



# Your Bank of Choice

# Bank Rakyat International Shariah Scholars Roundtable 2019

## Contemporary Issues Faced by the Islamic Finance Industry

## RESOLUTIONS



*Market capitalism has focused much on what main street wants and not what the high street needs. Our own fraternity as we are all aware is often accused of favouring the elites and not having solutions for the less privileged, the disasters and the deprived in our societies.*

## 29<sup>th</sup> – 30<sup>th</sup> October

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# Building Institutions of Tomorrow for Sustainable Societies

Dear Readers,

The International Shariah Scholars Roundtable (iSHAR) came to a close with very impactful resolutions. As the Chair of Bank Rakyat, and a key partner to iSHAR, I am truly pleased with both the participation as well as the issues which were deliberated, debated and discussed. As the only woman in the crowd of many intellectual men, I was truly heartened to see how our fraternity empowered and accorded me similar, if not a higher stance, whenever I had a point to make and/or one to disagree upon. Simply put, across and around the table, in addition to the diversity of men and woman, from near and far, we engaged as intellectuals who based our discourse on Maqasid Shariah and how this would impact our world of today and tomorrow.



As we straddle between what we are used to as governments, businesses and civil institutions to what needs to be, societies are demanding for social justice, equity, integrity and ethics in institutions and governments – values seen short changed in our zest for the bottom line race. It is based on these realities that the Roundtable this year discussed a subject very near and close to my heart – the integration of Islamic finance, ethical and responsible finance into sustainable finance. I am persuaded that this is the way forward for the longevity of financial institutions of all denominations. But to do this we must transform our institutions, our fraternity.

In these times of much abundance and severe competing forces, doing things differently alone doesn't guarantee success. From the perspective of our own fraternity, I would hasten to say that we need to soul search and address the many criticisms aired at Islamic financial institutions. The reorganizing of our own resources from our business solutions, governance structures, regulatory standards, Shariah council capabilities and research bodies has to rise to the occasion.

For Bank Rakyat, our raison d'être is to implement the BR25 Plan, launched in August 2019, aimed to transform the bank into a fully sustainable bank in the next five years. The work has begun, but there are lots more to be done. With an asset size of US\$ 27.9 billion, we posted US\$500 million in profits in 2019. We are today the third-largest Islamic institution, sixth by revenue, profit and asset size globally and the eighth and fastest growing Islamic finance institution in Far East Asia. Given this standing, I continually remind myself and my team that if we are to do better for our societies we have to relentlessly transform our own internal structures and build capacities able to respond to the needs of our societies. We have to ask the difficult questions of whether the way we have been is still relevant and where the change must happen. This is being cascaded down and across the organization currently.

Simply put, our institutions must provide solutions which the man on the street can understand. It cannot just be understood by scholarly elites only. It needs to be useful to people from all walks of lives and where the rubber meets the road. It is based on these realities that we developed this year's problem statements for the Roundtable. We discussed issues like – is capital invested in multi-currency avenues allowed to be guaranteed from a Shariah perspective, is interest accrued from gold investment akin to Riba, are there any other restrictions from governance and operational perspectives in implementing capital investment in multi-currencies, is the current Rahn policy issued by the central bank prohibits a bank from charging safekeeping fees beyond the actual cost to name but a few issues discussed. This Report covers the resolutions collectively arrived for all issues raised.

Issues cannot be solved in silos. The magnificence of diversity cannot be overstated and underestimated for these times. It is my hope that we continue this discourse in the many platforms accorded to the fraternity and translate that into implementable action plans with tracking mechanisms of progress. This Roundtable could not have been possible without the phenomenal commitment and support from the team in Bank Rakyat, all the local and international scholars present, International Shari'ah Research Academy for Islamic Finance as well as all participants who gave not only their time but their honest and open thoughts and ideas. For that I thank you very much and I hope this journey of ours will continue to strengthen our standings and our purpose globally.

