

THE APPLICATION OF *MUSHĀRAKAH MUTANĀQIŞAH* IN PROPERTY FINANCING: EXPERIENCE OF AFFIN ISLAMIC BANK BERHAD

Mohammad Mahbubi Ali¹
Ahmad Husni Abd Rahman²
Mohd Faiz Rahim³

ABSTRACT

The widespread adoption of the tawarruq contract by Islamic banks in their deposit and financing offerings has spurred the emergence of mushāraakah mutanāqişah as an alternative for Islamic property financing. Affin Islamic Bank Berhad is among the Islamic banks that offer mushāraakah mutanāqişah as the core Sharīah contract in their Islamic property financing services. This type of financing is offered to customers for completed properties and those that are under construction. In the context of Islamic property financing, mushāraakah mutanāqişah refers to a structure where the customer assumes the role of the registered property owner while the bank holds ownership shares in the form of beneficial ownership. Bank Negara Malaysia (BNM) has

¹ Corresponding Author. Ph.D in Islamic Banking and Finance from IIUM Institute of Islamic Banking and Finance Malaysia, 53100, mahbubi.ali83@gmail.com

² Senior Manager, Shariah and International Relation, Pusat Pungutan Zakat Majlis Agama Islam Wilayah Persekutuan, 56100 Kuala Lumpur, Malaysia, aharaffin@gmail.com

³ Head of Shariah Department, Affin Islamic Bank, 55188 Kuala Lumpur Malaysia, mohdfaiz@affingroup.com

released multiple Policy Documents regarding Sharīah contracts as guidelines to ensure uniformity in the application of Sharīah contracts across Islamic financial products and services. Islamic banks are required to adhere to these guidelines, including the mushārahah mutanāqīṣah. Thus, this paper intends to study the application of mushārahah mutanāqīṣah in property financing based on Affin Islamic Bank's experience in adopting the related Policy Documents issued by BNM. The findings from this paper would shed light and provide valuable insights into implementing the related guidelines to mushārahah mutanāqīṣah and its impact on the Islamic finance industry in Malaysia. Document analysis approach was used to analyse library data gathered from previous studies and relevant policy documents.

Keywords: *mushārahah, mushārahah mutanāqīṣah, property, ownership, policy document*

INTRODUCTION

The Islamic banking industry has developed well over the last three (3) decades. According to the *Islamic Financial Services Industry Stability Report 2022*, the global assets of the Islamic banking industry in 2021 stood at USD 2.10 trillion, grew by 6.5% from the preceding year and remained systemically significant in fifteen (15) jurisdictions. Islamic banking represents the highest share (68.7%) of the Islamic finance industry, worth USD 3.06 trillion in 2021.⁴

Islamic banking has its own goals and values compared to conventional banking. Islamic banks apply suitable underlying *Sharīah* contracts and concepts to structure their products and services, which involves the application of sale-based, lease-based and partnership-based *Sharīah* contracts, including *mushārahah* (partnership). While there has been progress in the adoption of *mushārahah mutanāqīṣah* in Islamic Finance since the issuance of Policy Document *Mushārahah 2015*, some challenges and limitations still exist, hindering its wider implementation. Based on

⁴ N.a., 'The IFSB issued the Tenth Edition of its Annual Flagship Publication: The Islamic Financial Services Industry (IFSI) Stability Report 2022', *Islamic Financial Services Board*, 19 August 2022, <https://www.ifsb.org/publications/>, accessed on 31 May 2023.

Bank Negara Malaysia's statistics on Financing by *Sharī'ah* contract, the percentage of adoption and providing *mushārahah mutanāqishah* products as of 2023 was still lacking, which consisted of only 9% of overall Islamic financing products.

Mushārahah mutanāqishah (diminishing partnership) comprises several *Sharī'ah* principles, namely *mushārahah*, *ijārah* (lease) and *wa'd* (unilateral promise). *Mushārahah* denotes a partnership of more than one (1) party, wherein each participant shares the profits and losses arising from the partnership. Diminishing partnership is a special form of *mushārahah* where under this concept, upon offering by a bank, the customer purchases the Bank's *mushārahah* units gradually until the bank's ownership is diminished throughout the *mushārahah* tenure. Based on this concept, the bank agrees to rent out its fraction of the property to the customer at a rental calculated at a rental rate plus any cost incidental to owning the asset. The unilateral purchase undertaking represents a binding obligation imposed upon the purchaser, which is acknowledged and accepted by all parties to the contractual agreement. This obligation is integral to the agreement and binding to the contracting parties.

Islamic banking is a banking system that adheres to the principles of Islamic law (*Sharī'ah*) in its operations, which prohibit the payment or acceptance of interest (*ribā*) and promote risk-sharing and ethical investment. Instead of interest, Islamic banks engage in profit-sharing arrangements, asset-backed financing and ethical investments that comply with *Sharī'ah* principles. In Malaysia, BNM has been playing its role to ensure that all Islamic banks follow the *Sharī'ah* rules and regulations. Therefore, BNM has issued Policy Documents as a valuable guideline and standard reference for implementing *Sharī'ah* contracts in Islamic financial institutions. These policy documents aim to provide a professional framework that adheres to the principles of *Sharī'ah* law, ensuring that all operations are conducted respectfully and appropriately.

The objective of this paper is to deliberate the application of *mushārahah mutanāqishah* implemented by the Affin Islamic Bank Berhad for property financing, focusing on the application and reference to the related Policy Document issued by BNM from the perspective of academicians, financial institutions and customers.

This research makes significant contributions across several domains. Firstly, it provides insight into the application and operation of *mushārahah mutanāqishah*, specifically in Affin Islamic Bank Berhad. Secondly, the study's findings will assist in understanding the guidelines

provided in policy documents by BNM for the implementation of *mushārahah mutanāqīṣah*. Finally, it could serve as a valuable resource for readers to understand the beauty of the *mushārahah mutanāqīṣah* concept, especially in property financing.

LITERATURE REVIEW

Noor Mohammad Osmani and Md Faruk Abdullah⁵ described the practice of *mushārahah mutanāqīṣah* in home financing based on the experience of RHB Islamic Bank, Kuwait Finance House (Malaysia), Maybank Islamic and Citibank (Malaysia). In the context of Islamic property financing, the practice of *mushārahah mutanāqīṣah* entails a collaborative approach. It commences with a joint purchase of the property, wherein the customer and the bank participate as partners. Subsequently, the bank leases its shares of ownership to the customer. Over time, the customer gradually acquires the bank's ownership portion through a structured process. The article also describes about comparison between *mushārahah mutanāqīṣah* and *bay' bithaman ajil* (deferred payment sale) home financing.

In another study, Khairul Hafidzi Mohd Subky, Liu Jing Yuan, Muhammad Muzzammil Abdullah, Zhafri Farhan Mokhtar and Ainaz Faizrakhman⁶ recorded their observation on the implication of *mushārahah mutanāqīṣah* (MM) in the current Malaysian Islamic focusing on the context of legal documentation from the perspective of academicians, financial institutions and customers. The paper demonstrated an increase in legal documentation on the implication of *mushārahah mutanāqīṣah*, where customers are required to cover costs commensurate with the risks inherent in Islamic banks' product implementation. According to the paper, Islamic banks should establish robust controls to uphold strong governance and adherence to *Sharīah* principles across all their products. Additionally, the paper suggested that Islamic financial institutions should

⁵ Noor Mohammad Osmani & Md. Faruk Abdullah, 'Musharakah Mutanaqisah Home Financing: A Review of Literatures and Practices of Islamic Banks In Malaysia,' *International Review of Business Research Papers*, vol. 6/2 (2010): 272-282.

