framework which shall ensure that the process of product development and product offerings adopting the Murabaha contract at the Bank is governed by a set of clear guidelines to be adopted by the Bank staff.
- 2.1.3 The Guide shall outline and communicate the key guidelines for the application of Murabaha contracts to various products and services. More specifically, the primary objectives of the Guide is to:
 - i. Provide concept and legitimacy of the Murabaha contract under Shariah;
 - ii. Provide pillars and conditions of the Murabaha contract; and
 - iii. Provide guidelines on the application of the Murabaha contract.

2.2 Scope of Policy

- 2.2.1 The Guide applies to the Bank, its subsidiaries and branches.

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3 Governance and Oversight

3.1 Supreme Council of DAB

3.1.1 The Supreme Council of DAB shall be the authority for approval of the Guide.

3.2 Head of IBD

3.2.1 The Head of IBD is the Guide owner providing, in consultation with the Shariah Supervisory Board ("SSB"), the necessary oversight which shall consider the following:

- i. ensuring the Guide is in line with the current business strategy, governance framework and business structures;
- ii. ensuring that detailed procedures are in place across the Bank to ensure compliance with the Guide;
- iii. assisting in providing subject matter expertise, support and technical guidance to the business in accordance with the Service Level Agreements (SLAs) signed with various departments; and
- iv. communicating the Guide to the business units and concerned functions and ensuring it is understood.

3.2.2 The Head of IBD is consulted on dealing with executive decisions and/or actionable issues arising from the Murabaha product offerings process and any deficiencies.

3.3 Islamic Banking Division ("IBD")

3.3.1 The IBD is the Accountable Executive (AE) for the Guide with the head of IBD shall be the Policy Owner.

3.3.2 The IBD assumes oversight and supervisory responsibilities for the framework used in the Murabaha product development, offerings process and ultimate responsibility for the ongoing review and for recommending alterations to the Guide.

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- 3.3.3 Any deviations or exceptions to the Guide must be based on a proposal by the IBD and/or other relevant authorised senior management person, in consultation with the SSB, to the Supreme Council of DAB, who shall approve or deliberate on such exceptions periodically. Any material deviation or exception shall be referred to the SSB for guidance or approval.
- 3.3.4 The IBD shall review the Guide's validity, relevance and accuracy as and when needed.

4 Overview of Murabaha Product Guide

- 4.1 The Murabaha Product Guide (the "Guide") describes the processes and guidelines to be used by all of the Bank staff as a general guidance for the application of Murabaha contract to various instruments, products and services. For example, the Murabaha contract may be applied, but not limited, to four (4) situations as follows:-
- i. Asset Financing through Murabaha to the Purchase Orderer (MPO) (to be referred hereinafter as Murabaha); and
 - ii. Cash Financing through Commodity Murabaha (to be referred hereinafter as Commodity Murabaha);
 - iii. Islamic money market products to manage the surplus and deficit amongst Islamic banks; and
 - iv. Working capital financing of purchasing goods for the requirements of the projects and ventures

4.2 Murabaha to the Purchase Orderer

- 4.2.1 Murabaha is a form of trust-sale that aims to finance acquisition of assets on short or long term basis. In a classical Murabaha practice, no financial intermediaries are involved and the customer would purchase an asset from the supplier at a disclosed cost plus mark-up basis. The asset would have already been owned by the supplier and the sale price is a mark-up price which is made known before the transaction. In modern Islamic financial practice, Murabaha sale established itself as a mode of asset financing with

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an agreed and known mark-up which is normally preceded by a promise to purchase from the customer. Acting on the promise by the customer, the Bank will purchase the required goods from the supplier and later sell the goods to the customer at a cost price plus a fixed mark-up. Being the most prevalent financing mechanism in Islamic finance, the Murabaha sale instrument has provided a Shariah-compliant alternative to interest-based financing mechanisms.

4.2.2 For example: Customer wishes to buy a car from a dealership at \$10,000. Customer approaches the Bank to buy the car on his behalf. The Bank agrees to buy the car subject to the proviso that the customer will then buy the car from the Bank, on a deferred payment basis, for instance of \$12,000 payable over three years. The customer agrees and the Bank buys the identified car from the dealer for \$10,000 and immediately sells the car on an “as is where is basis” to the customer for \$12,000 on a deferred payment basis. Payment options for the \$12,000 could be:

- Fully amortizing: e.g. 36 equal monthly installments of \$333.33; or
- Reducing balance with balloon payment on the last installment, for example \$250 monthly installments with balloon payment of \$3,250 on the final month of financing. The balloon payment should be linked, as far as possible, to the resale value of the car.

4.2.3 An “as is where is” basis refers to the fact that the customer will purchase the car/asset based on the existing features of the car/asset – as seen and found on the day of the purchase and will have no right of recourse for anything beyond those features.

4.3 **Commodity Murabaha**

4.3.1 Interchangeably, the word Murabaha is also used to describe cash financing which is essentially based on the arrangement of a Commodity Murabaha. The main distinguishing element between the two contracts is the ultimate economic objective of having these contracts: whilst Murabaha aims for asset financing via deferred payment sale for a mark-up price, Commodity Murabaha seeks to provide cash financing whereby the customer only seeks

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to obtain cash for a payment obligation in the future.

4.3.2 It is a transaction between three or more parties allowing one of them to obtain cash through a sale mechanism. A Commodity Murabaha facilitates this purpose in the following manner:

1. Financier receives an undertaking to purchase the Commodities from the customer. The Commodities are usually commodities such as metals (excluding gold and silver), crude palm oil or any other Shariah compliant commodities.
2. The Financier then purchases commodities from a commodity vendor for a purchase price of say, USD100,000.
3. Upon delivery of this asset to the financier, either actual or constructively, the financier would sell the same asset to the customer (on foot of the purchase undertaking) who is seeking cash or personal financing at a mark-up price, that is cost plus a particular margin of profit, say USD120,000 ("the Deferred Sale Price"). In the event that the Customer refuses to buy the Commodities at the agreed price the financier can sell the commodities on the open market and pursue the Customer for any losses incurred by it as a result of the Customer refusing to honour his undertaking.
4. Upon the sale of the asset to the customer, he is granted a deferment to pay the Deferred Sale Price to the financier e.g. within 12 months (for the purposes of this Clause 4.3, hereinafter referred to as "the Facility").
5. Upon the delivery of the commodities (either actual /physical delivery or constructive delivery), the customer may sell of the commodities in the open market for a cash price, for example, USD100,000 for him to get the cash. By having this Commodity Murabaha facility, the customer will have 'cash financing' amounting to USD100,000 via a sale contract with the financier and later with the market either directly or appointing the financier as an Agent to carry out the commodity on-sale on his behalf.

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6. The financier is required to allow the customer to opt to take physical delivery of the commodities at his own cost, in which case, the customer will receive the commodities and not cash.

The payment options of this Facility, from a credit risk perspective, should be on a fully amortizing basis. The payment schedule itself is Shariah neutral. Shariah insists that there is a payment schedule at the onset of the transaction where both parties are clear on the profit rate and the payment amount. The customer can:

- i. Pay the profit portion only on a monthly basis with principal amount as a bullet payment on determination of the Facility; or
- ii. Pay nothing until the determination of the Facility whereby all principal and profit becomes due; or
- iii. Have a fully amortizing payment schedule.

The payment schedule is a decision for the Bank's Credit Department which may be made on a case by case basis.

