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ISRA Research Paper (No. 2/2009)

Is the Ban on "Organised Tawarruq" The Tip of The Iceberg?

- Rafe Haneef, Research Fellow, ISRA
- RM 7.00 (31 pages)
- English

Abstract: The paper discusses and analyses the perspectives of both opponents and proponents of tawarruq with the view of ascertaining the soundness of the Fiqh Academy ruling. Interestingly, the tawarruq ruling epitomizes the growing divide between proponents and opponents of the contemporary Islamic finance industry as a whole. Generally, those who oppose tawarruq also abhor murabahah lil amir bi shira', Ijarah muntahiah bittamlik, contemporary sukuk al-mudharabah, musharakah and wakalah and many other contemporary Islamic finance products. The critics view the ban on tawarruq as the tip of the iceberg. The critics want the whole iceberg, the contemporary Islamic finance industry itself, to be exposed and transformed in its totality. Many of the critics believe that the transformation can only be realized by banning all the contemporary contracts mentioned above and rejuvenating the classical mudharabah and musharakah contract. Hence, it is important to discuss the tawarruq ban within the overall Islamic Finance context.

ISRA Research Paper (No. 3/2009)

Insurable Interest in Takaful Practices: An Analysis

- Nusaibah Mohd Parid, Researcher, ISRA
- RM 7.00 (38 pages)
- English

Abstract: This paper seeks to examine the application of insurable interest to takaful practices in general, with special reference to section 152 of the Insurance Act 1996. It is found that the unique features of takaful do allow for the application of insurable interest, but section 152 should be adopted in the Takaful Act only with certain modifications and guidelines, as have been discussed in the paper. However, it was found that there are still some unresolved issues in current takaful practice that require significant attention, issues related to the fundamental principles underlying takaful practices, such as the contract itself. It must be stressed, once again, that this paper only intends to bring forward a perspective or view on insurable interest in takaful practice, especially from the perspective of the Shari'ah, which can be further discussed, examined and modified, if necessary.

ISRA Research Paper (No. 4/2009)

The Concept of Promise and Bilateral Promise in Financial Contracts: A Fiqhi Perspective

- Assoc. Prof. Dr. Mohamad Akram Laldin, Executive Director, ISRA
- RM 7.00 (38 pages)
- English

Abstract: The topic of promises needs clarification and precise determination. It is vitally important because promises are relevant to a great number of contemporary issues. The paper thus reviews the types of promises in the Shari'ah and juristic opinion as to whether promises are legally binding. It concludes by highlighting nine (9) Shariah parameters that must be applied in allowing promises. It argues that if fulfilling promises is a binding obligation, then promises should not be used indiscriminately; rather, parameters must be laid down to govern their use. Among the suggested parameters are that promises should not displace and impede the objectives of contracts. For example, partnership contracts are intended to make the contracting parties share in the profit and loss; therefore, promises should not be used to negate this essential feature. For the remaining 8 parameters, download the paper!

ISRA Research Paper (No. 5/2009)

Challenges of Realizing Maqasid Al-Shari'ah (Objectives of Shari'ah) in the Islamic Capital Market: Special Focus on Equity-Based Sukuk Structures

- Assoc. Prof. Dr. Asyraf Wajdi Dusuki, Head of Research Affairs Department, ISRA
- RM 7.00 (30 pages)
ISRA Research Paper (No. 6/2010)

The New Central Bank Act 2009 (Act 701) : Enhancing the Integrity and Role of the Shari'ah Advisory Council (SAC) in Islamic Finance

- Hakimah Yaacob, Researcher, ISRA
- RM 7.00 (31 pages)
- English

Abstract: The new Central Bank of Malaysia Act 2009, known as Act 701, was gazetted on the 3rd of September 2009. Anything related to Islamic finance is thoroughly discussed in Part VII of the Act. The previous Central Bank of Malaysia Act 1958 (Act 519) only discussed the Shariah Advisory Council in one section of Part II under the heading of establishment, capital and administration of the bank, whereas the new Act provides comprehensive details for the function of the Shariah Advisory Council in Part VII. The paper reviews the anomalies surrounding the Shariah Advisory Council (SAC) prior to the amendment of the Central Bank Act and highlights the nature of the amendments made. The paper also elaborates the role of expert opinion (al-raj'yu al-khabir) from an Islamic perspective before concluding by summarizing the effect of the amendment on the industry as a whole.

ISRA Research Paper (No. 7/2010)

Derivatives in Islamic Finance

- Dr. Sherin Kunhibava, Researcher, ISRA
- RM 7.00 (55 pages)
- English

Abstract: The main objective of this paper is to review the use and status of derivatives in Islamic finance. This is done by first explaining the basic derivative contracts of forwards, futures, options and swaps. Thereafter, the discussion turns to the use of derivatives with sukuk. The paper then explores the debate between scholars on the admissibility or otherwise of forwards, futures and options in Islamic finance. It then examines contracts in Islamic finance that have derivative-like features and which can be used for the same purposes of hedging as forwards, futures, options and swaps. It concludes by highlighting areas for future research.

