



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**Effective date: 12 August 2022**

**GUIDELINES TO BANKS AND FINANCIAL INSTITUTIONS  
GUIDELINES NO. SYAFI/G/02/2022**

**SYARIAH STANDARD MURABAHAH**



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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 *Murabahah* 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 “*Hamish jiddiyah*” means a security deposit provided by the buyer to secure an undertaking to purchase an asset before the execution of a sale and purchase contract;
- 2.1.5 “*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;
- 2.1.6 “*Hukum Syara*” has the same meaning assigned to it under section 2 of the Syariah Financial Supervisory Board Order, 2006;
- 2.1.7 “*Ibra*” means waiving certain parts of a debt;
- 2.1.8 “*Ijab*” means an offer;
- 2.1.9 “*Kaafil*” means a guarantor;
- 2.1.10 “*Kafalah*” means a guarantee;
- 2.1.11 “*Khiyar al-‘ayb*” means an option arising from a defect; the option of dissolving or continuing the contract upon the discovery of a defect in the asset purchased;
- 2.1.12 “*Majlis al-‘aqd*” means the place of the contract session;
- 2.1.13 “*Muqaassah*” means the settlement of debts between contracting parties;
- 2.1.14 “*Muwakkil*” means a principal;
- 2.1.15 “*Qabd haqiqi*” means physical possession;
- 2.1.16 “*Qabd hukmi*” means constructive possession;
- 2.1.17 “*Qabul*” means an acceptance;
- 2.1.18 “*Rahnu*” means a debt contract with the purpose of obtaining cash by providing collateral such as gold or other valuable assets;
- 2.1.19 “*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;
- 2.1.20 “*Sukuk*” means certificates that represent a proportional undivided ownership or investment in assets which are in accordance with *Hukum Syara*;



- 2.1.21 “Sukuk *Murahahah*” means a certificate that represents a proportional undivided ownership in assets, including right to the receivables arising from the asset;
- 2.1.22 “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);
- 2.1.23 “Takaful” has the same meaning assigned to it under section 2(1) of the Takaful Order, 2008;
- 2.1.24 “*Urbun*” means an amount paid by the buyer to the seller subject to the amount being deemed part of the purchase price in the event a *Murahahah* contract takes place;
- 2.1.25 “*Wa’d*” means an undertaking or commitment given by one party to another to perform an act in the future;
- 2.1.26 “*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
- 2.1.27 “*Wakeel*” means a person who carries out a business on another party’s behalf, with or without a fee.

### 3. DEFINITION AND LEGITIMACY OF A *MURABAHAH* CONTRACT

#### Definition of *Murahahah* contract

- 3.1 A *Murahahah* is the sale and purchase of an agreed specified asset where the cost and profit margin are disclosed to the buyer.
- 3.2 *Murahahah* to The Purchase Orderer arrangements are commonly used by Banks and Financial Institutions offering *Murahahah* financing. In this case, the Bank or Financial Institution becomes the intermediary between the supplier of the asset and the purchase



orderer. Ownership of the asset will be transferred to the buyer after completion of the transaction.

- 3.3 An example of a *Murabahah* contract structure can be found in **Appendix 1**.

**Legitimacy of *Murabah* contract**

- 3.4 The legitimacy of a *Murabahah* contract is derived from the Al-Qur’an and the Hadith.

- 3.5 Al-Qur’an

The following verse of the Al-Qur’an implies the permissibility of a sales contract including a *Murabahah* contract:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

“Whereas Allah Subhanahu Wa Ta’ala has permitted trading and forbidden usury” (Surah al-Baqarah: 275)

- 3.6 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 says: "The Messenger of Allah Shallallahu ‘alaihi wasallam said: 'Transactions may only be done by mutual consent.'" (Sunan Ibn Majah: 2269)

The legitimacy of a *Murabahah* contract can also be derived from one of the legal maxims as follow:

الأصل في الأشياء الإباحة حتى يدل الدليل على التحريم

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

**4. GENERAL REQUIREMENT OF A MURABAHAH CONTRACT**

**Contracting parties**

- 4.1 The contracting parties in a *Murabahah* contract should comprise of a seller and a buyer/purchase orderer.
- 4.2 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***

4.3 *Ijab* and *Qabul* may be executed verbally, in writing or any other methods that result in the execution of a contract.

**Asset**

4.4 Assets used in a *Murabahah* contract should be tangible or intangible. Additionally, the asset should be:

4.4.1 Valuable, identifiable and deliverable; and

4.4.2 Already in existence and owned by the seller.

4.5 Assets used in a *Murabahah* contract should be verified and endorsed to be in accordance with paragraph 4.4 by the respective Syariah Advisory Body.

