



19th Dhūl al-Ḥajj, 1441 H
9th August 2020

In the Name of Allah, The Merciful, the Very Merciful

*English Abridgment of the Statement (No. 4/2020) Issued in Arabic by Islamic Economic Forum¹
Regarding:*

Transfer of Shari'a Possession in Palm Oil Tawarruq Transactions at Bursa Suq Al-Sila' (Malaysia)

The Islamic Economic Forum initiated an in-depth discussion on 7th Ramaḍān 1441H (corresponding 14th May 2020) regarding Tawarruq transactions carried by Islamic banks. This was part of a project to issue guiding directives, which may result, if applied, in an Islamic Banking Model, which is free from the Tawarruq based banking arrangement, which is currently considered as a standardized product and a permanent solution at the level of financing and liquidity management.

The discussion took place between 16th Ramaḍān 1441 H (=23rd May 2020) and 8th Shawwāl 1441 H (=16 June 2020). It concentrated on the two types of Tawarruq of palm oil, namely: i) CPO raw palm oil, and ii) RBD Palm Olein (OLN). Both of them are available at the trading platform (referred to as “**BSAS System**”) of Bursa Suq Al-Sila' (Malaysia) (“**BSAS**”)². However, the discussion, specifically, focused on verifying the existence of the possession, as required by Shari'a, which implies the transfer of risk of ownership from the seller to the buyer. The said discussion continued for around 300 hours wherein the participants, as Shari'a experts of Islamic jurisprudence, deliberated on the citations and quotations from the classical *fiqh* literature and examined all possible meanings and connotations of these quotations from different aspects and angles. Further, the participants also presented the relevant views of contemporary *fiqh* scholars.

¹ Islamic Economic Forum (“**IEF**”) is a specialized knowledge-based platform on social media which was founded on 1st February 2016 by Mufti Khalid Hasani (Pakistan) (+923101108983). Its Arabic platform is managed by Dr. Abdul Bari Mishal (+19199176595). The total number of members (in Arabic as well as English platforms) are around 600 persons. The members include Shari'ah scholars, experts, professionals, economists, academicians, advisors, Shari'ah auditors etc. from 58 different countries. Also, IEF includes representatives of support organizations and various central banks. IEF issued i) Statement on the permissibility of Bitcoin, ii) Fatwa on Charging an Amount for Delay in payment of Murabaha Installments in light of the COVID-19 Pandemic Circumstances, iii) Statement on Borrowing Funds with Ribā by Corporations During the COVID-19 Pandemic. Besides that, IEF released more than 20 discussion files.

² Bursa Suq Al-Sila' (Malaysia) BSAS specializes in the transactions of liquidity management in Islamic banks. Besides crude palm oil, there are other types of commodities traded over the exchange like Plastic Resin, Plastic Resin, Softwood Timber, Hardwood Timber etc. It's worth mentioning that BSAS is independent from Bursa Malaysia, the stock exchange of Malaysia.



They further considered profoundly and carefully the necessary ingredients and attributes (*murā'āt al-manāf*) required to establish the possession, as recognized per Shari'a, that transfers the risk, which permits the buyer to on-sell the purchased commodity on deferred Murabaha, and the presence of such possession in the form of Tawarruq arrangement applied by several Islamic banks via BSAS, Malaysia.

The participants in the discussion included the practitioners from those banks which are active in using this type of Tawarruq, members of the Shariah Committee of BMIS (Malaysia), and the experts and researchers specializing in BSAS (Malaysia). The participants have received detailed responses to their queries with proper and authentic references and citations. The Shari'a Executive Committee, which was formed out of the members of the Islamic Economic Forum to draft and ratify this statement, had held various meetings between 10th Shawwāl 1441 H (= 18th July 2020) till the date of issuing this Statement. All these discussions helped in narrowing the differing perceptions which were presented during the discussion. Finally, an agreement was reached concerning perceptions, solutions, and suggestions, which are stated below.

Firstly: Structure of the Transaction Under Consideration

- 1) An Islamic bank purchases a defined quantity of palm oil in a certain volume (e.g., 5,0 tons) from one supplier or several suppliers registered at BSAS (the “**Commodity Supplying Participant**”, “**CSP**”)³ at a price payable either after two working days or on the same day.
- 2) The Procedure Rules of Bursa Suq Al-Sila' state that the liability and risk of the commodities will transfer to the purchasing bank on the date the acceptance and the offer are linked (exchanged) over the BSAS System, on the grounds that the physical or constructive possession takes place the moment ownership was transferred.

