

## Issues and Challenges Facing Islamic Financial Institutions in Malaysia

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### ABSTRACT

The issue of *riba* or usury has long been a problem for Muslims. The establishment of Islamic financial institutions is a major step in addressing this predicament, as Islamic finance has been characterized as a body to remove exploitation and injustice. The concepts of Islamic finance were initially discussed in the mid 1940s; however, further details were only revealed and then practiced in the late 1960s. The Pilgrims Management and Fund Board of Malaysia (TPMFB) established in 1962 was the earliest Islamic financial institution set up to cater for the pilgrims in Malaysia. This was followed by Bank Islam Malaysia Berhad (BIMB) in 1983, which marked the beginning of commercial financial institutions offering Islamic products and services to consumers. This paper evaluates the issues, challenges and prospect of this emerging industry, and ends with suggestions and recommendations on how they can be addressed for Muslims to go forward in the field of financing.

*Keywords:* Riba, Islamic Financial Institutions, Malaysia, Islamic Finance and Challenges

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### INTRODUCTION

Islamic law (*Shariah*) of commercial transactions is fundamentally rooted in the premises of eradication of *riba* (usury). It balances the moral and material needs of individuals and society. The very objective of the *Shariah* (*Maqasid al-Shariah*) is to promote the welfare of the people

and remove injustice and unfairness (Al-Ghazali, 1937). As the custodian to the Islamic financial system, Islamic financial institutions face challenges in ensuring that the prescribed rulings are met and their products are *Shariah*-compliant. One way to reduce its dependence on debt-based products, such as *Murabahah* and *Bai Bithaman Ajil* (BBA) which many scholars argue are similar to the profits of conventional financing, is predetermined. The practice of the BBA concept in Malaysia for not being *Shariah*-compliant, as bank do not take the risks of ownership, liability and effort, and act as a mere lender.

As an alternative, equity-based concepts such as *Mudharabah* and *Musharakah*, which operate based on the profit and loss sharing modes, are seen to be fairer and can reduce the hardship and burden of individuals and society in financing. This is because banks and customers are partners and profits and losses are shared in the business. The verse in the Quran that says:

*Allah has permitted the trade and forbidden riba (usury)*  
(Qur'an, 2: 275)

is the key guiding principle in Islamic finance transactions. Moreover, Islamic finance transactions should not contain elements of *gharar* (ambiguity) and *maysir* (speculation) so that they can be conducted fairly and with transparency. The Quran and *Sunnah* have both placed tremendous emphasis on justice, making it one of the central objectives of the *Shariah* (Chapra, 2000). Thus, financial transactions and activities that violate the

*Shariah* requirement are not permitted in Islamic finance.

There has been a tremendous growth of Islamic banking and finance internationally. The current global Islamic banking assets and assets under management had reached USD 750 billion and were expected to hit USD 1 trillion by 2010 (McKinsey Report, 2007-2008). According to (Abdul Razak, 2011), the total assets by Islamic financial institutions in 2008 was estimated to be between USD 400 billion to USD 500 billion and the potential market for Islamic financial services was then close to USD 4 trillion.

Malaysia's long track of building a successful domestic Islamic financial industry of over 30 years has given the country a solid foundation. Presently, Malaysia's Islamic banking assets reached USD 65.6 billion, with an average growth rate of 18-20% annually (Abdul Razak, 2011). The share of Islamic banking assets in the banking sector as of 31 December 2008 expanded to 17.4% of the total banking assets of the Malaysian financial system as compared to 6.9% percent in the year 2000. As of 2008, the total assets of Malaysia's *Takaful* industry amounted to USD 240.2 million, with a market penetration of 7.5%. *Takaful* assets and net contributions experienced strong growth of an average of 21% and 29%, respectively, from 2004 to 2008 (MIFC, 2011). To date, there are more than 100 financial institutions in over 45 countries and the industry has been growing at a rate of more than 25 % annually for the past five years. The market's current annual

turnover is estimated to be USD 70 billion compared to a mere USD 5 billion in 1985, and this is projected to grow further (Zamir Iqbal, 1997).