5 Definition

- 5.1 Literally, Murabaha comes from a root word, *ribh*, which means 'increase'.
- 5.2 Technically, Murabaha is the mark-up disclosed to the purchaser over the purchase price of a certain specified asset, excluding monetary assets such as cash, gold, silver and receivables. Murabaha sale can be contracted on cash or credit basis.
- 5.3 According to Accounting and Auditing Organisation for Islamic Financial Institutions ("AAOIFI"), Murabaha is selling goods as per the purchase price with a defined and agreed profit mark-up. This mark-up may be a percentage of the selling price or a lump sum figure. This transaction may be concluded either without a prior promise to buy, in which case it is called an ordinary Murabaha, or with a promise to buy submitted by a person interested in acquiring goods through the institution, in which case it is called a "banking Murabaha", i.e. Murabaha to the purchase orderer ("MPO"). In an MPO, there are three parties involved namely the bank, the supplier and the purchase orderer or the customer. The Murabaha credit sale of a specified asset by a bank to the purchase orderer is at a disclosed mark-up price based on the bank's cost of financing towards the purchase.
- 5.4 AAOIFI defines Commodity Murabaha as the process of purchasing a commodity for a deferred price determined through Murabaha and selling it to a third party for a spot price so as to obtain cash. Commodity Murabaha is distinct from Bai' al Inah where Bai' al Inah refers to the process of purchasing the commodity for a deferred price, and selling it for a lower spot price to the same party from whom the commodity was purchased.

6 Legitimacy of Murabaha Contract

6.1 The legality of Murabaha is deduced from the Qur'an, the Sunnah of the Prophet Muhammad (SAW), the consensus of the majority of Muslim jurists and Qiyas (analogy).

6.1.1 The Qur'an

- i. The Qur'an generally allows the sale contract. Among others, the Qur'an says to the effect that "... and Allah permitted trade and prohibited usury" (2:282)
- ii. Some scholars had also cited "It is no sin for you to seek the bounty of your Lord (by trading)..." (2:198) to support the legitimacy of Murabaha, arguing that the bounty here is profit.

6.1.2 The Sunnah of the Prophet Muhammad (SAW)

There is no direct juristic authority from the Sunnah of the Prophet Muhammad (SAW) on the legitimacy of Murabaha sale. It is based on the general permissibility of sale in Islamic law. The Prophet Muhammad (SAW) was reported to have said: "The best earning is what man earns with his own hands and from a permissible trade" (narrated by Hakim).

6.1.3 The Consensus of Muslim Jurists

Islamic jurisprudence literatures indicate that the legitimacy of Murabaha is based on the consensus of Muslim jurists.

6.1.4 Analogy (Qiyas)

Murabaha is also analogous to a form of *tawliyyah* sale (sale based on cost price), which has been approved by the Prophet Muhammad (SAW). The sale

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on mark-up will be equally permissible on the basis of analogy on the *tawliyyah* sale which requires full and honest disclosure of the cost price by the seller.

- 6.1.5 The permissibility of Commodity Murabaha has been confirmed by AAOIFI, the Islamic Fiqh Academy of the Muslim World League and the Standing Committee of the Supreme Board of Sharia Scholars of the Kingdom of Saudi Arabia (Fatwa No. 19297) as well as fatwas of many Shariah supervisory boards.

7 Pillars and Conditions of a Murabaha Contract

7.1 Basic Conditions of a Valid Murabaha and Commodity Murabaha Agreement

- 7.1.1. Under a Murabaha transaction, the seller or its agent purchases an asset from the manufacturer / supplier or dealer and sells the same asset to a customer on a cost-plus profit basis. The basic requirement in a Murabaha sale is the disclosure of the cost of the asset acquisition prior to its sale under the Murabaha contract.
- 7.1.2. A Murabaha transaction can either be a cash sale (spot payment Murabaha) or a credit sale (deferred payment Murabaha) or a combination of both i.e. payment can be in the form of a lump sum amount or in installments or a combination of both. Murabaha is not necessarily a deferred payment sale.
- 7.1.3. The most essential element of a Murabaha transaction that distinguishes it from the conventional interest bearing loan is that once the sale is executed, the selling price cannot be changed under **any** circumstances. This condition must be strictly applied even when handling cases of early payment or late payment or restructuring of the financing in the case of default.
- 7.1.4. Where the customer pays off the total outstanding amount earlier than the final agreed maturity, the Bank may forego a part of its profit and give the same to the customer as a gift. However, this gift will be solely at the discretion of the Bank and the customer will not be entitled to demand such a gift from the Bank. The Bank may not contract to give the customer a rebate in the event of prepayment.
- 7.1.5. Another key feature of a Murabaha transaction that distinguishes it from the conventional interest bearing loan is the risk of ownership shall be borne by the seller (the Bank) from the time of purchase of asset(s) by the Bank or its agent to the time the asset is actually sold to the customer (Bank's customer).

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- 7.1.6. The seller must own an asset and assume actual or constructive possession of the asset before the same can be sold to a customer. The seller therefore assumes the risks and rewards associated with ownership of the asset(s) during the period between the time of purchase of the asset and the time of sale to the customer. Once the Murabaha agreement is executed, the risks and rewards arising from ownership of the asset(s) shall be transferred to the customer.
- 7.1.7. A Murabaha transaction cannot be used as a mode of asset financing where the asset is already owned by the customer and can only be used where the customer needs funds to purchase new assets not owned by him/her. Sale & buy-back arrangement is prohibited as this will tantamount to Bai' al Inah.
- 7.1.8. Being a sale transaction, each Murabaha transaction should also comply with all the basic conditions of a valid sale.

7.2 Basic Conditions of a Valid Sale

- 7.2.1 Following are the key conditions that have to be complied with for a Murabaha sale transaction to be in line with Shariah principles (as per AAOIFI Standards):
- i. The subject matter of the sale must exist at the time of sale. Thus, anything that may not exist at the time of sale cannot be sold and its non-existence makes the Murabaha contract void.
 - ii. The subject matter of the sale should be in the ownership of seller at the time of sale. If the seller sells something that is not owned by him, the sale is void.
 - iii. The subject of the sale must be in the physical or constructive possession of seller when he sells to the buyer. Constructive possession means a situation where the owner has not taken the physical delivery of the asset(s), yet it has come into his control and all rights and liabilities of the asset(s) are passed on

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to him, including the risk of the destruction of the asset(s).

- iv. The sale must be instant and absolute. Thus, a sale attributed to a future date or a sale contingent on a future event is void. For example, 'A' tells 'B' on 1st January that A's car stands sold to B effective 1st February; the sale is void as it is attributed to a future date.
- v. The subject matter shall be assets in existence, valid and can be considered for an enforceable sale. Assets under construction are not eligible for Murabaha sale. Assets such as traded goods, production material, property, equipment and fixtures, and other intangible and **non-monetary** assets are eligible assets for sale provided that they are not specifically prohibited in the Qur'an and the Sunnah of Prophet Muhammad (SAW).
- vi. The assets of Murabaha must not be an asset which is exclusively meant for Shariah non-compliant activities like gambling equipment, liquor related products, etc.
- vii. The subject of sale must be specifically known and identified to the buyer. For example, an owner of a car showroom having a number of cars standing in the showroom says to 'X' that he will sell one of the cars in the showroom to 'X' for USD \$100,000. This sale is void because the car to be sold is not specifically mentioned or pointed out to the buyer. This is particularly relevant when buying commodities, they must be segregated and easily identifiable.
- viii. The delivery of the asset(s) sold to the buyer must be certain and should not depend on a contingency or chance.
- ix. The certainty of price is a necessary condition for the validity of sale and should be clearly defined at the time of executing Murabaha. If the price is uncertain, the sale is void.