⁶ Khairul Hafidzi Mohd Subky, Liu Jing Yuan, Muhammad Muzzammil Abdullah, Zhafri Farhan Mokhtar & Ainaz Faizrakhman, 'The Implication of Musharakah Mutanaqisah in Malaysian Islamic Banking Arena: A Perspective on Legal Documentation', *International Journal of Management and Applied Research*, vol. 4/1 (2017):17-30.

streamline the form-filling and legal documentation processes wherever feasible.

In the same vein, Nurul Iffah M A Zaaba and Rusni Hassan⁷ explored the reason why Islamic financial institutions hesitate to endorse *mushārahah mutanāqishah* for Home Financing, as the risks are associated with advance rental payments and ownership in the case of defaulting developers for under-construction properties, as well as force majeure risks for completed properties. With regard to the BNM Policy Document on *Ijārah*, the study addressed the issue of advance rental and ownership risks. Consequently, the bank is obligated to refund advance rental payments collected from customers and forfeit the financing disbursed in the event of an abandoned project following the issuance of the new *ijārah* concept paper. The paper has suggested for improvement of the legal framework on the operation of *mushārahah mutanāqishah* for property through amendments to existing laws or the enactment of a new statute governing its operation.

Siti Fariha Muhamad and Azira Hanani Abd Rahman⁸ reiterated the issue of using *mushārahah mutanāqishah* in property financing. They outlined operational and contractual challenges, including ownership issues, wherein the initial contract specifies that the bank does not share property ownership jointly with the customer. Their assessment revealed that some Islamic banks are accustomed to the *bay' bithaman ajil* contract and are hesitant to transition to *mushārahah mutanāqishah* as its underlying *Sharī'ah* contract due to the associated costs of switching from *bay' bithaman ajil* to *mushārahah mutanāqishah*. Moreover, many Islamic banks are more acquainted with debt-based financing rather than equity-based financing.

Mohd Sollehudin bin Shuib, Joni Tamkin Borhan and Azizi Abu Bakar⁹ provided the implementation study, product benefits and issues on the

⁷ Nurul Iffah Binti M A Zaaba & Rusni Hassan, 'Why Islamic Banks Are Reluctant to Offer Musharakah Mutanaqisah for Home Financing: The Case of Maybank Islamic and Affin Islamic Bank,' *Turkish Journal of Islamic Economics*, vol. 6/1 (2019): 51-65.

⁸ Siti Fariha Muhamad & Azira Hanani Abd Rahman, 'An Evaluation on Musharakah Mutanaqisah based House Financing By Islamic Banks In Malaysia,' (Proceeding of the International Conference on Social Science Research, Kuala Lumpur, 2013), 1286-1295.

⁹ Mohd Sollehudin bin Shuib, Joni Tamkin Borhan & Azizi Abu Bakar, 'Musharakah Mutanaqisah Home Financing Products: An Implementation

application of *mushārahah mutanāqishah* in home financing at Citibank (Malaysia). The article describes the features specifically offered by Citibank (Malaysia); for instance, advance payment with a rebate, payment holiday once a year, daily rest calculation to minimise profit payment and lower ceiling rate adopted by Citibank (Malaysia).

The above articles do not cover the application of *mushārahah mutanāqishah* post-implementation of BNM's Policy Document on *Mushārahah*. Furthermore, the Islamic banks under study have reduced their offering of *mushārahah mutanāqishah* post the issuance of the policy documents. This paper aims to examine the practical implementation of *mushārahah mutanāqishah* in property financing, drawing insights from the operational experience of Affin Islamic Bank Berhad. It leverages the relevant Policy Documents issued by Bank Negara Malaysia (BNM) to inform its analysis.

PRINCIPLE AND LEGITIMACY OF MUSHĀRAKAH

Mushārahah is a valid nominal contract (*'uqūd musammā*). The Ḥanafī school defines *mushārahah* as a contract between two parties with shared capital and profits.¹⁰ The Mālikī school defines it as a contract where each contracting parties allow the others to do the transactions (*taṣarruf*) over the assets under the partnership¹¹. The Shāfi'ī school refers to it as a contract on mutual rights on assets of the contracting parties,¹² while the Ḥanbalī school defines it as a combination of rights to do the transactions (*taṣarruf*) on certain assets.¹³

Based on the above, the definitions by the Ḥanafī and Mālikī schools cover *shirkah al-'aqd* (contractual partnership), which is closer to the modern concept of partnership. On the other hand, the Shāfi'ī and Ḥanbalī

Analysis, Product Advantages and Issues at Citibank (Malaysia) Berhad,' *Journal of Techno-Social*, vol. 3/2 (2011): 43-53.

¹⁰ Al-Kasānī Abū Bakr Ibn Mas'ūd, *Badā'ī' al-Ṣanā'ī' fī Tartīb al-Sharā'ī'*, vol. 3 (Bayrut: Dār Kitāb al-'Arabī, 1974), 55

¹¹ Sayyidī Aḥmad al-Dardīr, *Hāshiyah al-Dusūqī 'alā al-Sharḥ al-Kabīr*, vol. 3 (Bayrūt: Dār al-Fikr, 1986), 348.

¹² Al-Sharbinī, Shams al-Dīn Muḥammad Ibn Aḥmad al-Shirbanī al-Khāṭib, *Mughnī al-Muḥtāj*, vol. 3 (n.p.: Maṭba'ah Muṣṭafā al-Bābī al-Ḥalbī wa Awlādih, 1958), 221.

¹³ Ibn Qudāmah, Shams ad-Dīn Abū 'Abd Allāh Muḥammad Ibn Abī Bakr, *Al-Mughnī Sharḥ Mukhtaṣar al-Khiraqī* (Bayrūt: Dār 'Alam al-Kutub, 1997), 3.

schools give broader definitions, which cover *shirkah al-milk* (joint ownership) and *shirkah al-'aqd* (contractual partnership).

According to the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI), *mushārahah* refers to an agreement between two or more parties to combine their assets, labour or liabilities to make profits.¹⁴ According to Bank Negara Malaysia (BNM), *mushārahah* is a partnership between two or more parties, whereby all parties will share the profits and bear the loss from the partnership.¹⁵ Both definitions are consistent with the Ḥanafī and Mālikī schools. Nevertheless, BNM also provides for *shirkah al-milk* (joint ownership) in its Policy Document on *Mushārahah*.

The permissibility of the *mushārahah* contract is derived from the Qur'an, Hadith and the consensus of Muslim jurists (*ijmā'*).

1. Al-Qur'an

﴿۱۲﴾ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ

“If there be more (brothers and sisters of the same mother), they shall (equally) share the third of the estate”.

(Surah al-Nisā', 4: 12)

Another verse from the Qur'an:

وَإِنَّ كَثِيرًا مِّنَ الْخُلَطَاءِ لَيَبْغِي بَعْضُهُمْ عَلَىٰ بَعْضٍ إِلَّا الَّذِينَ ءَامَنُوا وَعَمِلُوا الصَّالِحَاتِ ﴿۲۴﴾

“Truly many partners (in all walks of life) are unjust to one another, but not so those who believe and do goods works”.

(Surah Ṣad, 38: 24)

¹⁴ Accounting and Auditing Organization for Islamic Financial Institutes, *Shari'a Standard (12) Sharikah (Musharaka) and Modern Corporations* (Bahrain: Dar al-Maiman, 2015), 363.