The purpose of this paper is to explore the issues, challenges and prospects of the Islamic finance industry. It critically assesses the traditional interpretation of *riba*, which is the *raison d'être* of the Islamic finance. It also examines the extent to which *maslahah* (public welfare) and the purpose of the *Maqasid al-Shariah* have been fulfilled in developing the products. The paper is organised into five sections. The immediate section provides a definition of *riba* in the Qur'an and *Sunnah*. The second section describes the importance of *Maqasid al-Shariah* and *Maslahah* (public welfare) in the Islamic finance. This is followed by a discussion on the features and principles of Islamic finance. The fourth section addresses the contemporary issues in Islamic finance and the challenges faced by the industry in Malaysia. The last section concludes with suggestions and recommendations based on the analysis.

### **THE DEFINITION OF *RIBA* IN THE QUR'AN AND *SUNNAH***

*Riba* means "usury" which is of two major kinds. The first type is called *riba al-nasiah*, which means interest on lent money over time. The second type is called *riba al-fadl*, which means unlawful excess in the exchange of two counter values where the excess is measurable through weight and measure (Usmani, 2002). This is based on the *hadith* of the Prophet (saw):

*The selling of wheat for wheat is riba except if it is handed from hand to hand and equal in amount. Similarly, the selling of barley is riba except if it is from hand to hand and equal in amount, and dates for dates is riba except if it is from hand to hand and equal in amount*

(Bukhari, 1985).

Literally, *riba* means excess, (*ziyadah*), increase, augmentation, expansion, or growth (Usmani, 2002). *Riba* is also interpreted as an increase and *al-Irba`* means the addition of a thing (Al-Tabari, n.d.). The increase (*ziyadah*) is due to either in the thing itself (Quran, 22: 5) or in the exchange or sale of money as the sale of one dirham for two dirham or the like in commodities (Al-Shawkani, 1973).

*Riba* in Islam refers to a specific kind of increase or excess. Ibn Hajar `Asqalani explains that the excess is either in terms of money or goods. It is an element in debt which is advanced on the condition that the borrower will pay more or better than what he has received from the lender. Abu Bakr Ibn `Arabi held that every excess is *riba* if no reward is paid (Al-Rahman, 1976).

Based on the knowledge and interpretations of trade and credit transactions during the time of Prophet Muhammad, *riba* is defined as a predetermined excess or surplus over and above the loan received by the creditor conditionally in relation to a specified period. It possessed the following three elements (Al-Rahman, 1976), namely:

- a. Excess or surplus over and above loan capital.
- b. Determination of this surplus in relation to time.
- c. Stipulation of this surplus in the loan agreement.

The above description of *riba* can be identified by the meaning of the word “interest” and “usury.” Both words are used to indicate excess or increase or additional amount paid over or above a loan capital. Thus, the prohibition on *riba* is affirmative. The Qur’an says:

*That is because they say: trade is just like riba whereas Allah permitted trade and forbids riba*  
(Qur’an 2:275.)

#### *Qur’an Exhorts on Generosity but not Riba-Based Lending to Help People*

While the Qur’an clearly mentions that *riba* is haram, the Qur’an encourages people to help the poor, the needy, orphans and others. The Qur’anic commandment is definitive as those who do not perform prayers and feed the destitute would be sent to hell (Qur’an, 74:43-44). The Quran also insists that beggars and those destitute have a share of the wealth of the affluent (Qur’an, 70:24-25). The Qur’an also condemns the rich from preventing the poor from having a share in their wealth (Qur’an, 17-33).

There are numerous other verses on spending either as *sadaqah* or *zakat* (Qur’an, 2:262; 4:39; 13:22, 25:67, 35:29). *Zakat* is used as spending 31 times (Qur’an, 2:43; 2:83; 2:110; 2:277; 4:77; 4:162; 5:12

etc). Meanwhile, *sadaqah* is considered a voluntary donation, and *zakat* is a compulsory payment. It gives an impression that when we pay *zakat*, there are no more legal obligations to the society in terms of financial help. This question requires new *ijtihad* (derivation) from our scholars.

