



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Bai` al-Sarf **Exposure Draft**

Applicable to:

1. Licensed Islamic banks
2. Licensed takaful operators and professional retakaful operators
3. Licensed banks and licensed investment banks carrying on Islamic banking business
4. Prescribed institutions carrying on Islamic financial business

As part of the objective to strengthen the Shariah compliance practice among Islamic financial institutions (IFIs), Bank Negara Malaysia (the Bank) is developing a Shariah-based regulatory policy to provide a comprehensive guidance to the Islamic financial industry with respect to end-to-end compliance with Shariah.

This exposure draft consists of two components, Shariah and operational requirements with respect to the operationalisation of *bai` al-sarf*. The Shariah requirements highlight the salient features and optional practices of a valid Shariah contract to facilitate sound understanding of *bai` al-sarf*. The operational requirements outline the regulatory expectations with respect to the governance and oversight, structuring, risk management as well as business and market conduct.

The Bank invites written feedback and comments on **Part C** i.e. the operational requirements of *bai` al-sarf*, including suggestions for particular issues/areas to be clarified or elaborated further and any alternative proposals that the Bank should consider. The Shariah requirements in Part B serves as reference to facilitate the IFIs in providing feedback and comments on operational aspects of *bai` al-sarf* in line with the Shariah requirements. To facilitate the Bank's assessment, please support each comment with a clear rationale, accompanying evidence or illustration, as appropriate.

Responses shall be submitted to the Bank by **17 July 2017** to:

Pengarah
Jabatan Perbankan Islam dan Takaful
Bank Negara Malaysia
Jalan Dato' Onn
50480 Kuala Lumpur
Email: scos@bnm.gov.my

Electronic submission is encouraged. Submissions received may be made public unless confidentiality is specifically requested for the whole or part of the submission.

In the course of preparing your feedback, kindly direct any queries to Suhana Alia Sidek (03-2698 8044 ext. 8665), Nik Rufaidah Sira Nik Jaafar (ext. 8706), Nurulhusna Zubir (ext. 7905) and Amalina Alharsikanil (ext. 7576).

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PART A OVERVIEW

1. Introduction

- 1.1 Compliance with Shariah requirement is a prerequisite for ensuring the legitimacy and integrity of Islamic financial products and services. It is essential for an Islamic financial institution (IFI) to establish sound operational framework and infrastructure to ensure that the conduct of IFI is consistent with Shariah.
- 1.2 The Shariah contract-based regulatory policy is intended to promote consistency of Shariah contract application in Islamic financial products and services. This policy is envisaged to strengthen legal certainty and Shariah compliance practices by IFIs.
- 1.3 This policy document aims to–
 - (a) provide reference on the Shariah rulings applicable to *bai` al-sarf*;
 - (b) set out key operational requirements for the implementation of *bai` al-sarf*; and
 - (c) promote end-to-end compliance with Shariah requirements, which further promote sound banking practices and safeguard consumer interests.
- 1.4 This policy document sets out the following:
 - (a) salient features and essential conditions of *bai` al-sarf* in Part B; and
 - (b) regulatory and supervisory expectations for the operational requirements on governance and oversight, structuring, risk management as well as business and market conduct in Part C.

2. Applicability

- 2.1 This policy document is applicable to all IFIs as defined in paragraph 5.2.

3. Legal provisions

- 3.1 The requirements in Part B of this policy document are specified pursuant to–
 - (a) section 29(1) of the Islamic Financial Services Act 2013 (IFSA); and
 - (b) section 33E(1) of the Development Financial Institutions Act 2002 (DFIA).
- 3.2 The requirements in Part C of this policy document are specified pursuant to–
 - (a) sections 29(2), 57, 135(1) and 155 of the IFSA; and
 - (b) sections 33E(2), 41, 42C(1) and 116 of the DFIA.
- 3.3 The guidance in this policy document is issued pursuant to section 277 of the IFSA and section 126 of the DFIA.