¹⁵ Bank Negara Malaysia, *Musyarakah Policy Document* (Kuala Lumpur: Bank Negara Malaysia, 2015), 5.

2. Hadith

عَنْ أَبِي هُرَيْرَةَ، رَفَعَهُ قَالَ: " إِنَّ اللَّهَ يَقُولُ: أَنَا ثَالِثُ الشَّرِيكَيْنِ مَا لَمْ يَخُنْ أَحَدُهُمَا صَاحِبَهُ، فَإِذَا خَانَ خَرَجْتُ مِنْ بَيْنَهُمَا

“Narrated by Abū Hurayrah: The Apostle of Allah (peace be upon Him) having said: Allah SWT says: "I make a third [partner] with two partners as long as one of them does not betray the other, but when of them betrays the other, I depart from them.”¹⁶

3. Consensus of Muslim Jurists (*Ijmā'*)

Ibn Qudāmah said that the practice of *mushārahah* in the history of Muslims is allowed and permissible even though some different views exist between the jurists pertaining to the elements in the contract of *mushārahah*.¹⁷

Imām Ibn al-Mundhir mentioned in his book that “(Muslim jurists) agree on the validity of partnership where each of the two partners contributes capital in dinar or dirham, and commingles the two capital to form a single property which is inseparable, and they would sell and buy what they see as (beneficial) for the business, and the surplus will be distributed between them while the deficit will be borne together by them, and when they really carry out (as prescribed) the deal, the partnership is valid.”¹⁸

PILLARS AND CONDITIONS OF *MUSHĀRAKAH*

The pillars of *mushārahah* are the contracting parties, *ṣighah* (offer and acceptance), capital and the business. In relation to the contracting parties, the partners must have *ahliyyah* (the ability to perform the contract). They must also have a sound mind, reach the required age (*bāligh*), be able to

¹⁶ Abū Dāwud, Sulaymān Ibn al-Ash‘ath Ibn Ishāq al-Azdī al-Sijistānī, *Sunan Abū Dāwud* (Cairo: Dār al-Salām, 1935), ‘Book No. 7, Kitāb al-Buyū’, *ḥadīth* no. 2936.

¹⁷ Ibn Qudāmah, *Al-Mughnī Sharḥ Mukhtaṣar al-Khiraqī*, vol. 5, 3.

¹⁸ Imām Muhammad b. Ibrāhīm al-Mundhir, *Consensus of the Islamic Jurists (al-Ijmā')*, 1st edition (USA: The Islamic Literary Foundation, 2014).

distinguish between what is harmful or beneficial (*mumayyiz*), have knowledge of the *ḥukm* (*rāshid*), have the freedom to perform the contract and have the mutual consensus (*mukhtār/tarāḍ*).¹⁹

1. *Ṣ̣ghah* (offer and acceptance)

In relation to the *ṣ̣ghah* (offer and acceptance), the contract must be stated either verbally, in writing or in any other way that indicates the willingness or consent from the partners to conduct the transaction (*taṣarruf*) on the assets.²⁰ The rights and obligations of each partner must also be cleared and agreed upon.

2. Capital

The capital must be in the form of identifiable and valuable cash. It must be readily available and accessible during the making of the contract; therefore, debt in the form of a receivable is not acceptable as capital in the *mushārahah* contract. The capital may comprise tangible or intangible assets and must be quantified in monetary terms, either through mutual agreement between the partners or by third-party experts or valuers at the inception of the *mushārahah* contract.²¹

3. Business

The business under a *mushārahah* must be *Sharī'ah*-compliant. The purpose of the business must be clear and well-known to the partners to avoid uncertainty. The business can be managed by each or certain partners who may be entitled to a higher profit sharing. A third-party manager can also be designated through an agency contract (*wakālah*), employment contract (*ijārah al-ashkhāṣ*), or profit-sharing contract (*muḍārabah*). The manager may receive a predetermined commission, fee, remuneration and/or incentives besides being obliged to operate the business using the capital as per the terms and conditions of the *mushārahah*. In addition, the manager is accountable for any losses resulting from misconduct (*ta'addī*),

¹⁹ 'Abd al-Raḥmān al-Jazirī, *Kitāb al-Fiqh 'alā al-Madhāhib al-Arba'ah* (Bayrūt: Dār al-Kutub al-'Alamiyah, 2003), 71.

²⁰ 'Abd al-Raḥmān al-Jazirī, *Kitāb al-Fiqh 'alā al-Madhāhib al-Arba'ah*, 72.

²¹ Bank Negara Malaysia, *Musyarakah Policy Document*, 11.

negligence (*taqṣīr*), or violation of specified terms (*mukhālafah al-shurūf*).²²

Profits generated by the business will be distributed in accordance with the capital contributions of each partner or as per mutually agreed terms at the inception of the *mushārahah* contract. The profit-sharing ratio may be revised during the duration of the *mushārahah*, contingent upon the mutual agreement of the partners. It is essential to note that the *mushārahah* contract should not specify a predetermined fixed amount of profit for any partner. The capital and profit shall also not be guaranteed to any partners. However, the partners may project certain expected returns where, in the event that the actual profit surpasses the expected return, the excess amount may be shared based on another ratio or paid to any of the partners or the manager as an incentive fund.²³

Should a loss occur, it will be absorbed by the partners in proportion to their capital contributions. However, if the loss results from misconduct (*ta'addī*), negligence (*taqṣīr*) or breach of specified terms (*mukhālafah al-shurūf*) by a partner or the manager, that partner or manager will bear the loss.²⁴

CATEGORIES OF MUSHĀRAKAH

The scholars divided *mushārahah* into two categories: partnership in joint ownership (*shirkah al-mīlk*) and contractual partnership (*shirkah al-'aqd*). *Shirkah al-mīlk* refers to the joint possession of assets between two or more parties, either on a voluntary basis (*ikhtiyārī*) or involuntary (*ijbārī*, such as inheritance).²⁵ *Shirkah al-'aqd* is an agreement between two or more parties to combine their assets, labour or liabilities to make profits.²⁶ Below are the categories of *mushārahah* based on four schools of thought:

1. Most scholars, including Shāfi'ī, Ḥanafī and Mālikī, agreed on the permissibility of *shirkah 'inān* type of partnership. This partnership is between two (2) or more parties investing a certain amount of capital

²² Bank Negara Malaysia, *Musyarakah Policy Document*, 7.

²³ Accounting and Auditing Organization for Islamic Financial Institutes, *Shari'a Standard (12) Sharikah (Musharaka) and Modern Corporations*, 321.

²⁴ Bank Negara Malaysia, *Musyarakah Policy Document*, 13.

²⁵ Al-Kasānī Abū Bakr Ibn Mas'ūd, *Badā'ī' al-Ṣanā'ī' fī Tartīb al-Sharā'ī'*, 74-75.