The Qur’an is deeply concerned with the weaker strata of the society; there are many cases where the rich are commanded to look after the poor relatives (Qur’an, 8:41), orphans (Qur’an (2:177) debtors (al-Quran 9:60), beggars, wayfarers (al-Quran, 2:177, 8:41; 9:60) migrants (Qur’an, 24:22) prisoners of war (Qur’an, 76:8-9), the divorced (Qur’an 2:236), the deprived (Qur’an, 51:19; 70:19-25), the destitute (Qur’an, 8:41; 76:8-9), the poor (Qur’an, 2:271; 9:60; 58:3), and slaves (Qur’an, 2:177; 9:60; 58:3).

The Qur’an also reminds us that wealth is just a trust and test (Quran, 2:155; 3:186; 8:28). Amassing wealth without considering social and economic responsibilities will not lead to salvation (Qur’an, 34:37). In addition, it also reminds us that God has destroyed many rich people for being arrogant and not concerned about the poor and needy (Qur’an, 17:16; 23:64; 28:58; 28:81). Spending to help the poor is known as spending for the way of God. In Islam, loan is known as *qard hasan*, where the borrower is not required to pay any returns (Qur’an, 57:10-11). As far as wealth and Prophet Muhammad (pbuh) are concerned, the latter is a man full of love for mankind. The Qur’an has mentioned that that he has been sent as a *rahmatan lil alamin* (mercy

and blessing for all mankind) (Qur'an, 21: 107). It is quoted that someone came to see Prophet Muhammad (pbuh) and asked for something as he was poor. Prophet Muhammad (pbuh) gave him some sheep as a mere gift. The poor man returned with the sheep and after three days, he came back to meet Prophet Muhammad (pbuh) and informed him that he intended to embrace Islam (Al-Yahsubi, 1991).

Islam exhorts the concept of generosity so much so that it is embedded in the Pillars of Islam, known as the obligatory charity of *zakat*. Rather, *riba* is more of socio-economic exploitation as the borrower is the one who has to take the risks in the business and puts in the hard work while the lender only waits to earn the profits.

#### **MAQASID AL-SHARIAH AND MASLAHAH**

*Maqasid al-Shariah* or the objectives of Islamic Law is an important science of the *Shariah* (Kamali, 1991). The *Shariah* generally predicates the benefits to the individuals and the community, and its law is designed so as to protect these benefits and facilitate the improvement and perfection of the conditions of human life on earth (Nyazee, 2000). The Qur'an is expressive of the aims of the *Shariah* when it highlights the most important task of Prophet Muhammad:

*We have not sent you but as a mercy to the world*

(Qur'an, 21: 107)

Similarly in another verse:

*and a healing to the (spiritual) ailments of heart – a guidance and mercy for the believers*

(Qur'an, 10: 57)

Thus, the uppermost objectives of the *Shariah* rest in the moral aspect of compassion and guidance which seeks to establish justice, alleviate hardship, and eliminate prejudice (Kamali, 1991).

The fundamental objective of the *Shariah* is based on the concept of "guidance and mercy" to seek the establishment of equilibrium between rights and obligations so as to eliminate excesses and disparities in all spheres of life (Shah Haneef, 2005). This is manifested in the realisation of *maslahah* (public welfare), which is generally considered to be all-pervasive value and objective of the *Shariah*.

A significant element in the meaning of *maslahah* is the sense of the "protection of interest." *Maslahah* concerns the subsistence of human life, the completion of man's livelihood, and the acquisition of what his emotional and intellectual qualities require of him, in an absolute sense (Shatibi, 1970). Literally, *maslahah* is defined as seeking benefits and repelling harm, as directed by the lawgiver or *Shariah* (Nyazee, 2000). Thus, the obligations of the *Shariah* concern the protection of the *Maqasid al-Shariah*, which in turn aims to protect the *masalih* (welfare or interest) of the people.