ISRA Research Paper (No. 8/2010)

Critical Appraisal of Shari'ah Issues on Ownership in Asset-based Sukuk as Implemented in The Islamic Debt Market

- Assoc. Prof. Dr. Asyraf Wajdi Dusuki, Head of Research Affairs Department, ISRA & Shabnam Mokhtar, Researcher, ISRA
- RM 7.00 (32 pages)
- English

Abstract: Sukuk comprise one of the fastest-growing segments of the Islamic debt capital market. This paper aims to shed light on Shari'ah issues that arise in asset-based sukuk structures and operations. It first discusses the concept of sukuk and delineates the difference between asset-based and asset-backed sukuk. It then discusses Shari'ah issues with regards to ownership (qabd). From the analysis of case studies conducted, three major issues were identified in the operation of asset-based sukuk. They are sukuk-holders interest in the underlying assets, restrictions on asset disposal, and due diligence regarding sukuk assets. The paper concludes that restriction of the right of disposal poses a serious doubt whether...
asset-based sukuk structures truly comply with Shari’ah principles. Furthermore, the coupling of this restriction of disposal with the purchase undertaking at par effectively turns sukuk into a debt instrument. Hence the paper suggests that there is a need to move towards asset-backed sukuk that clearly fulfills the Shari’ah requirement. Nonetheless the paper recognises that the current legal framework impedes the issuance of asset-backed sukuk. Instead of making overnight changes to the sukuk market, the paper highlights the need for all stakeholders to come together and thoroughly discuss measures needed for a transition to an improved market.

I.SRA Research Paper (No. 9/2010)

**Islamic Banks and Wealth Creation**

- **Prof. Dr. Abdul Ghafar Ismail**
- RM 7.00 (16 pages)
- English
- **Abstract**

This paper aims to examine how Islamic banks create wealth: how customers as depositors invest their money through the banks; how the banks invest the funds at their disposal; and how economic agents such as individuals, firms and government use these funds. It also examines how this money generates profit, which is then distributed to Islamic banks and depositors, and hence preserves and develops the wealth (ma) of economic agents. It also raises the larger question of whether Islamic banks contribute to the well-being of society by focusing on return to depositors and to shareholders.

Can Bursa Malaysia’s Suq al-Sila’ (Commodity Murabahah House) Resolve the Controversy over Tawarruq?

- **Assoc. Prof. Dr. Asyraf Wajdi Dusuki, Head of Research Affairs Department, ISRA**
- RM 7.00 (32 pages)
- English
- **Abstract**

In 2009, Bursa Malaysia launched a new trading platform called Suq al-Sila’ or Commodity Murabahah House. It was introduced to facilitate certain Islamic financial transactions, particularly commodity murabahah based on tawarruq. This platform is claimed to provide genuine commodity transactions where possession and delivery of the commodity can take place without any hindrance, as opposed to the controversial widespread form of tawarruq that uses platforms like the London Metal Exchange (LME). This paper discusses the practice of tawarruq using Bursa Malaysia’s Commodity Murabahah House. In particular the paper comprehensively examines the debates over tawarruq which eventually lead to the OIC Fiqh Academy’s declaration that organized tawarruq is impermissible. This paper concludes that despite the criticisms and some unresolved Shari’ah matters entangling the practice of tawarruq, the effort made by Bursa Malaysia to introduce a platform such as Commodity Murabahah House is commendable. Furthermore, since the nature of modern organized tawarruq may not strictly comply with Shari’ah principles, the reasons behind using this facility should be carefully taken into consideration, especially situations of real urgency and cases of need.

Reshaping the Islamic Finance Industry Applying the Lessons Learnt from the Global Financial Crisis

- **Rafe Haneef, Research Fellow, ISRA & Edib Smolo, Researcher, ISRA**
- RM 7.00 (29 pages)
- English
- **Abstract**

In the last 27 years, the world has witnessed more than 124 distinct financial crises. The financial meltdown caused by the current global financial crisis brought the financial world to its knees. This paper aims to discuss how the Islamic finance industry can reshape itself by learning lessons from the global financial crisis. To achieve this aim, the paper first identifies the lessons that can be learnt from the crisis including risk transfer & imprudent credit growth, failure of risk management, liquidity and leverage, tax regulation and opaque disclosure. The paper then suggests how the economic agents’ behavior and responsibilities could be reshaped by highlighting the sellers’ standard of care and regulatory responsibility. The paper concludes that the global financial crisis revealed the weaknesses of the global financial architecture on one side and provided an opportunity for Islamic finance to show its inherent...
strengths and qualities on the other. To facilitate this, the paper offers some possible Shari'ah-based solutions that can help the financial world avoid similar crises in the future.