²⁶ Accounting and Auditing Organization for Islamic Financial Institutes, *Shari'a Standard (12) Sharikah (Musharaka) and Modern Corporations*, 326.

where each shall have a right towards the assets of the business. The profit will be shared based on the capital contributed.²⁷

2. The Ḥanbalī school divided *shirkah al-‘aqd* into several types as follows:

a) *Shirkah Amwāl* (partnership in capital)

In this type of partnership, all partners invest a sum of money as capital to the business. Profits or losses from the business will be shared based on the capital contribution. This type of partnership can be divided into:

b) *Shirkah ‘Inān*

It is a partnership between two or more parties investing a certain amount of capital. Each shall have a right towards the assets of the business. The profit will be shared based on the agreed ratio.

c) *Shirkah Mufāwāḍah*

It requires similar permissibility obligations and rights on each partner in terms of capital, profit and the right to conduct an action (*taṣarruf*) towards the assets of the business. This type of partnership is impermissible according to the Shāfi‘ī and Ḥanbalī schools, as it is impracticable to ensure equal actions and roles among the parties.

d) *Shirkah A‘māl* (partnership in labour)

It involves two or more parties sharing in providing labour and expertise as capital to the *mushārahah*. The profit will be shared based on an agreed ratio. In the event of loss to the business, the losses for the partners are in the form of their efforts that do not result in the profit as desired.

e) *Shirkah Wujūh* (partnership in good name)

It includes an agreement between two or more parties of good names and reputation to form a partnership to purchase assets on credit for the purpose of making a profit whereby the partners undertake to fulfil their obligations according to an agreed percentage. This type of partnership is allowed in the Ḥanafī and Ḥanbalī schools.

f) *Shirkah Muḍārabah*

It refers to a type of partnership where one partner invests certain capital while the other partner conducts the business. The profit will be shared

²⁷ Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuh*, vol. 5 (Dimashq: Dār al Fikr, 2005), 549.

between the capital provider and the manager based on an agreed ratio. Losses will be borne ultimately by the capital provider, while the manager's loss is in the form of time and effort given into the business.

MUSHĀRAKAH MUTANĀQIŞAH

Mushārahah mutanāqīşah, also known as a diminishing partnership, is a collaborative agreement concerning specific assets or businesses. In this arrangement, one partner commits to gradually purchasing the share of the other partner until full ownership of the assets or business is transferred to them.²⁸

Mushārahah mutanāqīşah can encompass *shirkah al-milk* (joint ownership) and *shirkah al-'aqd* (contractual partnership). In *shirkah al-milk*, the arrangement involves shared possession of an asset by multiple parties, with one gradually acquiring the shares of the others until they become the sole owner. Meanwhile, in *shirkah al-'aqd*, *mushārahah mutanāqīşah* involves a partnership between multiple partners in a business, with one partner progressively acquiring the shares of the other partners until they become the sole owner of the business.

Based on the above, BNM classifies *mushārahah mutanāqīşah* into two distinct types. Firstly, the *mushārahah mutanāqīşah* utilised for asset acquisition operating under the conditions of *shirkah al-milk*, which involves shared ownership. Secondly, the *mushārahah mutanāqīşah* employed to engage in profit-generating business activities operating under the conditions of *shirkah al-'aqd*, which pertains to contractual partnership.

Mushārahah mutanāqīşah aimed at acquiring completed assets can be structured using *ijārah* (lease contract) and *bay'* (sale contract). Initially, partners collectively purchase an asset from a third party. Subsequently, one (1) partner leases their ownership share to the other partner through *ijārah*. The lessee partner then gradually purchases the shares of the ownership from the other partner, eventually becoming the sole owner of the asset.

For *mushārahah mutanāqīşah* intended to acquire assets under construction, *istithnā'* contract with the developer can be employed. Following this, one partner leases their ownership share to the other partner using *ijārah mawşūfah fī dhimmah* until the completion of the asset. Upon

²⁸ Bank Negara Malaysia, *Musyarakah Policy Document*, 14.

completion, the lessee gradually acquires the ownership shares of the other partner, ultimately becoming the only owner of the asset.

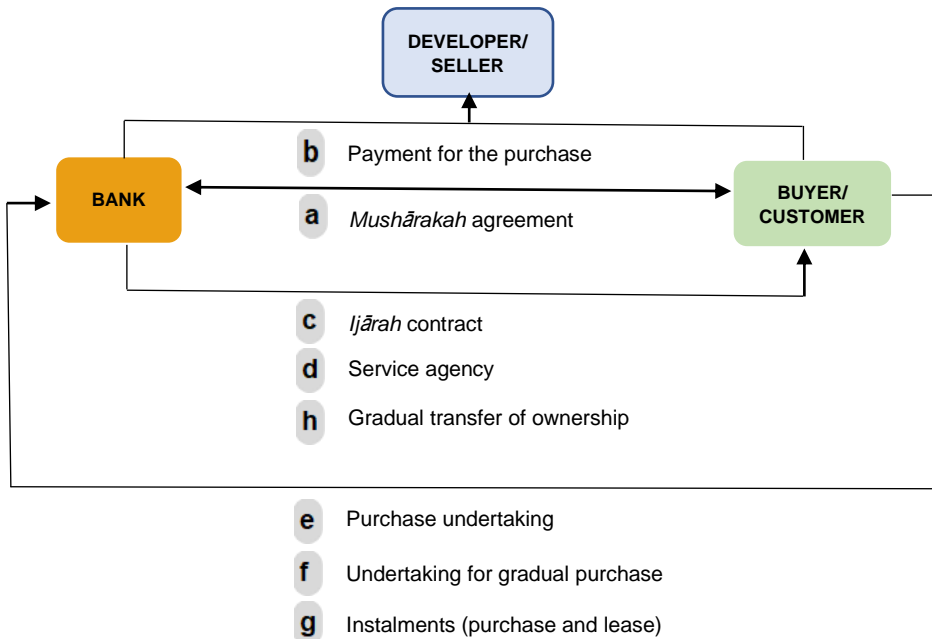
APPLICATION OF *MUSHĀRAKAH MUTANĀQIṢAH* IN PROPERTY FINANCING BY AFFIN ISLAMIC BANK BERHAD

Affin Islamic Bank Berhad offers property financing and term financing based on *mushārahah mutanāqīṣah*, covering purposes such as property acquisition as well as refinancing for working capital for customers under the consumer banking and business banking segment.

Customers will undergo a normal process of financing application, credit assessment and legal documentation. For the consumer banking segment, customers submit their application to the bank before or after the execution of the Sale and Purchase Agreement (SPA) with the seller or developer.

The mechanism of this financing, as practised by Affin Islamic Bank Berhad, can be exemplified in Figure 1 below.

Figure 1: Flow for *Mushārahah Mutanāqīṣah* in Property Financing



- a) The bank and the customer enter into a joint ownership agreement via the *mushārah mutanāqishah* facility agreement.
- b) For joint ownership, the customer purchases the identified asset by executing the SPA with the seller or developer.
- c) The bank leases its ownership shares to the customer throughout the financing tenure based on *ijārah* (lease contract).
- d) The bank appoints the customer as its agent throughout the financing tenure based on *wakālah* (agency contract) to maintain the asset and expenses such as *takāful*, taxes, repair and maintenance. The customer may also agree to maintain the asset at its own cost and expenses.
- e) The customer gives a promise or undertaking (*wa'd*) to purchase the bank's remaining ownership shares at once upon early settlement or event of default. This undertaking also applies for early settlement or default taking place during construction. However, abandonment of construction is not considered an event of default.
- f) The customer also makes another promise to purchase the bank's shares of ownership from time to time at an agreed price.
- g) The customer's instalment payment is inclusive of the lease payment (the profit portion of the instalment) as well as the payment for the gradual sale of the property in relation to the bank's ownership share (a portion of the instalment).
- h) The customer's ownership shares will increase over time, while the bank's ownership shares will diminish in proportion until the customer becomes the sole owner upon maturity.

In terms of legal ownership, the customer shall be the registered owner of the property. The bank's ownership shares are held in trust by the customer through the facility agreement. In other words, the bank's ownership shares are in the form of beneficial ownership, which is a form of full ownership from the *Sharī'ah* perspective.