4. Effective date

- 4.1 This policy document comes into effect on sixteen months after the issuance date of the finalised policy document [the effective date will be specified upon

issuance of the finalised policy document] except for paragraph 25 which takes effect immediately upon issuance of the finalised policy document.

Question 1

Highlight any significant operational consideration with appropriate justification that needs to be addressed to ensure effective implementation of the policy document upon the effective date.

5. Interpretation

- 5.1 The terms and expressions used in this policy document must have the same meanings as assigned under the Financial Services Act 2013 (FSA), IFSA and DFIA, as the case may be, unless otherwise defined in this policy document.
- 5.2 For the purpose of this policy document–
- “**S**” denotes a standard, an obligation, a requirement, specification, direction, condition and any interpretative, supplemental and transitional provisions that must be complied with. Non-compliance may result in enforcement actions;
- “**G**” denotes guidance which may consist of statements or information, intended to promote common understanding and advice or recommendations that are encouraged to be adopted;
- “**Islamic financial institution**” or “**IFI**” refers to a–
- (a) licensed Islamic bank;
 - (b) licensed takaful operator and professional retakaful operator;
 - (c) licensed bank and licensed investment bank approved under section 15(1)(a) of the FSA to carry on Islamic banking business; and
 - (d) prescribed institution approved under section 33B(1) of the DFIA to carry on Islamic financial business.
- 5.3 A glossary of terms used in this policy document is set out in Appendix 2.

6. Related legal instruments and policy documents

- 6.1 This policy document must be read together with other relevant legal instruments and policy documents that have been issued by the Bank including Notice 1 of the Foreign Exchange Administration rules.

PART B SHARIAH REQUIREMENTS AND OPTIONAL PRACTICES

7. Compliance with Part B

- S 7.1 An IFI which uses *bai` al-sarf* as part of the underlying contract for its products and services must ensure that such products and services are in compliance with Part B of this policy document.

8. Definition

- S 8.1 *Bai` al-sarf* refers to a contract of exchange of money for money of the same or different type.
- S 8.2 Money is a medium of exchange that shall be in the form of gold, silver, currency notes or coins that have legal tender, or other forms accepted by Shariah.

9. Nature

- S 9.1 *Bai` al-sarf* is an exchange contract that is binding in nature. Therefore, the contract shall not be terminated unilaterally by either of the contracting parties.
- S 9.2 Terms or conditions that have been mutually agreed by the contracting parties, which does not contravene the Shariah principles, shall be binding on the contracting parties.

10. Components of *bai` al-sarf*

- S 10.1 A *bai` al-sarf* shall consist of the following components:
- (a) the seller and buyer (collectively referred to as contracting parties);
 - (b) the offer (*ijab*) and acceptance (*qabul*) to enter into the *bai` al-sarf*; and
 - (c) the subject matter of the *bai` al-sarf*.

11. Contracting parties

- S 11.1 The contracting parties in a *bai` al-sarf* shall be a seller and a buyer.
- S 11.2 A contracting party shall be a natural person or legal entity that must have the legal capacity¹ to enter into the *bai` al-sarf*.
- G 11.3 Any party to the *bai` al-sarf* may enter into the contract through an agent.

¹ Legal capacity of a person, from Shariah perspective, is defined as capacity to assume rights and responsibilities and capacity to give legal effect to his action. Among the important conditions are that the person must possess sound mind and the capacity to distinguish between what is harmful or beneficial to one's interests. Legal capacity of a legal entity is defined as eligibility of an entity to acquire rights and assume responsibilities. In Malaysia, legal capacity is subject to the Contracts Act 1950 and the Age of Majority Act 1971.

12. Offer (*ijab*) and acceptance (*qabul*)

- S 12.1 A *bai` al-sarf* must be entered into through an offer and acceptance between the contracting parties.
- G 12.2 The offer and acceptance may be expressed orally, in writing or by any other methods recognised by Shariah.

