

# DISSIMILARITIES BETWEEN AAOIFI AND BNM SHARIAH STANDARDS: ANALYSIS ON MURABAHA FINANCING

Muhammad Shujaat Saleem<sup>1</sup> and Dr. Fadillah Mansor<sup>2</sup>

## Abstract

*The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and Bank Negara Malaysia (BNM) are the two standard setting bodies which develop Shariah standards for Islamic financial institutions pertaining to different products of the contemporary Islamic banks. This paper aims to explore the dissimilarities between the Shariah standards issued by the AAOIFI and BNM on Murabaha financing. The qualitative method of data collection from the archival sources was used for content analysis. We find that there exist dissimilarities in the seven (7) clauses between the two standards. The study helps AAOIFI and BNM to minimize the gap between the two Shariah standards to attain a comprehensive standardized financial system worldwide.*

**Keywords:** Murabaha financing, Islamic banks, AAOIFI Shariah Standards, Standardized Financial System.

**JEL Classification:** E400, G210

## Introduction

Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)<sup>3</sup>, the Bahrain based organization, was established in the year 1991 with an objective to develop and to issue the Accounting, Auditing and Shariah Standards which do not only comply with the Islamic Shariah rulings but also aim to achieve the harmonization in the Islamic banking and finance industry in the global arena. As of 3<sup>rd</sup> March 2019, AAOIFI has developed and issued fifty seven (57)<sup>4</sup> Shariah Standards pertaining to almost each and every product being practiced by the contemporary Islamic banks worldwide.

<sup>1</sup> Ph.D. Islamic Banking & Finance (candidate), University of Malaya, Kuala Lumpur, Malaysia.  
Email: salaemmshujaat@gmail.com

<sup>2</sup> Senior Lecturer & HOD, Department of Shariah & Management, University of Malaya, Kuala Lumpur, Malaysia.  
Email: fadillah@um.edu.my

<sup>3</sup> In AAOIFI, there is a presence of Islamic Scholars from all the four (4) schools of thoughts across the world.

<sup>4</sup> Please log on to <http://aaoifi.com/issued-standards-4/?lang=en>

However, Bank Negara Malaysia (BNM) was given authority by the Islamic Financial Services Act (IFSA) to develop and issue Shariah Standards for the Islamic banks in Malaysia. As of now, BNM has already issued twelve (12) Shariah Standards including Murabaha which was issued by BNM on 23<sup>rd</sup> December, 2013.

Unlike Islamic banking industry of Malaysia, Islamic banks in the entire world including GCC countries either adopted or adapted the Shariah standards developed and issued by the AAOIFI<sup>5</sup> the non-compliance of which is subject to penal action by the central banking authorities of the respective countries. Islamic Banking Division of the SBP<sup>6</sup> made it compulsory for the Islamic Banks in Pakistan to adopt AAOIFI Shariah Standard No:(8)<sup>7</sup> on Murabaha financing failing which subject to penal action under the provisions of Banking Companies Ordinance, 1962.

However, to follow the AAOIFI Shariah standards is not compulsory for Islamic banks in Malaysia as Islamic banking industry in Malaysia is governed by the rulings of the Shariah standards set by SAC<sup>8</sup> of the BNM<sup>9</sup>.

The objective of this paper is to explore and/or analyze the dissimilarities between the Shariah standards issued by the AAOIFI and BNM on Murabaha financing i.e. the clauses of AAOIFI Shariah Standard No: 8 titled, “Murabaha To The Purchase Orderer” are compared and analyzed with the clauses of the Shariah standard on Murabaha financing issued by BNM to answer the research question as to what are the dissimilarities that exist between the AAOIFI and BNM Shariah standards on Murabaha financing?. The study helps AAOIFI and BNM to minimize the gap between the two Shariah standards to attain a comprehensive standardized financial system worldwide.

### *Problem Statement*

Islamic banking products in the entire world have now emerged as not only viable but also competitive mode of financing against conventional interest based financial system, nevertheless numerous impediments still exist on the way forward to the growth of Islamic banking (Ouerghi, 2014). Among these lack of standardization in the legal documentation and Shariah interpretation of the products of Islamic banking also coexist which becomes one of the main sources to make people not only skeptic and hence they opt for the conventional interest based financing but also make investor feel reluctant to invest in Islamic banking products (Islamic Finance Outlook, 2019).