The above mechanism is suitable for financing property acquisition, including completed or properties under construction, such as residential and commercial properties like warehouses, factories and power plants. Besides, it is suitable for financing land acquisition like agricultural land. Refinancing can also involve unencumbered properties or settling encumbrances at other banks or creditors.

However, this mechanism is not suitable in a few scenarios; for instance, where there is another bank that still holds the first charge over the land. Another scenario would be involving property development companies as customers under this financing where the properties will normally be sold to end buyers during the financing tenure.

APPLICATION OF BNM'S POLICY DOCUMENTS IN MUSHĀRAKAH MUTANĀQIṢAH PROPERTY FINANCING BY AFFIN ISLAMIC BANK BERHAD BERHAD

Affin Islamic Bank Berhad adopts *shirkah al-milk* (joint ownership) for its property financing products where BNM's policy documents on *mushārahah*, *ijārah* and *wa'd* are applicable. With regards to the Policy Document on *Mushārahah*, requirements on *shirkah al-milk* will be applied as in Figure 2.

Figure 2: *Mushārahah* Policy Document

MUSHĀRAKAH POLICY DOCUMENT Paragraphs 11.1 (a) (S) and 21.2 (S)
<p><i>Shirkah al-milk</i> (partnership in joint ownership): Refers to possession of an asset by two or more persons with or without prior arrangement to enter into a sharing in joint ownership. Under <i>shirkah al-milk</i>, each partner's ownership is mutually exclusive. In this regard, one partner cannot deal with the other partner's assets without the latter's consent.</p> <p><i>Mushārahah mutanāqīṣah</i> with an asset acquisition objective must be governed by the principle of <i>shirkah al-milk</i> and therefore must have the effect of <i>shirkah al-milk</i> as defined in paragraph 11.1(a).²⁹</p>

Mushārahah Mutanāqīṣah for Completed Property

For the acquisition of completed property, the relevant underlying *Sharī'ah* contracts are *mushārahah* (partnership), *ijārah* (lease) and *bay'* (purchase). It involves the joint purchase of a completed property from a seller at an agreed price evidenced by the SPA, as referred to in Figure 3.

In procuring a completed property, relevant contracts include *mushārahah* (partnership), *ijārah* (lease contract) and *bay'* (sale contract).

²⁹ Bank Negara Malaysia, *Musyarakah Policy Document*, 5.

This entails the collective acquisition of a finished property from a seller at a prearranged price, documented in the Sales and Purchase Agreement (SPA), as illustrated in Figure 3.

Figure 3: *Mushārah* Policy Document

MUSHĀRAKAH POLICY DOCUMENT Paragraph 22.2 (G)
<i>Mushārah mutanāqishah</i> for the purpose of acquiring completed assets may be arranged whereby the partners jointly purchase an asset from a third party. Subsequently, one of the partners will lease his share of the asset ownership to the other partner based on <i>ijārah</i> . Simultaneously, the partner who is the lessee will purchase the share of the other partner on a gradual basis and ultimately become the sole owner of the asset. ³⁰

If, at the time of execution of the facility agreement, the customer has entered into the SPA with the seller, while the bank agrees to jointly purchase the property with the customer. The execution of the SPA by the customer is done as the nominee to the bank in relation to the bank's ownership portion towards the property.

The customer pays a deposit (such as 10%) of the property price to the seller upon execution of the SPA as his initial ownership shares. Upon approval of the financing application and fulfilment of the conditions precedent, the bank will disburse the balance (such as 90%) on a lump sum basis to the seller as its initial ownership share. The composition of the initial ownership shares will form the co-ownership ratio between the bank and the customer, in this case, at 90:10 at the onset.

As for refinancing cases, the customer is already the owner of the property at the time of executing the facility agreement. For this, the bank agrees to acquire a portion of the property from the customer up to its initial ownership shares. The bank pays the financing amount (such as 70% of the property value) on a lump sum basis, partially to the customer's creditor and the balance to the customer (if unencumbered, the whole amount will be disbursed to the customer). The composition of the disbursement amount out of property value will form a co-ownership ratio of the bank and the customer, in this case, at 70:30 at the onset.

³⁰ Bank Negara Malaysia, *Musyarakah Policy Document*, 15.

Ijārah for Completed Asset

The lease and rental payment will commence upon full disbursement. As the asset is completed, the lease shall be based on normal *ijārah* (lease), where the lease involves the bank renting out its ownership portion of the property to the customer. The lessee pays rental during the financing tenure, as described in Figure 4.

Figure 4: *Ijārah* Policy Document

<i>IJĀRAH</i> POLICY DOCUMENT Paragraph 9.3 (S)
The leased asset may be— a) an asset in existence and has been identified at the time of entering into the <i>ijārah</i> contract; or b) an asset to be made available at an agreed future date based on agreed specifications, which is known as <i>ijārah mawṣūfah fī dhimmah</i> . ³¹

The rental payable by the customer can be calculated based on a fixed rate or variable rate with reference to a benchmark rate. Since the benchmark rate is a variable, it is also subject to a ceiling rate stipulated in the legal document and maintained in the bank's IT system. The rental payment forms part of the instalment, which is the profit portion of the instalment. This is stated in Figure 5.

Figure 5: *Ijārah* Policy Document

<i>IJĀRAH</i> POLICY DOCUMENT Paragraphs 14.3 (G) and 14.4 (S)
The contracting parties may agree on the rental amount – a) to be paid in a fixed amount; b) to be determined <i>via</i> reference to a specified benchmark or form; or c) to be paid using a combination of paragraph 14.3(a) and 14.3(b) above. In respect of paragraph 14.3(b), the rental shall be subject to a minimum and maximum limit. ³²

³¹ Bank Negara Malaysia, *Ijarah Policy Document* (Kuala Lumpur: Bank Negara Malaysia, 2018), 6.

³² Bank Negara Malaysia, *Ijarah Policy Document*, 9.

Besides the change due to the movement of benchmark rate, the rental amount will also constantly change even if the instalment amount remains the same for a certain period since it is calculated based on monthly or daily rest method.

Mushārahah Mutanāqishah for Property Under Construction

With regard to Figure 6, for the acquisition of property under construction, the relevant contracts are *mushārahah* and *ijārah mawṣūfah fī dhimmah* (forward lease), while the purchase of property under construction involves *istithnā'* (construction contract). In this regard, the *istithnā'* refers to the SPA executed with the developer.

If, at the time of execution of the facility agreement, the customer has entered into the SPA with the developer, and the bank agrees to jointly purchase the property with the customer. The execution of the SPA by the customer is done as a nominee to the bank. The customer pays a deposit (such as 10%) of the property price to the developer upon the SPA execution as his initial ownership shares. Later, the bank will make progressive disbursement based on construction progress (such as 90% of the SPA price) to the developer as its initial ownership share. The composition of initial ownership shares will form the co-ownership ratio between the bank and the customer, in this case, at 90:10 at the onset.

Figure 6: *Mushārahah* Policy Document

MUSHĀRAKAH POLICY DOCUMENT Paragraph 22.3 (G)
<i>Mushārahah mutanāqishah</i> for the purpose of acquiring assets under construction may be arranged with <i>istithnā'</i> whereby the partners enter into an <i>istithnā'</i> contract with a third party. Subsequently, one of the partners will lease his share of the asset ownership to the other partners based on <i>ijārah mawṣūfah fī dhimmah</i> until the asset is completed. Simultaneously, the partner who is the lessee will purchase the share of the other partner on a gradual basis and ultimately become the sole owner of the asset. ³³

³³ Bank Negara Malaysia, *Musyarakah Policy Document*, 15.

