RESULTS AND RECOMMENDATIONS
17 Muharram 1437 H, corresponding to 30 October 2015
Under the auspices of Bank Rakyat Malaysia
Kuala Lumpur -Malaysia

First: The Combination of a Loan and a Sale

1. It is forbidden to combine a sale and loan by an explicitly stipulated condition in the contract itself or during the contract session.
2. If it is proved that the price in the sale is not higher than the market price when the seller lends to the buyer, the suspicion [of ribā] will be negated. And if the price does not fall below the market price in case the buyer lends to the seller, here as well the suspicion [of ribā] will be negated.
3. The borrower shall bear actual direct expenses of the lending procedures and the collection and repayment of the loan. This does not include the cost of borrowing, inflation, opportunity cost, the expected return and lost profit. The Sharīʿah committee shall approve the determination of actual expenses.

Forms of combination of a loan and a sale in ijārah (leases) include:
If the client is late in paying a fixed or variable rental instalment, it will be a debt upon him, and it is not permissible to take an increase on it. (It is not to be capitalized.)
However, if both parties agreed to renew the ijārah contract with a new rate, or to sign an ijārah contract on a new property, there is no objection to the lessor taking into consideration in the agreement on the rental payment what was lost in the previous ijārah. There shall be no obligation nor any condition [stating it] in the terms of the contract or during the contract session. This is based on the view of the Shāfiʿī School.
It has been decided in fiqh that the terms of the lease contract may be amended for the future period in which the property has not yet been used, by mutual agreement.
The rest of the forms have been postponed to a future seminar, inshāʾ Allah.

Second: Tier 1 Ṣukūk

1) The purpose of tier 1 ṣukūk is to support the capital sufficiency of an Islamic bank by enhancing its ability to increase its assets and face the attendant risks. The rulings that apply to the shareholders; i.e., the equity-right holders, shall apply to the ṣukūk holders; however, the Islamic bank has the right to amortize this ṣukūk after a period of time, whereas the shareholders' partnership is permanent. Also, the Sharīʿah classification of the tier 1 ṣukūk is that they are subject to the same rule as shares as far as rewards and liabilities but without partnership in the ownership of the joint-stock company. The relationship between the ṣukūk holders and the shareholders is mushārakah (partnership); both will be considered as the muḍārib (managing entrepreneur) with regard to the depositors' funds.

2) For the tier 1 ṣukūk issuance to be Sharīʿah compliant, the terms and conditions of the ṣukūk whose funds are added to the investment accounts in the general investment fund must be in accordance with the Sharīʿah parameters. Thus, the current account balances will be secured loans guaranteed by the shareholders, and the investment account balances (on the basis of muḍārabah or investment agency) will not be guaranteed by the shareholders except in case of infringement, negligence or breach of terms in their capacity as the muḍārib or investment agent.

3) The [funds collected from the] ṣukūk issued for investment by muḍārabah end up in the general investment fund, for which the muḍārib (Islamic bank) has permission to mix the ṣukūk capital with its own funds (equity). The bank shall be considered as a muḍārib with regard to the ṣukūk holders' funds. It shall not guarantee the ṣukūk capital except in case of infringement, negligence or violation of the conditions. The relationship between the bank and the ṣukūk holders shall be an investment partnership (shirkat amwāl). That entity will have the status of the muḍārib or the borrower (regarding the current accounts) in relation to the other components of the general investment fund, according to the circumstance.

(4) At the time of liquidation, the rights that will be paid to the deposit account holders and the ṣukūk holders will be determined by the terms and conditions of the contracts concluded with each of them.

5) What is stated in Basel 3 that the tier 1 ṣukūk holders have a lower priority than depositors does not necessarily mean that the depositors' funds will be absolutely guaranteed by the Islamic bank without reference to the terms and conditions of the deposit and the application of its provisions.