“RULE 401.1 PASSING OF RISK, LIABILITY, AND OWNERSHIP

(1) Risk and liability arising from the Approved Commodity will lie with the owner of the Approved Commodity and will pass in the same instance when ownership of the Approved Commodity passes. For the avoidance of doubt, when ownership of the Approved Commodity passes to the buyer, the buyer will have at that point, possession of the Approved Commodity and such possession may be actual or constructive.” [Chapter 4: Trading Rule, pg. 32].

This clause establishes that the possession is transferred the moment of ownership transfer pursuant to which liability transfer is constructed.

- 3) The quantity purchased, at the time of sale, is stored together with its similar (oil) in a specific tank(s) based on certain technical specifications related to the oil. The said tank is under the

³ Commodity Supplying Participant is the original seller of the oil or his agent as per the rules of BSAS.



ownership of the Commodity Supplying Participant, and some of its contents are offered for sale at BSAS, whereas the rest is not offered for sale on BSAS System.

- 4) BCH System, the electronic system of BSAS, issues an e-certificate after linking the acceptance with the offer. The e-certificate will include: i) name(s) of the Commodity Supplying Participant(s), ii) name of the purchasing bank, iii) No. of the certificate, iv) No. of the tank and its location, v) date of certificate issuance, vi) technical specifications of the oil, vii) the price, viii) the currency type, ix) date of payment and x) the quantity in tons. [[Chapter 5: E-Certificate, pg. 38](#)]
- 5) On the same purchasing day, the bank sells, through a deferred Murabaha sale contract, the purchased quantity, which is stored in one tank or multiple tanks, to its customer(s) seeking liquidity through Tawarruq arrangement (the “**Liquidity Seeker(s)**”). Hence, the aggregate of the sold quantity will be equal to the quantity which was purchased, by the bank, and evidenced in the e-certificate.
- 6) On the same day, the bank also sells the quantity on behalf of its customers against a spot price to Bursa Malaysia Islamic Services Sdn Bhd (“**BMIS**”), which is an entity that owns the BSAS System. Afterward, BMIS, in turn, sells the commodities randomly to the Commodity Supplying Participants, excluding the first Commodity Supplying Participant (i.e., CSP who sold the commodity to the respective bank). However, this does not imply that the commodity shall not return to the first CSP via subsequent transactions that may take place off the BSAS System (over-the-counter transactions).

7) Physical delivery of Oil

- a) In case the purchasing bank wants the physical delivery of the oil, which will result in segregating it and taking it out of the tank, then it has to click, at the time of purchase, on the icon of “**Delivery**” shown in that BSAS System, so that BSAS is notified electronically about the bank’s wish to take physical delivery.
- b) In case the purchasing bank has not clicked on the icon of “Delivery,” then it has to directly coordinate with the Commodity Supplying Participant for the “**Delivery Request**” outside the BSAS System, and the Commodity Supplying Participant has no option to decline to entertain such a request.
- c) In case the purchasing bank has not clicked on the icon of Delivery, the parties will understand that the purchasing bank is willing to sell its portion in BSAS and does not wish to demand the physical delivery, bearing in mind what was stated in Point (7.b).



- d) Supposedly, the bank has not clicked on the Delivery icon, and it did not sell during the same working day, then it is automatically understood by the end of the day (cut-off time) that the bank wishes to take the physical delivery⁴.
- e) The Commodity Supplying Participant carries out the logistical and legal procedures required for the physical delivery, which includes the issuance of the Delivery Note in the name of the buyer within a suitable period in line with the customary practice of the industry in this regard. Those procedures, also, include the issuance of legal licenses required to transfer the oil outside the tank. This procedure is needed because the oil commodity has particular technical specifications which require specific technical procedures for taking out the oil and transferring it without damaging the same.
- f) The Commodity Supplying Participant, which has offered at BSAS System a defined quantity of oil in terms of volume (e.g., 50 tons) for sale to the banks, may freely dispose of, for its own benefit, what it owns from the tanks through a process of decreasing and increasing of the similar type of oil. However, the Commodity Supplying Participant shall always maintain the quantity equal to the one offered at BSAS. This disposition is an act that may result in changing the fungible specimen of the oil, which was existing in the tank at the time of sale to the bank. For clarification, the aggregate quantity in the tank, which includes the quantity offered at BSAS upon which the sale to the bank took place, does not identically remain intact without changing. Instead, it is subject to substitution with another quantity of a similar type. This substitution may take place before the sale by the purchasing bank to its Liquidity Seeker.