As can be seen, the most important challenge to the Islamic finance sector is

adherence to the *Shariah*. In addition, the features of banking products should also abide to the *maslahah* (public welfare) which removes burden and hardship to individuals following the spirit of *Maqasid al-Shariah*.

## FEATURES AND PRINCIPLES OF THE ISLAMIC FINANCE

The discussion of paragraph 2 provides us with a theoretical understanding of the importance of avoiding *riba* (usury) in the Islamic finance transactions as it causes unfairness and injustice due to increases, augmentation, expansion or growth, as a result of time known as *riba al-nasiah*. Another form of *riba* that should be avoided is known as *riba al fadl* due to the unequal exchange of counter value in sale or *iwad*. While paragraph 3 restates the importance of *maslahah* (public welfare) and *Maqasid al-Shariah*, which are critical factors to be considered by the Islamic financial institutions in developing their products. This implies that the product features in Islamic finance should not contain elements that cause hardship and burden to customers (Saeed *et al.*, 2001).

Apart from avoiding *riba* (usury), the Islamic finance transactions should also be clear of ambiguity (*gharar*) and *maysir* (speculation). The main difference between conventional and Islamic finance transactions is that the former is based on lending similar to giving out loans in conventional financing. The Islamic finance transactions are governed by the *Shariah* principles, as follows:

### *Murabahah*

This concept applies to the buying and selling transactions between the customers and the bank. The bank takes ownership of the asset before it is sold to the customers. According to Imam Abu Hanifah, the seller has the right to include all the costs for the payment of the goods. This is supported by Hanafi and Malik who also stipulated the inclusion of cost to the original price (cost plus) (Muhammad Kamal Azhari, 1993). Hence, the bank can add its profit to the cost of the goods which then forms the total selling price.

### *Bai-Bithaman Ajil*

*Bai-Bithaman Ajil* (BBA) refers to the sale of goods or assets on a deferred payment. Goods or property required by the customers are bought by the bank and subsequently sold back to them at a higher selling price, which is inclusive of the bank's profit margin. The customers are required to pay monthly instalments to the bank to settle the outstanding amount within the stipulated period. It is a form of long-term debt where the selling price is fixed and cannot be changed until the end of tenure.

### *Ijarah*

Another principle used is known as leasing or *Ijarah*. It is a *fiqh* term which means "to give something on rent" (Usmani, 2007). It refers to the transfer of the usufruct of a particular property to another person in exchange for rent claimed from him. The rule of *Ijarah* is similar to sale because in both cases, a commodity is transferred to

another person for a valuable consideration. However, the difference is that in the case of sale, the corpus of the property is transferred to the purchaser, while for *Ijarah*, ownership remains with the lessor (bank) and only the usufruct (right to use it) is transferred to the lessee (customer). As ownership is retained by the lessor, all the risks and liabilities emerging from the ownership are borne by the lessor throughout the lease period until the property is fully transferred to the customer (Usmani, 2007).

#### *Mudharabah*

This principle is derived from the Arabic word *dharaba*, which means walking on the road. It implies a journey to seek profit for the benefits of trade. Before the Prophet Muhammad (pbuh) married Khadijah, he was entrusted to trade in her business and he succeeded in making substantial profits (Ahmad Shalaby, 2000). A *Mudharabah* transaction between the bank and customer can be in the form of investment, whereby the bank and customer share the profit based on a pre-agreed profit sharing ratio such as 70% (bank) and 30% (customer) [Ibn Rushd (trans.), 2000]. Under this arrangement, the customer is the sole capital provider (*rabbul-mal*) and the bank is the entrepreneur (*mudharib*). In the case of loss, the customer has to bear it solely.

#### *Musharakah*

*Musharakah* is another form of profit sharing between the bank and customer derived from the word *sharikah*. It is a joint venture, whereby both parties provide their

own capital jointly, such as Bank (80%) and Customer (20%). The profit sharing ratio may differ from the capital contribution, i.e., Bank (60%) and Customer (40%). The loss sharing is based on the capital contribution. *Musharakah* can also be in the form of cooperatives whereby members contribute capital to the cooperative for investments in projects. Profits will be shared based on their capital contribution (Muhammad Kamal Azhari, 1993).