7.3 Features of Murabaha Contract

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- 7.3.1 Murabaha is a contract that comprises several principal features namely:-
- i. Price of Murabaha sale;
 - ii. Asset of Murabaha sale;
 - iii. Duty of full disclosure of cost and profit; and
 - iv. Wa'd (promise) to buy (more importantly in the case of asset financing or MPO).

7.4 Price of Murabaha Sale

- 7.4.1 The Murabaha sale price shall be determined based on the disclosed acquisition cost with an added mark-up amount or percentage to be determined prior to the conclusion of the Murabaha contract.
- 7.4.2 The mark-up, in the form of an absolute amount or a certain percentage of acquisition cost shall be determined and specified before the conclusion of the Murabaha contract.
- 7.4.3 Any mutually agreed benchmark, including but not limited to conventional financial benchmark such as the Base Lending Rate (BLR), may be used to determine the mark-up in the Murabaha contract. Any benchmark adopted to determine the mark-up shall be specified and agreed upfront by the parties.
- 7.4.4 The determination of the mark-up may either be based on an agreed percentage of acquisition cost or specified amount for a known and agreed currency.
- 7.4.5 The agreed mark-up that is determined shall not be subjected to price variation or affected by currency fluctuation as payment due is pre-determined at an agreed currency.
- 7.4.6 In an agreement where several Murabaha contracts are separately concluded and executed, each Murabaha contract mark-up may be priced differently.

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- 7.4.7 If several commodities in several Murabaha contracts are sold to the same customer under a Master Murabaha Agreement, the total acquisition cost plus the total mark-up may be stated in one clause in the Master Murabaha Agreement, provided that the details of each asset's acquisition cost and mark-up must be appended to each sales contract.
- 7.4.8 At the time of concluding a Murabaha contract, both the Bank and customer may mutually agree to vary the financing tenure and adjust the mark-up that was initially promised in the Wa'd undertaking (as in the case of MPO).
- 7.4.9 The acquisition cost, which forms the cost portion of the Murabaha price may include direct expenses which refer to the costs incurred to enable the acquisition of goods by the Bank and delivery of the goods to the customer. This includes expenses such as transportation, storage, assembly, taxes, insurance or *Takaful* or any valid expenses established by customary practice. The full acquisition cost shall be disclosed to the customer.
- 7.4.10 Indirect expenses such as staff wages, labour charges, which are not part of the cost of acquisition, shall not be included in the acquisition cost. These costs shall be absorbed by the Bank and may be factored in the mark up component of the sale price.
- 7.4.11 Cost of services integral to an asset such as installation cost may form the cost portion of the asset acquired.
- 7.4.12 Whenever a purchase order involves a transaction requiring the issuance of a Letter of Credit (LC), commission charged by the Bank for issuing the LC shall not be part of the acquisition cost. The Bank may include the commission as part mark up in the total selling price.
- 7.4.13 Upon acquisition of an asset from the supplier and until the ownership is transferred to the purchase orderer, the Bank is liable for the asset, and may

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obtain Takaful/Insurance coverage (if Takaful not available) on the asset acquired before selling it to the purchase orderer. The Takaful/Insurance contribution paid by the Bank may be added to the cost of acquisition as it is a direct cost by the Bank to purchase the asset from the supplier.

- 7.4.14 Where Takaful cover is either insufficient, not available in the respective country or entails excessive cost, the Bank may utilise a conventional insurance policy to cover its risk. The Bank is obliged to use its best endeavours to obtain Takaful cover for all assets but the SSB recognises the commercial reality of the Takaful business and acknowledges that the Bank may not be able to obtain Takaful coverage in all instances. The SSB deems that it is upon necessity to allow Banks to insure their assets as opposed to expose them to the risk of loss of same. The SSB may, with prior consultation with the Bank, tighten this requirement as the Takaful industry develops and more competitive Takaful products come to the relevant market. The Shariah Board of the Bank may not pose more stringent terms in relation to the provision of insurance as this is a policy decision to be taken by the SSB at a national level.
- 7.4.15 Alternatively, the two parties may negotiate to exclude Takaful/Insurance contribution from the acquisition cost and be charged separately.
- 7.4.16 Any additional direct expenses not specified in the agreement relating to a Murabaha contract which is incurred post conclusion of the Murabaha contract shall be borne by the customer, provided that such a clause to that effect is already incorporated in the contract. These additional charges, however, shall not be taken into consideration in determining the Murabaha sales mark-up.
- 7.4.17 The Bank may levy a service charge for additional services rendered by the Bank as requested by the customer such as to conduct a feasibility study on business needs.

For the avoidance of doubt, the Bank may charge the customer for

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additional services carried out by the Bank on behalf of the customer at his request. The Bank must agree a fee rate with the customer (hereinafter referred to as "the Quote") prior to undertaking any work on behalf of the customer. The Bank can perform this service on a bespoke basis. The Bank may not charge the customer for any of its normal operational costs, these shall be deemed included in the Quote.

- 7.4.18 Any discount on cost of acquisition obtained upon purchase by the Bank shall be reflected as a reduction in the acquisition cost.
- 7.4.19 Any asset purchased in local or foreign currency by the Bank may be sold to the customer in any other agreed currency. The acquisition cost shall be based on the exchange rate on the day the Bank purchases the asset from supplier.
- 7.4.20 The Bank and the customer may agree to make settlement in a currency which is different from the currency specified in the contract at the prevailing exchange rate on the day of payment provided that this does not result in a change of the sale price.
- 7.4.21 Rescheduling of debt in another currency is not permissible. However, full settlement of outstanding debt in another currency is permissible and it shall be executed based on the exchange rate of the settlement date.
- 7.4.22 In the event that the customer is in difficulty making payments due under a MPO or Commodity Murabaha; the Bank may, in its absolute discretion, restructure the existing Commodity Murabaha facility by granting the customer an additional Commodity Murabaha on the terms agreed to therein, subject to the proviso that the customer applies the proceeds of this Commodity Murabaha to settle his outstanding debt to the Bank under the existing Commodity Murabaha facility and hence, retire the same.
- 7.4.23 The Bank may at its discretion, reward a customer who honours the terms of the Murabaha contract by waiving part of the price or by awarding some

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points for certain gifts, etc.

7.5 Asset

- 7.5.1 Assets such as traded goods, production materials, property, equipment and fixtures, and other intangible and non-monetary assets, are eligible assets for sale provided that they are not specifically prohibited in the Qur'an and Sunnah of Prophet Muhammad (SAW) such as usurious items in the category of a medium of exchange, liquor and pork.
- 7.5.2 Assets to be purchased for Murabaha sale shall be assets which are in existence, valid and can be considered for an enforceable sale. Assets under construction are not eligible for Murabaha sale.
- 7.5.3 Asset meant to be sold to the customer/Bank on Murabaha basis shall be legally and/or beneficially owned by the Bank/customer prior to the Murabaha sale to the customer.
- 7.5.4 Physical possession or constructive possession by the seller of an asset is required for the asset to qualify for a Murabaha contract. Constructive possession shall be proven via existence of physical evidence of effective transfer or receipts such as warehouse receipt, holding certificate, etc.
- 7.5.5 Transfer of ownership from the Bank to the customer shall take place upon execution of the Murabaha contract.
- 7.5.6 The Murabaha sale shall exclude any sale of currencies and debt for a deferred payment.
- 7.5.7 Shariah-compliant shares may be made as asset of a Murabaha transaction.
- 7.5.8 Intellectual properties such as trademarks, brands, patents and copyright, also