Secondly: Operational Clarifications

- 1) In practice, the bank pays the price on the transaction date, which is usually credited to the account of BSAS held with the purchasing bank. In the chain of the transaction, the open credit-debit positions of the parties will be closed in the subsequent transaction (i.e., when the commodity is resold to BSAS on behalf of Liquidity Seeker) via netting off between the sale price and the purchase price on the same day if no physical delivery was demanded.

⁴ The points related to delivery mechanism (1-4) are summarized from various answers of the Shariah Committee of BMIS, which was concluded with the following statement: “At the time of willingness to purchase, the purchasing bank clicks on the icon of delivery of the commodity which indicates its wish to take delivery. In case the purchasing bank has not clicked on the icon of commodity delivery, this will imply that the commodity delivery will be done automatically, and the relevant procedures will thereafter initiate”, [Translated from Arabic response].



For clarification, the price of the commodity remains fixed during the trading day so that the banks can sell the commodity on behalf of the Liquidity Seekers for the price at which the bank has bought the commodity. The netting process between both the prices shall lead to a situation where the banks' payment obligation (liability) towards BSAS is limited to transferring the charges only.

In case the physical delivery was demanded, then it means that the transaction will not reach the netting stage. Instead, the purchase price will be credited to the Commodity Supplying Participant, and the transaction circle is closed once the bank takes the delivery of the purchased quantity. Based on the inputs from the Shariah Committee of BMIS, the parties (i.e., the purchasing bank and the selling Commodity Supplying Participant) may agree on a deferred price. In this case, BSAS shall be notified about what was decided by the parties.

- 2) Let's assume that the capacity of the oil tank is 200 tons, and the tank is filled up to its full capacity. The Commodity Supplying Participant allocates only 50 tons of the total quantity to be offered at the BSAS System through which Tawarruq transactions for the Islamic banks can be carried out. However, the other portion (i.e., 150 tons) will not be offered at the BSAS System.
- 3) The transactions of the Islamic banks are carried over 50 tons, and they are traded during the day at BSAS, whereas the Commodity Supplying Participant disposes of the quantities over 50 tons. Subsequently, it pumps to the tank a similar substitute either with equal or less quantity, which means that the tank does not necessarily need to remain full up to its maximum capacity. Because there is no separation between both quantities (the quantity that belongs to the banks and the quantity that belongs to the Commodity Supplying Participant) as they are mixed in the same tank, so the aggregate quantity available in the tank shall be in continuous change during the day. However, the available quantity in the tank shall not be less than the quantity which was offered at BSAS at the start of the day (i.e., 50 tons).
- 4) The electronic information available in the BSAS System does not provide the percentage of the ownership of each bank against the aggregate quantity available in the tank at any time, and such a ratio is fluctuating during the day because of the possibility that the Commodity Supplying Participant may dispose of the quantity outside BSAS. The available information over the BSAS System is only related to the intraday sale movements of the quantity offered at BSAS.
- 5) Without the availability of the Delivery Request, the physical delivery of the commodities cannot take place. The logistical and legal procedures of the physical delivery require time



as per the customary practices of the industry. Based on the responses of the Shari'a Committee of BMIS, the period needed for arranging the delivery of the commodity to the buyer is usually 7 days. This period could be shorter if the value was settled on the transaction date (i.e. the trading date) itself, so the Delivery Request can be issued immediately after settling the price. The buyer can take delivery of the commodity on the transaction date or the subsequent day.

- 6) The Procedure Rules of BSAS state the following:

RULE 701.3 ADMINISTRATION OF DELIVERY REQUEST

(1) Upon receiving a notification or a deemed notification in the manner specified by BMIS for physical delivery of the Approved Commodity, the CSP will be notified through the BCH System. The CSP must deliver to BMIS the Delivery Document in the manner and within the time as specified by BMIS.