Thank you.  
*Noripah Kamso*  
 Chairman  
 Bank Rakyat

# International Shariah Scholars Roundtable 2019

## Participating Scholars



Sheikh Dr Waleed Hadi (Chairman)



Sheikh Dr Abdul Aziz KH Al-Qassar



Sheikh Dr Abdul Rahman Abdulla Abdul Hameed  
Saad Al-Saadi



Sheikh Dr Abdul Sattar Abdul Karim Mohammed Abu  
Ghuddah



Dr Abdullaah Jalil



Sheikh Dr Ali Ibrahim Ar-Rasyid



Prof Dr Ashraf Md Hashim



Associate Prof Dr Azman Mohd Noor



Prof Dr Azmi Omar



Associate Prof Dr Aznan Hasan



Ustaz Burhanuddin Lukman



Prof Dr Engku Rabiah Adawiah Engku Ali



Sheikh Dr Esam Kh Al Enezi



Sheikh Dr Ismail Halitoglu



Ustaz Md Yunus Abd Aziz



Prof Dr Mohamad Akram Laldin



Dr Mohammad Zaini Yahaya



Sheikh Dr Mohd Abdul Rahim Mohd Ali AlOlama



Dr Mohd Daud Bakar



Ustaz Mohd Zamerey Abd Razak



Sheikh Dr Mousa Mustafa Al Qoudah



Sheikh Dr Nizam Mohamed Salih Yaquby



Dr Shamsiah Mohamad



Dr. Suhaimi Mohd Yusof



# Bank Rakyat gathers international scholars in Kuala Lumpur to deliberate on Shariah issues of Islamic finance industry



Waqf and Tawarruq were among the topics discussed and debated by international scholars in Kuala Lumpur on the 29<sup>th</sup> – 30<sup>th</sup> October 2019 as industry veterans call for the global Islamic finance industry to brace for change and embrace a paradigm shift to empower marginalized groups of society and boost the economy.

“Islamic financial institutions should be innovation and research incubators to develop economic activities in the markets they serve,” opined Noripah Kamso, the chairman of Bank Rakyat. “For this, we need clarity and consensus in ruling and framework on how we approach current issues and the rising culture of innovation in business.”

The desire to achieve clarity and consensus among Shariah frameworks was one of the driving forces behind the International Shariah Scholars Roundtable (iSHAR). The third edition of the two-day roundtable discussion carried the theme ‘Contemporary Issues Faced by the Islamic Finance Industry’ and was co-organized

by Bank Rakyat and the International Shari’ah Research Academy for Islamic Finance (ISRA). It was attended by over 80 Islamic banking practitioners, 25 of which were Shariah scholars from Malaysia, the UAE, Turkey, Saudi Arabia, Kuwait, Syria, Bahrain and Jordan.

The roundtable highlighted 12 pressing issues faced by the Islamic banking and finance sector and their proposed solutions, including the differentiation between Waqf and Sadaqat, enhancing the guidelines for Zakat calculations, underdeveloped Waqf property in Malaysia, Islamic banks moving from the traditional Rahn-Qard to Tawarruq to maintain profitability and lessons the Islamic finance industry can learn from Turkey’s gold trading.







“Shariah rulings (need) to constantly be contextualized toward addressing contemporary issues facing the Ummah. From ending poverty and hunger to promoting responsible production and consumption, providing affordable housing, better healthcare and education – Shariah deliberations on Islamic finance matters should reflect on the evolving needs of the economy and society,” commented Sheikh Dr Nizam Mohammed Saleh Yaquby, the scholars’ representative of the roundtable discussion.

Designed to ensure that the issues were discussed openly and honestly, taking into consideration Shariah rulings and differences in schools of thought, the discussions also took into account the growing disillusionment of the public in organized institutions including Islamic financial ones, as well as the rising diversity of Muslims across the globe and the importance of customizing solutions while maintaining the principles of Shariah.

The event also saw the launch of the ‘Studies and Recommendations of the second Bank Rakyat iSHAR’ book, which presents Waqf-related issues and the role of Islamic financial institutions in improving the socioeconomic status of communities. iShar is organized once every two years, compiling resolutions derived from the roundtable discussions into a book to be shared with scholars, universities, Islamic financial institutions and policymakers.



“ We do not just need tools for financing but economic models that will enable and spur economic activities and real progress to lives; a model based on sustainable finance which motivates an economy of co-dependence where every cog in the wheel has a role to play. ”





## TOPIC ONE

### The Mudarib's Guarantee of Capital upon Currency Depreciation

*Presented by: Dr Abdul Sattar Abu Ghuddah*

#### Problem Statement:

1. Is capital invested in multicurrency avenues allowed to be guaranteed from a Shariah perspective?
2. Are there any other restrictions from governance and operational perspectives in implementing capital investment in multicurrencies?