Ijārah Mawṣūfah fī Dhimmah for Property Under Construction

During the construction period, the Bank rent out its ownership shares to the customer on the basis of *ijārah mawṣūfah fī dhimmah* (forward lease); after that (upon completion or full disbursement), the lease shall be under the normal *ijārah*, as can be referred to Figure 7.

Figure 7: *Ijārah* Policy Document

IJĀRAH POLICY DOCUMENT Paragraph 20.2 (S)
In respect of paragraph 20.1(a), the <i>ijārah mawṣūfah fī dhimmah</i> shall be affected as follows: a) the lessor transfers usufruct of an asset for a specified duration in the future, and b) the asset is to be made available at an agreed future date based on agreed specifications between the contracting parties at the inception of the contract. ³⁴

With reference to Figure 8, under the *ijārah mawṣūfah fī dhimmah*, the lessee pays advance rental during the construction period. The advance rental will be recognised as the bank's income. However, in the event of the project being abandoned with no chance of revival, the advance rental will be returned to the customer in the manner determined by the bank.

Figure 8: *Ijārah* Policy Document

IJĀRAH POLICY DOCUMENT Paragraphs 14.7 (G), 14.9 (S) and 30.18 (a) (S)
The rental may be received in advance and such rental may be immediately utilised by the lessor. Where the rental is paid in advance, and the lessor fails to deliver the leased asset to the lessee, the lessor shall refund the rental to the lessee. In relation to paragraphs 14.7 and 14.9, where the rental is received in advance before the delivery of the leased asset, the IFI shall determine and reflect in its policies and procedures the following: (a) the appropriate treatment to recognise the advance rental; ³⁵

³⁴ Bank Negara Malaysia, *Ijarah Policy Document*, 16.

³⁵ Bank Negara Malaysia, *Ijarah Policy Document*, 10.

Wa 'd (unilateral binding promise)

The unilateral binding promise is used to obtain an undertaking from a customer to acquire bank's ownership shares. The promise is to facilitate the transfer of ownership at once upon early settlement or event of default. This can be referred to in the *Wa 'd* Policy Document in Figure 9 below:

Figure 9: *Wa 'd* Policy Document

WA 'D POLICY DOCUMENT Paragraph 13.7 (G)
Contracting parties in <i>mushārah</i> , <i>muḍārah</i> or <i>ijārah</i> arrangements may enter into <i>wa 'd</i> to purchase the underlying asset of the respective arrangement upon maturity, dissolution or in the event of a default. ³⁶

Based on Figure 10 below, the customer also provides a promise or an undertaking to gradually purchase the bank's ownership shares in the property.

Figure 10: *Mushārah* Policy Document

MUSHĀRAKAH POLICY DOCUMENT Paragraph 22.5 (G)
A partner may, at the time of entering into the contract, request the other partner to give a promise (<i>wa 'd</i>) to gradually purchase the former's share of the asset over an agreed period of time at market value, fair value, or any price to be agreed by the partners. ³⁷

Gradual Transfer of Ownership

The gradual sale of the bank's ownership shares to the customer is reflected by a sale contract at the onset. Thereafter, the gradual sale will take place by conduct (*bay' mu'āḥāh*) on a monthly basis, considering the payment from the customer and change of co-ownership ratio accordingly. The reference can be made in *Mushārah* Policy Document as per Figure 11 below:

³⁶ Bank Negara Malaysia, *Wa 'd Policy Document* (Kuala Lumpur: Bank Negara Malaysia, 2017), 7.

³⁷ Bank Negara Malaysia, *Musyarakah Policy Document*, 15.

Figure 11: *Mushārahah* Policy Document

MUSHĀRAKAH POLICY DOCUMENT Clause 22.5 (G)
A partner may, at the time of entering into the contract, request other partner to give a promise (<i>wa'd</i>) to gradually purchase the former's share of the asset over an agreed period of time at market value, fair value, or any price to be agreed by the partners. ³⁸

As mentioned in Figure 12 below, the price for a gradual sale is determined based on the financing amount. Therefore, the co-ownership ratio will change each time the customer pays the principal (part of the monthly instalments). It also takes place upon prepayment of principal by the customer. Upon paying the last instalment amount, the customer will become the sole owner of the property.

Figure 12: *Mushārahah* Policy Document

MUSHĀRAKAH POLICY DOCUMENT Clause 32.4 (S)
For gradual redemption* under the <i>mushārahah mutanāqishah</i> financing, an IFI shall specify a specific formula in the legal documentation on the calculation and determination of the redemption amount. <i>*Also known as gradual share acquisition during the tenure of the mushārahah mutanāqishah financing</i> ³⁹

Transfer of Ownership upon Early Settlement

As can be observed in Figure 13, if the customer makes an early settlement before the maturity date, they shall buy the bank's ownership share at once for a certain price, as reflected by a sale contract to be executed upon the settlement.

Figure 13: *Mushārahah* Policy Document

MUSHĀRAKAH POLICY DOCUMENT Paragraph 34.1 (S)
Where the customer wishes to make an early settlement of the <i>mushārahah</i> financing, the amount to be paid to the IFI shall be the outstanding amount (principal plus accrued profit). ⁴⁰

³⁸ Bank Negara Malaysia, *Musyarakah Policy Document*, 15.

³⁹ Bank Negara Malaysia, *Musyarakah Policy Document*, 54.

The price of the sale will be calculated based on the formula specified in the facility agreement according to the outstanding principal amount, the unpaid profit or charges. In other words, the price is equivalent to the total settlement sum for the early settlement.

Following the execution of the sale contract and payment of the settlement amount, the customer will become the sole owner of the property.

Transfer of Ownership upon Event of Default

With reference to Figure 14, if the customer fails to make payment of an instalment (or occurrence of other events of default), the bank may initiate legal action towards the disposal or auction of the property where the proceeds will be used as a settlement for the facility.

Figure 14: *Mushārah* Policy Document

MUSHĀRAKAH POLICY DOCUMENT Paragraph 22.10 (G)
Approach 1: (a) Promisee invokes the promise to purchase and where the promisor fails to perform the promise, the partners shall jointly sell the asset to a third party. (b) The proceeds of the sale shall be allocated to all partners based on the ownership share at the point of sale based on the following options: (i) allocation to all partners is made after deducting all costs related to asset liquidation from the proceeds of the sale; or (ii) allocation to all partners is made without prior deduction of costs related to asset liquidation from the proceeds. Under this approach, the cost related to asset liquidation is deducted only from promisor's share of the proceeds. (c) The promisee may claim the rental due (if any) from the promisor's share of the proceeds. (d) The promisee may claim a compensation amount from the promisor's share of the proceeds. The compensation amount shall be the difference between the agreed purchase price (as promised) and the realised proceeds portion allocated for the promisee. (e) In the event that the promisor's share of the proceeds is inadequate to meet the claim under paragraph.

⁴⁰ Bank Negara Malaysia, *Musyarakah Policy Document*, 54.

(d) the promisee may demand the remaining difference from the promisor.
(f) In the event that the promisee's share of the proceeds is equivalent to or higher than the promised purchase price, the provisions on compensation under paragraphs (d) and (e) shall not be applicable.
(g) In the event that the promisee's portion of proceeds exceeds the promised purchase price, the promisee may share his excess proceeds with the promisor.⁴¹

Alternatively, the bank may request the customer to acquire the bank's ownership shares at once for a certain price, which is reflected by a sale contract to be executed upon default. Following the execution of the sale contract, the customer will become the single owner of the property and owe the payment of the price to the bank. The bank's legal action towards the disposal or auction of the property is to recover this amount.