---

<sup>5</sup> Accounting and Auditing Organization for Islamic Financial Institutions

<sup>6</sup> State Bank of Pakistan

<sup>7</sup> (“IBD Circular- State Bank of Pakistan,” 2010)

<sup>8</sup> Shariah Advisory Council

<sup>9</sup> Bank Negara Malaysia

In this regard, with an objective to make standardization in the contracts of Islamic banks across different countries, the study aims to explore the dissimilarities between the AAOIFI and BNM Shariah standards that pertain to Murabaha financing so that the objective of standardization may be achieved. Therefore, the study answers the question: What are the dissimilarities that exist between the AAOIFI and BNM Shariah standards on Murabaha financing?

### **Shariah Standards on Murabaha**

#### *AAOIFI on Murabaha*

Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) in its meeting held in Madina al-Munawwarah on May 11-16, 2002 developed the Shariah Standard No: 8 on Murabaha financing with the title, “Murabaha to the Purchase Orderer”. This standard is comprehensively divided into five (5) sections and each section is further divided into different sub-sections which encompass the important aspects of Murabaha transaction and its various steps in detail. Securities before the execution of Murabaha to the purchase orderer such as Promise, Hamish Jiddiyah and their details are also covered. However, to secure the debt arises under Murabaha transaction such as collateral and guarantees etc. are discussed in brief. This standard is applicable to both Murabahah transactions whether it is on the spot payment basis or the deferred payment basis. The concept of sukuk based on Murabahah transaction is not discussed in this standard as it is covered in a separate standard with the name Investment Sukuk- Shariah Standard No: 17. Murabaha to the Purchase Orderer also does not cover the procedure as to how the relationship between the Institution and Client is created {see table 1.1 (a) in Appendix-A}.

#### *BNM on Murabaha*

The Shariah Standard on Murabaha financing by Bank Negara Malaysia (BNM) is broadly divided into three (3) parts. Part (A) introduces the standard and followed by policy objectives, scope of policy document, applicability, legal provisions, effective date, policy superseded, interpretation & related legal and policy documents. Whereas Part (B) of the standard outlines the Shariah requirements that contain nine (9) sections comprises of ninety eight (98) sub-sections which discusses (1) definition and nature of Murabaha (2) components of Murabaha (3) asset (4) price (5) arrangement of Murabaha with wa’ad (Murabaha to the purchase orderer), (6) arrangement of Murabaha to the purchase orderer with Wakalah (7) incorporation of rebate (ibra’) in Murabaha contract and (8) arrangement of Murabaha with ta’widh and/or gharamah. Finally, Part (C) discusses the operational requirements such as oversight functions, documentations, internal policies & procedures, information disclosure and risk management which is followed by five (5) appendices on legitimacy of Murabaha contract, glossary, general parameter on underlying assets, general guidance on the components of acquisition costs and related legal & policy documents.

Moreover, clauses under Part (B) & (C) are categorized as either Standard (S), the non-compliance of which is subject to penal action, or Guidance (G) which contains the information, advice and/or recommendation that help Islamic financial institution in Malaysia for the implementation of sound industry practices. Table 1.1 (b) of appendix (A) summarizes the clause-wise categorization of the BNM standard on Murabaha financing.

### Methodology and Data Collection

The main intent of the study is to explore the dissimilarities between the AAOIFI and BNM Shariah standards through content analysis of the archival data from both the AAOIFI and BNM Shariah standards on Murabaha financing, hence the study is qualitative in its nature which uses archival research strategy.

Furthermore, the study's main intent along with research question had never been inquired before thus, the study is exploratory also. Furthermore, this study collects archival data from the AAOIFI and BNM Shariah standards as prescribed by (Bryman, 2012).

The rationale as to why this study uses archival research strategy is that, to answer the question of the study, the researcher collects data from the AAOIFI and BNM Shariah standards on Murabaha financing as (Lee, 2012) suggests that the archival data includes but not limited to data collected from textual documents, emails, blogs, letters, administrative records, calendars, manuals, policy documents, standard operating procedures of companies, agreements, contracts, minutes of meetings and press releases.