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- qualify as assets of Murabaha transaction.
- 7.5.9 Usufructs such as air ticket representing a specific seat in a flight qualify as assets to be purchased and sold on Murabaha basis.
- 7.5.10 Murabaha sale shall not take effect between the same contracting parties on the same asset more than once. The revolving facility using Murabaha contract may involve separate contracts on different assets between the same contracting parties.
- 7.5.11 The liability for loss or damage of asset acquired for the purchase orderer while in the possession of the Bank shall be borne by the Bank.
- 7.5.12 Any asset purchased by the Bank for Murabaha financing to the customer shall be specified and differentiated from similar or other goods in the same shipment based on customary practice. This is to ensure segregation of risks and rewards are effective.
- 7.5.13 MPO sale by the Bank to the customer is not valid if the Bank purchases an asset from the customer and subsequently sells the same asset to the customer. The contract is also not valid if the asset purchased by customer from supplier is subsequently purchased by the Bank and sold to the customer based on MPO.
- 7.5.14 The Bank shall not sign the Murabaha contract with the customer prior to the purchase of assets by the Bank from the supplier.
- 7.5.15 The Bank shall be deemed to have ownership rights on the assets to be sold based on Murabaha upon receipt of documents attesting to the ownership transfer to the Bank which include, among others, shipment and storage certificates.
- 7.5.16 In an MPO contract, the customer would apply to the Bank, with an order to purchase an asset with identified specifications. The customer may provide

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the Bank with information pertaining to the asset specifications in terms of price, availability and market location. However, the Bank reserves the right to conduct its own assessment on the asset ordered to be purchased. The customer, once he accepts the asset, buys it on an "as is where is" basis.

7.5.17 Assets purchased by the Bank according to the customer's requirements may be delivered to the customer prior to the conclusion of the Murabaha contract but the ownership risk is still vested with the Bank.

7.5.18 Loss or damage of goods in the possession of the customer prior to the conclusion of the Murabaha contract due to negligence or wilful default of the customer shall be borne by the customer.

7.6 Duty of Full Disclosure

7.6.1 The purchase cost of the asset payable by the Bank to the seller shall be disclosed to the customer before concluding the Murabaha contract. The cost shall include the purchase price and direct expenses related to the acquisition of the assets.

7.6.2 The failure of the Bank to properly disclose the purchase price as cost to determine the mark-up to the customer shall render the Murabaha contract null and void *ab initio*.

7.6.3 In the event where the customer is appointed as the agent of the Bank based on a Wakalah contract, where several quotations are given by the customer for the Bank to consider, the Bank shall clearly specify to the customer the quotation which the Bank has chosen.

7.6.4 The Bank shall disclose to the customer the mark-up to be added to the purchase price. The mark-up could either be a fixed amount or a percentage of the purchase price.

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7.6.5 Any defect caused by force majeure in the asset which is discovered by the Bank or the customer before delivery of the asset shall be communicated to the other contracting party. Both the Bank and the customer may either mutually agree to adjust the terms of the contract or rescind it.

7.7 Agency in Murabaha

7.7.1 As a purchasing agent of the Bank, the customer may advance his own money for partial payment of purchase price to the supplier. The amount advanced shall be off-set by the Bank from the selling price to be concluded with the customer.

7.7.2 The appointment of the purchase orderer as an agent by the Bank based on a Wakalah contract to acquire the asset from the supplier shall be documented outside the Murabaha transaction. There shall be a Murabaha Agreement and a Wakalah agreement.

7.7.3 The purchase orderer, as a purchasing agent of the Bank, shall not waive the effective transfer of assets from the Bank to the purchase orderer. The Bank which appoints the purchase orderer as a purchasing agent shall not waive its liability on the purchased asset.

7.7.4 As a purchasing agent of the Bank, the purchase orderer may obtain quotations on asset price in the name of the Bank.

7.7.5 As a purchasing agent of the Bank, the purchase orderer may obtain quotations from the supplier under his name subject to acceptance from the Bank.

7.7.6 The Bank may appoint the supplier as its selling agent to conclude the Murabaha contract with the purchase orderer provided that the Bank has taken possession of the asset before selling it to the customer.

7.7.7 The supplier may be appointed as the agent of the purchase orderer to

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purchase the goods on Murabaha basis from the Bank provided that the supplier was not appointed as a selling agent by the Bank to conclude the sale with the customer. This agency contract should be in a separate contract, independent from the sale contract of the supplier to sell and deliver the assets to the Bank.

7.7.8 The purchase orderer cum promisor may be the sole authorized agent to purchase or import a particular asset from the supplier or exporter. The relationship between the purchase orderer and supplier and the fair value of the purchase price must be made known to the Bank.

7.7.9 The name of the purchase orderer who is appointed as an agent of the Bank to conclude the Murabaha contract may be disclosed in all documents.

7.8 Features of Commodity Murabaha Contract

7.8.1 Price

Paragraphs 7.4.1 until 7.4.4 and paragraphs 7.4.6 until 7.4.7 shall be applicable for Commodity Murabaha.

7.8.2 Asset

7.8.2.1 The commodity used as underlying asset in Commodity Murabaha may be any type of commodity such as metals, precious metals, crude palm oil etc., except ribawi items such as gold and silver.

7.8.2.2 The commodity sold should be well identified i.e. type, quality, quantum, location, serial number etc., so as to become actually identifiable. This is crucial when the commodity is not made available at the time of signing the contract.

7.8.2.3 The commodity should be actually or constructively received by the purchaser.

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7.8.2.4 The commodity must be sold to a party other than the one from whom it was purchased i.e. a third party, on deferred payment basis, so as to avoid Bai' al Inah. The commodity shall not return to the seller thereafter either by virtue of prior agreement or collusion between the parties.

7.8.3 Duty of Full Disclosure

7.8.3.1 Clause 7.6 shall be applicable to Commodity Murabaha.

7.8.4 Other Features of Commodity Murabaha

7.8.4.1 The contract for purchasing the commodity on deferred payment basis and the contract for selling it on spot price shall not be linked to each other in such a way that the customer loses his right to receive the commodity. Such linking of the two contracts is prohibited.

7.8.4.2 The Commodity Murabaha beneficiary may be a customer who purchases the commodity from the Bank and sells it to a third party to obtain liquidity. It may also be the Bank itself when it purchases the commodity from the customer or another institution and sells it to a third party to obtain liquidity.

7.8.4.3 Documents may include (where applicable) a statement to the effect that the purchaser will use the goods and any proceeds for Shariah compliant purposes only.

8 Ancillary Shariah Principles

8.1 Rebate (Ibra')

- 8.1.1 In the event of early settlement before the completion of the agreed period, it is permissible for the Bank to give up part of the selling price, provided this was not part of the contractual agreement and is at the sole discretion of the Bank.
- 8.1.2 There is no certain limit or formula of the rebate as this is based entirely on the absolute discretion of the Bank.

8.2 Penalty (Gharamah)

- 8.2.1 The Bank is allowed to charge late payment charges to the customer who is defaulting on their payments. The penalty charges for late payment can be documented in the contract to deter morally irresponsible behavior, i.e. to deter customers from defaulting on their obligations.
- 8.2.2 This practice is permissible based on the undertaking (wa'd) by the customer to pay an amount of money either in the fixed form or a percentage if the customer delays any payment of a financial obligation which is due. This payment is only due upon the request by the Bank.
- 8.2.3 The Bank is entitled to reimburse its actual loss and expenses from this penalty amount whereby the remaining, if any, shall be channeled to charitable bodies as per approved by the SSB. The manner and frequency of this payment to charitable bodies are to be determined by the SSB.

