



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Effective date: 12 August 2022

**GUIDELINES TO BANKS AND FINANCIAL INSTITUTIONS
GUIDELINES NO. SYAFI/G/01/2022**

SYARIAH STANDARD TAWARRUQ



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1. INTRODUCTION

- 1.1 These Guidelines are issued pursuant to section 32 of the Brunei Darussalam Central Bank Order, 2010 and applies to Banks and Financial Institutions.
- 1.2 These Guidelines are designed as a reference in providing best practice to structure any financial product based on *Tawarruq* in accordance with Hukum *Syara'* and to provide customer protection.
- 1.3 All Banks and Financial Institutions offering Islamic products and services are advised to adhere to the principles set out in these Guidelines.
- 1.4 These Guidelines should be read together with other relevant notices and guidelines issued by the Authority, in particular:
 - 1.4.1 Notice on Application Process of Islamic Product (SYAFI/N/01/2022);
 - 1.4.2 Notice to Financial Institution on Syariah Governance Framework (IFAU/N/1/2018); and
 - 1.4.3 Notice and Guidelines on Internal Syariah Audit Framework for Financial Institutions (IFAU/N/2/2018 and IFAU/G/3/2018).
- 1.5 These Guidelines are not exhaustive and subject to revision from time to time as deemed necessary by the Authority.
- 1.6 Banks and Financial Institutions should ensure that any aspect not covered by these Guidelines are addressed in accordance with Hukum *Syara'*.
- 1.7 These Guidelines are provided in both English and Malay. In the event of inconsistencies between both versions, the Malay version of these Guidelines will prevail.
- 1.8 These Guidelines takes effect on 14 Muharram 1444/ 12 August 2022.

2. DEFINITIONS

- 2.1 For the purpose of these Guidelines:
 - 2.1.1 "Authority" means the Brunei Darussalam Central Bank established under section 3(1) of the Brunei Darussalam Central Bank Order, 2010;
 - 2.1.2 "Bank(s)" has the same meaning assigned to it under section 2 of the Brunei Darussalam Central Bank Order, 2010;
 - 2.1.3 "Financial Institution(s)" has the same meaning assigned to it under section 2 of the Brunei Darussalam Central Bank Order, 2010. For the avoidance of doubt, this



also includes Perbadanan Tabung Amanah Islam Brunei established under the Perbadanan Tabung Amanah Islam Brunei Act [Chapter 163];

- 2.1.4 “*Hiwalah al-dayn*” means an assignment or a transfer of debt from the original debtor to a third party so that the original debtor becomes free of debt and liability;
- 2.1.5 “*Hukum Syara*” has the same meaning assigned to it under section 2 of the Syariah Financial Supervisory Board Order, 2006;
- 2.1.6 “*Ibra*” means waiving certain parts of a debt;
- 2.1.7 “*Ijab*” means an offer;
- 2.1.8 “*Khiyar al-‘ayb*” means an option arising from a defect; the option of dissolving or continuing the contract upon discovery of a defect in the asset purchased;
- 2.1.9 “*Majlis al-‘aqd*” means the place of the contract session;
- 2.1.10 “*Muqaassah*” means the settlement of debts between contracting parties;
- 2.1.11 “*Murabahah*” means the sale and purchase of an agreed specified asset where the cost and profit margin are disclosed to the buyer;
- 2.1.12 “*Musawamah*” means a sales contract without disclosure of the acquisition cost of the asset and the profit margin to the buyer;
- 2.1.13 “*Muwakkil*” means a principal;
- 2.1.14 “*Qabd haqiqi*” means physical possession;
- 2.1.15 “*Qabd hukmi*” means constructive possession;
- 2.1.16 “*Qabul*” means acceptance;
- 2.1.17 “Special Purpose Vehicle” means a separate legal entity. A special purpose vehicle is a distinct company with its own legal status and assets and liabilities. “SPV” shall be read accordingly;
- 2.1.18 “Sukuk” means certificates that represent a proportional undivided ownership or investment in assets which are in accordance with *Hukum Syara*’;
- 2.1.19 “Syariah Advisory Body” means:
 - [a] a body established pursuant to section 8[2](g) of the Islamic Banking Order, 2008;
 - [b] a body established pursuant to section 10[1](e) of the Takaful Order, 2008;



- (c) a body appointed pursuant to section 23(2) of the Securities Markets Order, 2013;
 - (d) a body established under section 14 of the Perbadanan Tabung Amanah Islam Brunei Act [Chapter 163]; and
 - (e) a body appointed pursuant to section 6(2)(g) of the Finance Companies Act [Chapter 89].
- 2.1.20 “*Wa’d*” means an undertaking or commitment given by one party to another to perform an act in the future;
- 2.1.21 “*Wakalah*” means an agency contract where a party, as *Muwakkil*, appoints another party, as *Wakeel*, to carry out a business on his behalf. The *Wakalah* contract can be subject to a fee or without a fee; and
- 2.1.22 “*Wakeel*” means a person who carries out a business on another party’s behalf, with or without a fee.