The price of the sale will be calculated based on the formula specified in the facility agreement, considering the outstanding principal amount, the unpaid profit and charges, as well as the unearned profit. In other words, the price shall be sufficient to recover the principal and profit portion of the financing up to the date of the total settlement sum post-judgment.

Figure 15: *Mushārahah* Policy Document

MUSHĀRAKAH POLICY DOCUMENT Paragraph 22.10 (G)
Approach 2: (a) The promisee may invoke the promise to purchase. Where the promisor fails to perform the promise, the promisee may sell his remaining ownership share to the promisor on credit based on a price agreed by both parties. ⁴²

If the event of default occurs during the construction period, the mechanism in Figure 15 may also be applicable. If a sale to the customer is to take place, the customer will become the single owner of the property and owe the payment of the price to the bank. The bank's legal action towards the disposal or auction of the property is to recover this amount, as stated in Figure 16.

⁴¹ Bank Negara Malaysia, *Musyarakah Policy Document*, 15.

⁴² Bank Negara Malaysia, *Musyarakah Policy Document*, 15.

Figure 16: *Mushārah* Policy Document

MUSHĀRAKAH POLICY DOCUMENT Paragraph 22.12 (G)
<p>In <i>mushārah mutanāqīṣah</i> for acquisition of an asset under construction, which is arranged based on the terms in paragraph 22.3, if a partner (promisor) breaches his promise to acquire the ownership share of the asset as agreed or fails to pay his rental and where the construction of the asset(s) has yet to be completed:</p> <p>(a) the promisee may invoke the promise and compel the promisor to purchase the promisee's interest in the <i>mushārah</i> based on the price agreed in the promise.</p> <p>(b) the rental paid by the promisor under <i>ijārah mawṣūfah fī dhimmah</i> may be set off against the purchase price of the promisee's interest in the asset.⁴³</p>

Abandonment of Property Under Construction

As stated in Figure 17, the payment by the customer during the construction period is regarded as an advance rental, which is subject to refund upon non-delivery of the asset.

Figure 17: *Ijārah* Policy Document

IJĀRAH POLICY DOCUMENT Paragraphs 14.9 (S) and 20.10 (S)
<p>Where the rental is paid in advance, and the lessor fails to deliver the leased asset to the lessee, the lessor shall refund the rental to the lessee.</p> <p>In the event that the lessee opts to terminate the <i>ijārah</i> contract either due to the failure of the lessor to deliver the asset or failure of the lessor to meet agreed specifications of the asset, the lessor shall return all rentals already been paid up to the date of termination to the lessee.⁴⁴</p>

Figure 18 mentions that for the refund, the bank shall determine the procedure, including the treatment and timing of the refund in relation to the abandonment status of the property under construction.

⁴³ Bank Negara Malaysia, *Musyarakah Policy Document*, 15.

⁴⁴ Bank Negara Malaysia, *Ijarah Policy Document*, 16.

Figure 18: *Ijārah* Policy Document

<i>IJĀRAH</i> POLICY DOCUMENT Paragraph 30.18 (b) (S)
In relation to paragraphs 14.7 and 14.9, where the rental is received in advance before the delivery of the leased asset, the IFI shall determine and reflect in its policies and procedures the following: (b) procedures to return the advance rental in the case of non-delivery of the leased asset or termination by the customer arising from the failure to meet the agreed specification on the asset. ⁴⁵

However, abandonment of the property shall not constitute an event of default unless the customer fails to pay the advance rental, which can be referred to in Figure 19.

Figure 19: *Ijārah* Policy Document

<i>IJĀRAH</i> POLICY DOCUMENT Paragraph 30.21 (S)
The IFI shall not invoke the <i>wa'd</i> to purchase the leased asset by the customer in the following events: (a) a total loss of the asset arising from the <i>force majeure</i> event, and (b) for an asset under construction, an incompleteness or non-delivery of the asset. ⁴⁶

Therefore, based on Figure 20, should the bank wish to terminate the financing upon abandonment of the property, the bank shall not require the customer to pay the principal amount disbursed to the developer.

Figure 20: *Mushārahah* Policy Document

<i>MUSHĀRAKAH</i> POLICY DOCUMENT Paragraph 34.6 (S)
The minimum losses to be borne by the IFI arising from the incompleteness of assets under construction shall be based on the capital contribution ratio between the partners. ⁴⁷

⁴⁵ Bank Negara Malaysia, *Ijarah Policy Document*, 29.

⁴⁶ Bank Negara Malaysia, *Ijarah Policy Document*, 29.

⁴⁷ Bank Negara Malaysia, *Musyarakah Policy Document*, 58.

Legal Documentation

The legal documentation of the financing shall include all terms in relation to the mechanism of *mushārah mutanāqishah*, as stated in Figure 21. This includes joint ownership, lease, gradual sale of ownership shares to the customer, purchase undertaking by the customer, early settlement and event of default.

Figure 21: *Mushārah* Policy Document

<i>MUSHĀRAKAH</i> POLICY DOCUMENT Paragraphs 32.11 and 32.12 (S)
An IFI shall ensure that all legal documentation relating to the <i>mushārah</i> financing stipulates the rights, obligations and expectations of all parties, including: (a) the nature of relationship or <i>Sharī'ah</i> principles used; (b) the lease (<i>ijārah</i>) of the IFI's shares in the asset, if applicable; (c) the gradual acquisition or diminishing of shares in the asset, if applicable; (d) the events of default; (e) the rights of the IFI in the event of partner's default, and (f) the responsibility of each party with respect to the asset. Where a <i>mushārah</i> financing is arranged with another <i>Sharī'ah</i> contract, the IFI shall ensure that the execution and sequencing of the <i>Sharī'ah</i> contracts are consistent with <i>Sharī'ah</i> requirements. ⁴⁸

The legal documents shall include the *mushārah*, *ijārah* and *wa'd* documents. Each *Sharī'ah* contract must be represented by appropriate legal documents reflecting the relationship between the bank and the customer.

Collateral

Figure 22 states that although the bank is the co-owner of the property, the customer may pledge the property as collateral to the bank.

⁴⁸ Bank Negara Malaysia, *Musyarakah Policy Document*, 56.

Figure 22: *Mushārahah* Policy Document

MUSHĀRAKAH POLICY DOCUMENT Paragraph 22.8 (G)
A partner may pledge his ownership share of the completed asset as collateral to the other partners. ⁴⁹

This is to secure the customer's obligation towards the rental payment as well as the payment of sale price upon early settlement or event of default, as mentioned in Figure 23.

Figure 23: *Mushārahah* Policy Document

MUSHĀRAKAH POLICY DOCUMENT Paragraph 22.10 (G)
Approach 2: (b) The promisee may take the asset as collateral to secure the payments of the deferred price as agreed under paragraph (a). (c) In the event that the promisee as the creditor liquidates the collateral, the following may be applied: (i) The promisee may claim the rental due, the purchase price as agreed in the promise to purchase and costs related to liquidation of the collateral. (ii) In the event that the proceeds from the liquidation of the collateral are inadequate to meet the claim under paragraph (i), the promisee as a creditor may demand the remaining difference. (iii) If there is any excess amount from the proceeds of the collateral liquidation after the deduction of claims under paragraph (i), the excess amount shall belong to the promisor. ⁵⁰

Cost and Expenses

With the nature of *mushārahah* as a partnership, any cost and expenses arising have to be proportionately shared between the parties as stated in Figure 24, which include the cost of repair, maintenance as well as *takāful* coverage for the property. They also comprise coverage like fire or house owner. As for the Mortgage Reducing Term Takaful (MRTT), it is to be borne by the customer if the customer decides to obtain coverage. In other

⁴⁹ Bank Negara Malaysia, *Musyarakah Policy Document*, 16.