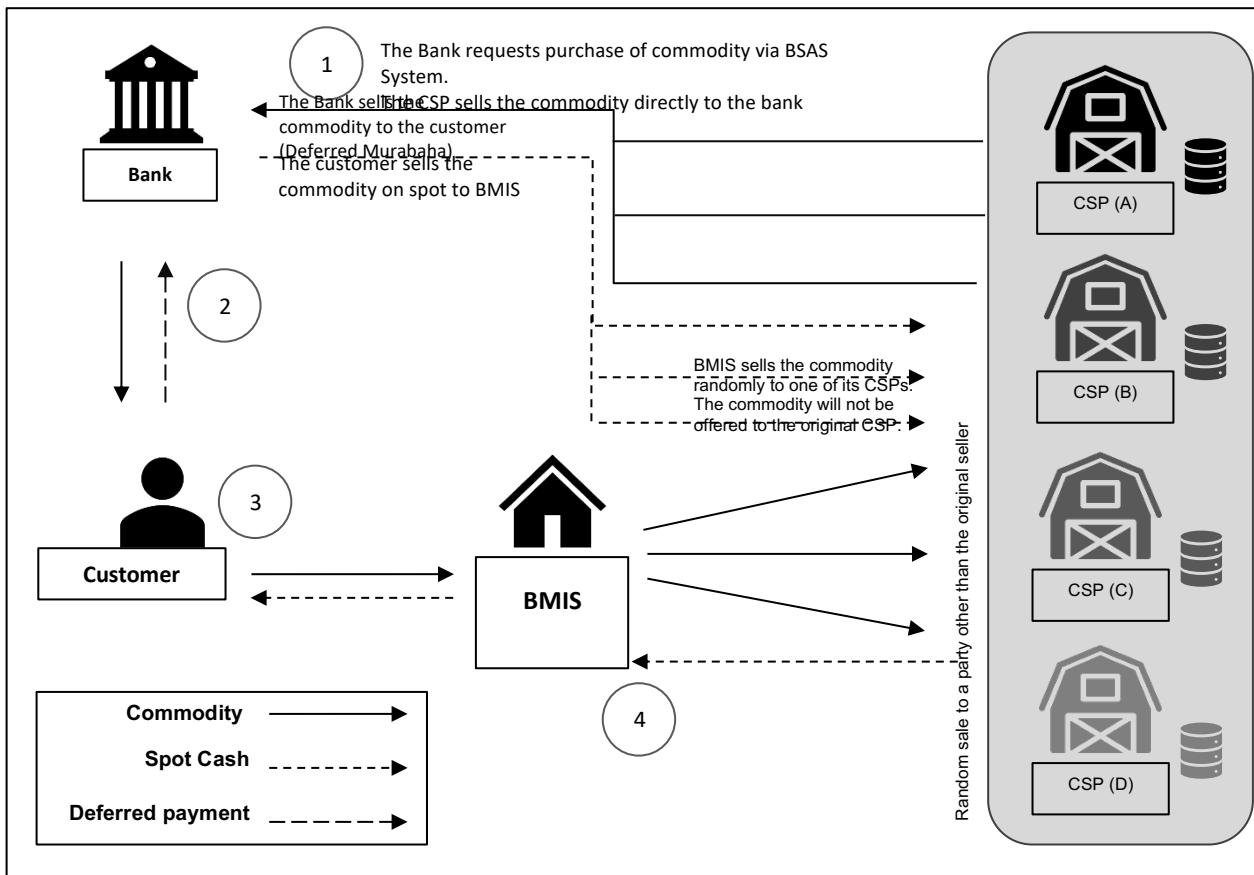
(2) If a CSP fails to fulfil Rule 701.3(1) within the period stipulated, BMIS will use its best endeavours to procure delivery of a Delivery Document from another CSP to fulfil the request. [[Chapter 7: Physical Delivery, pg. 41](#)]

Based on the responses from the Shariah Committee of BMIS, if the seller fails to deliver the commodity to the buyer, then the management of BSAS will oblige the Commodity Supplying Participant (as seller) to provide commodities with similar specifications from another Commodity Supplying Participant either via purchasing or borrowing the commodity. Hence, the purchasing bank receives the commodity from the Commodity Supplying Participant (as seller) from whom the commodity was bought. In case this was not possible, then the Commodity Supplying Participant (as seller), is obliged to settle the transaction by paying the price of the commodity in cash via BSAS in its capacity as a broker.