13. Subject matter

- S 13.1 The subject matter of a *bai` al-sarf* shall be money which is known and deliverable by the contracting parties before the contract session ends.
- S 13.2 A contract session in *bai` al-sarf* refers to the duration of time and the place during which the contracting parties meet and enter into a contract that commences with the offer (*ijab*) which follows with an acceptance (*qabul*) to sell and buy monies from each other and ends by the dispersal of the contracting parties, physically or constructively, or by waiving the right to revoke or to continue with the contract during the contract session by both contracting parties.
- S 13.3 The type of money in *bai` al-sarf* shall be determined and mutually agreed by the contracting parties at the time of the execution of the contract.

14. Salient features of *bai` al-sarf*

Delivery of money

- S 14.1 The delivery and taking possession of the exchanged money in all *bai` al-sarf* transactions, regardless of the type of money, shall take place on spot basis in full before the contract session ends.
- S 14.2 In connection with paragraph 14.1, earnest money (*`urbun*) and conditional option (*khiyar al-shart*) shall not apply in *bai` al-sarf*.
- G 14.3 In the event the delivery of the exchanged money cannot be carried out in accordance with paragraph 14.1, the delivery of the money may be extended beyond the contract session provided that the extension is due to–
- (a) established customary business practice (*'urf tijari*); or
 - (b) an unexpected disruption to the business.

Same type of money

- S 14.4 In the event that the exchanged money are of the same type, the transaction shall be done at par (by equal unit of measurement²).

Different type of money

- G 14.5 In the event that the exchanged money are of different types, the transaction may be done at the prevailing currency rate or any mutually agreed rate (unit of measurement) at the time of the execution of the contract.

² Please refer to Appendix 3 on the exchange rules of money.

Possession of money

- S 14.6 The exchanged money shall be possessed in the form of physical possession (*qabd haqiqi*) or constructive possession (*qabd hukmi*).
- S 14.7 The buyer shall take possession of the exchanged money upon delivery of the money from the seller to the buyer through any mechanism permitted by Shariah (including customary business practice), such that the buyer having access to the money and assuming the ownership risk of the money.
- S 14.8 The seller shall continue to have responsibility to effect delivery of the exchanged money prior to the buyer taking physical or constructive possession of the exchanged money.

ARRANGEMENT OF BAI` AL-SARF WITH OTHER CONTRACTS OR CONCEPTS**15. Arrangement of bai` al-sarf with agency (*wakalah*)**

- G 15.1 In *bai` al-sarf*, the contracting parties may appoint an agent to execute *bai` al-sarf* and to take possession or deliver the money on their behalf.

16. Arrangement of bai` al-sarf with promise (*wa`d*)

- G 16.1 A party may provide a unilateral binding promise (*wa`d*) to enter into *bai` al-sarf* with another party in the future.
- G 16.2 The parties may provide two separate unilateral binding promises (*wa`dan*) to each other which will be triggered by different causes of events respectively to enter into *bai` al-sarf* at a future date.
- G 16.3 The parties may provide bilateral binding promise (*muwa`adah mulzimah*) to execute *bai` al-sarf* in the future.
- S 16.4 All arrangements in paragraphs 16.1, 16.2 and 16.3 shall only be for the purpose of hedging.

17. Arrangement of bai` al-sarf with *ijarah al-khadamat*

- G 17.1 *Bai` al-sarf* may be arranged with *ijarah al-khadamat* (services contract), which includes, but are not limited to, the following:
- (a) transfer of money (remittance) in a different currency;
 - (b) cash withdrawal in a different currency; and
 - (c) other related services such as the service of counting coins.
- G 17.2 *Bai` al-sarf* and *ijarah al-khadamat* may be combined in one document.
- S 17.3 Notwithstanding paragraph 17.2, both contracts must be specified and distinguished clearly in such document.
- G 17.4 The service provider may charge a fee for the service rendered.

18. Payment of debt in different currency

- G 18.1 Subject to the agreement of a creditor, a debtor may pay the debt obligation upon him in a different currency from that of his original debt.
- G 18.2 Parties who have debt obligations against each other may agree to set-off their obligations in different currencies.
- S 18.3 In connection with paragraphs 18.1 and 18.2, the payment of debt in a different currency shall be effected at the prevailing exchange rate or a mutually agreed rate on the day of payment (not a pre-agreed rate).

