

# MURABAHA TO PURCHASE ORDERER BETWEEN THEORY AND PRACTICE

**Reference:** Samireh, M.A. (2020). "Murabaha To Purchase Orderer Between Theory And Practice", International Social Mentality and Researcher Thinkers Journal, (Issn:2630-631X) 6(32): 825-831.

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## ABSTRACT

Banking Murabaha provided by Islamic banks is an important source of financing and an alternative to usurious transactions offered by traditional banks, As it has proven its importance as well to meet the client's financing needs. This article shows the magnitude of the suspicions raised by the skeptics in the legality of the Murabaha sale, as well as the defects that some Islamic banks make during the practice of the Murabaha banking. It also shows the extent to which Islamic banks apply the Murabaha banking sale in terms of conditions that have been approved by the Islamic Fiqh Academy. It is extremely important to clarify this issue in order to find full knowledge of the main difference between Murabaha and usury.

**Key words :** Islamic banks, Classic murabaha, Murabaha to purchase orders, Promise to buy, Sharia provisions.

## 1. INTRODUCTION

The emergence of Islamic banks in the modern era led to the development of Islamic financing contracts of various kinds , Among the most important of these contracts is the Murabaha contract, which is widely used by Islamic banks, And that these contracts are only means used to achieve certain purposes, including the circulation of funds between society, poverty reduction, and the optimal operation of funds , Allah said, “... كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ ...”<sup>1</sup> means “in order that it may not become a fortune used by the rich among you”. As a result of this development, which made it a banking contract - it became called a banking term, which is Murabaha to purchase orderer (MPO). It is reported that Dr.Sami Mahmoud was the first to spread this new concept of murabaha in the modern era.

Banking Murabaha provided by Islamic banks is an important source of financing and an alternative to usurious transactions undertaken by traditional banks. It is noteworthy that the Murabaha share constitutes about 70 percent of their total financing as compared to the profit-sharing modes at less than 14 percent (Iqbal et al., 1998: 62).

Murabaha is considered to be a competitive tool for other financing modes, because it meets the customer's needs, as well as ease of implementation, low risks and guarantee of profitability.

This paper deals with the reality of the application of MPO sal , giving a quick overview of its concept, characteristics, conditions of validity of this sale and also focuses on investigating the doubts and fears that people feel about dealing with the MPO due to the increased deviations in implementation in some Islamic banks.

## 2. THE CONCEPT OF MURABAHA TO PURCHASE ORDERER

MPO, the commodity to be purchased is not held by the bank when the customer requests it to be purchased ,The bank buys it at the request of the customer because he does not have enough money to pay for it in cash or because the seller does not sell it for a term so the bank buys it for a cash price and sells it to his customer for a deferred price higher than the first price (Younis Al-Masry, 2012: 91).

Thus, Murabaha to purchase orderer is the customer's request to the bank to buy a specific good, based on a promise from him to buy that commodity with an agreed profit, in addition to the commodity's capital, with repayment typically in installments.

<sup>1</sup> Surat al- hashar , verse :7

### 3. THE DIFFERENCE BETWEEN CLASSIC MURABAHA & MURABAHA TO PURCHASE ORDERER (MPO)

It is well known that the MPO applied by Islamic banks originated from the traditional murabaha and was modified to be applied in Islamic banks. But this amendment caused the scholars to differ in the validity of this modified formula, Some of them sanctioned it, some of them hated it, and some of them prohibited from working with it, and also some of them criticized it because of the defects in their document cycle. As for the traditional murabaha, no scholars differed, They found its legitimacy from the Holy quran <sup>2</sup> "وأحل الله البيع وحرم الربا" means "Allah has permitted trade". the prophets, peace be upon him, said "if they differed sell as you wish if it was hand to hand"<sup>3</sup>.

Dr.Rafik Younis Al-Masry mentioned in his book Altmouil alislami the main differences between Classic murabaha and Banking murabaha in the table below (Younis Al-Masry, 2012 : 95-97).