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8.3 Murabaha and Commodity Murabaha Security

8.3.1 The Bank may ask the customer to provide lawful security in the Murabaha and Commodity Murabaha contract. This may include, but is not limited to:

- Third-party guarantee;
- Pledge on the Shariah compliant account or deposit;
- Pledge on any real or moveable property;
- Pledge on the subject matter of the Murabaha contract as a fiduciary charge, either taking or without taking possession of the pledged asset and releasing the pledge progressively according to the percentage of the total payment received;
- Pledge on Shariah compliant shares.
- Pledge on Shariah non-compliant assets where the Customer is appointed as agent of the Bank to dispose of same in the event of a default.

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9 Operational Process Flow

There are two different financing modes which can be done via Murabaha contract:

- i. Asset Financing or Murabaha to the Purchase Orderer (MPO); and
- ii. Cash Financing or Commodity Murabaha

9.1 Asset Financing

9.1.1 The product of Murabaha that is being used in Islamic banking as a mode of financing is different from the normal Murabaha trade. This transaction is concluded with a prior promise to buy, submitted by a customer who is interested in acquiring goods through the Bank.

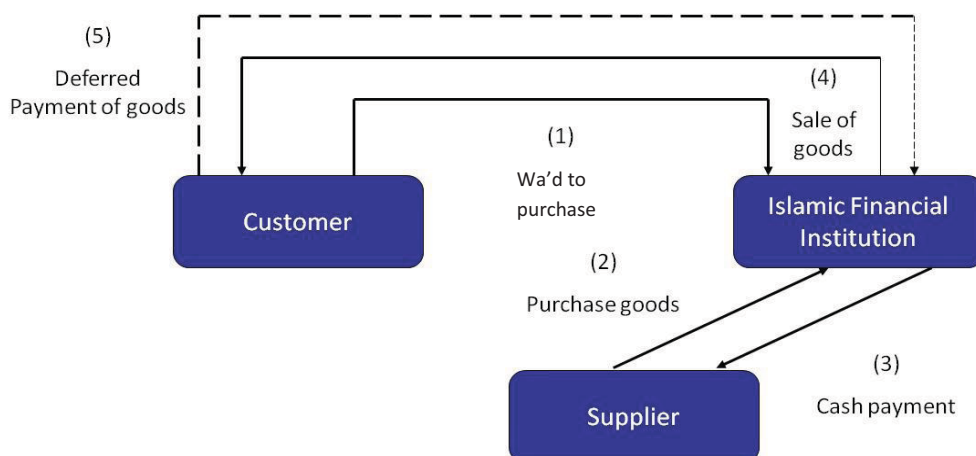
9.1.3 MPO

It refers to a contract wherein the Bank, upon request by the customer, purchases an asset from a third-party, normally a supplier, and sells the same to the customer either against a spot payment or on a deferred payment basis for a known mark-up.

9.1.4 The stages in an MPO are simplified in the diagram below:

Diagram 1:

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(1) **Promise (Wa'd) Stage:**

The customer places an order with the Bank and also provides a promise or undertaking (Wa'd) to purchase the goods from the Bank. The Wa'd to purchase is binding on the customer or purchase orderer. Breach of the Wa'd by the customer shall render the customer to be liable for losses and damages incurred by the Bank.

The customer may pay a security deposit (Hamish Jiddiyah) to the Bank. This payment will be used to cover the losses and damages incurred by the Bank (if any) if the customer breaches his promise or undertaking to purchase the assets. After deduction of its losses and damages, the Bank shall return the balance of the security deposit to the Customer.

(2) **Acquisition stage:**

The Bank then purchases the goods requested from the supplier.

(3) **Murabaha stage:**

The Bank then sells the goods to the customer at a deferred price, including mark-up, with, say, a three-month credit period.

For example, if the cost price is USD50,000 the Bank would sell to the

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customer at USD60,000 to be payable either on an installment basis or on a lump sum basis at the end of the financing period.

9.1.5 Documentation

| Document | Stage | Parties |
|--|-------|----------------------------|
| Purchase Order | (1) | Customer to Bank |
| Purchase Undertaking | (1) | Customer in favour of Bank |
| Supply Agreement | (2) | Bank and Supplier |
| Murabaha Financing Agreement (together with relevant Transaction Notices) | (3) | Bank and Customer |
| Security Documents such as guarantee, charge, assignment of future income, promissory notes etc. | (3) | Bank and Customer |

9.2 Cash Financing

9.2.1 Commodity Murabaha is a transaction between three or more parties to facilitate cash financing for the Customer.

9.2.2 An example of Commodity Murabaha is when a person who needs cash financing purchases an asset or commodity from one party on a credit term payable in the future. Thereafter the person sells the asset, usually for a lower price to a third-party other than the original seller for a cash payment.

9.2.3 The asset in this case must not return to the original vendor. It must be sold to a third-party. Unlike Bai' al Inah, which involves two-party transaction, Commodity Murabaha is a three or more party contract arrangement with a true sale.

9.2.4 An example of Commodity Murabaha arrangement is simplified in the diagram below:

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(1) - (2) A customer who wishes to take out Islamic cash financing of USD100,000 for personal consumption will approach the Bank for this facility. The Bank, upon receiving this application will purchase a certain commodity from Prime Broker A at USD100,000 on a cash basis using its own money.

(3) - (4) Subsequently, the Bank will sell the same commodity to the customer under the Commodity Murabaha scheme at USD110,000 to be payable within two years.

(5) - (6) Ultimately, the customer will on sale this commodity to Prime Broker B at USD100,000 on a cash basis, which is normally done through the Bank as an agent. The proceeds of this sale will be deemed as the amount of his cash financing.

By virtue of the above transaction, the customer will get USD100,000 from the sale of asset X to Prime Broker B, but will owe the Bank USD110,000 payable within two years under the Commodity Murabaha contract.

9.2.5 Documentation

| Document | Stage | Parties |
|------------------------------|-----------|--------------------|
| Promise to Purchase | (1) – (2) | Customer to Bank |
| Commodity Purchase Agreement | (1) – (2) | Bank and Commodity |

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| | | |
|--|-----------|------------------------------|
| | | Seller |
| Commodity Murabaha Financing Agreement (together with relevant Transaction Notices) | (3) – (4) | Bank and Customer |
| Commodity Sale Agreement | (5) – (6) | Customer and Commodity Buyer |
| Security Documentation such as guarantee, charge, assignment of future income, promissory notes etc. | (3) – (4) | Bank and Customer |

9.3 Suggested Accounting Entries for Various Products Adopting Murabaha Principles

- a) *Upon approval of the facility, the Bank buys inventory of commodity from Broker A*

DR Inventory of Commodity
CR Bank

- b (i) *Customer buys commodity from the Bank (Murabaha Sales)*

DR Customer's account (Principal + Profit)
CR Deferred profit
CR Inventory of Commodity

- b (ii) *Establishment of Murabaha financing facility*

DR Murabaha receivable
CR Murabaha Account

- c) *Profit Accrual and Recognition*

DR Deferred Profit
CR Murabaha Income (P/L)

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* this entry will be repeated each month for the amount of profit accrued for the month

- d) *Receipt of Installment at each due date, with the amount of principal and profit due as of date*

| | |
|-----------------------|------------------------|
| DR Bank | DR Murabaha Account |
| CR Customer's account | CR Murabaha Receivable |

- e) *Early settlement of Murabaha Sale Price*

(A) To record earning the portion of unearned profit waived by the Bank

| |
|--------------------------|
| DR Deferred Profit |
| CR Murabaha Income (P/L) |

(B) To record receipt of the settlement price from the customer, including the outstanding principal amount plus profit earned

| | |
|-----------------------|------------------------|
| DR Bank | DR Murabaha Account |
| CR Customer's account | CR Murabaha receivable |

(C) To record reversal of unearned income not waived by the Bank

| |
|----------------------------|
| DR Murabaha Discount (P/L) |
| CR Customer's account |

- f) *Penalty Receivable (Charity) – to record accrual of penalty for delay in payment by Customer*

| |
|---|
| DR Charity (penalty) receivable from customer |
| CR Charity fund payable |

- g) *Collection of Penalty from Customer*

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DR Cash in Hand / Customer's account
 CR Charity (penalty) receivable from Customer

h) *Charity paid as per approval of the SSB*

DR Charity fund payable (B/S – Liability)
 CR Cash in Hand / Bank Account (B/S – Asset)

Note: All banking accounts opened for any Murabaha and/or Commodity Murabaha products shall be Shariah compliant.

