

**Shariah Advisory Council (SAC) of Bank Negara Malaysia (BNM) Resolution No. 78 Dated 20 May 2010**

**Ibra' in Islamic Financing**

Most Islamic financial institutions do not include the ibra' clause in the financing agreement entered with their customer due to the concern that this will give rise to the issue of uncertainty (gharar) in the selling price. However, the exclusion of ibra' clause from the agreement may also lead to a dispute between the customer and Islamic financial institution on the customer's entitlement to ibra' arising from early settlement of outstanding debt.

In line with the need to preserve public interest (maslahah) and to ensure fair treatment between the financier and customer, the SAC was referred to on the proposal to mandate Islamic financial institutions to accord ibra' to the customer who settled their debt obligation under sale-based contract (such as bai` bithaman ajil or murabahah) prior to the agreed settlement period.

***Resolution***

The SAC of BNM, in its 101st meeting dated 20 May 2010, has resolved that Bank Negara Malaysia as the authority may require Islamic financial institutions to accord ibra' to their customer who settled their debt obligation arising from the sale-based contract (such as bai` bithaman ajil or murabahah) prior to the agreed settlement period. Bank Negara Malaysia may also require the terms and conditions on ibra' to be incorporated in the financing agreement to eliminate any uncertainty with respect to customer's entitlement to receive ibra' from Islamic financial institution. The ibra' formula will be determined and standardised by Bank Negara Malaysia.

***Basis of the Ruling***

Forgoing of rights is closely associated with ibra' and dho` wa ta`ajjal in the context whereby Islam encourages the financier to waive his right to claim the settlement of a debt (either partially or wholly). The debt obligation is recognised as a liability (zimmah) that is to be settled by the debtor to the financier. Dho` wa ta`ajjal is a term used to refer to an act of reducing partial amount of a debt in the event where the debtor makes an early settlement.

The evidence on waiving of right to claim part or total amount of debt existed during the lifetime of Rasulullah SAW as stated in the following hadith:

“Rasulullah SAW once ordered the people of bani Nadhir to leave Madinah, then he received delegates from the people who said: Oh Rasulullah! You ordered us to leave Madinah while we have outstanding debts that must be settled by the local people. Then Rasulullah SAW replied: Give discount and accelerate the settlement.” (Al-Daraqutni)

Some scholars are of the view that dho` wa ta`ajjal is not permissible since it is similar to the practice of riba. They argued that the increment in value of debt due to an extension of repayment period is considered as riba. Hence, the reduction in the value of debt arising from shortening the repayment period is also regarded as riba.

Besides that, there are some arguments stating that the provision on dho` wa ta`ajjal in a debt transaction is not allowed as it will create gharar in the selling price. Some scholars are also of the opinion that the provision on dho` wa ta`ajjal in a debt transaction is not permissible because this practice resembles the characteristic of bai`atain fi al-bai`ah transaction which is forbidden by Sunnah.

However, some scholars are of the view that dho` wa ta`ajjal is permissible and it is not appropriate to equate dho` wa ta`ajjal with riba given the essence of both subjects are distinct from one another.

Considering the views of scholars that allow full adoption of dho` wa ta`ajjal and those who allow it on a provisional basis, it is concluded that there is no restriction for the authority to mandate the implementation of such practice to be compulsory. This is because the directive issued by the authority to implement such permissible practices is intended to safeguard the interests of all related parties.

Such an action is consistent with the resolution adopted by the classical scholars, of which the settlement value of the debt that is paid prior to the agreed settlement period should commensurate with the duration prior to its settlement. Ibnu `Abidin wrote on this matter as follows:

“If a debtor settles his debt before it is due or if he passes away and a claim proportion of his estate is claimed (to settle the debt), the contemporary scholars replied: Verily, none shall be taken from the murabahah between them except the amount that commensurates with the duration prior to its settlement.”

*Reference:*

*Shariah Resolutions in Islamic Finance (2<sup>nd</sup> edition), BNM,*

[https://www.bnm.gov.my/documents/20124/9198675/shariah\\_resolutions\\_2nd\\_edition\\_EN.pdf](https://www.bnm.gov.my/documents/20124/9198675/shariah_resolutions_2nd_edition_EN.pdf)