- 7) Usually, trading of the commodities, among the relevant parties, takes place on an intraday basis, unless one of the buyers wishes to demand physical delivery.
- 8) The following diagram explains the steps of Tawarruq at BSAS.



Figure: Tawarruq Process at Bursa Suq Al Sila.'



Source: Bursa Suq Al-Sila'- Its Development and Role in Facilitating Commodity Trading Transactions (2019) With Minor Modification.



Thirdly: Shari'a Observations

The participants in the discussion raised various observations, which can be summarized as follows:

1. The transaction was designed in a way that it would be a purchase of a defined quantity (from a tank which has contents that are continuously changing) wherein the seller undertakes to deliver to the buyer if the latter wishes to take delivery. This is the feature of a subject of sale which requires the right of satisfaction (the "*ḥaq al-tawfiya*"⁵) via measure and weighing. Hence, the nature of the purchase, as explained above, cannot be accommodated as a purchase from a common share due to a partnership between the seller and other owners of the oil available in the tank. This ruling is applicable to oil even if it was a nonedible commodity.
2. The obligation of the Commodity Supplying Participant to deliver the purchased quantity does not occur on the available quantity in the tank at the time of sale to the bank due to a) constant material change of the oil, b) the existence of time-gap between the contract date and the physical delivery date, c) an undertaking to arrange the commodity delivery from another Commodity Supplying Participant when the delivery cannot take place through the selling Commodity Supplier. This form of an undertaking to deliver is only applicable to the delivery of the purchased quantity of similar specifications to the quantity available in the tank at the time of contract but it is not the specific (identified) (*mu'ayyan*)⁶ commodity which was available at the time of contract. Instead, the request for the physical delivery will be waived, and cash netting will take place if the delivery was not possible from another Commodity Supplying Participant.
3. The Islamic banks dispose of the defined quantities, which were purchased by them, by selling them to their Liquidity Seekers before a) performance of the right of satisfaction ("*tawfiya*")⁷ by measuring and weighing the quantity, and b) the transfer of the actual or constructive possession. Both these matters (*tawfiya* and possession) cannot take effect unless the Commodity Supplying Participant issues legal licenses and the Delivery Request wherein

⁵ **Translation Note:** In Fiqh, when existing and unascertained goods are sold (e.g. fungible goods which are mixed in a pile), then the seller is supposed to separate (*faṣal*) or to sort (*ifrāz*) the sold goods from similar units of the same goods which are owned by the seller or others, so as the unascertained and undivided goods will become ascertained goods which are owned by the buyer. The buyer has the right to demand separation of what he owns, so he shall bear the risk of only the ascertained goods. This right of satisfaction is known as *ḥaq al-tawfiya*.

⁶ **Translation Note:** *specific goods:* "Goods specially identified at the time of a contract of sale is made".

⁷ **Translation Note:** *Ḥaq al-tawfiya* is fulfilled by a relevant act carried by the seller when he separates the asset for the buyer from his other assets. This act is known as *tawfiya* and it depends on the nature of the goods, for example, for weighable goods, it would be through weighing them, for countable goods, it would be through counting them, and for measurable goods it would be through measuring them.



tawfiya takes place by segregation which shall result in the physical delivery or constructive delivery through *takhliya*⁸.