The first session discussed the issue of a Mudarib guaranteeing the capital of Mudarabah in the event of currency depreciation. Dr Abdul Sattar Abu Ghuddah started his presentation by clarifying that investment pools are supposed to be in a specified currency where the investor (Rab Al Maal) invests in the same currency.

However, the Islamic bank may have several investment pools with various currencies. In this case, the bank is supposed to invest the investor's funds in the investment pool corresponding to the same currency provided by the investor. If the Islamic bank converts the provided funds into another currency, and losses are realized at the end of the Mudarabah contract due to changes in the value of the currency, would the Islamic bank, as a Mudarib, guarantee such a loss?

The matter under consideration here has three possible scenarios:

- First scenario: The bank and the client agree not to convert the currency into another currency. In such a case, the client (capital provider) bears the currency depreciation risks.
- Second scenario: Both parties agree to convert the currency into the same currency of the investment pool.
- Third scenario: Both parties do not agree on anything,

whereby the Islamic bank would accept the funds in a certain currency that differs from the pool's currency and then it converts it into the pool's currency. In such a case, the bank guarantees the losses incurred due to currency depreciation because the bank acted without proper authorization from the client, which is a form of misconduct. The rationale for this is the fact that Mudarabah is a form of agency and the agent cannot dispose the funds belonging to the principal without his permission. This does not negate the unrestricted nature of the Mudarabah, which is based on granting permission to invest with the principal's currency, not by converting it without his permission.

The roundtable participants discussed the three aforementioned scenarios in addition to the case of when an Islamic bank is obliged by the central bank to have a single investment pool with the local currency only and hence will not be able to accept the foreign currency.

#### Draft Resolution

"If the Rab Al Mal (capital provider) authorized the Mudarib (entrepreneur) to convert the provided currency into the investment pool's currency, this is deemed permissible.

However, if he did not authorize the Mudarib, the latter cannot convert it into another currency, and if he did so, the Islamic bank should guarantee the risk of currency depreciation because such conversion was executed without the authorization of the Rab Al Mal. Furthermore, the Mudarabah contract does not become invalid with this guarantee because it is not an absolute guarantee."







## TOPIC TWO

### Changing Waqf Conditions

*Presented By: Dr Abdul Sattar Abu Ghuddah*

#### Problem Statement:

1. Current statistics show that Malaysia has approximately 13,400 hectares of Waqf land which are left idle, unproductive and require funds for restoration.
2. Underdeveloped Waqf properties in Malaysia become a burden to future generations as significant portions of land are untouchable once designated as Waqf.
3. Most Waqf founders stipulate a condition in which the Waqf land is to be developed to build a mosque or a cemetery, thereby restricting further development.
4. According to a majority of Muslim jurists, it is not permissible to change the conditions of Waqf income and assets as stipulated by the endowers based on the famous maxim on Waqf condition — “The condition of the Waqf founder is like a text of lawgiver” — which is used widely in understanding the connotation and is an obligation to act.

Dr Abdul Sattar began by sharing the view of the majority of jurists who are of the opinion that the endower's conditions cannot be changed because conditions laid down by an endower are similar to rulings laid down by the lawmaker in terms of meaning, implication and adhering to them. However, based on the opinion of the great scholar Ibn Taymiyyah, Waqf conditions are equivalent to rulings of the lawmaker in terms

of meaning and implication but not in terms of adhering to them. Therefore, it is permissible to change the endower's conditions for a more beneficial cause as long as the Waqf is not specified for certain beneficiaries.

Therefore, the endower's conditions could be changed by stipulating certain conditions in the Waqf deed including the right to increase and decrease, specify and prefer, grant and dispossess, add and remove, convert and change, and substitute and purchase. All of these stipulations are mentioned within the Hanafi books of jurisprudence under the discussions on the beneficiaries of Waqf. Dr Abdul Sattar concluded his discussion by mentioning some general provisions and rules that should be considered in applying the aforementioned conditions.

#### Draft Resolution

“It is permissible to change the endower's conditions by changing the beneficiaries to another philanthropic cause because the endower's purpose is to perform good deeds with the hope of receiving reward in the hereafter which has already been achieved. Sheikh Al-Islam permitted moving away from the less preferred to the more preferred. This is similar to the advice of the Prophet for someone who made a vow to pray at Bait Al-Maqdis to pray at Al-Masjid Al-Haram instead.”