3. DEFINITION AND LEGITIMACY OF TAWARRUQ

Definition of *Tawarruq*

- 3.1 *Tawarruq* refers to the process of purchasing an asset at a deferred price and selling it to a third party on a cash and spot basis.
- 3.2 An example of *Tawarruq* can be found in **Appendix 1**.

Features of *Tawarruq*

- 3.3 Each sale and purchase contract in *Tawarruq* is binding in nature and should not be terminated unilaterally by any of the contracting parties.
- 3.4 The common inherent nature of each sale and purchase contract in *Tawarruq* is the transfer of ownership of an asset from the seller to the buyer for consideration.
- 3.5 Sale and purchase contracts in *Tawarruq* may take the form of a *Musawamah* or *Murabahah*.
- 3.6 An example of Sukuk using *Tawarruq* can be found in **Appendix 2**.

Legitimacy of *Tawarruq*

- 3.7 The legitimacy of *Tawarruq* is derived from the Al-Qur’an and Hadith.
- 3.8 Al-Qur’an
The following verse of the Al-Qur’an implies the general permissibility of sales contract including *Tawarruq*.



وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

"Whereas Allah Subhanahu Wa Ta'ala has permitted trading and forbidden usury" [Surah al-Baqarah: 275]

3.9 Hadith

قَالَ سَمِعْتُ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ ، قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ :
" إِنَّمَا الْبَيْعُ عَنْ تَرَاضٍ "

I heard Abu Sa'eed Al-Khudri say: "The Messenger of Allah *Shallallahu 'alaihi wasallam* said: 'Transactions may only be done by mutual consent.'" [Sunan Ibn Majah: 2269]

The legitimacy of *Tawarruq* can also be derived from one of the legal maxim as follows:

الأَصْلُ فِي الْأَشْيَاءِ الْإِبَاحَةُ حَتَّى يَدُلَّ الدَّلِيلُ عَلَى التَّحْرِيمِ

"An original ruling for something is permissible until there is an evidence of its prohibition."

4. GENERAL REQUIREMENTS OF TAWARRUQ

Contracting parties

- 4.1 Contracting parties to a sale and purchase contract in *Tawarruq* should comprise of a seller and a buyer.
- 4.2 The seller in the first sale and purchase contract should not be the buyer in the second sale and purchase contract in the same *Tawarruq* transaction.
- 4.3 The contracting parties in a sale and purchase contract in *Tawarruq* may enter into the sale and purchase contract through a *Wakeel*.
- 4.4 Contracting parties should have competency according to Hukum Syara' and the laws of Brunei Darussalam to enter into a contract. This includes corporate entities, statutory bodies and unions.

Ijab and Qabul

- 4.5 *Ijab* and *Qabul* may be executed verbally, in writing or any other methods that result in the execution of a contract.
- 4.6 *Ijab* and *Qabul* should be executed in the following sequence:



- 4.6.1 The seller or *Wakeel* sells an asset to the buyer by entering into a sale and purchase contract; and
- 4.6.2 The buyer or *Wakeel* from the first sale and purchase contract enters into another sale and purchase contract to sell the same asset to a third party.