The following table shows the list of sources from where we have gathered the archival data.

Table 1  
*List of Archival Data Sources*

Bank/Institution	Document	Source	Year of access
AAOIFI	Murabaha to the Purchase Orderer	Bank Personnel	2018
Bank Negara Malaysia	Shariah Standard on Murabaha	Bank Website	2019

This table is constructed by the researcher which reveals the secondary sources of data collection.

### Data Analysis, Discussion and Findings

After having done a rigorous content analysis and comparison between the clauses of the AAOIFI Shariah Standard and BNM Shariah Standard on Murabaha financing, it reveals that the clauses covered in all the five (5) sections of Murabaha to the purchase orderer framed by AAOIFI are also comprehensively covered in the BNM Shariah Standard on Murabaha in its nine (9) sections.

However, certain dissimilarities (See Appendix- B) in the contents of the clauses of both the standards are observed; the details of which are as follows.

*AAOIFI Clauses: 4/8, 5/6 & 5/8 on Late Payment Penalty*

Murabaha price can be paid on the spot in case of spot Murabaha, or it can also be paid in different installments in case of deferred payment Murabaha in which case every installment is the part of selling price. In principle, when the buying and selling is done on credit then both the buyer and seller become debtor and creditor respectively; and the selling price becomes the debt. Charging extra amount against the unpaid debt is Riba according to the Islamic jurisprudence (Abdel-Bagi, 2018; Al-Jassas, 1980; Siddiqui, 2005). Therefore, it is strictly not allowed for the bank to charge extra amount if the customer delays in payment with or without reason. Moreover, it is also not allowed for the bank to charge extra amount against unpaid debt by giving extra time to the customer (clauses: 4/8 & 5/8). However, in order to safeguard the Islamic banks from the willful deception by solvent debtors, clause 5/6 of the standard permits Islamic banks to incorporate the undertaking in the Murabaha contract whereby, customer is asked to pay certain amount to charity provided that, non-payment or delay in payment by the customer is without a good reason acceptable to Shariah.

*BNM Clauses: 19.1 & 19.2 on Late Payment Penalty*

According to the BNM standard, Islamic banks may charge late payment charges to an extent of actual loss borne by the bank and recognize the same as income of the bank (clause 19.1 and 19.2 a). However, late payment charges which are over and above the actual loss shall be donated in charity (clause 19.2 b) which is similar to the self-imposed penalty mentioned in the clause 5/6 of the AAOIFI Shariah standard.

*Difference between AAOIFI & BNM on Late Payment Penalty*

Aforementioned clauses of the AAOIFI Shariah standard and the respective clauses of the BNM standard show the distinction between the two standards pertain to Shariah rulings regarding late payment penalty.

*AAOIFI Clause: 5/7 on Rescheduling*

Irrespective of the fact that the customer is solvent or insolvent, Islamic banks in case of rescheduling must not increase the debt arising from Murabaha contract i.e. it is not allowed for the bank to charge extra amount on rescheduling (Kahf, 2006; Taqi, 2000). Islamic banks can only extend the time but cannot charge extra amount (clause: 5/7).

*BNM Clauses: 14.13 & 14.14 on Rescheduling*

According to the clauses: 14.13 & 14.14 of the BNM standard on rescheduling, Islamic banks are permitted to increase the amount of unpaid debt arising from Murabaha contract by executing the new contract with revised debt obligation.

*Difference between AAOIFI & BNM on Rescheduling*

After having analyzed the clauses of both the AAOIFI and BNM Shariah standard on Murabaha financing pertains to rescheduling, it is revealed that there is a significant difference between the two standards on rescheduling of Murabaha debt i.e. AAOIFI does not allow charging extra amount on scheduling unlike BNM.