DISSOLUTION (FASAKH) AND COMPLETION (INTIHA') OF BAI` AL-SARF**19. Dissolution of *bai` al-sarf***

- S 19.1 A *bai` al-sarf* shall dissolve under any of the following circumstances:
- (a) the contracting parties mutually agree to terminate the contract; or
 - (b) one of the contracting parties exercises the defect option (*khiyar al-`ayb*) to terminate the contract.

20. Completion of *bai` al-sarf*

- S 20.1 A *bai` al-sarf* completes under any of the following circumstances:
- (a) possession of the exchanged money by the contracting parties;
 - (b) set-off (*muqassah*) of debt obligation between the contracting parties in different currencies; or
 - (c) transfer of debt obligation (*hiwalah al-dayn*) to pay the counter-value to a third party provided that it is effected on the spot.
- S 20.2 Upon completion of *bai` al-sarf*, the contracting parties shall be absolved from further contractual obligations.

PART C OPERATIONAL REQUIREMENTS

21. Governance and oversight

- G 21.1 The requirements under this part complement the broad governance and oversight expectations specified under the relevant policy documents on governance issued by the Bank.
- S 21.2 While the broad governance and oversight principles are applicable to *bai` al-sarf*, an IFI must observe specific requirements on governance arrangements as outlined in this policy document to address inherent risks associated with *bai` al-sarf*.
- S 21.3 An IFI must have sufficient understanding of its risk profile and ensure the availability of personnel with the appropriate knowledge and skills to offer *bai` al-sarf*.

Board of Directors

- S 21.4 The Board of Directors of an IFI (the Board) must establish a sound governance structure to facilitate effective oversight on the management and implementation of *bai` al-sarf*. The adequacy of the governance structure shall commensurate with the nature, complexity and risk profile of *bai` al-sarf*.
- S 21.5 The Board has overall accountability and responsibility for Shariah governance and Shariah compliance of an IFI. As such, the Board must–
- approve the business and risk strategies of an IFI with regard to the application of *bai` al-sarf*;
 - approve and oversee the implementation of policies and procedures governing the application of *bai` al-sarf* which includes risk management aspects;
 - ensure that the internal policies and procedures remain relevant, current and effective in managing the overall operational conduct and risk profile of the *bai` al-sarf*;
 - ensure that appropriate internal controls, systems and infrastructure are in place to implement *bai` al-sarf* in accordance with Shariah;
 - ensure that sufficient resources are in place, and that the IFI has adequate and competent personnel with sufficient knowledge on the concept, application and risks associated with *bai` al-sarf*, and
 - ensure that independent reviews are conducted regularly to assess compliance with the policy documents issued by the Bank and internal policies established by the IFI.

Shariah Committee

- S 21.6 The Shariah Committee has the responsibility to advise an IFI in ensuring its business, affairs and activities involving *bai` al-sarf* transaction comply with Shariah. As such, the Shariah Committee must–
- endorse the application of Shariah requirements in the relevant policies and procedures governing *bai` al-sarf*;
 - deliberate and endorse the terms and conditions stipulated in the legal documentation and other documents such as information published on promotional materials, product manuals or other publications are in

- (c) compliance with Shariah; advise and provide clarification on relevant Shariah rulings, decisions or policy documents on Shariah matters issued by the Bank, and if relevant, any other authorities; and
- (d) deliberate Shariah matters referred by the Shariah review and Shariah audit and where relevant, endorse rectification measures that are needed to ensure that *bai` al-sarf* complies with Shariah requirements.

Senior management

- S 21.7 The senior management has the responsibility to ensure that the business and operations of an IFI complies with Shariah requirements. As such, the senior management must–
- (a) establish policies, procedures and processes with regard to proper management of *bai` al-sarf*;
 - (b) develop internal control and risk management policies and procedures in line with the business and risk strategies approved by the Board;
 - (c) implement relevant internal systems, infrastructure and mechanisms to identify, measure, control and monitor risk associated with *bai` al-sarf*;
 - (d) identify, assign and train key personnel with appropriate skill to undertake *bai` al-sarf* and ensure the roles and responsibilities are properly delegated to relevant functions;
 - (e) undertake regular review and monitor compliance with the approved internal policies; and
 - (f) ensure timely disclosure of relevant information to the Board and the Shariah Committee.

