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COMMODITY MURABAHA: DOES IT VIOLATE ISLAMIC NORMS? NOTE

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Abstract

Recently commodity murabaha has run into disrepute due to court decisions going against the use of this instrument in Islamic banks. This brief note argues that at fault has been the structure of contracts and the excessive use of the instrument. In principle, commodity murabaha is doubtless rooted deep in the Islamic Shari'ah.

Key words: Islamic finance; commodity murabaha; Time value in price; Shari'ah intention and spirit

Commodity murabaha is one of the most commonly used financing contracts in Islamic banking. But some court decisions in the matter recently going against Islamic banks in Malaysia have put people in a quandary; it is being increasingly asked if commodity murabaha defies Islamic requirements. The answer is: in principle it does not. Commodity murabaha falls in the same generic category of '*uqud al-mu'awadhat*' or exchange contracts that covers all types of transactions Islam allows.

In exchange contracts a given quantity of one commodity is traded for a given quantity of *another* commodity, including money. The money value of a commodity is called its price. The delivery of a commodity and the payment of price may be simultaneous i.e. on the spot or the obligation of one of the parties may be *deferred* to a future date. Commodity murabaha belongs to the *deferred* contracts' group. A client may, for example, request a bank to purchase a car for him on a cost plus basis. The arrangement *per se* does not contain any element of interest.

Islam does not grant a time value for money in contracts if *money were exchanged for money*; that is the basis of banning interest. However, the mark-up in commodity murabaha is allowed on the ground that "time has a share in price" (*lil zamani hazzun fil thaman*). Indeed, it is this juristic pronouncement that constitutes the justification for allowing the deferring of obligations in Islamic contracts. Even the courts did not throw out the cases alluded to above on pure juridical basis; the *structuring* of contracts was more to blame. Thus, the causes of current discomfiture have to be sought elsewhere.

The Islamic economic system has social implications related to economic development, especially for the fulfillment of basic needs and achieving distributional equity. Islamic banking operations are not contributing to these goals; they are essentially guided by profit considerations. Admittedly, profit is important, rather imperative, but cannot be the sole criterion in evaluating their

performance. Like mainstream banks, they too are diverting the savings of those at the lower rungs of society to the richer classes. In addition, the distribution of earnings between the owners of banks and the depositors, especially the smaller ones, is skewed in favor of the former.

Commodity contracts may not *individually* defy the Shari'ah norms, but their overwhelming use is disquieting. Naturally, debt transactions dominate the scene at the cost of real economy. The use of deferred contracts seems to have already been carried too far. Of late, even Zeti the illustrious governor of Bank Negara Malaysia has advised Islamic banks to curb the use of fixed return transactions. Presumably, it is time to apply the principle of *saad-al-dharai* that closes the potential avenues for circumventing the Shari'ah, more so its objectives and spirit. It is not the permissibility of murabaha contracts *per se* but their defective structuring and indiscreet use which is fueling the perception that Islamic banks are providing cover to the taking of interest from the back door.

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