*AAOIFI Clause: 5/9 on Rebate*

In case of deferred payment Murabaha, if the customer wants to pay the debt before the maturity date then it is at the option of the bank to give rebate to customer or not. Customer cannot claim the bank for rebate as the same is not a part of contract (Usmani, 2002). The reason as to why does rebate (on spot discount) cannot become the part of contract is that, in Shariah viewpoint, rebate (on spot discount) is ehsaan (benevolent act) and if it becomes the part of contract then it would become obligatory on the seller to give rebate, however ehsaan (benevolent act) cannot become obligatory, rather it is at the sole discretion of the party who does ehsaan (benevolent act). Secondly, if rebate becomes the part of the contract of Murabaha then it would tantamount to having two prices of Murabaha goods that would create ambiguity regarding the selling price. In Shariah viewpoint, if the sale contract is executed, the selling price should be certain leaving no ambiguity to avoid Gharar e Kaseer<sup>10</sup>. Thirdly, if rebate becomes the part of contract then it may lead to Riba.

*BNM Clauses: 18.1, 18.2 & 18.3 on Rebate*

According to the clauses 18.1, 18.2 and 18.3 of the BNM Shariah standard on Murabaha financing pertaining to rebate, it is allowed for the Islamic banks to incorporate the rebate clause in the Murabaha contract.

*Difference between AAOIFI & BNM on Rebate*

Aforementioned clauses of both the AAOIFI and BNM standards show that, there is a dissimilarity exists between the two standards pertaining to Shariah rulings regarding rebate. AAOIFI does not allow rebate to be the part of Murabaha contract whereas, BNM standard permits to do so.

---

<sup>10</sup> Major uncertainty within the clauses of transaction

*AAOIFI Clause 5/10 on Different Currency*

If the customer wants to pay off the Murabaha debt in a currency different from what has been agreed upon, then the following conditions must be met according to the clause 5/10 of the AAOIFI Shariah standard.

- It should not be pre-agreed between the contracting parties.
- Amount of debt in a different currency has to be paid in full.
- Exchange should take place on the spot rate prevailing at the time of exchange

*BNM Clause: 14.12 on Different Currency*

In accordance with clause 14.12 of the BNM Shariah standard on Murabaha financing, it is not necessary for the Islamic banks that the amount of debt in a different currency be paid in full i.e. partial payment of debt in a different currency is also allowed by BNM.

*Difference between AAOIFI & BNM on Different Currency*

The dissimilarity between the AAOIFI and BNM Shariah standards pertaining to this clause is that, according to the AAOIFI Shariah Standard, it is compulsory that the Murabaha debt in a different currency is paid in full. However, according to BNM Standard, Murabaha debt in a different currency can also be paid partially.

*AAOIFI Clause 2/3/2 on Promise*

There is every probability that the customer after requesting the bank to purchase an item not interested in buying the requested item in which case the bank would be exposed to risk of loss. To mitigate this risk, a customer may be asked to sign promise document in which he undertakes to purchase an item after the bank's purchase. In the absence of promise, the bank cannot sue the customer in the court of law for the enforcement of rights. Nevertheless, it is not mandatory for the bank to ask the customer to make promise in all Murabaha transactions. It is a tool to mitigate business risk and according to the AAOIFI, an institution is advised not to take promise in the following cases.

- If the credibility of the customer is such where it is certain that the customer will buy the goods from the bank.
- If the bank has bought the goods from the supplier on *khayar e Shart (Sale on return basis)*
- If the nature of goods is such that the goods may be sold easily in the market without discounting the price.

*BNM Clause 15.1 on Promise*

After having done the analysis of the BNM clause 15.1 on promise, it reveals that BNM Shariah standard does not require Islamic banks to see as to whether or not there are other opportunities to sell the item i.e. BNM standard allows Islamic banks to take promise from the customer in every Murabaha transaction regardless of the fact that, there are other opportunities to sell the item or not.

*Difference between AAOIFI & BNM on Promise*

According to the aforementioned clause of the AAOIFI Shariah Standard, bank is advised not to take promise from the customer when there are other opportunities to sell the item whereas, in BNM Shariah Standard, this provision of not taking promise from the customer has not been incorporated i.e. according to the BNM standard, bank may ask customer to make promise in each and every Murabaha transaction which is the point of distinction between the two standards.

