

Shariah Advisory Council (SAC) of Bank Negara Malaysia (BNM) Resolution No. 63 Dated 3 May 2007

Application of Tawarruq in Sukuk Commodity Murabahah

There was a proposal to issue sukuk commodity murabahah based on tawarruq as an alternative instrument to existing money market products which are based on the concept of bai` `inah. Generally, the method of issuance of this sukuk involves commodity murabahah transaction through tawarruq contract to create indebtedness between the sukuk issuer and investors. The debt will be settled by the sukuk issuer on maturity date. This sukuk will be tradable in the secondary market for financial institutions that apply the concept of bai` dayn.

In this regard, the SAC of BNM was referred to on the issue as to whether the proposal to issue sukuk based on tawarruq complies with Shariah.

Resolution

The SAC of BNM, in its 67th meeting dated 3 May 2007, has resolved that there is no objection in Shariah for the issuance of sukuk commodity murabahah based on tawarruq as long as the sale transactions involve three or more contracting parties.

Basis of the Ruling

The aforesaid resolution is based on the following textual provisions and views relating to permissibility of tawarruq:

- i. “whereas Allah has permitted trading and forbidden riba usury...” (Al-Baqarah: 275)
Based on general meaning of the above verse, scholars are of the view that tawarruq is allowed since it is a kind of trading activity. It may be conducted for the purpose of obtaining cash, with either the purpose is known by all related parties or not. It may also be conducted due to pressing need or as a common practice of certain parties or institutions.
- ii. Fiqh maxim:
“According to the original method of ruling, mu`amalah is permissible, except when there is a provision prohibiting it.” (Al-Syafii, Al-Umm)

Contemporary scholars allow the application of tawarruq based on the views of Hanafi, Syafii and Hanbali schools that permit the application of tawarruq.

Reference:

Shariah Resolutions in Islamic Finance (2nd edition), BNM,
https://www.bnm.gov.my/documents/20124/9198675/shariah_resolutions_2nd_edition_EN.pdf