4.6 The following assets should not be used in *Murabahah* contracts:

4.6.1 Gold, silver, currencies and *ribawi* items;

4.6.2 Assets to be constructed or under construction; and

4.6.3 Assets which are debt in nature.

4.7 Ownership of the asset should be transferred from the seller to the buyer by means of transfer which does not contravene *Hukum Syara'*.

4.8 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.

4.9 Transfer of ownership from the seller to the buyer should take effect upon complete execution of the *Murabahah* contract.

4.10 Possession of the asset should either be in the form of a *Qabd haqiqi* or *Qabd hukmi*.

4.11 The seller should be liable for any defect or damage of the asset before the buyer takes possession of the asset.

4.12 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 *Murabahah* contract was entered into.

4.13 The buyer should have the right to exercise *Khiyar al-'ayb* if the buyer discovers a defect in the asset before the *Murabahah* contract is entered into.

4.14 Where the buyer has the right to exercise *Khiyar al-'ayb*, the buyer should have the right to terminate the *Murabahah* contract, to continue with the contract as it is or to continue with the contract subject to mutually agreed variations by the contracting parties.



- 4.15 Notwithstanding paragraph 4.11, above, the contracting parties may mutually agree for the seller to waive liability for any defect on the asset before entering into the *Murabahah* contract.
- 4.16 The duration on which *Khiyar al-'ayb* may be exercised should be mutually agreed between the buyer and the seller.
- 4.17 The same asset should not be the subject matter of multiple *Murabahah* contracts at any one time.

**Price**

- 4.18 The acquisition price, profit mark-up and methodology in calculating the profit should be disclosed in the *Murabahah* contract.
- 4.19 The price of the asset and the currency used in a *Murabahah* contract should be mutually agreed by both contracting parties.
- 4.20 Payments made under a *Murabahah* contract may be made either on a cash or deferred basis subject to the mutual agreement of the contracting parties.

**5 ARRANGEMENT OF A MURABAHAH CONTRACT WITH OTHER SYARIAH CONTRACTS**

**Arrangement of *Wakalah* contract in *Murabahah* contract**

- 5.1 Any contracting party in a *Murabahah* contract may appoint a *Wakeel* to act on his behalf.
- 5.2 The appointment of the *Wakeel* should be documented in a separate contract from the *Murabahah* contract.
- 5.3 The *Wakeel* may provide a quotation and specifications of the assets to the *Muwakkil*.
- 5.4 Any advance payments of the purchase price by the *Wakeel* should be compensated by the *Muwakkil*.
- 5.5 Once the *Wakeel* has bought the asset, the liability of the asset should remain and be borne by the *Muwakkil*.

**Arrangement of *Wa'd* in a *Murabahah* contract**

- 5.6 A *Wa'd* may be given to ensure that the purchase orderer buys the specified asset from the seller at the acquisition cost and agreed profit. This promise should be made binding on the purchase orderer when the seller has acquired and delivered the asset to the purchase orderer.
- 5.7 A *Wa'd* may be executed before entering into a *Murabahah* contract.
- 5.8 Where a purchase orderer refuses to enter into the *Murabahah* contract after executing a *Wa'd* in the manner set out in paragraph 5.6 above, then the purchase orderer should





compensate the seller for actual costs and disposal costs incurred in the acquisition of the asset and disposal of the same to a third party.

- 5.9 An example of the structure of a *Murabahah* contract in relation to the purchase orderer can be found in **Appendix 2**.

**Arrangement of *Murabahah* contract with Takaful**

- 5.10 The seller may require the buyer to acquire takaful coverage to ensure the payment of any outstanding selling price under the *Murabahah* contract.
- 5.11 The contracting parties may agree to exclude takaful contributions from the acquisition cost and the buyer may agree to absorb the takaful cost before entering into the *Murabahah* contract.

**Arrangement of a *Murabahah* contract with a Kafalah**

- 5.12 In the event of default by the buyer, the *Kaafil* (if any) should have the option to:
- 5.12.1 Buy the assets on behalf of the buyer; or
- 5.12.2 Pay the outstanding selling price on behalf of the buyer.

**Arrangement of *Murabahah* contract with a *Hamish jiddiyah***

- 5.13 A *Hamish jiddiyah* may be used to compensate against any actual losses incurred in the event the buyer fails to comply with the *Wa'd*.
- 5.14 Any excess amounts from the *Hamish jiddiyah* after payment of the compensation against actual losses should be returned back to the buyer.
- 5.15 The *Hamish jiddiyah* may be regarded as part of the payment of the agreed selling price under the *Murabahah* contract.