*AAOIFI Clause 3/1/3 on Agency*

According to the aforementioned clause, Islamic banks must buy the subject matter of Murabaha directly from the vendor or the bank may appoint a third party (other than customer) as an agent to purchase. Nevertheless, if it is not possible for the bank to buy the goods directly from the supplier or appoint a third party as its agent then it is also allowed for the bank to appoint the customer as its agent to buy goods provided that, there is a dire need of the same.

*BNM Clause 16.1 on Agency*

The agency clause: 16.1 of the BNM Shariah standard on Murabaha financing permits Islamic banks to sign an agency contract with the customer in all the Murabaha transactions irrespective of the fact that there is a dire need or not.

*Difference between AAOIFI & BNM on Agency*

According to the AAOIFI Shariah standard, customer should not be appointed as the bank's agent except in case of dire need which is not mentioned in the respective clause of the BNM Shariah standard i.e. in accordance with the BNM standard, bank may not take into account as to whether or not there is a dire need and it is permitted to appoint the prospective customer as the bank's agent in each and every Murabaha transaction.



*AAOIFI Clauses: 3/1/6 and 3/1/7 on Documentation*

According to the aforementioned clauses of the AAOIFI Shariah standard on Murabaha financing, documents pertaining to purchase of goods must be in the name of the bank even if the customer acts as an agent of the bank i.e. in case of disclosed agency between the bank and the customer, it is necessary that each and every document pertains to the acquisition of an item must be in the name of the bank being a buyer. However, in case of undisclosed agency agreement between the bank and the customer, the two parties may appoint a third party as agent to purchase the item from the supplier. In which case, the customer plays the following two roles.

- Acts as principal to the third party
- Acts as agent to the bank

By undergoing aforementioned arrangements, documents pertain to the acquisition of an item may be in the name of the customer provided that, the risk relating to the acquisition of an item should be borne by the bank being the principal and a buyer. Although, the best practice prescribed by the standard is to have disclosed agency arrangement.

*BNM Clauses: 16.4 & 16.5 on Documentation*

The clauses 16.4 & 16.5 of the BNM Shariah standard on Murabaha financing do not make it compulsory that the documents pertaining to purchase of goods must be in the name of Islamic bank i.e. BNM Shariah standard permits Islamic banks to incorporate the prospective customer's name in all the documents relating to purchase of goods.

*Difference between AAOIFI & BNM on Documentation*

According to the clauses 3/1/6 & 3/1/7 of the AAOIFI Shariah standard, documents pertaining to purchase of goods must be in the name of the bank even if the customer acts as bank's agent. However, in the respective clauses 16.4 & 16.5 of the BNM Standard, it is not a compulsory requirement.

**Conclusion & Recommendations**

After having done a rigorous comparative analysis of the clause-wise dissimilarities between the AAOIFI and BNM Shariah standards on Murabaha financing, it is found that, there are four (4) major and three (3) minor dissimilarities exist between the two Murabaha standards. In Murabaha contract of both the AAOIFI and BNM Shariah standards, the clauses in which major dissimilarities were analyzed includes the clauses pertaining to (1) late payment penalty (2) rescheduling (3) rebate

and (4) use of different currency whereas, minor dissimilarities exist in the clauses pertaining to (1) promise (2) agency and (3) documentation.

On the basis of the findings of the study, we recommend to competent authorities of both the AAOIFI and BNM to minimize, if not eliminate, the gap between AAOIFI and BNM Shariah Standards which is also recommended by the Islamic Finance Outlook Report-2019 edition by Standard & Poor's (S&P) Global Ratings<sup>11</sup> as the plurality in the Shariah contracts and its interpretation across different regions may reap benefits in the short run by designing innovative state of the art products. However, in order to meet the objectives of Maqasid e Shariah across the globe and to attain a comprehensive financial system in the long run, standardization in the Islamic banking contracts along with its interpretation are of utmost importance. Furthermore, standardization in the contracts of Islamic banking industry of Malaysia with the AAOIFI Shariah Standards also help resolve the problem to not only operate globally but also make integrated financial deals with the regions that follow AAOIFI Shariah Standards.