Asset

- 4.7 Assets used in a *Tawarruq* transaction should be tangible or intangible. Additionally, the asset should be:
 - 4.7.1 Valuable, identifiable and deliverable; and
 - 4.7.2 Already in existence and owned by the seller in each respective sale and purchase contract being executed.
- 4.8 Assets used in a *Tawarruq* transaction should be verified and endorsed to be in accordance with paragraph 4.7 by the respective Syariah Advisory Body.
- 4.9 The following assets should not be used in *Tawarruq* transactions:
 - 4.9.1 Gold, silver, currencies and *ribawi* items;
 - 4.9.2 Assets to be constructed or under construction; and
 - 4.9.3 Assets which are debt in nature.
- 4.10 Ownership of the asset should be transferred from the seller to the buyer by means of transfer which does not contravene *Hukum Syara'*.
- 4.11 In the event where the asset is not available during *Majlis al-'aqd*, the seller should provide the buyer with a specific and clear description of the asset.
- 4.12 Transfer of ownership from the seller to the buyer should take effect upon complete execution of the sale and purchase contract.
- 4.13 The buyer should take possession of the asset before being sold to a third party.
- 4.14 Possession of the asset should either be in the form of *Qabd haqiqi* or *Qabd hukmi*.
- 4.15 The seller should be liable for any defect or damage of the asset before the buyer takes possession of the asset.
- 4.16 The buyer should be disqualified from exercising *Khiyar al-'ayb* if any defect on the asset was found and consented to at the time the sales and purchase contract of a *Tawarruq* transaction was entered into.



- 4.17 The buyer should have the right to exercise *Khiyar al-'ayb* if the buyer discovers a defect in the asset before the sales and purchase contract of a *Tawarruq* transaction is entered into.
- 4.18 Where the buyer has the right to exercise *Khiyar al-'ayb*, the buyer should have the right to terminate the relevant contract, to continue with the contract as it is or to continue with the contract subject to mutually agreed variations by the contracting parties.
- 4.19 Notwithstanding paragraph 4.15 above, the contracting parties may mutually agree for the seller to waive liability for any defect on the asset before entering into the sale and purchase contract.
- 4.20 The duration on which *Khiyar al-'ayb* may be exercised should be mutually agreed between the buyer and the seller.
- 4.21 The same asset should not be the subject matter of multiple *Tawarruq* transactions at any one time.

Price

- 4.22 The price used for each sale and purchase contract in a *Tawarruq* transaction should be determined and mutually agreed by the contracting parties at the time of entering into each of the respective sale and purchase contract.
- 4.23 Where the sale and purchase contract in a *Tawarruq* transaction is on a *Murabahah* basis, the guidelines on price for *Murabahah* transactions should be complied with, including disclosure of price and profit.
- 4.24 The price of each sale and purchase contract in a *Tawarruq* transaction may be paid at any time after entering into the contract and on such terms as may be agreed by the contracting parties.

Other requirements of *Tawarruq*

- 4.25 Each sale and purchase contract should satisfy all the necessary conditions of a valid sale and purchase contract under Syariah principles.
- 4.26 All sale and purchase contracts should be executed by entering into a separate and independent sale and purchase contract.
- 4.27 The buyer should have the option to either take delivery of the asset or decline such delivery and this option should be clearly stated in the sale and purchase contract.
- 4.28 The sale and purchase contract should not contain any terms and conditions that restrict the buyer from taking delivery of the asset or create an obligation for the buyer to sell the asset.



5 ARRANGEMENT OF TAWARRUQ WITH OTHER SYARIAH CONTRACTS

Arrangement of *Wakalah* contract in *Tawarruq*

- 5.1 Any contracting party in a *Tawarruq* transaction may appoint a *Wakeel* to act on his behalf.
- 5.2 The appointment of the *Wakeel* should be arranged in a separate contract from the sale and purchase contract of the *Tawarruq* transaction.
- 5.3 The *Wakalah* contract in a *Tawarruq* transaction should not restrict the *Muwakkil* or *Wakeel* of the buyer from taking delivery of the asset.
- 5.4 Ownership of the asset should be transferred from the seller to the buyer even though the sale and purchase contract in the *Tawarruq* transaction is entered into through a *Wakeel* on behalf of the seller or the buyer.
- 5.5 The roles and responsibilities of the *Wakeel* should be clearly specified in the *Wakalah* contract.
- 5.6 The *Wakeel* should not be held liable for any loss except in the event of misconduct, negligence or breach of specified terms in the *Wakalah* contract.
- 5.7 The name of the *Muwakkil* in the *Wakalah* contract may be disclosed in the sale and purchase documentation of the *Tawarruq* transaction between the *Muwakkil* and the third party.

Arrangement of *Wa'd* in the *Tawarruq*

- 5.8 In a *Tawarruq* transaction, the buyer may provide a *Wa'd* to purchase the asset from the seller upon its acquisition from a third party.
- 5.9 The sale and purchase contract in a *Tawarruq* transaction should not contain any condition that requires the buyer to give an undertaking that the asset will be sold to a third party.
- 5.10 The sale and purchase contract in a *Tawarruq* transaction should not contain any condition that requires the buyer to give an undertaking that the asset will be sold to its original seller.