10 Application of Murabaha Contract

The Murabaha contract can be applied in many forms as follows:

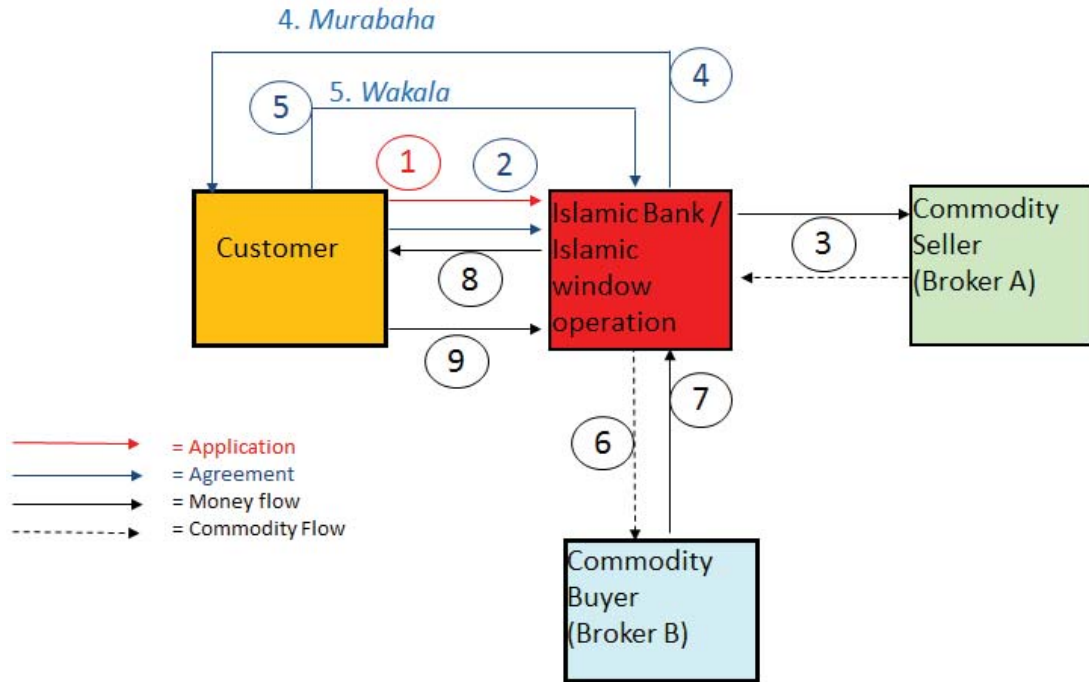
| Segment | Product | Shariah Concept |
|-------------------|---|--|
| Retail banking | Personal financing / Cash Line Islamic credit card Deposit account (Term Deposit) Auto-financing | Commodity Murabaha Commodity Murabaha Commodity Murabaha Murabaha |
| Wholesale banking | Letter of Credit Asset-financing | Murabaha Murabaha |

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10.1 Retail Banking Products

(1) Personal Financing / Murabaha Cash Line (One-off / Revolving Facility)

i. Murabaha Cash Line is a financing facility which operates based on Commodity Murabaha concept. The product process flow is detailed out below:



ii. Detailed flow of the Murabaha Cash Line Financing:

| Steps | Process | Party |
|-------|--|-------------------|
| 1. | Eligible customer shall apply the product by filling the application form, or by way of an application letter to the Bank or on line | Customer and Bank |

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| Steps | Process | Party |
|-------|--|-------------------|
| 2. | <p>Once the application is approved, the bank will issue :</p> <ul style="list-style-type: none"> ▪ The Offer of Murabaha ▪ Facility Agreement which also consist Form of Disbursement Notice ▪ Sales Agency | Bank and Customer |
| 3. | <p>Subject to the fulfilment of all conditions precedent as set out in the legal documentation, the Customer may utilize the Facility by issuing a disbursement notice to the Bank of his/its/their intention to enter into a purchase transaction with the Bank. The disbursement notice which is irrevocable on issuance shall specify the amount intended to be utilized by the Customer.</p> | Customer |
| 4. | <p>The Bank then will order from a vendor the underlying commodity. For this purpose, the Bank will enter into a supply agreement with the said vendor.</p> | Bank and Broker A |
| 5. | <p>The Bank will then issue Confirmation of Purchase</p> | Bank and Customer |
| 6. | <p>Following the Confirmation of Purchase, the Bank will issue the Option to take Physical Delivery or Authorisation for On-Sale requesting the Customer to opt for either: (a) Physical delivery of the Commodity at the Customer's own costs. In the event the Customer will take physical delivery of the Commodity, the Bank</p> | Customer and Bank |

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| | will issue a Customer's Acceptance of Physical Delivery of Commodity for the Customer's acknowledgment and acceptance of the Terms of such physical delivery or (b) the Customer will authorise the Bank as his agent under the Sales Agency contract, to sell the Commodity on his behalf to a third party. | |
|--------------|--|-------------------|
| Steps | Process | Party |
| 7. | Upon conclusion of a Murabaha Contract, ownership of the Commodities shall immediately pass to the Customer, together with all associated rights and obligations. If the Customer requested physical delivery of the Commodities (option (a) at Clause 6 above), any delivery and other costs incurred in respect of such Commodities shall be payable by the Customer to the Bank. | Customer and Bank |
| 8. | In the event that the Customer authorises the Bank to sell the Commodity under the Sales Agency contract, (option (b) at Clause 6 above) The Bank will then enter into a commodity sale agreement with a third party broker. The proceeds from the sale of the underlying commodity to the said third party broker will be disbursed by the Bank into the Customer's One Pack. The Bank will then issue a Confirmation of On-Sale. | Bank and Broker B |
| 9. | The selling price shall be settled via monthly instalments or other settlement method throughout the financing period. | Customer |

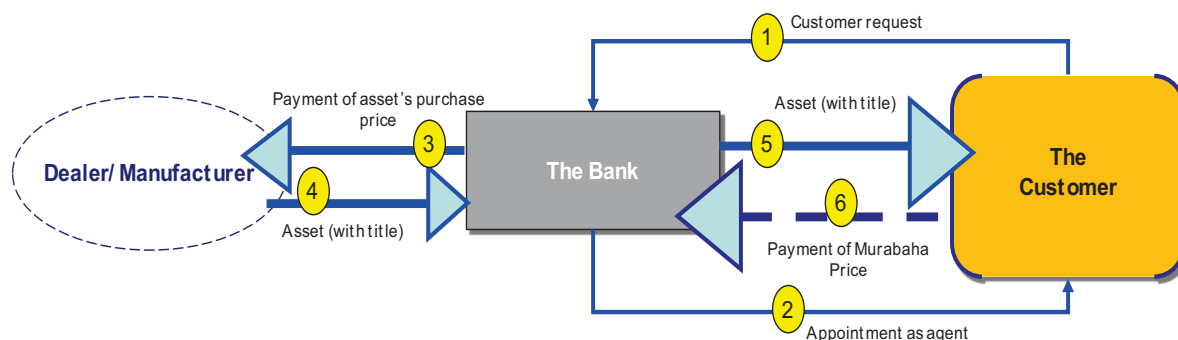
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The above steps constitute a single purchase request transaction by the customer that is concluded with the sale by the bank and payment from the customer. Several similar transactions could be executed according to the needs of the customer, provided the total purchase price at any point in time does not exceed the approved credit limit specified for the facility.