### References

- Abdel-Bagi, A.-A. H. (2018). Bibliography about Islamic Studies. *Tafakkur*, 5(1).
- Al-Jassas, A. A. (1980). *Ahkam ul Quran*. Lahore: Sohail Academy.
- Bryman, A. (2012). *Social research methods*: OUP Oxford.
- IBD Circular- State Bank of Pakistan, Circular No:1 C.F.R. § Paragraph No: 2 & 3 (2010). *Islamic Finance Outlook*. (2019). Retrieved from
- Kahf, M. (2006, August). Maqasid al Shari'ah in the Prohibition of Riba and their Implications for Modern Islamic Finance. In *Presented Paper at IIUM International Conference on Maqasid Al-Shari'ah*.
- Lee, B. (2012). Using documents in organizational research. *The practice of qualitative organizational research: Core methods and current challenges*, 389-407.
- Ouerghi, F. (2014). Are Islamic banks more resilient to global financial crisis than conventional banks? *Asian Economic and Financial Review*, 4(7), 941.
- Siddiqui, S. A. (2005). Understanding and Eliminating Riba: Can Islamic Financial Instruments Be Meaningfully Implemented?. *Journal of Management and social sciences*, 1(2), 187-203.
- Taqi, U. M. M. (2000). *An Introduction to Islamic Finance*, Idaratul Maarif. Karachi, Pakistan.
- Usmani, M. I. A. (2002). *Meezanbank's Guide to Islamic Banking*. Karachi, Pakistan: Darul-Ishaat.

<sup>11</sup> Despite the growth of Islamic banking industry worldwide has been phenomenal however, one should not ignore the fact that, according to the Islamic Finance Outlook Report-2019 Edition by S&P Global Rating, the pace of Islamic banking industry worldwide would be steady and slow in 2019, due to weak economic conditions in the core Islamic finance markets. Nonetheless, Malaysia is given exception by the GIFR-2018 to have adversely effected by the sluggish economic growth in the core Islamic finance markets but still, Islamic banking industry in Malaysia cannot operate in an isolated world especially when the problem of lack of standardization in the contracts of Islamic banking industry in general and debt based contract in particular coexist.

## APPENDIX- A

Table 1.1 (a)

*AAOIFI: Murabaha to the Purchase Orderer*

AAOIFI Clause	Title of Clause	Total
1.0	Scope of the standard	1
2	Procedure prior to contract of Murabaha	
2/1/1-2/1/4	The customer's expression of his wish to acquire an item through the Institution	4
2/2/1-2/2/6	The position of the institution in respect to the application of the customer for Murabaha to the purchase orderer	6
2/3/1-2/3/5	The promise from the customer	5
2/4/1-2/4/5	Commissions and expenses	5
2/5/1-2/5/6	Guarantees related to the commencement of the transaction	6
3	Acquisition of title to , and possession of, the asset by the institution or its agent	
3/1/1-3/1/7	The acquisition of the asset or good by the institution prior to its sale by means of Murabaha to the purchase orderer	7
3/2/1-3/2/7	The institution's taking possession of the asset or good, prior to its sale by Murabaha to the purchase orderer	7
4/1-4/11	Conclusion of a Murabaha contract	11
5/1-5/10	Guarantees and treatment of Murabaha receivables	10
6	Issue date	1
Total		63

This table is constructed with the help of AAOIFI Shariah Standard No: 8 titled, "Murabaha To The Purchase Orderer"

Table 1.1 (b)

*BNM: Murabaha Standard*

Part A <sup>12</sup> : Overview				
BNM Clause No	Title of Clause	Standard	Guidance	Total
1.1 – 1.6	Introduction	N/A	N/A	6
2.1	Policy objectives	N/A	N/A	1
3.1 -3.2	Scope of policy document	N/A	N/A	2
4.1	Applicability	N/A	N/A	1
5.1	Legal provisions	N/A	N/A	1
6.1	Effective date	N/A	N/A	1
7.1	Policy superseded	N/A	N/A	1

(Table Continued...)

<sup>12</sup> Sixteen (16) clauses under Part A of the standard are neither classified as "S" nor categorized as "G".