⁵⁰ Bank Negara Malaysia, *Musyarakah Policy Document*, 16.

words, it is optional for the customer but crucial to secure their indebtedness under the financing in the event of death or total permanent disability.

Figure 24: *Mushārah* Policy Document

MUSHĀRAKAH POLICY DOCUMENT Clause 32.6 (S)
The costs and expenses of a <i>mushārah</i> financing shall either be: a) agreed by the partners at the pre-contractual stage; b) shared proportionately among the partners throughout the life cycle of the <i>mushārah</i> financing or c) in accordance with the requirements made in the relevant <i>Sharī'ah</i> contracts like <i>ijārah</i> ⁵¹

Alternatively, both parties may also agree on the parties to bear the costs and expenses. Similar to other types of financing, it is operationally practical that the customer agrees to bear the costs and expenses, as stated in Figure 25.

Figure 25: *Ijārah* Policy Document

IJĀRAH POLICY DOCUMENT Paragraph 16.8 (G)
Notwithstanding paragraphs 16.1 and 16.2, the lessor may alternatively appoint the lessee to maintain the leased asset and/or to obtain a <i>takāful</i> coverage for the leased asset. In respect of Paragraph 16.8, where the lessor appoints the lessee to maintain the leased asset and/or to obtain the <i>takāful</i> coverage on its behalf, the lessee shall be entitled to recover all costs incurred for such maintenance from the lessor in the absence of any mutual agreement to the contrary. As such, the lessee shall accordingly be reimbursed by the lessor pursuant to any claim made by the lessee. Notwithstanding paragraphs 16.8 and 16.9, and subject to the terms of <i>ijārah</i> contract, the contracting parties may mutually agree on who will bear the cost of maintenance and <i>takāful</i> coverage of the leased asset. ⁵²

⁵¹ Bank Negara Malaysia, *Musyarakah Policy Document*, 55.

⁵² Bank Negara Malaysia, *Ijarah Policy Document*, 13.

CONCLUSION

Mushārahah mutanāqīshah is a practical *Sharī'ah* contract that can be adopted for property financing. In Affin Islamic Bank Berhad, *mushārahah mutanāqīshah* is the main product offered for property financing, especially home financing. Through this approach, the composition of *mushārahah mutanāqīshah* financing has formed 37% of the total financing portfolio of Affin Islamic Bank Berhad for the year 2022.

This is also in line with the Financial Sector Blueprint 2022-2026, which promotes the application of diverse *Sharī'ah* contracts in Islamic financial institutions and minimises the application of *tawarruq*. This paper showed the practical application of *mushārahah mutanāqīshah* in property financing, together with the application of relevant BNM policy documents.

REFERENCES

- Accounting and Auditing Organization for Islamic Financial Institutes, *Shari'a Standard (12) Sharikah (Musharaka) and Modern Corporations* (Bahrain: Dar al-Maiman, 2015).
- Abū Dāwud, *Sunan Abū Dāwud* (Cairo: Dār al-Salām, 1935), 'Book No. 7, Kitāb al-Buyū', *ḥadīth* no. 2936.
- 'Abd al-Raḥmān al-Jazirī, *Kitāb al-Fiqh 'alā al-Madhāhib al-Arba'ah* (Bayrūt: Dār al-Kutub al-'Alamiyah, 2003).
- Bank Negara Malaysia, *Ijarah Policy Document* (Kuala Lumpur: Bank Negara Malaysia, 2018).
- Bank Negara Malaysia, *Musarakah Policy Document* (Kuala Lumpur: Bank Negara Malaysia, 2015).
- Bank Negara Malaysia, *Wa'd Policy Document* (Kuala Lumpur: Bank Negara Malaysia, 2017).
- Ibn Qudāmah, Shams ad-Dīn Abū 'Abd Allāh Muḥammad Ibn Abī Bakr, *Al-Mughnī Sharḥ Mukhtaṣar al-Khiraqī* (Bayrūt: Dār 'Alam al-Kutub, 1997).
- Imām Muhammad b. Ibrāhīm al-Mundhir, *Consensus of the Islamic Jurists (al-Ijmā')*, 1st edition (USA: The Islamic Literary Foundation, 2014).

- Al-Kasānī Abū Bakr Ibn Mas‘ūd, *Badā’i’ al-Ṣanā’i’ fī Tartīb al-Sharā’i’*, vol. 3 (Bayrut: Dār Kitāb al-‘Arabī, 1974).
- Khairul Hafidzi Mohd Subky, Liu Jing Yuan, Muhammad Muzzammil Abdullah, Zhafri Farhan Mokhtar & Ainaz Faizrakhman, ‘The Implication of Musharakah Mutanaqisah in Malaysian Islamic Banking Arena: A Perspective on Legal Documentation’, *International Journal of Management and Applied Research*, vol. 4/1 (2017):17-30.
- Mohd Sollehudin bin Shuib, Joni Tamkin Borhan & Azizi Abu Bakar, ‘Musharakah Mutanaqisah Home Financing Products: An Implementation Analysis, Product Advantages and Issues at Citibank (Malaysia) Berhad,’ *Journal of Techno-Social*, vol. 3/2 (2011): 43-53.
- N.a., ‘The IFSB issued the Tenth Edition of its Annual Flagship Publication: The Islamic Financial Services Industry (IFSI) Stability Report 2022’, *Islamic Financial Services Board*, 19 August 2022, <https://www.ifsb.org/publications/>, accessed on 31 May 2023.
- Nurul Iffah Binti M A Zaaba & Rusni Hassan, ‘Why Islamic Banks Are Reluctant to Offer Musharakah Mutanaqisah for Home Financing: The Case of Maybank Islamic and Affin Islamic Bank,’ *Turkish Journal of Islamic Economics*, vol. 6/1 (2019): 51-65.
- Noor Mohammad Osmani & Md. Faruk Abdullah, ‘Musharakah Mutanaqisah Home Financing: A Review of Literatures and Practices of Islamic Banks In Malaysia,’ *International Review of Business Research Papers*, vol. 6/2 (2010): 272-282.
- Sayyidī Aḥmad al-Dardīr, *Hāshiyah al-Dusūqī ‘alā al-Sharḥ al-Kabīr*, vol. 3 (Bayrūt: Dār al-Fikr, 1986).
- Al-Sharbinī, Shams al-Dīn Muḥammad Ibn Aḥmad al-Shirbanī al-Khāṭib, *Mughnī al-Muḥtāj*, vol. 3 (n.p.: Maṭba‘ah Muṣṭafā al-Bābī al-Ḥalbī wa Awlādih, 1958).
- Siti Fariha Muhamad & Azira Hanani Abd Rahman, ‘An Evaluation on Musharakah Mutanaqisah based House Financing By Islamic Banks In Malaysia,’ (Proceeding of the International Conference on Social Science Research, Kuala Lumpur, 2013), 1286-1295.
- Wahbah al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuh*, vol. 5 (Dimashq: Dār al Fikr, 2005).