4. Whether we assume that a) the sold oil is a defined quantity out of an aggregate quantity identified at the time of the contract, or b) the sold oil is *bay' mauṣūf bi dhima* (sale of described and due), the suspicion of a sale by the Islamic banks before the transfer of possession continues to exist. If we say that the defined quantity is part of a specific (identified) subject of the sale, then the bank sells to the Liquidity Seeker on a deferred Murabaha basis before segregating the subject of sale and before effecting *takhliya* which represents constructive possession of the segregated item. On the other hand, if we say that it is a sale on the liability of a described future item but unascertained goods, then the bank will be selling to the Liquidity Seeker a quantity on a deferred Murabaha basis before the appropriation⁹ (*ta'yyin*) of such a quantity (*ta'yyin*) through segregating it, and even before the occurrence of *takhliya* (i.e., this would result in the sale of debt to a party other than the debtor). Hence, in the absence of a) actual segregation (as a form of *tawfiya*), and b) *takhliya* of the segregated item free from any impediments, the transfer of possession is nullified which, in turn, nullifies transfer of risk, associated with specific (identified) subject of sale, to the buyer, against what was stated in the Rules of the BSAS, given in Point (2). Hence, the obligation of the seller to deliver would be a form of a contingent future obligation.
5. Arguably, if we considered the subject of sale as a form of a common share, then the purchase was not based on the purchase from partnership because the Commodity Supplying Participant (as a seller) undertakes to deliver the quantity sold whereas as opposed to the partner who, in the partnership, never undertakes to deliver anything. Also, BSAS System does not provide information relating to the aggregate quantity available in the tank to say that the sale is effected on the percentage of the aggregate amount available in the tank. Consequentially, it cannot be said that the Commodity Supplying Participant and the banks are joint partners in Sharikat al-Milk (joint ownership).
6. Hence, it would not be right to accommodate the transaction structure based on Sharikat al-Milk, where parties participate in common shares of the available quantity in the tank due to (a) fluctuations in calculating the portions held by the partners, and b) the bank entered into a purchase of a defined quantity that requires *ḥaq tawfiya* because the seller undertakes to

⁸ **Translation Note:** *Takhliya* is a form of possession, recognized by Shari'a, in the corporeal properties wherein the seller permits the buyer to take control of the subject of sale with no impediments. In case physical possession cannot be taken by the buyer without an impediment, then the possession is deemed to be held by the seller even if it was stated in the contracts to be transferred to the buyer.

⁹ **Translation Note:** the act of identifying unascertained goods.



deliver it and not as a common share in a (identified) commodity. The coming Section No. 5 will give the guidelines for re-designing the transaction based on Sharikat al-Milk.

7. If we look at the entire structure of the transaction, which includes the purchasing bank selling on a deferred Murabaha basis what was bought by it, the transaction does not fulfill the conditions of on-sale in the context of the structure of the subject of sale that requires *haq tawfiya* as explained earlier. From Fiqh (jurisprudence) perspective, the structure of the transaction is analogous or comparable to selling a measure of grain (*qafiz*) from a pile of food (*şabra*) which quantity may or may not be known due to the absence of *tawfiya* and *takhliya* before a sale on a deferred Murabaha basis to the Liquidity Seeker by the Bank. The structure of the transaction can be redesigned to fulfill the Shari'a requirements of selling back the subject of sale, which has *haq al-tawfiya* as per the following Section No. Four.

Fourthly: Guidelines for Redesigning the Structure of the Transaction based on Subject of Sale with the Tawfiya

1. Selling subject of sale which has *haq al-tawfiya*: is where the bank buys from the Commodity Supplying Participant a defined quantity from a specific tank and take a recognized Shariah possession before selling the subject of sale on a deferred Murabaha basis to the Liquidity Seekers who are bank's customers. The possession materializes through *tawfiya* and *takhliya*. *Tawfiya* takes place by the segregation and separation of the quantity from the existing aggregate oil in the tank. After the segregation and *takhliya*, it is permissible to execute subsequent sale contracts on the segregated portion. The risk shall, then, be transferred to any buyer on a Murabaha sale basis provided the sold quantity is specific (i.e. identified and segregated from similar oil) with occurrence of *takhliya* by the seller as required by Shari'a.
2. When the bank buys a defined quantity out of an unknown or known aggregate quantity, such as purchasing 50 tons out of the aggregate content of a specific tank, the risk of ownership does not transfer to the bank unless *tawfiya* and *takhliya* take place as mentioned earlier. Hence, it is not permissible for the bank to sell the purchased quantity on a deferred Murabaha basis to its Liquidity Seekers before *tawfiya* and *takhliya*.
3. A mere undertaking by the Commodity Supplying Participant, as stated in the contract of purchase, to deliver a quantity of oil, shall not constitute *tawfiya*. Further, this undertaking will not result in the transfer of risk, as recognized by Shari'a, to the purchaser. This is because *takhliya* applies only to a specific (identified) and segregated item from similar kinds of the same gene. Insofar as the sold quantity is not segregated, then the undertaking to deliver, as given in the transaction structure, would be akin to an undertaking to deliver a similar fungible



item of the same kind of the sold quantity and not specific (identified) sold quantity. It is, however, a kind of contingent liability undertaking (*iltizām fī al-dhima*) and not an obligation to provide a specific (identified) item. In this case, the risk of the sold specific (identified) item will not transfer to the buyer in case of loss unless the following has taken place: a) appropriation (identification) of the unascertained and unallocated items through segregation from a similar kind of the same gene, and b) *takhliya* by the seller.

