



Pronouncement of the Shariah Committee of Bursa Malaysia Islamic Services Sdn Bhd

In the Name of Allah, the Most Gracious the Most Merciful

13 Rejab 1434H – 23rd May 2013

**Subject: Application of Debt Settlement Through Agents in
Bursa Suq Al-Sila'**

All praise is due to Allah, prayers and peace be upon the last Prophet Mohammad, and be upon his relatives and all his companions,

The Shari'ah Committee of Bursa Malaysia Islamic Services Sdn Bhd ("BMIS") in its meeting held on 8 April 2013 at its Main Office in Kuala Lumpur, reviewed the structure and mechanism prepared and submitted by the BMIS concerning the application of debt settlement through agents as one of the settlement procedures of payments for trades done via Bursa Suq Al-Sila' ("BSAS") (Memo Ref: IM/M099/13 dated 3 April 2013). To further explain the concept, Bursa Malaysia Islamic Services (BMIS) has submitted a Memo (Ref: IM/M117/13) dated 18 April 2013 to the Committee for endorsement.

In principle, any trades should be followed by transfer of fund from buyer to seller to effect the payment in exchange of ownership transfer of the asset sold. In some conditions, the real transfer of fund may not be required e.g. if the buyer is indebted to the seller where the price to be paid for the asset can be set-off against the debt.

In BSAS, the settlement by agents i.e. (i) BMIS on behalf of commodity suppliers and (ii) Commodity Trading Participant (CTP) or Bank on behalf of its client; using setting-off concept may need to be applied due to some reasons amongst others;

- a) There are non-commercial banks and non-bank CTPs which may not be able to open an account to effect the transaction due to regulatory constraint.
- b) Risks of the funds movement especially when it involves a multi-billion dollar of fund either local or cross-border transfer.
- c) Deliverable risk of the fund transfer – expected fund not received within the time stipulated.
- d) To insist with actual transfer of funds is cumbersome in such circumstances.

e) There is no real-value of fund transferred as the value of each two debts is same.

However, in the event of taking delivery of the commodity, there will be actual transfer of fund for the settlement of payment.

Illustration 1.0: Appointment of Agents in Murabahah Transaction

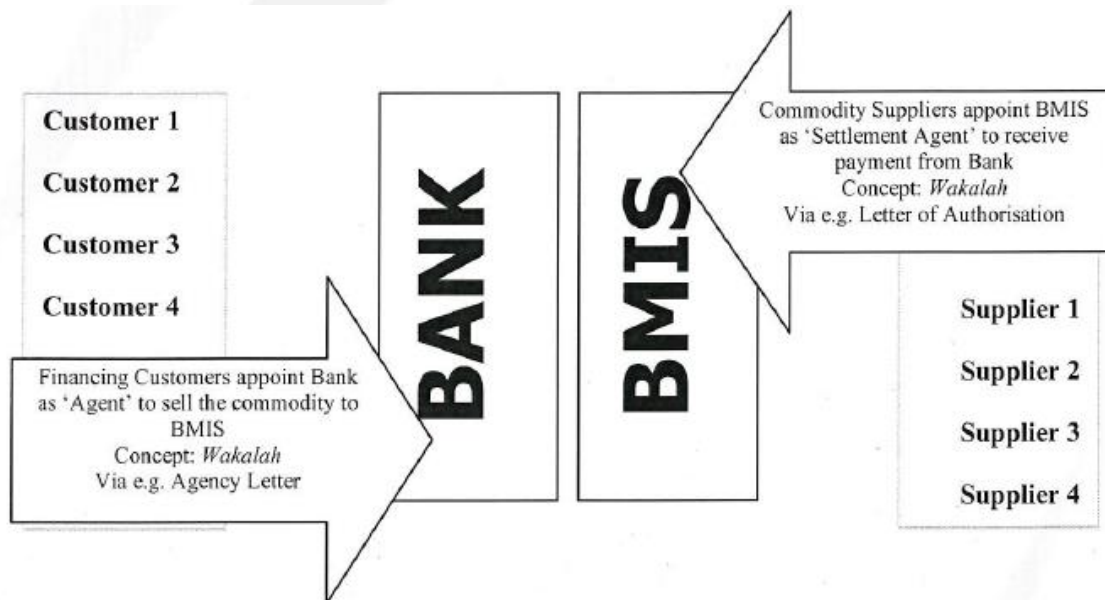
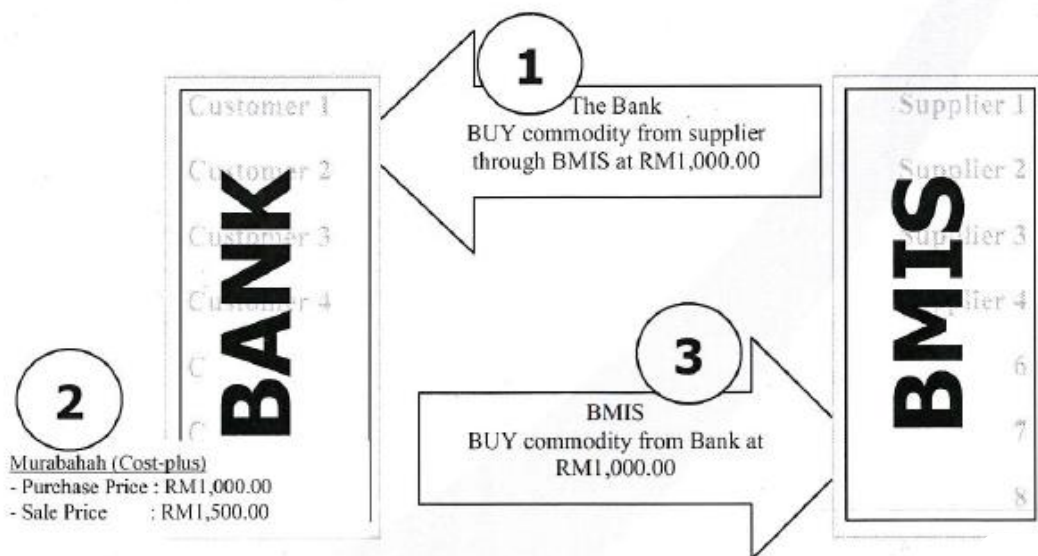