Characteristic	Classic murabaha	MPO
The nature of the seller's profession	The seller first buys the commodity for himself to use, lease, or sell, and Sometimes a long time passes between the time the item is purchased and resold.	The bank purchases the commodity only at the request of the customer.
The need for a pre-purchase promise	The sale is done directly without the need for promise, because the commodity are owned by the seller.	Promise may be binding, although the price is unknown, Because the bank has not yet bought it and has no knowledge of its first price.
Contractual relationship	The parties to the contract are: seller and buyer.	There are three parties to the contract: the seller, the buyer, and the bank as an intermediary dealer.
The existence of the commodity	The commodity is with the seller at the time of the contract.	The commodity is not in the hands of the bank at the time of the contract.
Payment type	Payment may be sooner or later	It is often paid later
Profit type	All profit is cash profit against the seller's effort and time.	All profit is profit against for the term.
The commodity's ability to be repaired and manufactured	Sometimes the seller enters the commodity an added value for repair, manufacture or formulation.	The bank cannot enter the commodity any addition.

### 4. CONDITIONS FOR THE VALIDITY OF THE MURABAHA TO PURCHASE ORDERER

There are conditions that MPO sale doesn't apply to unless they exist (Tayil, 2006: 203), including: The price of the commodity must be known to the buyer. Profit must be known to the buyer and seller. The bank must own the commodity for itself. The buyer shall have the option to keep a promise or not. The original purchase contract should be sahih (valid). The capital must be from motheliyat , such as cash.

Looking at and reflecting on the Murabaha contract model that Islamic banks use, it becomes clear to us that this sale has several parties, (Dhiya, 2009) including: The bank, The customer (Alaamir bi-alshira), Guarantor (al-kafil) and The first seller, it includes the following components:

- ✓ A binding promise from the buyer to the bank to purchase the commodity.
- ✓ A contract between the bank and the first seller.
- ✓ A contract between the bank and the buyer (Alaamir bi-alshira).
- ✓ These contracts combine in one contract (One transaction).

### 5. PRACTICAL STEPS TO IMPLEMENT THE BANKING MURABAHA

The most important practical steps for Banking Murabaha, including: (Hamid: 308)

<sup>2</sup> Surat al-baqara, verse : 275

<sup>3</sup> Reported by Muslim (1587) from the hadith of 'Ubâda Ibn As-Sâmit

1. Purchase request : The customer submits to the Islamic bank asking him to buy commodity with specific specifications, then the customer fills out the Murabaha purchase request which contains the detailed data of the commodity to be purchased.
2. Study the purchase process : The Islamic Bank studies the extent of verification of the validity of the data and guarantees provided by the customer, a study of the quality of the commodity required, its marketability, the absence of legal barriers to trade in it, and then the profit rate as well as study of the down payment made by the customer and the payment installments.
3. Signing the contract to promise to buy : If the bank agrees to implement the murabaha process after it is proven that it has been fulfilled, the customer is required to sign (the promise to purchase contract) whereby the customer undertakes to purchase the required commodity when the bank provides it.
4. The bank purchases the agreed commodity: The bank calls the supplier and contracts with him to buy the commodity and pays him the price. The Islamic bank requires the supplier to provide a set of documents proving the Commodity validity.
5. The bank receives the commodity from the supplier: The Islamic bank receives the agreed commodity from the supplier, until the ownership condition for them is fulfilled, after that the bank enters into (the Murabaha sale contract) with the customer to sell it again for the first price, with a previously agreed profit.
6. The bank collects the amount of commodity : After completing the procedures for the Murabaha sale contract, the customer pays the remaining price of the commodity with the profit margin to the bank or signs debt securities that indicate his obligations to pay in installments.