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## TOPIC THREE

### Certificates of Deposit as an Alternative to Tawarruq

*Presented By: Dr Abdul Sattar Abu Ghuddah*

#### Problem Statement:

1. To explore potential product diversification by utilizing certificates of deposit as an alternative to Tawarruq.

The third session discussed the issue of certificates of deposit as an alternative to Tawarruq. Dr Abdul Sattar explained that this product involves the sale of a portion from the bank's Mudarabah investment pool to one or more investors for cash or

on credit. The buyer would then be given a tradable certificate indicating the investor's share in the investment pool. The discussion centered on whether such a product would result in Inah (sale and buyback). However, it was agreed that there is no Inah involved because the assets of the Mudarabah investment pool, from which the investor bought a share, are continuously changing.

#### Draft Resolution

"Selling a share of the Mudarabah assets and securitizing them is practiced and widely accepted as permissible. In addition, the AAOIFI Shariah standard on debt did not stipulate any condition related to the percentage of tangible assets. Therefore, it is permissible for the Islamic bank to sell a portion of the Mudarabah investment pool to an investor and then issue an ownership certificate that can be called a certificate of deposit. The investor then has the option of continuing with the investment to obtain a share of the profit generated by the investment pool, or he can sell the certificate in the secondary market or the Islamic bank can redeem the certificate for any agreed upon price. Furthermore, since the Mudarabah investment pool is continuously changing, it is also allowed to redeem the certificate for less than the original price."





## TOPIC FOUR

### Purchasing from Sister Companies without Considering a Certain Percentage of Ownership

*Presented By: Dr Abdul Sattar Abu Ghuddah*

The fourth topic discussed the issue of purchasing from sister companies. Dr Abdul Sattar clarified that the matter under discussion is mainly on the Shariah ruling of a purchaser purchasing goods from a company in which he has an ownership stake of more than 50%, and the sale of these goods to another company in which he also has an ownership stake of more than 50%.

Dr Abdul Sattar presented several cases taken from classical books of Fiqh as evidence supporting the notion that a sale does not follow ownership but follows the right of disposal. As an example, it is permissible for the Rab Al Maal (capital provider) to purchase the capital of Mudarabah (even though such a transaction is prohibited based on analogy since the capital provider is buying his own capital with his own funds).

Based on the foregoing, it would be permissible for a party that has a more than 50% ownership stake in a company to purchase from that company an asset and then sells it to another company in which he also has a more than 50% ownership stake.

Furthermore, according to Dr Abdul Sattar, restricting the permissibility of buying and selling to having an ownership stake of less than 50% is a contemporary Ijtihad (Shariah ruling) that

is not in line with the general opinion of classical scholars who do not impose any restrictions related to the percentage of ownership.

#### Draft Resolution

“It is permissible to buy from an independent company and then sell the purchased item to another independent company where both companies are owned by the same party, without considering the ownership stake in each company. This ruling is in line with the Hanafi opinion that permits the Rab Al Maal to purchase the Mudarabah capital. This is because the Rab A Maal does not have control over the Mudarabah capital although he has ownership of it, while the Mudarib has control over it without ownership.

As such, the Rab Al Maal is considered a third party to the Mudarabah. This opinion is also supported by the Hanbali jurists who permitted such transactions provided that the Mudarabah venture generates some profit, which implies that the capital of the Mudarabah has been commingled with the generated return without taking into consideration the percentage of ownership between the two parties.”







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## TOPIC FIVE

### Stipulating Fees for Early Settlement

*Presented By: Dr Nizam Ya'qubi*

#### Problem Statement:

1. Do fees imposed in the event of an early settlement comprise Gharar?

Dr Nizam Ya'qubi started his discussion by clarifying that we should ascertain the reasons behind the prohibition of any matter before we decide on the appropriate Shariah rulings of any new scenario. One such example would be the fees imposed by Islamic banks. If such fees were associated with an exchange contract, then they would be considered part of the profit because they are, in essence, cash inflows to the bank. Therefore, separating the fees from the profit for market considerations does not change the ruling that these fees are equivalent to profit, and they are not a form of Riba (interest) or Maysir (gambling) or Gharar (uncertainty). Dr Nizam presented some juristic examples for the permissibility of charging fees for

undertaking a commitment or an obligation and thus, he opined that it is allowed for an Islamic bank to charge fees on early settlement and to consider such fees as part of its profit.