### CONTEMPORARY ISSUES IN ISLAMIC FINANCE

Despite the encouraging growth of Islamic banking and finance industry to date, many scholars such as El-Gamal (El-Gamal, 2006) argue that the Islamic finance has failed to serve the objectives of the *Shariah* (*Maqasid al-Shariah*) (Al-Ghazali, 1937). This is because majority of the financing modes are still based on debt financing which is similar to conventional financing that uses a fixed rate to determine its profit upfront (Abdul Razak, 2011). This argument is supported by Dusuki (2005) who also commented that a financial system built dominantly on debt-based modes of financing cannot be superior to the existing interest-based system on the basis of profit sharing as it cannot remove the injustices of the interest-based system. Al-Ghazali defines the objective of the *Maqasid al-Shariah* as promoting the well being of all mankind, which lies in safeguarding five essential elements namely faith (*din*), human self (*nafs*), intellect (*aql*), posterity (*nasl*) and wealth (*mal*). He further contends that whatever ensures the safeguard of these five

essential elements as serving public interest (*maslahah*) is desirable (Al-Ghazali, 1937). Thus, the goals of *Maqasid al-Shariah* entail intense commitment of every individual and organisation to the promotion of justice, brotherhood and societal well-being. In the context of the Islamic financing, this means that the products and services implemented by the financial institutions should reflect ethical values, fairness and justice (Yousri Ahmad, 2009).

Since the establishment of BIMB in 1983, the main principle used in financing has been *Bai Bithaman Ajil* (BBA). This principle has been practiced by Islamic financial institutions in Malaysia for the past 28 years. BBA is based on a deferred payment sale of an asset at an agreed selling price between customer and bank inclusive of bank's profit margin. It is structured as a long-term debt financing, whereby price is fixed and benchmarked on market interest rates (Abdul Razak, 2011).

The same formula based on time value of money in conventional financing is used to compute bank's income using the principle of BBA. The only difference is that the term used for pricing is known as 'profit rate' instead of 'interest rate' (Abdul Razak *et al.*, 2005). During the 1997 Asian financial crisis, home financing using BBA home financing was much more expensive than conventional financing as it was based on fixed profit rates. Hence, the selling price could not be changed until the end of the tenure, e.g., 20 years. Conversely, home financing using conventional financing was cheaper because interest rate could be

adjusted freely when the economic condition improved. As a result, there were many customers who have transferred their BBA home financing facilities to conventional home financing as the latter is cheaper in the long run.

There are several cases involving BBA home financing. One of the most glaring case is BIMB vs. Adnan Bin Omar (1994) 3 CLJ 375. In the above case, the buyer Adnan bin Omar entered into a debt financing facility with BIMB using the principle of BBA to purchase a property valued at USD 88,333.33. The selling price based on the BBA agreement was USD 194,333.33 to be repaid by 180 monthly instalments over 15 years. However, the defendant defaulted in making payment at the end of the second year. The bank sued him for USD 194,333.33. The court held that the defendant was required to pay the full amount and was not entitled to rebate (*ibra'*) for early settlement (Malaysian Bar, 2008). Paradoxically, the amount of claim would be much lower if the facility was under conventional financing. This is because the bank's accrued interest would only be computed for two years instead of 15 years under BBA home financing. The case illustrated that Islamic financing transaction using BBA had caused burden and hardship to the customer as he had to pay a higher amount upon default, which is not in line with the objectives of the *Shariah* (Al-Ghazali, 1937).