6) In the investment partnership established between the ṣukūk holders and the shareholders, it is possible to agree to transfer the burden of proof of non-infringement and non-negligence to the Islamic bank (in its capacity as the representative of the investment partnership to the depositors). If any loss is reported, the Islamic bank must prove there was no infringement and no negligence; otherwise, it will be liable for the loss (as a muḍārib) in the depositors' money. The ṣukūk holders will then demand their money from it in its capacity as a muḍārib with their funds.

7) Based on the previous details, there is no objection to issuing financial instruments that meet the Sharīʿah parameters for incorporation into tier 1 capital. The funds gathered from these financial instruments shall be combined with shareholders' equity and invested along with the investment deposits which the Islamic bank has accepted in a single investment fund. The funds invested in that fund are eligible to share in the profits and shall bear liability for the investment losses in proportion to their share of the total. In case of liquidation, the current account holders and investment account holders will have priority in the distribution [of assets], each according to their rights established by the terms and conditions of their deposits, and then the ṣukūk holders [come next].

Third: Qalb al-Dayn (Debt Rescheduling)

There are many forms of debt rescheduling; one of them is prohibited by consensus, one of them is permissible by consensus, and one of them is subject to investigation and ijtihād (legal reasoning).

a. The form that is prohibited by ijmāʿ (consensus) includes:-
- Deferring debt with an addition [to the amount owed] without any new transaction (debt scheduling).
- Forcing the debtor to reschedule the debt.

b. The form that is permissible by ijmāʿ (consensus) includes:-
- Agreeing on deferral of the debt by a new transaction that results in settlement of the current debt without increment.
- The entry of a creditor with the debtor whose debt to him has matured into a recurring set of transactions to hedge against a fixed rate of interest (in a series of murābaḥah sales to hedge against the rate of return, not for financing purposes).

c. The disputed forms include:

The creditor enters with the debtor whose debt has not matured into a new transaction before the maturity date, if it is within the limit granted to him, and the client is enabled even for a moment to dispose of it. It is also a condition in this form that the first and second debts not be linked, i.e., by a stipulation in the second murābaḥah that the customer is required to pay the first murābaḥah with its proceeds. It is not considered to be linkage what is stated in the general terms and conditions that the institution has the right to refer to all the client's accounts to offset what the client owes with what is owed to him.

Accordingly:

1. An increase in the debt due to its deferral via a transaction between the creditor and the debtor, if it is with a debt increase and an explicit agreement between the creditor and the debtor, is forbidden by the Sharīʿah.
2. A stipulation to reschedule the debt when it is first incurred, with a new transaction between the creditor and the debtor whose debt is matured, is forbidden by the Sharīʿah.

3. Debt rescheduling by a new transaction for a purpose other than increasing the current debt, such as the creditor and the debtor intending to hedge against a fixed rate of return, not financing, is permissible in Sharīʿah.

d. The use of revolving murābaḥah between the financing institution and the client is permissible, with the following conditions:
1) The purpose is to achieve a variable return in long-term finance rather than to schedule mature debts; therefore, it is obligatory to conduct the new murābaḥah before the maturity date of the existing murābaḥah.

2) A clause stipulating a new murābaḥah in the general agreement or in the existing murābaḥah is forbidden. It is also prohibited to link the two murābaḥahs, and the customer should have the absolute choice to either pay off his existing murābaḥah debt himself or enter into a new murābaḥah.

3) After entering into the new murābaḥah, the customer should have the absolute choice between keeping the purchased goods and selling them. If he chooses to sell, he will have the right to use the proceeds of the sale to pay the existing murābaḥah debt or not to pay. In order to confirm this, credit approval must be issued for the new murābaḥah in consideration of it being a new independent financing for the customer that can remain alongside the previous murābaḥah.

4) It is preferable that the profit rate in the new murābaḥah be equal to or less than the profit rate of the existing murābaḥah if the prevailing rate in the market or the institution is still at the level of the profit rate of that murābaḥah.

