# Murabahah Sukuk Structure: The Shariah Challenges And The Way Forward

Dr. Auwal Adam Sa'ad, Dr. Uzaimah Bt Ibrahim, Jr., and Dr. Muhammad Deen Mohd Napiah

*Abstract*— **Murabahah Sukuk is an Islamic trust contract which includes a disclosure of the original cost and the mark up. Murabahah in Islamic jurisprudence means a contract of sale for the equivalent price of the subject matter which includes its cost along with a known additional profit. The paper discusses issues related to Murabahah Sukuk financing. It also provides the structural overview of Murabahah in terms of Sukuk issuances. The paper highlighted three different ways of structuring Murabahah Sukuk, it looks into the structure of Murabahah for asset acquisition, Murabahah with Inah transaction and lastly Murabahah with tawarruq transaction. The paper concluded that according to the general rules of Shari'ah, Murabahah Sukuk should not be traded at secondary market due to the fact that it involved the sale of debt which is forbidden. However, Murabahah Sukuk might be negotiated at the secondary market if it forms a small part of a larger portfolio comprising other negotiable instruments such as Ijarah Sukuk, Musharakah, and Mudarabah Sukuk certificates.**

***Keywords- Murabahah sukuk; structural development; shari'ah challenges***

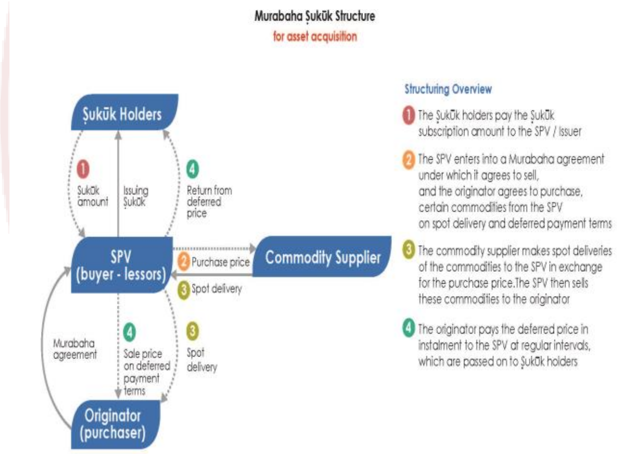
## I. INTRODUCTION

Murabahah comes from the word ribh which means an increase. Technically, Murabahah is the mark-up disclosed to the purchaser as per the seller's purchase price for a trust-sale of a certain specified asset, excluding monetary assets such as cash and receivables. Murabahah sale may be contracted on cash or credit basis. In the Islamic financial services industry, Murabahah is adopted in a transaction known as Murabahah to the purchase orderer (MPO) whereby three parties are involved, namely the IFI, the supplier and the purchase orderer. The Murabahah credit sale of a specified asset by an IFI to the purchase orderer is at a disclosed mark-up price based on the IFI's cost of financing the purchase.

Murabahah contract is valid if the profit is made through one of the two different methods, the first of which is Bay Al-musawamah. In this contract the price of the good is specified, followed by the method of Musawamah (price negotiation) without mentioning the seller's cost. The second valid Murabahah contract is called Bay Al-Amanah. In this contract, the buyer trusts the seller to honestly reveal the actual cost of the good. The buyer then proposes a fair price to offer the seller based on the seller's cost. According to bay Amanah, if he buys the good for a price less than the actual price, then it is called al-wad'iyyah. However, if he bought the good at cost, the transaction turns in to bay al-tauliyah. Finally, if the good was bought for more than its cost (which is the norm) then the transaction becomes bay Murabahah.

The majority of Muslim scholars have agreed that Murabahah is a genuine Islamic Amanah based contract, its acceptance relayed on the provision of Qur'an verses, the Sunnah, custom and general rules of Shari'ah. In the Holy Qur'an, Allah the Almighty said, "But Allah has permitted trade and has forbidden interest" and "There is no blame upon you for seeking bounty from your lord" and Murabahah is part of that. From the Sunnah, the Prophet (SAW) was reported to have said, "The best jobs is a handy job and any other explicable business" The Prophet (SAW) also said: "If the type of the subject matter is different, then you can sell it as you wish, if it is hand to hand" this hadith legalizes the sale of subject matter at whatever price, whether higher or lower than the original price. Imam Al-Kasani has recorded ijma (consensus) on bay Murabahah and said people have inherited such transactions since the early ages without any constraint, which constitutes the consensus on its acceptability. In Islamic finance, the term Murabahah is generally used to refer to a contractual arrangement between a customer and a financier whereby the financier would sell specified assets or commodities to the customer for spot delivery in the expectation that the customer would be able to meet its deferred payment obligations under the Murabahah agreement. The deferred price would typically include the cost price at which the financier had purchased the assets, plus a pre-agreed payment representing the profit generated from the transaction. The payments of the deferred price from the customer may be structured as periodical payments on dates specified at the outset, thus creating an income stream for the financier for the term of the transaction. Similar characteristics of Murabahah can also be adapted as an underlying structure in a sukuk issuance. Sukuk proceeds from Investors may be applied by Issuer/SPV to acquire commodities on behalf of investors and sell such commodities to the Originator to generate revenue from the Murabahah deferred selling price which would be distributed to the Investors throughout the term of the sukuk al-Murabahah. Sukuk al-Murabahah essentially represent right to share in receivables from the originator of the underlying Murabahah, they are not negotiable instruments that can be negotiated on the secondary market because Shari'ah does not permit trading in debt except at par value. This reduces the popularity of sukuk al-Murabaha in the global Sukuk Market. Murabahah certificates are certificates of equal value issued for the purpose of financing the purchase of goods through Murabahah so that certificate holders become the owners of the Murabahah commodity. Therefore, Murabahah Sukuk refers to securities issuances where the underlying transaction between the issuer and obligor is a sale then purchase of an asset at a mark-up of Murabahah. Various Murabahah Sukuk methods are available. Firstly, a factual purchase and sale of an asset involving three basic parties in which the asset moves linearly from seller to buyer. Secondly, a pre-arranged sale and buy back, or bai' al'inah, of the same asset between two parties. Thirdly, a three party agency sale applying commodity Murabahah, i.e. Tawarruq.