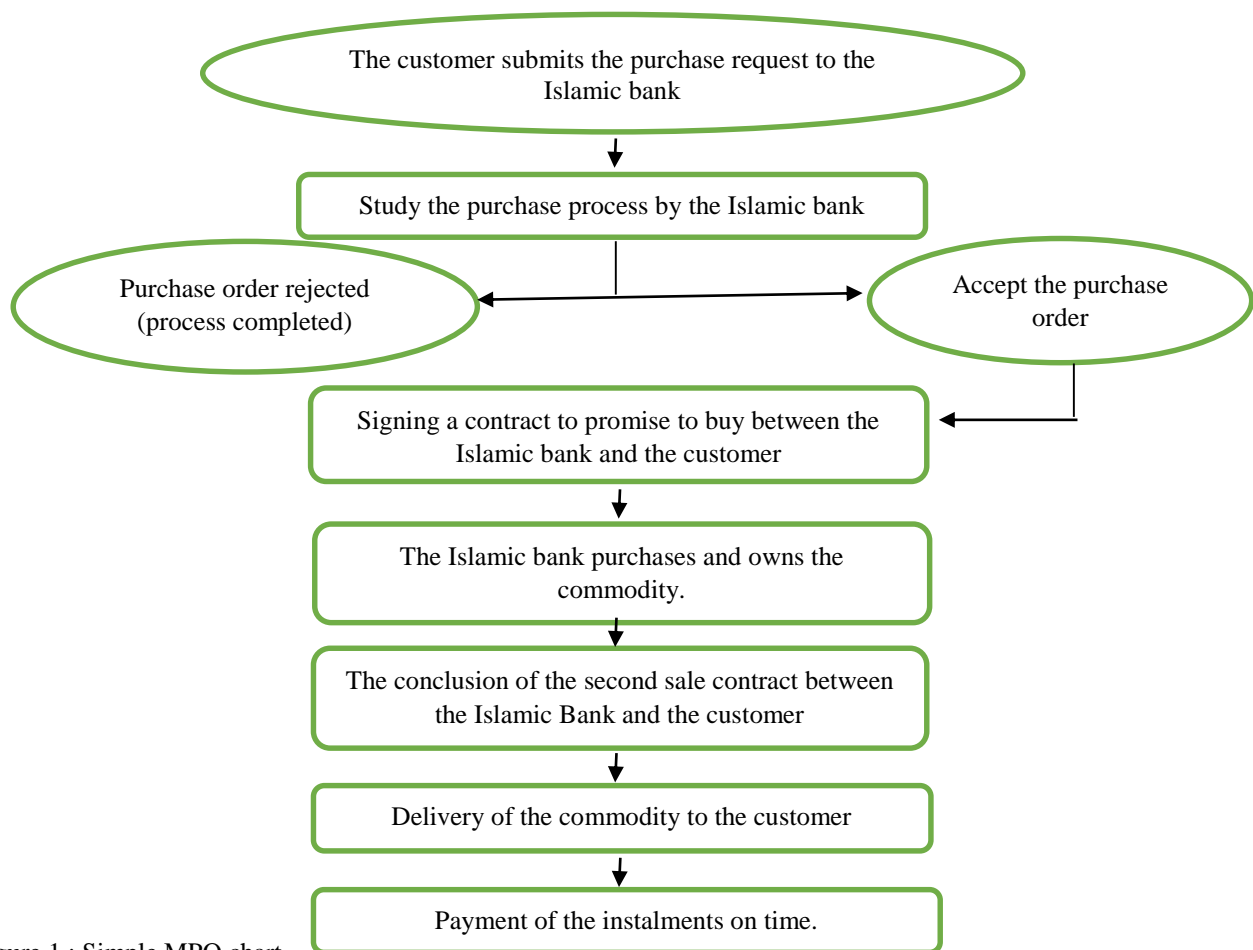


Figure 1 : Simple MPO chart

## 6. A PRACTICAL EXAMPLE OF MPO

Eg. It was agreed between an Islamic bank and one of its clients that the bank would finance the purchase of the commodity at a cost of \$ 10,000, compared to a 5% annual margin of profit. The repayment period is 10 months, paid in equal monthly installments, and the commission is \$ 50, provided that the customer pays \$ 1,000 in advance.