22. Structuring

Purpose

- G 22.1 An IFI may adopt *bai` al-sarf* in a financial transaction to achieve specific financial outcome which includes acquisition of gold or silver, and trading of currencies for hedging purposes.
- G 22.2 An IFI may refer to the examples in Appendix 4 to determine the purpose and application of *bai` al-sarf*.

Contracting parties

- S 22.3 An IFI shall clearly identify the contracting parties as seller or buyer, which includes any appointment of agent, and the respective roles and responsibilities of the contracting parties.
- S 22.4 In the case where an agent acts on behalf of an IFI in executing a *bai` al-sarf* transaction, the IFI must–
- (a) ensure that the agent complies with the requirements of this policy document; and
 - (b) ensure that the agent has the requisite capacity and capability to perform its duties and obligations in *bai` al-sarf*.

Offer and acceptance

- S 22.5 An IFI shall ensure that each offer and acceptance of *bai` al-sarf*³, is clearly evidenced by appropriate documentation⁴ or record⁵.

Subject matter

- S 22.6 An IFI shall establish and perform appropriate verification process to ensure the authenticity and legitimacy of the money.
- G 22.7 In ensuring the authenticity of gold or silver, an IFI may consider ensuring such gold or silver are recognized by commodity association or exchange such as London Bullion Market Association, Dubai Multi Commodities Centre and Tokyo Commodity Exchange.

Rate of exchange

- S 22.8 In connection with paragraphs 14.5 and 18.3, in determining the prevailing rate of the money, an IFI shall refer to reference rate fixed onshore for currencies involving ringgit.
- G 22.9 For gold or silver, an IFI may refer to price fixed by established commodity association or exchange.

Settlement

- S 22.10 In connection with paragraph 14.1, the settlement terms agreed between the IFI and the customer shall include, at minimum, the following:
- (a) counterparties for the exchange;
 - (b) date of the settlement or delivery of money;
 - (c) rate of exchange;
 - (d) settlement mechanism;
 - (e) settlement amount; and
 - (f) arrangement of off-setting, where applicable.
- G 22.11 In connection with paragraph 22.10(d), the settlement mechanism to conduct exchange of money which fulfil the spot settlement may include, but not limited to, the following:
- (a) payment by bankers cheque or money order;
 - (b) payment by debit card, charge card, credit card or prepaid card;
 - (c) cash payment including online cash transfer to an account; or
 - (d) electronic settlement system.

³ For example, in the case of foreign currency swap products, offer and acceptance of *bai` al-sarf* may occur at each payment dates.

⁴ Includes other generally acceptable documents in trade and financial transactions as an evidence of the transactions e.g. terms and conditions, confirmation and settlement of trades, enforceable document.

⁵ Includes records generated from the systems or trading platforms.

Question 2

- (a) What are the scenarios or operational circumstances that may affect delivery of exchanged money under *bai` al-sarf* beyond the contract session as specified in paragraph 14.3?
- (b) What are the additional terms required for settlement and whether your institution's current practices has met minimum settlements terms as specified in paragraph 22.10?