Similarly, in another case, Affin Bank vs. Zulkifli Bin Abdullah (2006) 1 CLJ 438 Abd Wahab Patail J., the learned judge, remarked



that the total outstanding amount claimed by the bank under BBA home financing facility also resulted in the customer having to pay more than conventional home financing (ISRA, 2009). This is because the bank had included its unearned profit in the selling price for the 20 years home financing facility but did not rebate the customer on default at the end of two years. Hence, the bank claimed a higher amount compared to conventional financing. The bank did not provide the rebate to the customer because it is the bank's sole discretion to do so. Thus, this judgment also implied the existence of injustice and unfairness to the customer due to the higher amount claimed by the bank for the prevailing BBA home financing.

In Malaysia, Islamic law and conventional banking regulations exist side by side. However, Islamic banking and finance are under the purview of the federal law of Malaysia. The law pertaining to Islamic banking and finance is passed by parliament. Currently, the avenues for legal disputes involving Islamic financial transactions rest under the purview of civil courts and not the *Shariah* court. Nonetheless, the civil court in dealing with Islamic finance cases should be judicially considered within the spirit of the Islamic Banking Act 1983.

Islamic finance transactions are also involved in real or genuine transactions, whereby banks take possession of an asset before it is sold to a customer. In doing so, the bank takes ownership risk which fulfils the *Shariah* requirements of equivalent counter value (*iwad*) (Rosly, 2005).

According to Rosly, *iwad* or equivalent counter value is the basic trait of a *halal* or lawful sale (*al-Bay*) because a sale is essentially an exchange of value against an equitable return and compensation for the goods or services exchanged. There are three components of *iwad*, namely, *ghorm* (risk), *daman* (liability) and *kasb* (effort) (Rosly, 2005). Sanusi further argues that the current practice of home financing in Malaysia does not genuinely fall under the concept of buying and selling required by the *Shariah* as the bank does not buy the house directly from the developer and hence does not have possession of the property (Sanusi, 2006). Instead, it falls under the contentious sale of *Bai Inah* (sale and buy back) as the customer first purchases the house from the developer and sells it to the bank for cash. Therefore, the bank sells the same house to the customer inclusive of its profit on deferred payment basis. The difference between the two prices resembles interest in conventional loan.

It is also observed that there is currently very low financing volume that uses the profit sharing principles of *Mudharabah* and *Musharakah* when compared to debt financing modes such as *Murabahah* and BBA (Abdul Razak, 2011). In the profit sharing model, each individual is involved in the economic activity promoting entrepreneurship and creativity in the economic cycle. These modes ensure fairness and equitable distribution of income meeting the purpose of the *Shariah* (Nik Yusoff, 2002). The profit sharing mode is embedded in the concept of *Musharakah*,

which is a partnership between the bank and customer. Ariff argues that a *Musharakah* contract conforms fully with the Islamic principles as the bank shares all the profits and losses with its customer (1988).

There are several verses in the Qur'an and *Sunnah* that support the use of the *Mudharabah* and *Musharakah* principles. For example, the term partnership appears in the Qur'an in relations to the share of inheritance:

*But if more than two they share in a third; after payment of legacies and debts; so that no loss is caused to anyone*

(Qur'an, 4:12)

In *hadith Qudsi*, Allah says:

*I am the third in the partners as long there as there is no defector. If one of the partners does betray the other, I cease to be the partner to them*

(Al-Zuhayli, 2003)

In addition, Prophet Muhammad SAW (pbuh) had in many occasions approved the practice of partnership and entered into a partnership with Ibn Abi Saiib before the advent of Islam (Ahmad, 1998).

The basic principle of *Musharakah* financing has been used as the Islamic financing product for commercial enterprises such as to structure a working capital facility, joint investment in real estate development and rural residential property (Lewis, 2009). Some Islamic scholars such

as Bendjilali and Khan (Khan *et al.*, 1995) and Usmani (Usmani, 2007) agreed on the implementation process of *Musharakah Mutanaqisah* or Diminishing Partnership. They also agreed that the principle used could help people to rely less on debt financing such as *Murabahah* and BBA. They agreed that it is best to implement Diminishing Partnership for the purchase of houses or machinery financing, whereby both assets can be leased out according to agreed rental rates.