**Arrangement of *Murabahah* contract with *Rahnu***

- 5.16 Collateral (if any) may be utilized to recover payment of the outstanding selling price under a *Murabahah* contract.
- 5.17 Any excess amounts derived in the manner referred to in paragraph 5.16 should be returned to the buyer.

**Arrangement of *Murabahah* contract in '*Urbun***

- 5.18 A buyer may provide an '*Urbun*' to the seller and a specified period, as determined by the seller, should be given to the buyer to decide whether to continue or terminate the *Murabahah* contract.
- 5.19 If the buyer fails to inform the seller his decision whether to continue or terminate the *Murabahah* contract within the specified period, the *Murabahah* contract should be terminated and the seller should be entitled to the '*Urbun*'.



- 5.20 If the buyer decides to terminate the *Murabahah* contract within the specified time, then the seller should be entitled to the '*Urbun*'.
- 5.21 If the buyer agrees to continue the *Murabahah* contract within the specified time, then the '*Urbun*' should be treated as part payment of the selling price.

#### **Sukuk *Murabahah***

- 5.22 A *Murabahah* contract can be applied in Sukuk and an example of Sukuk *Murabahah* can be found in **Appendix 3**.

## **6 TERMINATION OF A MURABAHAH CONTRACT**

- 6.1 A *Murabahah* contract may be terminated under the following circumstances:
- 6.1.1 The buyer in a *Murabahah* contract with '*Urbun*' decides to terminate the *Murabahah* contract within the specified time;
- 6.1.2 Any of the contracting parties exercise a mutually agreed option to terminate the *Murabahah* contract within the agreed time period;
- 6.1.3 Any of the contracting parties exercise an option to terminate the *Murabahah* contract due to a breach of specified terms; and
- 6.1.4 Both contracting parties mutually agree to terminate the *Murabahah* contract.

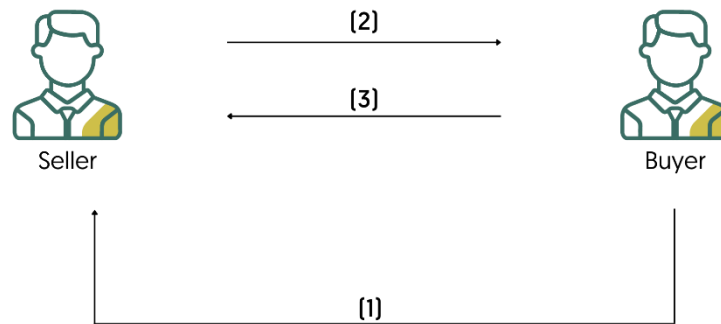
## **7 COMPLETION OF A MURABAHAH CONTRACT**

- 7.1 A *Murabahah* contract should be completed upon fulfilment of the obligations of the contracting parties which may include the following:
- 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*, and
- 7.1.4 Waiving of the right to receive the remaining outstanding selling price through *lbra'* given by the seller.