6 DISSOLUTION OF THE TAWARRUQ

- 6.1 The sale and purchase contract in a *Tawarruq* transaction may be dissolved under the following circumstances:
 - 6.1.1 The buyer exercises *Khiyar al-'ayb* and chooses to terminate the sale and purchase contract;
 - 6.1.2 Any of the contracting parties mutually agree to exercise the option to terminate the sale and purchase contract within the agreed time period;



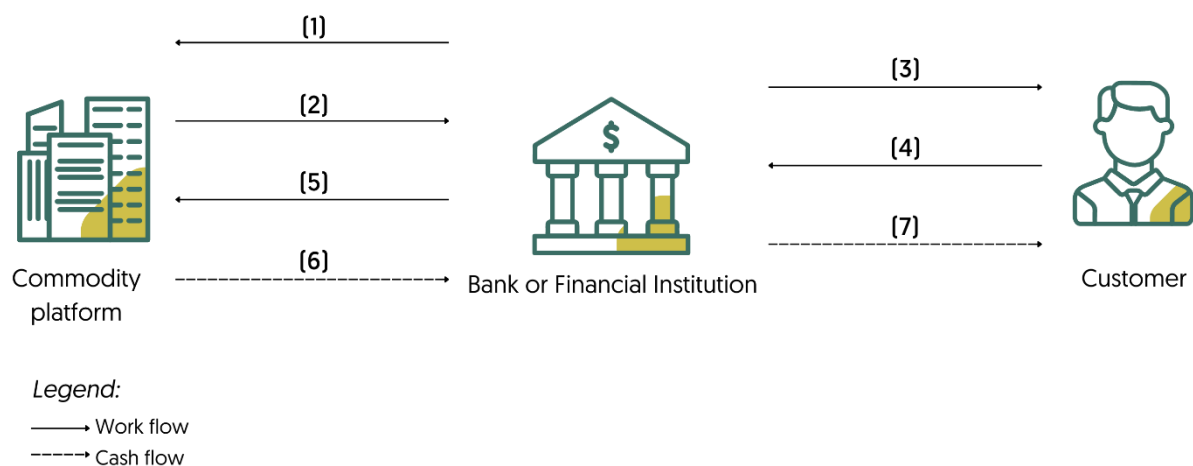
- 6.1.3 Any of the contracting parties exercises the option to terminate the sale and purchase contract due to breach of specified terms;
- 6.1.4 Both contracting parties mutually agree to terminate the sale and purchase contract.
- 6.2 Upon dissolution of any of the sale and purchase contracts in a *Tawarruq* transaction where the asset has not been sold to a third party, the asset should be returned to the respective seller and the price paid should be returned to the respective buyer.
- 6.3 Notwithstanding paragraph 6.1 above, the dissolution of the sale and purchase contract should be effective provided that the asset can be returned to the seller. Otherwise, the seller should be entitled to the value of the asset.