5) The customer should be solvent when making the new murābaḥah. That is because his insolvency would compel him to enter into the new murābaḥah, to sell the goods purchased thereby and use the sale price to pay the existing murābaḥah indebtedness. That would negate the condition of choice. The basic state of the client shall be considered solvency unless he proves the opposite.

6) There should be no stipulation to consider the period of late payment of the existing murābaḥah profit in the profit calculation of any new murābaḥah.

7) The application of this formula should be exceptional, due to inability to finance by another form, not just for ease of implementation. Special Sharīʿah approval must be obtained in each case.

Fourth: The Fiqhi Classification of the Ribā of Loans

Ribā is of various types:

1- The ribā of Jāhiliyyah (the pre-Islamic era of ignorance): it is the increase [of the amount owed by] the debtor after his liability for the debt has been established, without any [new] transaction, in consideration of deferral [of payment]. It is called the ribā of debt, or ribā al-nasīʾah, or ribā of the Qurʾān or clear ribā. It is ḥarām by the consensus of Muslim scholars, and declaring it permissible makes one a disbeliever.

2. Ribā al-faḍl: It is an increment in the exchange of ribawī commodities that are sold by measure or weight. It is one of the major sins according to the majority of scholars. Shaykh al-Islam Ibn Taymiyah held that it is a minor sin that may be permissible if needed.

3. Combining ribā al-faḍl and ribā al-nasīʾah at the beginning of the contract: It is a major sin by consensus, even in the opinion of Shaykh al-Islam Ibn Taymiyyah. It includes the ribā of loans as practiced by conventional banks. It is not permissible due to need (ḥājah) but is permissible due to necessity (ḍarūrah) as per its special meaning, and the sin is on the lender. As for owning shares in companies that are a mix [of ḥalāl and ḥarām]—which is authorized in the Sharīʿah Standards—which take interest-based loans, the sin is on the one who borrowed, which is the administration, not the shareholder. That is because he has no power to change [the policy].

Fifth: Islamic Banks' Management of Waqf Funds

1. It is permissible to make waqf (endowment) of money for investment and give its returns as charity.
2. It is permissible to establish waqf companies with capital earmarked as waqf, and what is gained from the yield of the waqf, or donated to it, or purchased from the proceeds is the property of the waqf and does not take the rule of waqf.
3. It is permissible for the bank, which acts as an intermediary between the waqf donor and the waqf company, to take a commission for that on the condition that the waqf donor is informed about it. This commission does not take the rule of a waqf asset.
4. The Forum recommends further studies of waqf companies and their problems that offer proposals which take into account the specificities of waqf companies with regard to existing laws.
5. The Forum recommends precisely defining what is considered yield and what is considered to be the original waqf as well as the provision for replacement of the waqf capital with other assets.

Sixth: Practical Applications of the Distinction between Ownership and Exclusive Non-ownership Right (Waiver of Underwriting Rights):

It is permissible to trade an underwriting right for compensation; this may be through waiver of the exclusive non-ownership right (ikhtiṣāṣ) and compensation for it. It is not permissible to take compensation for it by a sale.

Seventh: Tawarruq in the Commodity Exchange (Palm-oil Exchange) in Malaysia:

1. There is no objection to Islamic banks and financial institutions dealing in Bursa Suq al-Sila (Commodity Exchange) in Malaysia in accordance with Sharīʿah parameters.
2. The Forum recommends arranging a joint working group of scholars and experts in the commodity market to study the steps and procedures of the market and propose what is necessary to develop it and improve its performance.
3. The Forum recommends that banks and financial institutions deal with this exchange market as a substitute for the London Metals Exchange.

Eighth: Banking Applications of the rule "What is Forbidden Because It Will Lead to the Unlawful is Permitted in Case of Need"
(It was postponed).
Ninth: Zakat of Exploited Items and Their Applications in Financial Market Products:
(It was postponed).
Tenth: Promise and Bilateral Promise in Ṣukūk:
(It was postponed).