#### Draft Resolution

"Stipulating a consideration for early settlement is permissible based on the fact that the customer has initially accepted what can be considered as some form of higher profit margin. The customer has accepted and consented to such an increase in the profit margin. Thus, no element of Riba or Gharar exists in such an arrangement. The roundtable recommends increasing the profit margin while providing a promise to waive such an increase (Waad Bi Al-Tanazul) in the event a customer did not settle early to avoid bringing the case to court."



## TOPIC SIX

### Charging a Fee for the Safekeeping of the Pledged Asset

*Presented By: Dr Abdul Rahman Al-Sa'di and Dr Abdul Aziz Al-Qassar*

#### Problem Statement:

1. The current Rahn policy issued by the central bank prohibits a bank from charging safekeeping fees beyond the actual cost.
2. Islamic banks need to move from the traditional Rahn-Qard to Tawarruq concept in order to maintain its profitability. Nevertheless, there are operational challenges faced by the bank when implementing Rahn-Tawarruq.

The sixth session witnessed the presentation of two research papers by Dr Abdul Rahman Al-Saudi and Dr Abdul Aziz Al-Qassar regarding the issue of charging a fee for the safekeeping of a pledged asset.

Dr Abdul Rahman discussed the topic from the angle of considering such fees similar to combining a loan with a sale. He concluded that it is impermissible to charge a fee on the safekeeping of the pledged asset if such a fee is higher than the comparable or equivalent fee prevalent in the market because there is a bias toward the lender (for the purpose of benefiting from the loan).

Dr Abdul Rahman added that there is no difference between stipulating such fees within the contract or in a separate document. However, if the fee charged by the pledgee (Islamic bank) is equal to the fee charged for safekeeping assets without taking a loan, then there will be no Riba element. Dr Abdul Rahman wrapped up his presentation by presenting a case study on the charging of a fee on the safekeeping of the pledged asset by some Islamic banks, which provide Qard (interest-free loans) to customers provided that the borrower documents the

loan by pledging gold to the Islamic bank and paying a fee for its safekeeping. He concluded that Islamic banks should not charge any fee for the safekeeping of the pledged asset (gold) more than the actual cost of the safekeeping.

Dr Abdul Aziz discussed the issue of charging fees for safekeeping of the pledged asset from a broader juristic perspective whereby he noted the debate among the four juristic schools concerning the issue under discussion. The majority of jurists, except for the Hanafis, agree that the cost of safekeeping and maintaining the pledged asset should be borne by the pledgor whether this cost is necessary for the maintenance of the asset or for safekeeping it. On the other hand, the Hanafis opined that the cost for the maintenance of the pledged asset should be borne by the owner (the pledgor) while the cost of safekeeping the pledged asset should be borne by the pledgee (the beneficiary). The researcher chose to adopt the opinion of the majority.

#### Draft Resolution

“Combining a loan with a sale in one contract is impermissible according to the four schools of jurisprudence (based on the explicit text of the Hadith) even if the price does not exceed the equivalent market price. However, Sheikh Al-Islam (Ibn Taymiyyah) considered the reason for the prohibition to be the presence of an element of bias, which is nonexistent in such a scenario and as such, some contemporary scholars have chosen such an opinion. Thus, if providing the loan and charging a fee on the pledged asset are not stipulated in the same contract, such a structure is permissible according to the Shafi'ees, while it is permissible for the Hanafis and Malikis on the condition that the fee is similar to the equivalent fee in the market. As for the Hanbalis, such an arrangement is completely prohibited.

The reason for those who permit such an arrangement is based on their understanding that the Hadith prohibited a combination that is stipulated. Thus, since both contracts are separate, combining a loan with a sale does not materialize.

As for those who prohibit such an arrangement, their reason is the explicit text of the Hadith that points to the prohibition of any form of combining a loan with a sale. Finally, those who considered it permissible provided that the equivalent fee is imposed, based their opinion on the fact that the reason for prohibiting such an arrangement is not present, which is the notion that it will lead to a loan that begets a benefit for the lender. Based on the above, Islamic banks should verify that no such stipulation is present in the contract in the case of safekeeping the pledged asset for a fee or any other similar mechanism.”