The solution ;

Purchase cost = \$ 10,000

Downpayment = -\$ 1000

The cost funded by the bank = \$ 9000

Bank profit =  $9000 \times 5/100 \times 10/12 = \$ 375$

Bank revenue = profit + commission  $375+50 = \$425$

Murabaha account balance =  $10,000 - 1000 - 425 = \$ 9425$ .

The value of one premium =  $9425/10 = \$ 942.5$

## 7. THE VALIDITY OF MPO SALE CRITICISM

As long as Murabaha banking has become the first predominant mode in Islamic banks, there are some criticisms from some scholars of this contract. I will try to clarify these criticisms by dividing them into criticisms related to this contract and the criticisms that come from Murabaha itself due to the defect in the Murabaha documentary cycle.

Some contemporary scholars and other ancient scholars raised some doubts about this contract, including : AL-albani , Abdur-rahman abdu-alkhaliq , Mohamed ramiz al-azizi.

Dr. Khoja mentioned in his book “Al-daleel alsharia lil-murabaha (Khoja, 1998: 43)”, four doubts that some scholars criticize regarding this contract including:

- ✓ This contract is two sales in one sale (Bayataani fii bay-ah)

Some scholars, such as Al-Azizi, have argued that MPO sale is two sales in one sale, The first sale is between the bank and the owner of the commodity, The second sale between the bank and the customer (Alaamir bi-alshira). other scholars claimed that the binding obligation to purchase by which the customer undertook to purchase the commodity was the third sale ( al-azizi, 1420).

These scholars indicate the hadith of Abu Hurairah”the Messenger of Allah may Allah bless him and grant him peace, forbade two sales in one sale<sup>4</sup>”.

According to Al-Azizi said, the image of the Murabaha contract that is practiced by Islamic banks is the same as that which the Messenger of God forbid. This speech was criticized by Dr. Al-Khojah in his book, as he mentioned that Banking murabaha does not come under the prohibition two sales in one sale (Bayataani fii bay-ah), because they have two separate sales and they are held from three parties other than Bayataani fii bay-ah that is made by only two parties, the seller and the buyer.

- ✓ Selling a person what he does not possess

There are a few scholars who are against this sale, and they understood that bank Murabaha is the sale of what the bank does not own. According to their understanding, the Islamic bank sells the commodity before owning it and this comes That the promise made between the bank and the customer before buying the goods and before the bank owns it is a sale.

<sup>4</sup> Reported by At-Tirmidhî (1231) from the hadith of ‘Ubi hureyrah

They rely on their arguments over Ibn Hizaam said : O Messenger of Allah, people come to me wanting to buy something that I do not possess; should I buy it for them from the marketplace? He said: “Do not sell that which you do not possess.”<sup>5</sup>

Dr. Khojah replied to this in his book, where he stated that banking murabaha does not involve selling a person what he does not have Because the contract with the buyer is not concluded until after the actual possession of the commodity, and what was before that is a promise to purchase only.

✓ Profit unless guaranteed

A small number of scholars consider that the sale of bank murabaha involves a profit unless it is guaranteed as long as the bank sold the commodity and makes a profit before taking it over. This contradicts the statement of Dr. Khojah, who stated in his book that bank murabaha is not considered a profit sale unless it is guaranteed , Because the bank bought the commodity and became the owner of it, The islamic bank bears the burden of loss and the burden of defect and carries these risks is one of the legitimate reasons for deserving of the profit.

✓ Bay’a al- ayina.

AL ayina is that a man sells the commodity at a deferred price and then buys it before cashing in for less than the first price, The seller gets a loan with usury, and the buyer gets a debt with an increase. Dr. Khojah says selling the bank murabaha is not subject to the sale of forbidden Bayu al-ayina because it is a sale in which the commodity is actually owned for use , This is the opposite of Bay’a al- ayina that is intended to be a ruse for usury.

