

Title

Circular on Implementation of Shariah Advisory Council of Bank Negara Malaysia's Resolution on Bai' Inah

Effective Date

1-Jan-2013

Applicability

(i) Islamic banks licensed under subsection 3(4) of the Islamic Banking Act 1983 (IBA);
(ii) banking institutions licensed under the Banking and Financial Institutions Act 1989 (BAFIA) that carries on Islamic banking business or Islamic financial business under section 124 of the BAFIA; and
(iii) development financial institutions prescribed under the Development Financial Institutions Act 2002 (DFIA) that carries on Islamic banking business or Islamic financial business under section 129 of the DFIA.

Summary**Highlights**

The circular on the implementation of SAC resolution on bai' inah aims:

- (i) to outline the Shariah compliance requirements on bai' inah; and
- (ii) to set out the supervisory expectations in terms of operational requirements to ensure Shariah compliance and desired implementation date.

Issuing Department

Islamic Banking and Takaful Department

[Guideline Info](#)



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Circular

Implementation of Shariah Advisory Council of Bank Negara Malaysia's Resolution on Bai` `Inah

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PART A OVERVIEW

1. Objective

- 1.1 The Shariah Advisory Council of Bank Negara Malaysia (SAC) has in its 128th meeting on 25 September 2012, approved an enhanced resolution on *bai` inah*¹ which stipulates the essential Shariah conditions relating to *bai` inah* transactions, and provides further clarifications to these *bai` inah* conditions. This enhanced resolution is expected to strengthen the conduct of *bai` inah* transactions by Islamic banking institution.
- 1.2 The circular on the implementation of SAC resolution on *bai` inah* aims:
- (i) to outline the Shariah compliance requirements on *bai` inah*; and
 - (ii) to set out the supervisory expectations in terms of operational requirements to ensure Shariah compliance and desired implementation date.

2. Legal provisions

- 2.1 This circular is issued pursuant to subsection 59(1) of the Central Bank of Malaysia Act 2009.

¹ Refer to the Shariah Resolutions in Islamic Finance (Second Edition) October 2010 for the definition of *bai` inah*.

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3. Applicability

3.1 The circular is applicable to:

- (i) Islamic banks licensed under subsection 3(4) of the Islamic Banking Act 1983 (IBA);
- (ii) banking institutions licensed under the Banking and Financial Institutions Act 1989 (BAFIA) that carries on Islamic banking business or Islamic financial business under section 124 of the BAFIA; and
- (iii) development financial institutions prescribed under the Development Financial Institutions Act 2002 (DFIA) that carries on Islamic banking business or Islamic financial business under section 129 of the DFIA.

The institutions are hereinafter referred to as "Islamic banking institutions (IBI)".

4. Issuance date

4.1 The Shariah Resolutions in Islamic Finance (Second Edition) (SRIF) on *bai` `inah* was issued on 26 October 2010. This circular provides an update and further clarifications on *bai` `inah*, which was last updated on 19 December 2012.

5. Effective date

5.1 The effective implementation date of this circular is 1 January 2013.

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PART B POLICY REQUIREMENTS

6. Shariah compliance requirements

6.1 IBI must satisfy all valid *bai` `inah* conditions as stipulated in the enhanced SAC resolutions as follows:

6.1.1 The purchases of asset and subsequent sales of the asset under *bai` `inah* must be concluded in two clear and separate agreements which comply with the following elements:

- (i) Both sales and purchase agreements must satisfy all necessary conditions of a valid sale and purchase contract under Shariah;
- (ii) The sale and purchase agreements may be developed based on generally accepted market practices (*'urf*) mechanism, which include written documentation or verbal recording; and
- (iii) Written documentations of both sale and purchase agreements must be prepared and represented by two separate set of documents.

6.1.2 The sale and purchase agreements must not stipulate any terms and conditions or create an obligation for both transacting parties to repurchase or resell the subject matter of sale². Failure to observe this Shariah requirement may render the agreements to be void from Shariah perspective. Therefore, IBI must ensure that all documentary evidence³ used in *bai` `inah* transactions:

² Any stipulation of terms and conditions to repurchase or resell of asset in the sale and purchase agreements or are made visible in the conduct of *bai` `inah* transaction is strictly prohibited under Shafii school of thought.

³ These documents shall include all types of materials encompassing, printed or online publication of sales materials, letter of offer and all types of agreements used in the conduct of *bai` `inah* based financial products and services.

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- (i) does not stipulate in any parts of these documents, the terms and conditions for contracting parties (seller and purchaser) to repurchase or resell the subject matter of sale; and
- (ii) does not describe in any manner that the whole *bai` `inah* transaction and the sequence of executing *bai` `inah* transaction creates an obligation for both contracting parties to repurchase or resell the subject matter of sale.

6.1.3 The execution or signing of both sets of sale and purchase agreements must be executed at different intervals. *Ex parte* execution of both documents simultaneously by any contracting party in *bai` `inah* transaction will render the contract to be void from Shariah perspective. In this regard, Bank Negara Malaysia (the Bank) expects IBI to record the time (time stamp) of execution or signing of both agreements as evidence of compliance to this Shariah requirement.

6.1.4 The sale and purchase agreements must be orderly executed in proper sequence, whereby, the seller must completely sell specific asset to the purchaser under *bai` `inah* transaction by executing the first sale and purchase agreement. Subsequently, both parties may agree to enter into another sale and purchase agreement to purchase and sell specific asset. In this regard, both contracting parties in *bai` `inah* transaction are required to fully observe following the Shariah requirements:

- (i) The seller must endorse the offer to sell the asset to the purchaser by initiating the signing of the sale and purchase agreement; and followed by the signing of the same agreement by the purchaser as endorsement of acceptance to purchase the asset;
- (ii) Contracting parties in subsequent sale and purchase

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agreement must properly execute this document in the manner described under paragraph 6.1.4 (i) above;

- (iii) Neither contracting parties to *bai` `inah* transaction shall endorse both sets of sale and purchase agreements by pre-signing these documents; and
- (iv) Any contracting party in *bai` `inah* transaction must not provide either written or verbal promise to repurchase or resell the subject matter of sale.

6.1.5 The ownership in the subject matter of sale in *bai` `inah* transaction must be effectively transferred from the seller to the purchaser. The transfer of ownership shall result in the purchaser's having absolute rights and control on the asset under permissible mechanism by Shariah and generally accepted trade practices (*'urf tijari*). The purchaser is regarded to have the ownership right in the underlying asset through physical possession (*al-qabd al-haqiqi*) or constructive possession (*al-qabd al-huqmi*).

7. Supervisory expectations

7.1 The IBI must conduct holistic operational review in the conduct of *bai` `inah* transaction, including sales and marketing practices, documentations, accounting, and risk management to ensure all conditions stipulated under paragraph 6.1 above is satisfied. Once the review is completed, the Chairman of IBI's board of directors and Chairman of IBI's Shariah Committee are required to provide attestation by **1 January 2013** that whole spectrum of *bai` `inah* operation has satisfied all validity conditions sets out by SAC.

7.2 IBI that are not able to satisfy the requirements under paragraph 7.1 above are not allowed to offer financial products and services based

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on *bai` `inah*. In this regard, IBI that resolves to discontinue offering *bai` `inah* must undertake immediate measure to adopt alternative Shariah contracts as to ensure minimal disruption in its operations and submit their development and action plan to **Pengarah, Jabatan Perbankan Islam dan Takaful Bank Negara Malaysia** by **1 January 2013**.