4. The risk, as recognized by Shari'a, will not transfer to the buyer by a mere stipulation that the risk will be transferred following a transfer of ownership. This is because the risk transfer of the subject of sale, which is subjected to *ḥaq tawfiya*, is a result of segregation and *takhliya* of the sold item and not a mere verbal agreement. Hence, even though taking possession was possible, in the end, for a similar quantity of the sold one but it will not be possible, as per Shari'a, to hold the buyer (i.e., the bank) liable for the loss associated with its portion before the incident of segregation and *takhliya* which are the trigger for the transfer of risk. In this case, the bank's sale to its Liquidity Seeker is a sale of what the seller (i.e., Islamic bank) does not take the risk of ownership (*bay' mā lā yaḍman*).

Fifthly: Guidelines for Redesigning the Transaction Structure based on Shirkat al-Milk

1. The form of Shirkat al-Milk is where the bank enters into a partnership to take ownership of a common share, such as half or quarter, in the aggregate quantity, which is known and fixed, of a specific tank (i.e., this aggregate quantity remains under the physical or constructive custody of the seller Commodity Supplying Participant), without any obligation on the Commodity Supplying Participant to deliver the purchased quantity. In this way, a partnership in the ownership of the aggregate quantity is formed between a) the seller, the Commodity Supplying Participant, and b) the buyer of a common share in the aggregate quantity. After that, any of the partners have the right to sell his or her common share (either entirely or partly) on a deferred Murabaha basis to a third party without any segregation requirement or obligation to deliver the sold quantity. By this, the buyer will replace the existing partner to own such a partner's portion in the aggregate quantity pursuant to which there is no impediment for the subsequent sale contracts to take place in this form. Further, each partner may demand the division of the partnership assets by segregating his portion and taking it out of the partnership.
2. When the bank signs with the Commodity Supplying Participant the contract of purchasing a common share, such as half or quarter, of the aggregate defined quantity in a specific tank, then Shirkat al-Milk (joint partnership) is established between the bank and the Commodity



Supplying Participant in the aggregate quantity defined in the tank irrespective of whether all such quantities are offered over BSAS System or not.

3. The partners in Shirkat al-Milk have a joint portion in commensuration with the percentage of their ownership in the aggregate quantity, and each of them bears the loss, if occurred, in line with the percentage of their ownership in the aggregate quantity upon the event of loss.
4. Considering what was mentioned in Point (1) of Section Five, the partner may entirely or partially sell his portion to a third party. In this case, the new buyer will replace such a partner *vis-à-vis* his portion in the sold portion - as a partner in the aggregate quantity available in the tank. This will result in the reduction of the selling partner's portion in the aggregate quantity by a percentage of the sold portion in the aggregate available quantity in the tank at the time of sale¹⁰.
5. If, for example, the aggregate quantity was 200 tons, and the bank owns 25% out of it. If the bank sells 12.5% out of it (i.e., 25 tons) to a third party that replaces the bank in its ownership in the partnership, then the portions will be revised as follows: i) 12.5% for the selling partner, ii) 12.5% for the buying partner, and iii) 75% for the Commodity Supplying Participant. The ownership and risk are transferred to the new customer immediately after executing the sale contract, and the transfer of ownership and risk will be repeated with every subsequent sale, upon the recurrence of sale contracts.
6. After linking the acceptance with the offer and the establishment of the partnership, the buying partner may demand division or segregation of what he owns, without any impediments or conditions, and that will be through the request of the Actual Delivery for the entire portion owned by him or part of it. This would be affected by clicking on the icon of "Delivery" on the BSAS System or presenting Delivery Request directly to the owners of the oil in the tank or their delegates. Further, the partner may sell his portion to the buyer, who is not willing to replace him in the partnership. In such a case, the division will take place by segregation of the portion of the buyer and taking it out of the tank in line with procedures followed in this regard.
7. In case of sale to a buyer who does not want to replace the seller in his partnership, then the seller will continue to bear the risk of the subject of sale until the actual segregation and *takhliya* take place. Also, the buyer is not allowed to dispose of the subject of sale through a sale on Murabaha basis unless it was segregated and separated from the tank together *with takhliya* free from any impediments. In this case, any loss occurred will be borne by the selling partner, whether this partner is one of the banks or the Commodity Supplying Participant itself.