Documentation

- S 22.12 Where *bai` al-sarf* is executed through documentation, the IFI shall ensure that the documentation are comprehensive and legally enforceable.
- S 22.13 An IFI must ensure that the legal documents specify the agreed terms and conditions for the *bai` al-sarf*. The IFI must ensure that the legal documentation clearly stipulate, at minimum, the following:
 - (a) purpose⁶ of the *bai` al-sarf*;
 - (b) contracting parties including the appointment of agent, if any;
 - (c) rights and obligations of the contracting parties to the *bai` al-sarf* including in the case of loss or damages during delivery;
 - (d) description of exchanged money i.e. type of money and unit of measurement used;
 - (e) rate of exchange agreed for *bai` al-sarf*;
 - (f) date of offer and acceptance;
 - (g) arrangement with other Shariah contracts or concepts⁷, where applicable;
 - (h) other terms, fees and charges including, brokerage fees, agency fee to be borne by the relevant contracting parties, where applicable; and
 - (i) conditions leading to dissolution or completion events of *bai` al-sarf*.
- S 22.14 An IFI shall adequately clarify or translate the use of Arabic terminology, if any, in its documentation to enhance understanding of the contracting parties. Any translation shall be consistent with the rulings of SAC.

Question 3

- (a) Please identify additional terms or those of less relevance to enhance the requirements on documentation in paragraph 22.13.
- (b) Please highlight any potential operational and/or legal impediment that may hinder the current practice on documentation to meet the expectations outlined in this exposure draft.
- (c) Where challenges and impediments are identified under Question 3(b), please provide proposed measures to ensure compliance to the policy document.

23. Risk management

- G 23.1 The application of *bai` al-sarf* contract may expose an IFI to various types of risks such as credit, market, liquidity and operational risks. The adoption of sound risk management framework is critical to ensure that the inherent risks

⁶ For example, hedging or trading of gold or silver.

⁷ Such as *wa`d*, *ijarah al-khadamat* etc

associated with *bai` al-sarf* are effectively managed.

- S 23.2 An IFI shall establish comprehensive and sound risk management framework and internal controls that is supported by adequate policies and procedures, processes and reporting to address risks associated with *bai` al-sarf*, which shall include, at minimum, the following:
- (a) processes and procedures for the identification, measurement, monitoring and control of risks including, if applicable, risk exposure to inventories arising from the acquisition of gold or silver for the purpose of trading gold or silver;
 - (b) appropriate risk mitigation measures, including establishing eligible criteria for the appointment or selection of the suppliers of gold or silver;
 - (c) appropriate valuation of gold or silver;
 - (d) setting out, where applicable, risk exposure limits such as counterparty settlement risk, foreign currency risk, market risk from trading of gold or silver, in line with the IFI's risk appetite; and
 - (e) reporting requirements⁸ to the Board, Shariah Committee and senior management.
- G 23.3 When establishing the appropriate selection criteria to identify a supplier, the IFI may include the following:
- (a) financial soundness of the supplier, including financial performance, and volume of trades; and
 - (b) operational capability including adequate systems, trading capacity and delivery capacity.
- G 23.4 The IFI may identify and maintain a list of alternative supplier of gold or silver to facilitate the execution of *bai` al-sarf* in a timely manner in the event the appointed supplier fails to deliver the desired gold or silver to the IFI.
- S 23.5 In the case where an IFI is involved in the trading of gold or silver, the IFI shall put in place effective measures to safeguard the gold or silver from theft and pilferage including the following:
- (a) employing security measures such as vault, security guards, closed-circuit television (CCTV);
 - (b) taking adequate takaful coverage; or
 - (c) adopting appropriate systems to ensure accurate and up-to-date inventories.
- S 23.6 In the event where a third party is appointed to provide safekeeping of the gold or silver, the IFI must–
- (a) assess the appointed third party's capacity and capability to properly safe keep the gold or silver; and
 - (b) establish an appropriate safekeeping arrangement, policies and procedures with the appointed custodian.
- G 23.7 For the purpose of valuation, an IFI may appoint a valuer to determine the quality or grading of gold or silver.

⁸ Which may include the frequency and scope of reporting

- S 23.8 An IFI shall maintain all records relating to *bai` al-sarf* transactions. The IFI shall ensure that these internal records must be updated regularly and are available for inspection by the Bank or external auditors as and when required.
- S 23.9 An IFI must establish a systematic process to regularly review and update its policies and procedures, processes and internal limits to ensure consistency with its risk appetite, taking into account significant changes that would increase its risk exposures.

Question 4

- (a) Please highlight the selection criteria established by your institution in considering the suppliers of gold or silver.
- (b) What are the current policies and processes in place to ensure appropriate valuation of gold or silver?