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## TOPIC SEVEN

### Mudarib's Zakat Obligation and its Effect on Bank Zakat Calculations

Presented By: Dr Azman Mohammed Noor

#### Problem Statement:

1. Banks' current Zakat calculation is based on the Zakat Manual issued by JAWHAR. With new banking product innovation, Zakat calculations may need to be revised.

The final session of Day One discussed the Zakat of the Mudarib and its impact on the Islamic bank's Zakat. Dr Azman Mohammed Noor presented the topic by clarifying the different juristic opinions regarding the Zakat of the Mudarabah. He concluded that the disagreement between the scholars in this matter is based on the following two considerations: First, the time of profit recognition — is it when the profit is realized or distributed? Second, whether waiting a whole lunar year (Hawl) after profit recognition is necessary or not.

The Hanafis agreed that the Zakat of the Mudarabah is due without waiting for a Hawl, while the Hanbalis argue that the passage of one Hawl is necessary. As for the Shafi'ees, they mentioned that Hawl starts from the actual earning of any profit, which would mean that each profit has its own Hawl. Dr Azman

presented the impact of this disagreement in opinion on the due Zakat through numeric examples. He concluded that the current practice is closer to the opinion of some Shafi'ees and Hanbalis who consider Zakat to be due as soon as profit materializes without having to wait for a Hawl to pass.

#### Draft Resolution

"Scholars discussed the issue of Zakat of the Mudarabah and the Zakat of the Mudarib, which is the Islamic bank in the context of Islamic banking. The Hanafis were of the opinion that the Mudarib should pay Zakat without having to wait for another Hawl, whereas the Hanbalis were of the opinion that a Hawl has to pass before Zakat is paid. As for the Shafi'ees, they opined that Hawl starts from the time profit is realized. Therefore, each profit that is realized will have its own Hawl. Such differing opinions will have an impact on the payable Zakat. It is up to the discretion of the Shariah board of each Islamic bank to select any of the well-established presented opinions."





## TOPIC EIGHT

### The Juristic Adaptation for Current Account and its Impact on Fees

*Presented By: Dr Essam Al-Anzi*

Dr Essam Al-Anzi discussed the juristic adaptation of the current account. He mentioned that the majority of scholars consider this account as a Qard because it is guaranteed. However, the guarantee alone is not enough to consider it a Qard.

Therefore, some consider it as a Wadiah Yad Dhamanah (guaranteed deposit), while others consider it as a Wadiah contract as in its original concept in Fiqh. Others consider the current account as an independent new contract that does not

follow any other nominal contract. The researcher mentioned also that all views agree that the current account should be guaranteed. Thus, the key research problem here is to what extent the increment on this debt (eg rewards) is permissible? Trying to answer this question, he mentioned that the current account is not a Qard but rather a form of obligation on the Islamic bank. A long discussion ensued between the participants about this contentious issue and its impact. At the end of the session, no resolution was issued and the topic was postponed.



## TOPIC NINE

### The Juristic Adaptation of the Wakalah Bil Istithmar (investment agency)

*Presented By: Dr Abdul Aziz Al-Qassar*

Dr Abdul Aziz Al-Qassar presented a paper about the juristic adaptation of the investment agency contract. He mentioned that the current adaptations for investment agency vary between being an Ijarah (leasing) contract, a brokerage contract or a Ju'alah, or a promise to give Hibah (gift). He also mentioned reasonable objections for each of those adaptations. He concluded that investment agency is a new independent contract that combines the attributes of the Wakalah contract (in its external form) with the attributes of other contracts such as Mudarabah, Ijarah and Ju'alah.

Since it is a new contract, some Shariah parameters should be observed when using it such as not guaranteeing the profits or capital. The respectful scholars discussed the issue in detail and agreed that investment agency does not follow the terms and rules of any of the contracts mentioned in all books of Fiqh. However, while some scholars suggested to consider investment agency as a new contract, others opined that it is not. No agreement about a resolution regarding this issue was reached at the end of the session.