8.1 – 8.2	Interpretation	N/A	N/A	2
9.1	Related legal and policy documents	N/A	N/A	1
Sub-total (A)		N/A	N/A	16
<b>Part B: Shariah Requirements</b>				
<b>BNM Clause No</b>	<b>Title of Clause</b>	<b>Standard</b>	<b>Guidance</b>	<b>Total</b>
10.1	Definition	1	0	1
11.1 -11.2	Nature	2	0	2
12.1-12.7	Contracting Parties	4	3	7
13.1 – 13.18	Asset	12	6	18
14.1 – 14.19	Price	6	13	19
15.1 – 15.19	Arrangement of Murabaha with Wa'ad ( Murabaha to the purchase orderer	12	7	19
16.1 – 16.10	Arrangement of Murabaha to the purchase orderer with Wakalah	5	5	10
17.1 – 17.5	Arrangement of Murabaha with Assurances such as Kafalah, takaful coverage, rahn, Hamish jiddiyah and urboon.	6	11	17
18.1 -18.3	Incorporation of rebate in Murabaha contract	1	2	3
19.1 -19.3	Arrangement of Murabaha with ta'widh and/or gharamah	1	1	2
20.1 -20.3	Dissolution of Murabaha contract	3	0	3
21.1 – 21.2	Completion of Murabaha contract	2	0	2
Sub-total (B)		55	48	103
<b>Part C: Operational Requirements</b>				
<b>BNM Clause No</b>	<b>Title of Clause</b>	<b>Standard</b>	<b>Guidance</b>	<b>Total</b>
22.1 -22.3	Oversight functions	3	0	3
23.1 – 23.9	Documentary requirements	9	0	9
23.10 – 23.16	Acquisition of asset	4	3	7
23.17 – 23.20	Sale of asset	4	0	4
23.21	Inventory management	1	0	1
24.1 – 24.3	Information disclosure	1	2	3
25.1	Risk management policies	1	0	1
25.2 – 25.4	Risk Identification	2	1	3
25.5 – 25.7	Risk measurement	2	1	3
25.8 – 25.12	Risk controls and mitigation	3	2	5
25.13 – 25.15	Risk monitoring and reporting	3	0	3
Sub-total (C)		33	9	42
Total (A+B+C)		88	57	161 <sup>13</sup>

This table is constructed after taking into account the Shariah standard on Murabaha issued by Bank Negara Malaysia.

<sup>13</sup> Includes sixteen (16) clauses pertains to Part A.

---

**APPENDIX- B***Late Payment Penalty**AAOIFI Clause: 4/8*

It is permissible to agree on the payment of the price of the item under Murabaha to the purchase orderer either by short or long term installments, and the selling price of the asset becomes a debt that the customer is obligated to pay at the time agreed upon. It is not permitted subsequently to demand any extra payment either in consideration of extra time given for payment or for delay in payment that may be for a reason or no reason.

*AAOIFI Clause: 5/6*

It is permissible that the contract of Murabaha consist of an undertaking from the customer to pay an amount of money or a percentage of the debt, to be donated to charitable causes in the event of a delay on his part in paying installments on their due date. The Shariah supervisory board of the institution must have full knowledge that any such amount is indeed spent on charitable causes. And not for the benefit of the institution itself.

*AAOIFI Clause: 5/8*

When there is default in payment by the customer with regard to installments of the selling price that are due, the amount due is just the amount of the unpaid selling price. It is not permissible for the institution to impose any additional payment on the customer for the institution's benefit. This provision, however, subject to item 5/6.

*Respective Clauses in the BNM standard**BNM Clause: 19.1*

The contracting parties may agree to include a clause in the murabaha contract stipulating late payment charges as determined by the relevant authorities.

*BNM Clause: 19.2*

Pursuant to paragraph 19.2, the late payment charges shall consist of

- a. Tawidh (compensation) for actual loss borne by the seller , which may be recognized as income to the seller; and/or
- b. Gharamah (penalty), which shall not be recognized as income. Instead, it shall be channeled

to charitable bodies.

*Rescheduling*

*AAOIFI Clause: 5/7*

It is not permissible to extend the date of payment of the debt in exchange for an additional payment in case of rescheduling, irrespectively of whether the debtor is solvent or insolvent.

*Respective Clauses in the BNM standard*

*BNM Clause: 14.13*

The contracting parties may agree to extend or reschedule the payment period of the remaining debt without any increase in amount to the remaining debt.