24. Business and market conduct**General principle**

- S 24.1 An IFI shall take into consideration customer's interests in developing policies and procedures to ensure that a *bai` al-sarf* transaction is conducted in a fair, transparent, responsible and professional manner.

Fair dealings

- S 24.2 An IFI must ensure that its internal policies and procedures on business and market conduct for the *bai` al-sarf* transaction must reflect transparency and fair dealings to all contracting parties. At minimum, the IFI shall include the following in its internal policies and procedures:
- (a) information provided must be accurate and clear;
 - (b) fees and charges related to the services offered under paragraph 17.1 must be disclosed, if any; and
 - (c) reasonable care must be taken prior to providing advice and recommendations, if any.

Disclosure of information

- S 24.3 An IFI shall provide clear and adequate information to the customer prior to entering into the *bai` al-sarf* transaction. For this purpose, the IFI shall disclose the following information to facilitate the customer's understanding on *bai` al-sarf*:
- (a) purpose of *bai` al-sarf*;
 - (b) date of delivery of money;
 - (c) salient terms and conditions of *bai` al-sarf*, such as:
 - (i) rights and obligations of the contracting parties;
 - (ii) fees and charges, if applicable; and
 - (iii) other terms and conditions including arrangement with other Shariah contracts; and
 - (d) termination and completion events of the *bai` al-sarf* contract.

Question 5

Where applicable, highlight the gap between current practice and the proposed information disclosure requirements in this exposure draft. Please indicate the proposed measures to ensure the proposed requirements are met.

25. Submission requirement

- S 25.1 An IFI that offers product or services that applies *bai` al-sarf* is required to submit implementation plan to comply with this policy document to Jabatan Perbankan Islam dan Takaful no later than six (6) months after the issuance date of the final policy document.
- S 25.2 The Board and the Shariah Committee must respectively approve and endorse the IFI's implementation plan to ensure compliance with this policy document by the effective date i.e. sixteen months after the issuance date of the finalised policy document.
- G 25.3 In relation to paragraph 25.2, the Bank expects the IFI to–
- (a) review and confirm existing policies, procedures and internal limits;
 - (b) clarify roles and accountabilities;
 - (c) where applicable, undertake enhancement to the existing system to address risk associated with the *bai` al-sarf* contract; and
 - (d) establish appropriate monitoring and reporting mechanisms to ensure compliance with the requirements.
- S 25.4 The IFI must immediately notify Jabatan Perbankan Islam dan Takaful if the IFI identifies any cause that will affect full compliance of the requirements of this document by the effective date.

APPENDICES

Appendix 1 Legitimacy of *bai` al-sarf*

The *Quran*

1. The following verse of the *Quran* implies the general permissibility of sales contract including *bai` al-sarf*.

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

“...whereas Allah SWT has permitted trading and forbidden usury...”⁹

The *Sunnah* of the Prophet Muhammad (peace be upon him)

2. The legality of *bai` al-sarf* is indicated in the following hadith:

"الذهب بالذهب والفضة بالفضة والبر بالبر والشعير بالشعير والتمر بالتمر والملح بالملح
مثلاً بمثل سواء بسواء يداً بيد، فإذا اختلفت هذه الأصناف فبيعوا كيف شئتم إذا كان
يداً بيد"

“[Exchange of] gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, or salt for salt [shall be] in equal quantities and hand to hand (spot). If they differ in type, you may trade them as you wish provided it is hand to hand (without deferment on either side)”¹⁰

The modern currencies are being used as medium of exchange which have same features (*illah thamaniyyah*) with the gold and silver. Therefore, the rules of exchange of gold and silver as mentioned in the above hadith are also applied to the modern currencies.

⁹ Surah al-Baqarah, verse 275.

¹⁰ Sahih Muslim, hadith no. 2970.