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(4) Auto Financing

i. Murabaha may be adopted for an auto-financing facility. The product process flow is detailed out below:



ii. Detailed flow of the Murabaha Auto Financing Facility:

| Steps | Process | Party |
|-------|---|------------------|
| 1 | <p>Customer Request</p> <p>The customer requests the Bank to purchase the required vehicle and promises to purchase the vehicle from the Bank. Subject to approval of the customer's request, the customer pays the security deposit (Hamish Jiddiyyah) and other fee due, to start the processing of transaction.</p> | Customer to Bank |
| 2 | <p>Agency</p> <p>Upon Bank's approval on the customer's request, both parties will enter into a Murabaha Financing facility to allow the customer to utilize the Bank's facility.</p> <p>Then, the Bank may appoint the customer as its agent to purchase the required vehicle on behalf of the Bank. The customer approaches the manufacturer or dealer to</p> | Bank to Customer |

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| | | |
|---|---|-------------------|
| | <p>purchase the vehicle and obtains a quotation. If the vehicle is a used car, the Bank obtains an estimate of its market value from the authorized dealer. Where deemed appropriate, the Bank may purchase the vehicle directly from the supplier without engaging customer as the Bank's agent.</p> | |
| 3 | <p>Vehicle Purchase</p> <p>The Bank makes the payment to the manufacturer/ dealer for the vehicle and takes ownership of the vehicle through the customer as agent or through the Bank's own representative.</p> | Bank and Dealer |
| 4 | <p>Possession</p> <p>The customer takes possession of the vehicle as the Bank's agent and declares that he / she has taken possession of the vehicle as Bank's agent. Here ownership is effectively transferred to the Bank.</p> | Customer and Bank |
| 5 | <p>Murabaha Execution</p> <p>Once the ownership is transferred to the Bank, the customer and the Bank sign the Murabaha agreement. The Murabaha price is agreed and the vehicle, with ownership, is transferred to the customer. However, the Bank may have a lien registered on the vehicle in the country's official vehicle registration authority to prevent the customer from on-selling the vehicle without the Bank's consent.</p> | Customer and Bank |
| 6 | <p>Payment of Murabaha Price</p> | Customer to Bank |

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| | | |
|--|---|--|
| | The customer pays the agreed Murabaha Price as per the payment schedule agreed as part of the Murabaha financing agreement. | |
|--|---|--|

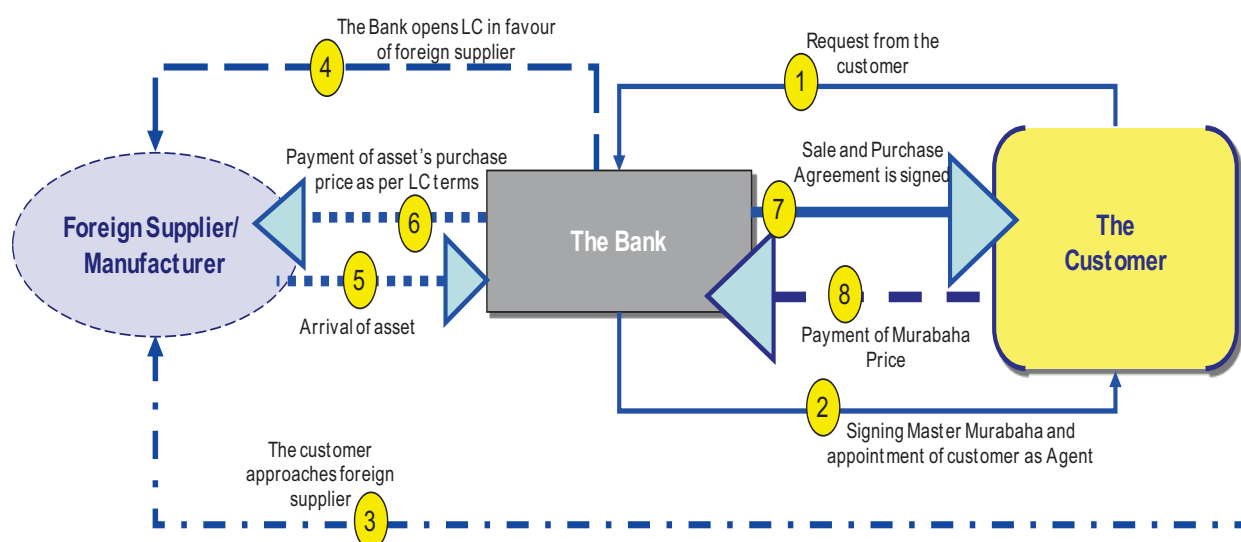
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10.2 Wholesale Banking Products

(1) Murabaha Letter of Credit ("LC")

- i. Murabaha LC is a letter of credit issued by the Bank in favor of a beneficiary (exporter). The Bank commits and accepts to pay against trade documents drawn in compliance with the LC terms. The Bank's credit worthiness replaces that of the applicant. The Bank may charge actual expenses or a fee for providing the required service.
- ii. Murabaha contracts allow customers to purchase raw materials, capital goods and other consumables from local and international markets. These goods are first bought by the Bank for its account on orders of the customers by paying cash or through LC as the case may be and then sold to the customers with profit margin on deferred payment basis. Payments on deferred basis can be made to the bank in installments or in one lump sum amount.

Overview of LC Process



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iii. Detailed flow of the Murabaha LC:

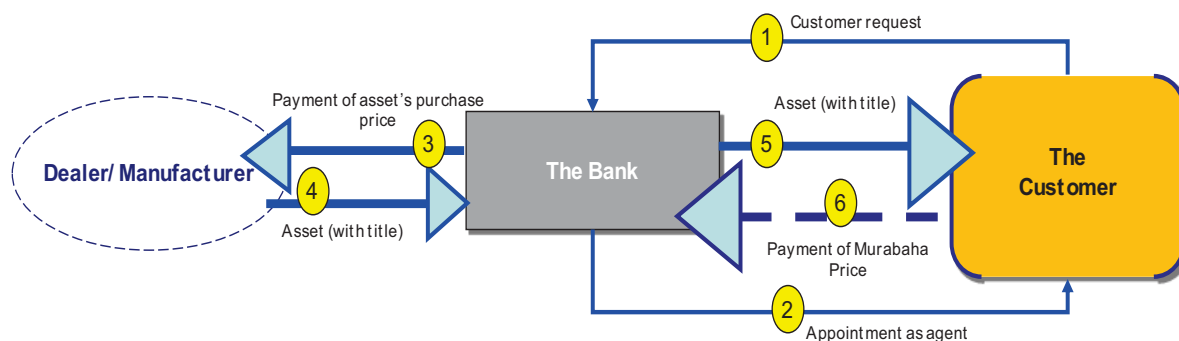
| Steps | Process | Party |
|-------|---|---|
| 1 | A buyer/importer approaches the Bank for an LC and a financing facility to acquire and import goods. | Importer / Customer and Bank |
| 2 | The purchase of goods from the Bank is executed under the Murabaha Agreement. The Bank will then appoint the importer as its agent to acquire goods from the seller and establish an LC and send it to the exporter / seller through their bank | Customer and Bank Importer's Bank (Issuing Bank) |
| 3 | Receive LC and advise LC to the exporter / seller | Exporter's Bank (Advising Bank) |
| 4 | Confirm LC details, ship the goods and send the relevant export documents to the bank | Exporter / Seller |
| 5 | Pay the exporter the amount due and forward the documents to the issuing bank | Exporter's Bank (Negotiating Bank) |
| 6 | Reimburse the negotiating bank and sell the goods to the importer for an agreed selling price (cost plus mark-up) and to be paid on deferred payment terms | Importer's Bank |
| | | |