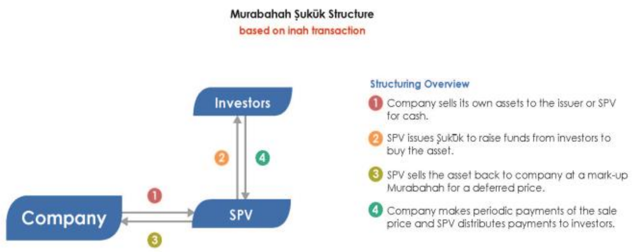
In Malaysia, the Islamic commercial paper and Medium-term note programme are usually structured under Murabahah notes issuance facilities. (MuNIF), while the longer tenured programme usually structured under Bai Bithaman Ajil with Islamic debt Securities (BaiDs). The market utilizes MuNIF for short-term maturities, while it uses BaiDs for long-term issuances. This is, however, a market setup and not a Shari'ah arrangement.




Source : Deloitte Luxembourg with some amendments

## II. MURABAHAH SUKUK STRUCTURE BASED ON INAH TRANSACTION

In this structure, instead of buying an asset from a third party, the SPV buys an asset from the company itself at the time of issuance. The SPV then sales the same asset back to the company at a higher deferred price. This structure is known as bai inah. The AAOFI does not permit this method, and it is only practiced extensively in Malaysia.



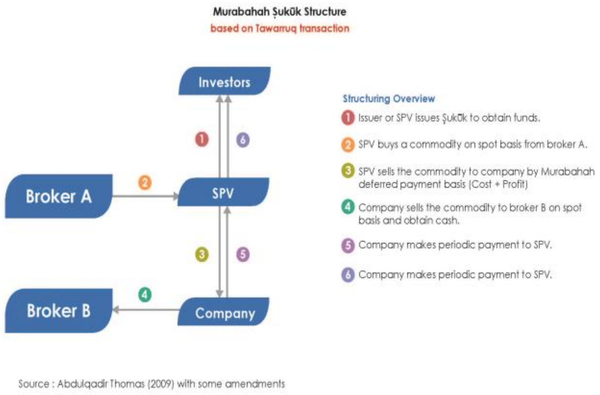

Source : Abdulqadir Thomas (2009) with some amendments

The example of Murabahah Sukuk based on Inah transaction is Sunway City, a Property developer in Malaysia, the Sunway is the issuer in this Sukuk as there is no SPV used in the structure. Sunway obtained approval from SC on 10 October, 2007 to issue RM500 Million Murabahah Sukuk under a medium-term note (MTN) program. This allows Sunway to raise Sukuk in different amounts within a period of 15 Years. Sunway will sell an identified asset to facility agent HSBC Bank on behalf of the investors on a spot basis.

An asset purchase agreement will be signed. The investors will buy the asset and HSBC will pay the purchase price to Sunway with the proceeds raised from the issuance of Sukuk. When the investors own the asset they will then sell it back to Sunway through HSBC on a deferred basis, the deferred selling price will be higher than the spot purchase price. Finally Sunway issues the sukuk Murabahah to evidence its obligation to pay the deferred selling price. Once the sell contract has taken place the investors are no longer the owners of the underlying asset used to facilitate the transaction, what they own is the entitlement or rights to the sale price to be paid by Sunway.

## III. MURABAHAH SUKUK STRUCTURE BASED ON TAWARRUQ TRANSACTION

Due to unacceptability of bai al-inah structure for Murabahah Sukuk in the Middle East, the market in those countries applied Tawarruq structure with the name Murabahah Sukuk. In this structure, instead of buying and selling between two parties, the arranger act as wakeel or purchasing and selling agent to trade commodities on behalf of the issuer as in the diagram below:




## IV. CONCLUSION

Murabahah Sukuk could not be traded in the Secondary Market according to the general Islamic rules and regulations. This is because the contracts in the Sukuk structure involve the sale of debt which is prohibited in the Islamic law. However, the Malaysian Scholars of the opinion that sale of debt is permissible. Their argument is based on the argument originated from Ibn Qayyim Aljawziyyah, who demonstrates that the majority of Islamic Jurists are unanimous in accepting bay Al-Dayn in general, they only differ in opinion about selling debt to a third party for the reason that the seller will not be able to deliver the sold debt to the buyer. Despite being debt instruments, Murabahah Sukuk certificates may still be negotiable if they form a small part of a larger portfolio comprising mostly of other negotiable instruments such as Ijarah Sukuk, Musharakah, and Mudarabah Sukuk. Murabahah Sukuk may be structured to facilitate a true asset acquisition transaction for companies. In such a case, the company is truly interested to own the asset which is the object of the sale. But most Murabahah Sukuk structures are simply aim to provide the cash to a company or sovereign. This approach is achieved either through bai al-inah in Malaysia or through Tawarruq in the Middle East. However, in all structures the sukuk represent a receivable arising from a permissible sale transaction under the relevant Shari'ah jurisdiction. Thus, Murabahah sukuk are generally not tradable in the secondary market, except in Malaysia.

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