*BNM Clause: 14.14*

Notwithstanding paragraph 14.13, the contracting parties may agree to settle the outstanding debt obligation by entering into a new contract that may results in a new debt obligation.

*Rebate*

*AAOIFI Clause: 5/9*

It is permissible for the institution to give up part of the selling price if the customer pays early, provided this was not part of the contractual agreement.

*Respective Clauses in the BNM standard*

*BNM Clause: 18.1*

The seller may consider waiving part of the outstanding debt in the form of a discount to the purchase upon pre-payment and/or early settlement.

*BNM Clause: 18.2*

A rebate clause shall be incorporated in the murabaha contract provided that it is a requirement imposed by the authority.

*BNM Clause: 18.3*

In the event that the murabaha contract involves payment of the deferred price in installment, the seller may provide periodic ibra based on certain benchmark agreed by the contracting parties.

*Different Currency*

*AAOIFI Clause: 5/10*

It is permissible for the institution and the customer to agree, on the due date, that payment of the debt due on account of Murabaha to the purchase orderer may be made in a currency different from that in which the debt is denominated, provided any such payment is made based on the exchange rate of the day of the settlement. It is also a condition that either the settlement of the debt is completed in full or that the amount agreed be paid in the different currency is paid in full. So that there remains no balance owing in that different currency.

*Respective Clause in BNM standard*

*BNM Clause: 14.13*

The contracting parties may agree to make payment of the instalments or full settlement in a currency different from the currency specified in the contract at the agreed prevailing exchange rate on the payment or settlement date respectively.

*Promise*

*AAOIFI Clause: 2/3/2*

The customer's promise to purchase, and the related contractual framework, are not integral to a Murabaha transaction, but are intended to provide assurance that the customer will complete the transaction after the item has been acquired by the institution. If the institution has other opportunities to sell the item, then it may not need such a promise or contractual framework.

*Respective Clause in the BNM standard*

*BNM Clause: 15.1*

Murabaha to the purchase orderer (MPO) refers to an arrangement whereby the purchase orderer (purchaser) (waad) to purchase an identified and specified asset from a seller on murabaha terms upon the latter's acquisition of the asset.

*Agency*<sup>14</sup>*AAOIFI Clause: 3/1/3*

The original principle is that the institution itself purchases the item directly from the supplier. However, it is permissible for the institution to carry out the purchase by authorizing an agent, other than the purchase orderer, to make the purchase; and the customer (the purchase orderer) should not be appointed to act as an agent except in a situation of dire need. Furthermore, the agent must not sell the item to himself. Rather, the institution must first acquire title of the item and then sell it to the agent. In such a case, the provisions of item 3/1/5 should be observed.

*Respective Clause in the BNM Standard**BNM Clause: 16.1*

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

*Documentation**AAOIFI Clause: 3/1/6*

The original principle is that all the documents and contracts concerned with the execution of the sale of the item must be in the name of the Institution and not in that of the customer, even if the latter acts as the institution's agent in acquiring the item.

*AAOIFI Clause: 3/1/7*

It is permissible, at the time when the institution appoints someone as its agent for the acquisition of the item, that the two parties agree to authorize the agent to carry out the acquisition of the item as agent, without disclosing the existence of the agency agreement. In this case, the agent will act as principal in dealing with other parties, and will undertake the purchase directly in his name but on behalf of the Institution as principal. However, it is preferable that the agent's role be disclosed.

*Respective Clauses in the BNM standard**BNM Clause: 16.4*

The name of the principal in the agency (wakalah) contract may be disclosed in all documents related to the sale contract between the supplier and the principal that are executed by the purchasing

---

<sup>14</sup> The word "Agency" in the study is referred to the "Contract of Agency" which may be executed between the Islamic bank and the prospective customer whereby; Islamic bank becomes the "Principal" and prospective customer becomes the "Agent".



agent on behalf of the principal.

*BNM Clause: 16.5*

Notwithstanding paragraph 16.4, the purchasing agent and the principal may agree that only the name of the purchasing agent may be disclosed in all documents related to the sale contract between the supplier and the purchasing agent.