Illustration 2.0: Commodity Murabahah-Tawarruq Financing via BSAS



Based on the above illustrations, conceptually there are a few arrangements involved in BSAS;

No.	Arrangement	Medium/Description	Concept
i.	Between 'Supplier (Seller)' and 'BMIS'	Authorisation Letter from registered suppliers appointing BMIS as financial settlement agent. This applies to all suppliers during the position as 'Seller'.	<i>Wakalah</i>
ii.	Between 'BMIS' and 'Bank'	BMIS undertakes to receive payment on behalf of suppliers based on the Authorisation Letter.	<i>Wakalah and normal Bay'</i>
iii.	Between 'Bank' and 'Customer'	Trading of the purchased commodity with disclosed mark-up and the execution or trading documents including sale offer and acceptance (' <i>aqd</i> ').	<i>Murabahah / Tawarruq</i>
iv.	Between 'Customer'- 'Bank'- 'BMIS'	Agency Letter from customer to appoint Bank as an agent to sell commodity to BMIS. Bank on behalf of the customer is expecting money from BMIS to be credited to the customer's account reflecting disbursement of financing.	<i>Tawarruq/ Wakalah and normal Bay'</i>
v.	Between 'BMIS' and 'Supplier (Purchaser)'	BMIS to randomly sell/buy the commodity purchased from Bank. The supplier is in the position as 'Purchaser'.	Normal Bay'
vi.	Between 'Supplier (Seller)' and 'Supplier (Purchaser)'	Resulting from the arrangements (i) and (v) above, the 'Supplier (Purchaser)' will be purchasing the commodity with the value up to the amount that they offer to sell for the day during its position as 'Seller'. As the commodity is not physically moved from one place to the other throughout the process, it is counterbalanced at the end of the day outside the system.	<i>Wakalah</i>

Upon revision and deliberations on the documents, the Committee decided to endorse the application of debt settlement through agents in BSAS based on the following justifications:

- a. The agents (BMIS and Bank) are part of the process, directly involved in the transactions and are authorized to perform their duties as stipulated by respective clients. Prophet (pbuh) said;

" Muslims are bound by the conditions they made; except a condition that legalises imperssible act or invalidates permissible act."

(Narrated by Imam al-Tirmizi)

- b. Based on feedbacks from the industry, it is cumbersome to perform actual transfer of fund in certain circumstances despite directing towards the same consequence. The application of Shariah legal maxim of “Hardship Begets Facility” is justifiable as a mitigating measure until the invention of better ways to address the issue is ascertained.
- c. While approving this debt settlement through agents arrangement, the following matters should be strictly observed:
 - i. The arrangement should not in any way be perceived as an obstacle for the rightful owner to take delivery of the commodity.
 - ii. The actual transfer of fund should take place in case the rightful owner decides to take delivery of the commodity.
 - iii. The arrangement should not in any way interrupt the “random” system of selling the commodity to the suppliers. In other words, the actual transfer of fund should take place if at the end of the day it is found that there is no indebtedness established between the parties involved.

Should there be any changes in or additions to the trading process, structure, or mechanism as what has been presented; it must be submitted to the Shari’ah Committee for review and approval.

And prayers and peace be upon the last Prophet Mohammad, and be upon his relatives and all his companions.