Appendix 2 Glossary

Terms	Definition
<i>Hamish jiddiyah</i>	A security deposit placed to secure the undertaking given by one party to another to perform certain action(s) in the future
<i>Hiwalah al-dayn</i>	Assignment/transfer of debt from the liability of the original debtor to the liability of a third person so that the original debtor becomes free of liability
<i>Ijab</i>	Offer
<i>ijarah al-khadamat</i>	Services contract
<i>Khiyar al-`ayb</i>	Option arising from a defect; the option of dissolving or continuing the contract upon discovery of a defect in the asset purchased
<i>Khiyar al-shart</i>	Conditional option
<i>Muqassah</i>	Offsetting
<i>Muwa`adah mulzimah</i>	Bilateral binding promises
<i>Qabd haqiqi</i>	Physical possession. It refers to a state where a person has actual possession and the rights to control an asset
<i>Qabd hukmi</i>	Constructive possession. It does not refer to an actual possession, but it is a presumptive possession based on the right of the owner towards an asset
<i>Qabul</i>	Acceptance
<i>`Urbun</i>	Earnest money paid to secure purchase of an asset in an exchange contract which is considered part of the price if the purchaser decides to continue the contract and is not refundable
<i>`Urf tijari</i>	Customary business practice which is acceptable by the community and does not contradict the Shariah principles
<i>Wa`d</i>	A promise or undertaking which refers to an expression of commitment given by one party to another to perform certain action(s) in the future
<i>Wakalah</i>	Agency

Appendix 3 Exchange rules of money

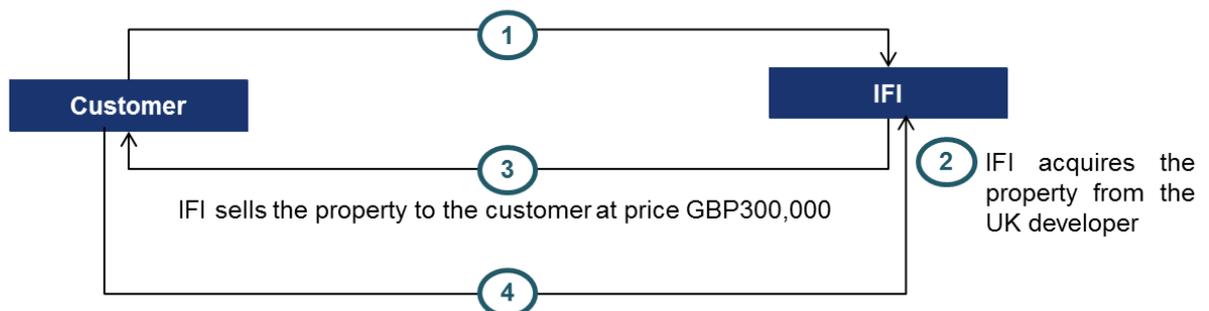
Type		Money			
		Gold	Silver	USD	RM
Money	Gold	1. On the spot 2. At par	1. On the spot	1. On the spot	1. On the spot
	Silver	1. On the spot	1. On the spot 2. At par	1. On the spot	1. On the spot
	USD	1. On the spot	1. On the spot	1. On the spot 2. At par	1. On the spot
	RM	1. On the spot	1. On the spot	1. On the spot	1. On the spot 2. At par

Example 3: Bai` al-sarf application in deposit or financing in foreign currency

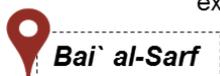
Bai` al-sarf transacted during the conversion of currencies, such as during the following:

- Withdrawal of money from customer’s country of origin deposit account (e.g. MYR) from a foreign country ATM (e.g. SGD, USD, GBP);
- Withdrawal of foreign currency deposit account in MYR; or
- Payment of foreign currency financing instalments.

Customer provides wa'd to purchase the property once IFI acquires the property



Monthly installments to the IFI is payable in MYR, at the prevailing exchange rate on the day of payment



e.g. Customer needs to pay GBP1000, every month. This means:

- At T+1 the rate is GBP1=RM5, customer pays RM5000
- At T+2 the rate is GBP1=RM4.50, customer pays RM4500
- At T+3, the rate is GBP1=RM4.00, customer pays RM4000