Unlike the BBA home financing, which is based on debt financing, Diminishing Partnership (DP) is a joint ownership of the house between the bank and customer. For example, if the cost of the house is USD70,000, the bank may own 90% of the property which is USD 63,000 and the balance 10% or USD700 is owned by the customer. The bank rents out its portion of share to the customer based on the rental value of the property, for example USD400. The rental amount is then shared between the bank and the customer based on their capital portion, i.e., bank will earn USD360 whilst the customer USD40. The customer utilises his profit amounting to USD40 to buy the bank's equity until he fully owns the house. In order to own the house earlier, he can buy more of the bank's equity periodically, which will subsequently reduce the period of financing (Abdul Razak *et al.*, 2005).

There are several differences between DP and BBA home financing. In terms of pricing, the former uses actual rental rate of the house which differs based on

the location, size of house and amenities. However, the profit rate for BBA home financing is benchmarked using market interest rates. Rental rates are flexible and can be changed according to economic conditions. However, profit rates in BBA home financing remain fixed throughout the period of financing and are more expensive. DP home financing is *Shariah*-compliant because bank takes ownership and liability of the house. Conversely, the current practice of BBA home financing is similar to *Bai Inah*, which is a contentious sale because the bank does not take possession of the property. In addition, the difference between the buying and selling prices is akin to *riba* (usury). Diminishing Partnership principle has greater justice and fairness and meets the goals of the *Maqasid al-Shariah*, as the bank does not pre-determine its profit upfront but shares it with the customers based on their portion of the capital. Hence, it is not a debt obligation which poses a burden and hardship to customers that is similar to conventional financing.

## CONCLUSION AND RECOMMENDATIONS

The future challenges of Islamic banking and finance and banking are tremendous. However, in order to reap this benefit, we should firstly realise that the objective of Islamic financing is not just to remove the interest rate element in the society. It has a broader objective of eliminating the entire system of *riba* (usury), *gharar* (ambiguity) and *maisir* (speculation) by ensuring that its operations are *Shariah*-compliant.

Secondly, the goals of Islamic financing is to address the broader objectives of *Maqasid al-Shariah* and *maslahah* by ensuring that the transactions in which it operates do not cause hardship and burden to individuals and society. In doing so, it favours the concept of equity such as *Mudharabah* and *Musharakah*, which are based on profit and loss sharing rather than debt financing in *Murabahah* and BBA that resembles conventional financing due to its fixed profit rate structure. Furthermore, banks do not take the risk in owning the product making it similar to conventional loan. However, the use of the profit sharing concept to date is still minimal and steps should be taken to encourage Islamic financial institutions to utilise this concept by ensuring proper regulations, governance and procedures.

Thirdly, there is also a need to review the prevailing legal environment which limits the administration of justice based on the *Shariah* regulations. This is because the existing disputes involving Islamic financial transactions are under the purview of civil courts and not the *Shariah* court. Hence, steps should be taken to ensure justice, while fairness on disputes involving Islamic financing transactions from the *Shariah* perspectives should be implemented.

Fourthly, we need a new *ijtihad* (derivation) from the scholars to determine the obligations of the Islamic banks to the society in helping the poor, destitute and others, as mentioned in the Qur'an. As Islamic banks, they are also obligated to meet their moral obligation and social

responsibility to the society apart from paying annual *zakat*. This can be carried out using the *qard hassan* concept by awarding those in need of financial assistance in the form of gift without any obligation for payment.

Lastly, Islamic financial institutions should be prepared for a paradigm shift which requires a change in mind-set by adopting the real practices of Islamic finance. In order to prepare themselves to do this, they should be willing to increase their knowledge in *Shariah* by attending courses and training with the support of their respective organisations. Meeting this objective requires us to be *Khalifah* (vicegerent) in carrying out our duties so as to ensure that justice and fairness is carried out for the benefit of the *ummah*. There is no era or organisation which fulfils all the objectives of *Shariah* except that of Prophet Muhammad (pbuh) who gave away all his wealth to others, and upon his death, he did own even a dinar.

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