**MANAGING DIRECTOR  
BRUNEI DARUSSALAM CENTRAL BANK**



**APPENDIX 1: MURABAHAH CONTRACT**

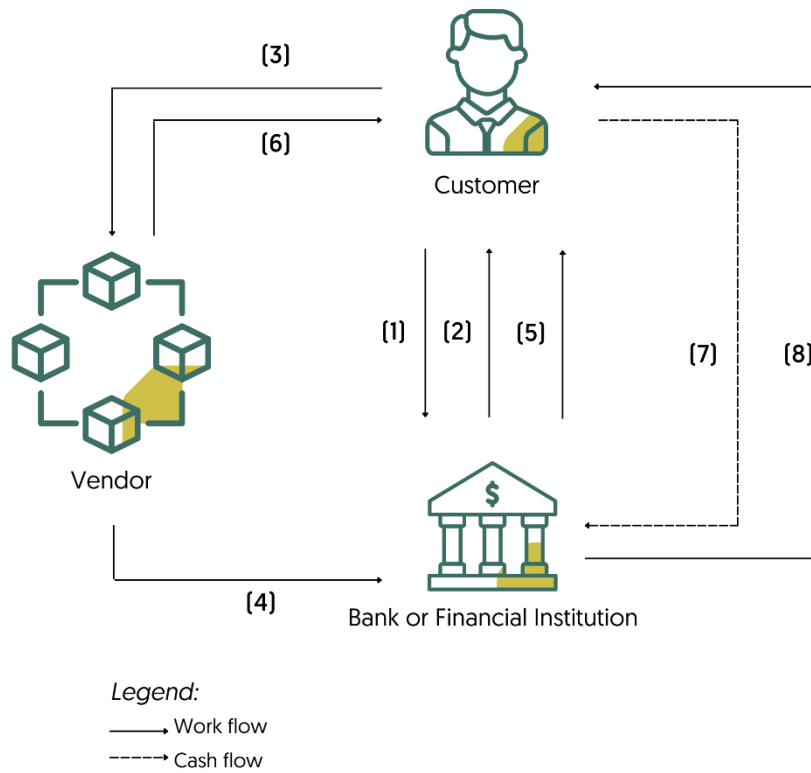


*Legend:*  
 ———→ Work flow  
 - - - - -→ Cash flow

No.	Description
1	The buyer shows interest to buy an asset from the seller.
2	The seller agrees to sell the asset to the buyer and discloses the acquisition cost plus profit margin. Mode of payment may be on a spot or deferred basis.
3	Ownership of the asset will be transferred to the buyer after concluding the <i>Murabahah</i> contract.



APPENDIX 2: MURABAHAH CONTRACT TO THE PURCHASE ORDERER



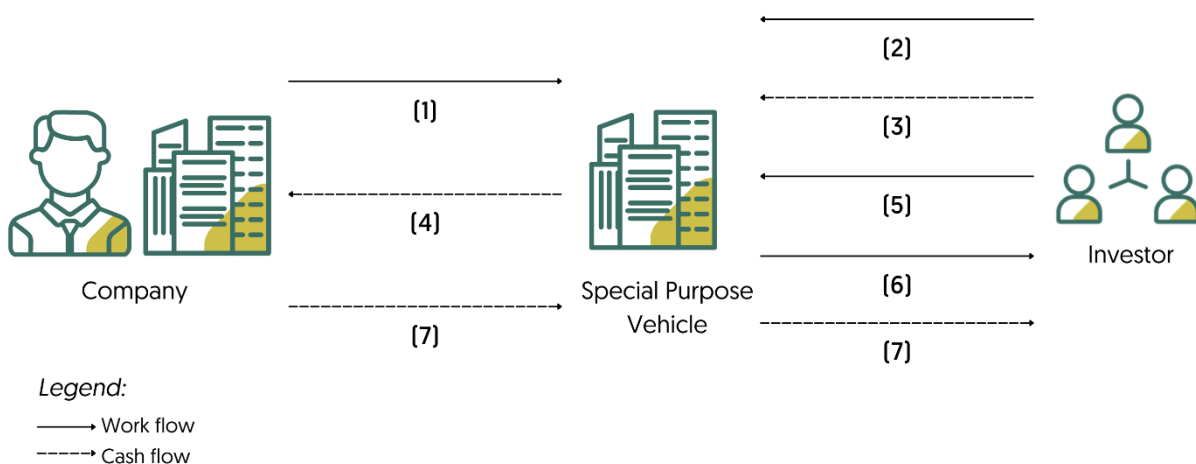
No.	Description
1	The buyer applies for a financing with the Bank or Financial Institution through <i>Murabahah</i> contract.
2	The Bank or Financial Institution agrees to appoint the buyer to be their <i>Wakeel</i> through <i>Wakalah</i> contract and then provide the quotation to the Bank or Financial Institution.
3	Wakeel appointed by the Bank or Financial Institution will purchase the asset from the supplier.
4	The supplier transfers the ownership of the asset to the Bank or Financial Institution.
5	The Bank or Financial Institution discloses the acquisition cost plus profit to the buyer.
6	After concluding the <i>Murabahah</i> contract, supplier transfers the asset to the buyer.



7	The buyer will pay on the spot or deferred basis.
8	Ownership of the asset will be transferred to the buyer after full payment has been made.



APPENDIX 3: SUKUK MURABAHAH



No.	Description
1	The company interested in acquiring fund through Sukuk will sell the identified asset to the Special Purpose Vehicle (SPV) at spot price.
2	The SPV raises funds equivalent to the price that had been set by the company in cash form from the investors.
3	Proceeds are then used to purchase the asset and then the SPV pays the company.
4	SPV pays the proceeds to the company.
5	Investor will appoint SPV to sell back the asset to the company with an acquisition cost plus profit.
6	SPV issues Sukuk <i>Murabahah</i> on behalf of the company.
7	The company pays the instalment to the SPV within agreed time period. Then, the instalment will be distributed to the investors until maturity.