¹⁰ =%(sold portion/aggregate quantity at the time of sale)



8. It is permitted for any partner, subject to approval from the other partners, to increase his portion by pumping more oil in the tank or buying more portions from other partners. Similarly, the partner may decrease his portion by selling what he owns, which will accordingly amount to a change of the percentage of the joint partners in the revised aggregate quantity. By referring to the example, as given above, if the Commodity Supplying Participant sells 50 tons from his common share, the new aggregate quantity will decrease to 150 tons wherein the bank shall have one-third of it (i.e., 33%), and the Commodity Supplying Participant will have two-thirds of it (i.e., 66.7%). In case the Commodity Supplying Participant pumps a new quantity of 50 tons, the aggregate quantity will be back to 200 tons. If it is assumed that a bank's quantity was always unchanged and remained at 50 tons, then the ownership percentage will revert to 25% for the bank and 75% for the Commodity Supplying Participant.
9. Having the possibility of linking the BSAS System and the electronic systems of inventory management used by the Commodity Supplying Participant will help in providing real-time information related to the change in the aggregate quantity of the tank, whether the same quantity is made available for trading at BSAS or not. Furthermore, this will help in calculating the percentage of the partnership between the parties of the Shirka al-Milk on an immediate basis at any time. It will also assist partners in arranging approvals of other partners for the sale-based disposition of the partnership quantities via electronic means.
10. It is, also, important to ensure keeping in place a continuous electronic record that contains the timing of any changes occurring to the tank so that each owner will bear the partial loss on his account applicable at that moment.
11. All the partners shall bear the charges of storage and other expenses which occur after purchasing their respective portion and the establishment of Sharikat al-Milk on the subject of partnership (i.e., the oil). These charges will be borne on a pro-rata basis.

Sixthly: The Closing Remarks

1. It is not necessary that rectifying the status of possession and risk, as explained in this statement, constitutes an endorsement of any Tawarruq transaction that meets the conditions mentioned herein. This is because the proscription of banking Tawarruq may depend on various other considerations such as (a) collusion between the parties leading to simulated contract (*'aqd ṣūrī*), b) devolution to Tripartite *'Inah* (*'Inah thulāthiya*), c) a direct cause (*dharī'a mubāshira*) for revolving (*qalb al-dayn*), or annulment (extinction) of a debt by another debt (*faskh al-dayn bi al-dayn*).
2. These considerations and others which can be relied on proscribing Tawarruq are open for further study on the public platform of Islamic Economic Forum as a part of a project to issue



guiding directives for developing an Islamic banking Model which is free from the banking Tawarruq, which became an ideal product and a permanent solution widely-spread at the level of financing and liquidity management.

Seventhly: Recommendations

1. The Islamic Economic Forum recommends to the management of BSAS (Malaysia), the Shari'a Committee of BMIS, and, also, Islamic banks which deal with these transactions to study the observations and solutions which are stated in this statement and to ensure the feasibility of achieving the Shari'a conditions while executing the transactions.
2. The Islamic Economic Forum recommends to the supervisory bodies to explore practical alternatives of the banking Tawarruq and to develop plans for Islamic banking where banking Tawarruq is not a uniform product and a permanent solution at the level of financing and liquidity management.



This statement was issued on 16 Dhū al-Ḥajj, 1441 H (corresponding 6th August 2020) by the Shari'a Executive Committee formed for this purpose within the Islamic Economic Forum, and the Statement was ratified in the general session of the forum on 19th Dhū al-Ḥajj, 1441 H (corresponding 9th August 2020).

Members of the Shari'a Executive Committee:

- | | |
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- Head of Islamic Economic Forum/
Member & Rapporteur

*End of English Abridgement*¹¹

¹¹ English abridgment was prepared by Dr. Mohammed Burhan Arbouna (Bahrain), Dr. Yousuf Azim Siddiqi and Dr. Abdoul Razzak Kaba (Malaysia).