With this criticism directed at banking murabaha, the prevailing trend among conferences and Islamic fiqh councils indicates that it is permissible to engage in banking murabaha. Among these conferences and councils include: The first conference of the Islamic bank in Dubai in 1979, the second conference of the Islamic bank in Kuwait in 1983, the Islamic economic symposium in Medina in 1983, the Islamic fiqh councils in Kuwait in 1983.

From my point of view, i agree with Dr. Khojah’s words and I clarify that in all Islamic banks there are Sharia Supervisory Boards that includes a group of scholars who specialize in jurisprudence financial transactions In order to clarify sharia provisions in emerging issues, Therefore, it is inconceivable that all these scholars agree on to make halal what God has forbidden usury and similar taboos.

After clarifying the provisions of the Murabaha banking, we must mention that there is a defect in some Islamic banks at the time of practice of Murabaha. Among these common mistakes(Taqi al-Othmani, 2019):

1. In some cases, customers only sign murabaha documents to obtain financing, and they do not intend to purchase a commodity by themselves but only want funds for unspecified purposes, In order to fulfill the conditions of the documents, they called a fictitious commodity, and after receiving the money, they use it for the purposes they desire. It is clear that this contract is an imaginary contract and it is a kind of trick for taking the usury.
2. In some cases, the commodity are sold to the customer before the bank owns them from the supplier, and this is contrary to the principles of Murabaha.
3. Some financial institutions enter into a murabahah for commodity that their customers had previously purchased from a third party, and this is not permissible in Sharia. Once a customer purchases the commodity himself, it cannot be purchased again from the supplier itself. But if the bank bought it from the customer himself and sold it to him again, this deal

<sup>5</sup> Narrated by at-Tirmidhi, 1232; an-Nasaa’i, 4613; Abu Dawood, 3503, Ibn Maajah, 2187, Ahmad, 14887. Classed as saheeh by al-Albaani in Irwa’ al-Ghaleel, 1292.

is called a reverse purchase, and it is not permissible according to Islamic sharia, especially in Murabaha.

4. Assuming that murabaha is a comprehensive means that can be used for every type of financing that banks provide such as paying electricity bills and Debt settlement due to other parties, This principle is completely rejected, Because Murabaha is only used when a customer wants to buy a specific good and does not have sufficient cash capacity to make purchases.
5. Sometimes Islamic banks resort to concluding global commodity contracts in financial markets in order to manage liquidity only, as some Islamic banks feel the possibility of using murabaha to enter into these contracts, as they are real assets, unaware of the fact that commodity contract operations as they are common in global markets It does not comply with the principles of Sharia, because it is fake contracts that are not delivered and received. In some cases, there are real commodity, but they are subject to futures sales, and they are not permissible in Sharia.

Nevertheless, Given that Murabaha is a large-scale deal, Islamic banks must at all times take the necessary precautions so that the transaction does not ship into the area of interest-based financing (Usmani, 1999: 153). It is also important that the banking murabaha be free from defects and faults so that the relevance and credibility of Islamic banks towards society are not questioned.

## 8. CONCLUSION

After clarifying, inference, deduction and discussion in this article, i summarize the following results:

The sale of murabahah is a sahih sale which is permissible according to Islamic islamic sharia, and this is what most scholars of the ummah have given in both ancient and modern, as well as what all Islamic fiqh councils have approved. All Islamic banks must ensure that the bank owns the commodity so that it does not enter into a sale with him. Giving scope for application to other forms of islamic modes of financing and mediating dependency on the Murabaha formula. The Shari'a Supervisory Board in Islamic banks must be an effective body, and its decisions are in compliance with the provisions of Islamic Sharia without exceeding it. Islamic banks should also provide educational courses for their employees on how to implement Islamic financing tools.

It must be emphasized that the occurrence of error in Islamic banks does not mean a mistake in the approach, but the error is in the application and finding a correction is required with good thinking and guidance towards right way .

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