7 COMPLETION OF TAWARRUQ

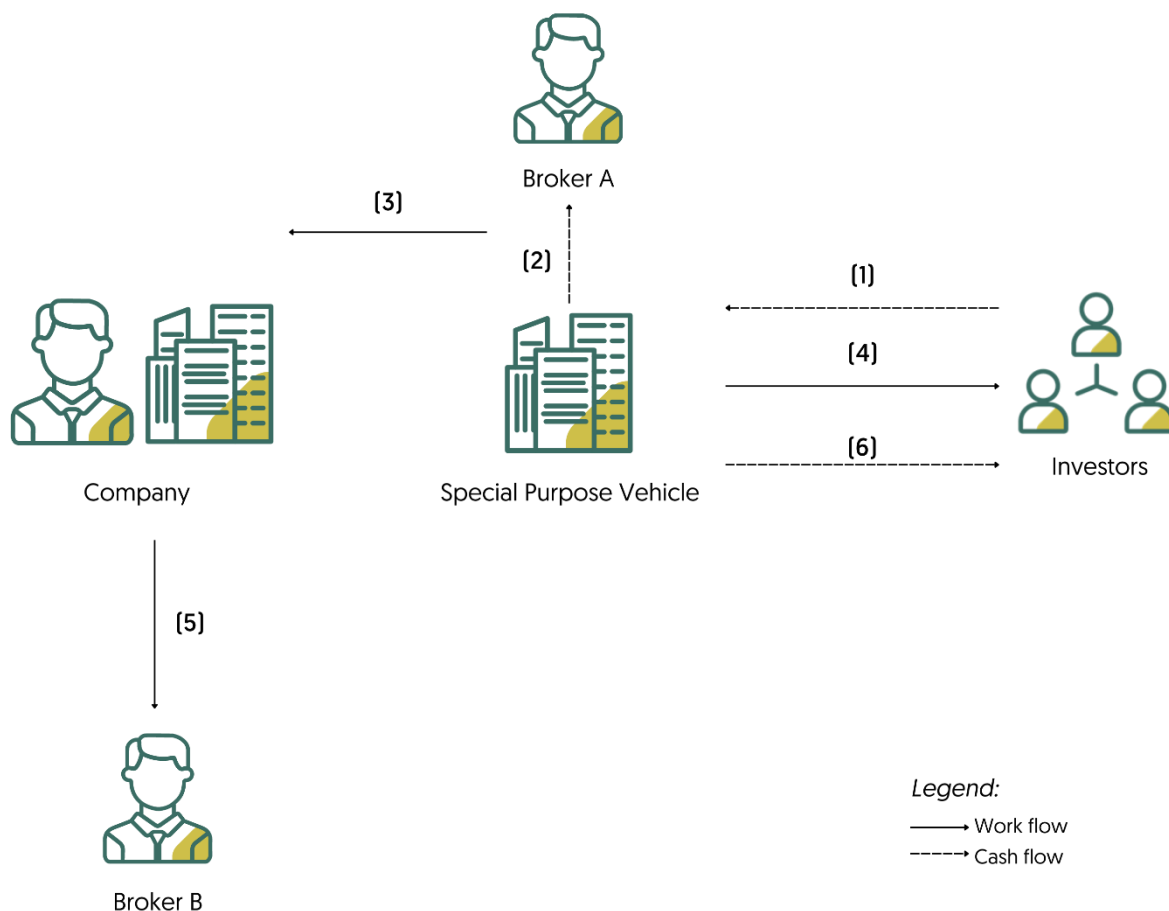
- 7.1 The sale and purchase contract in a *Tawarruq* is considered complete upon fulfilment of the obligations of the contracting parties which may include the following circumstances:
 - 7.1.1 Full settlement of the selling price;
 - 7.1.2 *Muqaassah* of debt obligations between the contracting parties;
 - 7.1.3 Transfer of the obligation to pay the selling price through *Hiwalah al-dayn*;
 - 7.1.4 Waiving of the right by the seller to receive the selling price through *Ibra'*.
- 7.2 Upon completion of the *Tawarruq*, the contracting parties are free from any contractual obligations, except for obligations that expressly or by implication survive the dissolution or completion of the relevant contract including confidentiality clauses.

**MANAGING DIRECTOR
BRUNEI DARUSSALAM CENTRAL BANK**

Issue Date: 14 Muharram 1444 / 12 August 2022

APPENDIX 1: *TAWARRUQ*

No.	Description
1	Banks or Financial Institution buys the commodity from the trading platform on the spot price basis.
2	Transfer of ownership of the commodity to the Bank or Financial Institution.
3	Bank or Financial Institution execute the contract to sell the commodity to buyer at cost and profit margin on deferred payment and followed by the delivery of asset.
4	After receiving asset, the buyer may appoint the Bank or Financial Institution as <i>Wakeel</i> /to sell the commodity to the market to acquire cash through <i>Wakalah</i> contract.
5	Bank or Financial Institution as the <i>Wakeel</i> /sells the commodity at the trading platform.
6	Bank or Financial Institution received proceeds from the selling of the commodity.
7	Cash is transferred to the buyer.

APPENDIX 2: SUKUK USING *TAWARRUQ* CONCEPT

No.	Description
1	A company that requires fund will set up a Special Purpose Vehicle (SPV).
2	Investors provide cash to the SPV and appoint the SPV as their <i>Wakeel</i> to purchase a commodity on their behalf through a <i>Wakalah</i> contract.
3	SPV purchases a commodity from broker A on the spot basis with the original purchase price and receives the commodity.
4	SPV sells the commodity to the company at cost plus mark-up on deferred payment.
5	SPV issues Sukuk to the investors.



6	The company sells the commodity to broker B at a selling price on the spot basis to obtain cash.
7	The deferred payment at a mark-up received by the SPV from the company will be distributed among the investors periodically.