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| | | |
|---|---|-----------------|
| 7 | Release the documents to the importer for collection of goods | Importer's Bank |
| 8 | Collect the goods and upon maturity of facility pay the selling price in accordance to the deferred payment terms | Importer's Bank |

(2) Asset-Financing

- i. A Murabaha asset financing arrangement can be executed when the asset identified by the customer is purchased at cost for cash and sold to the customer at cost plus mark-up for deferred payment.
- ii. The product process flow is detailed out below:



| Steps | Process | Party |
|-------|---|------------------|
| 1 | Customer Request The customer requests the Bank to purchase the required asset and promises to purchase the asset from the Bank. Subject to approval of the customer's request, the customer pays the security deposit (Hamish Jiddiyyah) and other fee due, to start the processing of transaction. | Customer to Bank |
| 2 | Agency | Bank to |

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| | | |
|---|---|-------------------|
| | <p>Upon Bank's approval on the customer's request, both parties will enter into a Murabaha Financing facility to allow the customer to utilize the Bank's facility.</p> <p>Then, the Bank may appoint the customer as its agent to purchase the required asset on behalf of the Bank. The customer approaches the manufacturer or dealer to purchase the asset and obtains a quotation. Where deemed appropriate, the Bank may purchase the asset directly from the supplier without engaging customer as the Bank's agent.</p> | Customer |
| 3 | <p>Asset Purchase</p> <p>The Bank makes the payment to the manufacturer/ dealer for the asset and takes ownership of the asset through the customer as agent or through the Bank's own representative.</p> | Bank and Dealer |
| 4 | <p>Possession</p> <p>The customer takes possession of the asset as the Bank's agent and declares that he / she has taken possession of the asset as Bank's agent. Here ownership is effectively transferred to the Bank.</p> | Customer and Bank |
| 5 | <p>Murabaha Execution</p> <p>Once the ownership is transferred to the Bank, the customer and the Bank sign the Murabaha agreement. The Murabaha price is agreed and the asset, with ownership, is transferred to the customer.</p> | Customer and Bank |
| 6 | <p>Payment of Murabaha Price</p> <p>The customer pays the agreed Murabaha Price as per the payment schedule agreed as part of the Murabaha financing agreement.</p> | Customer to Bank |

11 Summary

11.1 Important Considerations in a Murabahah Financing Transaction

11.1.1 The pillars and conditions in Murabaha and Commodity Murabaha Sale & Purchase Transaction

- a. Asset / Commodity must be:
 - In existence at the time of contract
 - In the form of valuable asset, lawful and permissible by Shariah
 - Owned by the seller
 - Capable to be delivered to the buyer
 - Known to both parties
- b. Price must be :
 - Determined in amount and known by both parties
 - Currency is specified
- c. Offer and acceptance must be:
 - Orally, in writing or by conduct
 - Acceptance must be consistent with the offer
- d. Additionally, Murabaha must also conform to the following special conditions:
 - The buyer must know the original price of the asset / commodity
 - The profit (to seller) must be declared to the buyer whether it is a certain fixed amount of money or a percentage of the original price
 - If the asset/commodity was inflicted by any defects, the buyer has to be informed of the defect
 - Murabaha is not allowed with regard to the ribawi items

11.1.2 Important consideration in relation to the Bank's Commodity Murabaha based product(s)

- a. The Bank must first purchase the commodity from Broker 1;

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- b. Offer and acceptance of sale/purchase of the commodity must be concluded between the customer and the Bank in the correct sequence;
- c. It is not acceptable for the Bank to buy commodity from Broker 1 and immediately sell the commodity to Broker 2 before concluding the offer and acceptance with the customer.
- d. The Wakalah appointment must be established between the Bank and customer to allow the Bank, at the customer's request, as his/her agent to sell the commodity to Broker 2 in accordance with the relevant documents in the proper sequence.
- e. The Bank shall not sign the Murabaha contract with the customer prior to the purchase of assets by the Bank.
- f. In order to ensure compliance, time stamps on transaction notices of commodity trades and on schedules (of the relevant contracts) exchanged with the customer would help create a proper deal flow from Shariah perspective.
- g. Two separate transaction notices must be kept; 1) purchase of commodity; and 2) sale of commodity.
- h. Purchase and sale of commodities must be underpinned by supporting documents e.g. purchase and sale invoices, warehouse receipts and other documents, confirming the trade transaction etc. These documents must be received from the commodity brokers immediately after concluding a Murabaha trade.
- i. Accounting entries must reflect steps involved in a Murabaha e.g. purchase and subsequent sale of commodities.

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11.2 Common mistakes made by banks with Murabaha products

- 11.2.1 Inadequate or non-existent documentation – this may render the transaction void *ab initio*;
- 11.2.2 Incorrect document process flow or incorrect sequencing of execution of documents – this may render the transaction void *ab initio* from Shariah perspective;
- 11.2.3 Selling the commodity to the same broker that the Bank bought the Commodity from in the transaction. This will render the transaction to be Bai' al Inah;
- 11.2.4 Restructuring a Commodity Murabaha payment schedule with an increment in the amount payable by the customer. This will make the Murabaha contract Shariah non-compliant since the Murabaha sale price has been changed.

The Bank may, at their absolute discretion, increase the tenor of the financing facility but may not increase the Murabaha sale price. If a customer is in difficulty with their payments, the Bank may offer customer to enter into a new Murabaha facility with a new tenor and sale price to refinance the existing Murabaha facility.

- 11.2.5 Adding late payment collection to the Bank's profit account. The late payment penalty is not to be treated as an income to the Bank.

The Bank is allowed to keep the actual costs incurred due to the customer's late payment, the balance (if any) must be channelled to charity as approved by the SSB. The Bank shall not claim for any opportunity costs or its cost of fund.

- 11.2.6 Incomplete records on the channelling of the late payment procedure.
- 11.2.7 Agreeing a rebate with a Customer in advance of providing the facility or in advance of an early settlement by the customer or making rebate contractual in the financing documents. Rebate is discretionary in nature and must not be made contractual.
- 11.2.8 In a revolving Murabaha facility, both parties do not enter into separate Murabaha transactions when the same is drawn down. A specific Murabaha contract needs to be entered into for each drawdown to govern the terms of such drawdown.

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12 Custodian of the Document

This Product Guide shall be under the safe custody of the Islamic Banking Division (“IBD”) of DAB. Any changes to this Manual shall be made by the IBD with prior consultation with the SSB, as reviewed by the DAB Executive Board and upon approval by DAB Supreme Council. A copy of the amended Guide shall be made available to all stakeholders and SSB members for reference and implementation.

13 Effective Date of the Document

The Effective date of this guide is the _____ day of _____ 20____