## TOPIC 10

### Borrowing Money for a Mudarabah Fund

*Presented By: Dr Abdul Aziz Al-Qassar*

Dr Abdul Aziz Al-Qassar clarified what is not considered as a borrowing for the Mudarabah capital. He gave two examples: deposits structured based on the Mudarabah contract, and the investment agency contract. Both contracts are not considered liabilities on Islamic banks. Thus, the funds collected through both contracts would be commingled in the general investment pool.

What is considered as a borrowing is the current account, which is considered Qard. Thus, such a borrowing is a liability on the shareholders and not on the general investment pool. The reverse Murabahah is also considered a borrowing because the funds collected, through the sale of the commodities for a spot price, are channeled into the general investment pool. Therefore, all returns from investing these funds belong to the shareholders.



A discussion occurred among the attendants about specifying who is borrowing these funds: is it the general investment pool or the shareholders? As there was no agreement, the topic was postponed for further investigation and no resolution was reached at the end of the session.



## TOPIC 11

### The Turkish Experience in Gold Trading

*Presented By: Dr Ismael Al-Khalidi*

#### Problem Statement:

1. Gold trading is a trending investment in Malaysia. Nevertheless, gold is one of the Ribawi items that must be transacted properly and accordingly to avoid any Riba element.

Dr Ismael Al-Khalidi started by providing an explanation of the basic concepts and juristic rules regarding the trading of gold. He then presented some Islamic banking products that are structured using gold. This was followed by a discussion on the application of a current account in gold. According to Dr Ismael, this product allows customers to purchase gold from an Islamic bank, then the amount of the purchased gold measured in grams will be displayed in his/her current account. The customer would be allowed to transfer this amount to third parties or withdraw it anytime.

Dr Ismael noted that scholars have allowed this practice with two conditions. The first condition is that the Islamic bank shall

own the gold before selling it to the customer and the second condition is enabling the customer to receive the gold upon his request. Dr Ismael then discussed another product, which is the investment account in gold. He explained its mechanism and discussed its permissibility with the participating scholars.

#### Draft Resolution

"It is permissible to buy gold if it is assigned. Among the methods of assigning gold is specifying the number of the bullion and other marks and descriptions that distinguish a piece of gold from another, and ownership certificates that indicate owning an undivided share of gold provided the price is paid. It is also permissible to buy a certain number of gold grams provided that the price is received, and the buyer has the option of physical or constructive possession through crediting the purchased gold in his/her current or investment account."



## TOPIC 12

### The Juristic Solution for Changing the Murabahah Profit Mark-up as an Alternative to Revolving Murabahah

Presented By: Dr Musa Al-Qudah

Dr Musa Al-Qudah clarified that the research problem is about finding a juristic solution to address the impact of changes in the benchmark rate on the profitability of Islamic banks. He discussed the possibility of fixing the Murabahah markup using a rate higher than the benchmark rate used in the market. Subsequently, the Islamic bank will issue a Waad (promise) to give Ibra' to the customer equal to the excess amount over the benchmark rate provided two conditions are met. The first one is that the changes in the benchmark rate will not result in exceeding the total debt amount.

The second condition is that the customer shall pay all installments based on the agreed upon schedule without any delay. As an illustration for this, Dr Musa mentioned that if the

*“It is in these times of much confusion that we make hay, change the way we have been doing business. Change the way we have been running trade. Change the way we think and view the world. Re-think ethics and how we each manifest this in our own private and public lives. Find common shared values to offer solutions to the problems in our way of financial intermediaries.”*

Murabahah markup that is prevalent in the market is 5%, and the expected change in the benchmark rate during the financing period is 2%, then 7% is fixed as a rate in the Murabahah financing contract. The Islamic bank then issues a Waad for the customer to provide a rebate, whereby the subject matter of this Waad is waiving the excess percentage, which is 2%.

Prof Ashraf Hashim and Dr Aznan Hasan presented the Malaysian experience regarding this practice. Dr Aznan mentioned that what is practiced is the conditional rebate because the customer is given this rebate at the end of the financing period.

#### Draft Resolution

“It is permissible to fix the markup of the Murabahah sale using a rate higher than the rate prevalent in the market by taking into consideration the future expected changes in the benchmark rate during the financing period.

For example, if the prevalent market rate is 5% and the expected change to the benchmark rate is 2% during the financing period, the Murabahah markup would be 7%. The Islamic bank would then issue a promise to the customer to forgo a certain amount equal to the difference between the actual benchmark rate and the contracted profit markup”.

