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EXCHANGE CONTRACT

Sale and Lease Contract

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EXCHANGE CONTRACT - SALE

Trading of
Gold and
Silver

Bay'
Tawarruq

Bay' Sarf

Bay' Inah



EXCHANGE CONTRACT - SALE

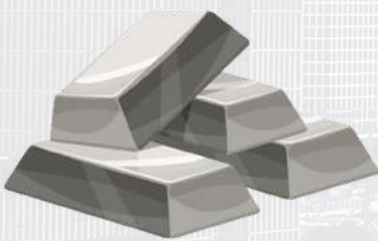
TRADING OF GOLD AND SILVER



INTRODUCTION



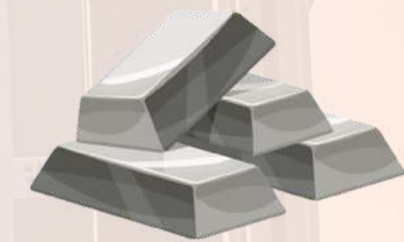
Gold **cannot** be sold for a different quality of gold



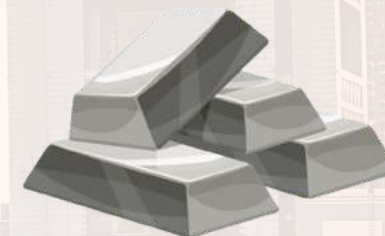
and silver **cannot** be exchanged for a different quality of silver



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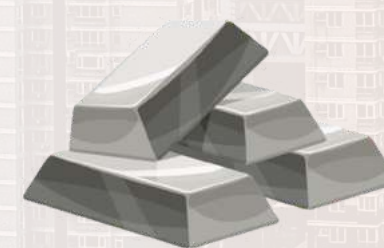
but in the other hand, gold may be purchased for silver



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and silver may be purchased with gold



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Both of these precious metals may be purchased with paper currency



EXCHANGE CONTRACT - SALE

TRADING OF GOLD AND SILVER



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Contracting Parties

- Have the legal capacity to enter into contract.
- Legal capacity is defined as the capacity to assume rights and responsibilities; to give legal effect to his action.
- Sound of mind and able to distinguish what is harmful and beneficial to one's interest.





EXCHANGE CONTRACT - SALE

TRADING OF GOLD AND SILVER



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Offer Acceptance

- Offer and acceptance entered and agreed upon between the contracting parties
- Expressed orally, in writing or by action
- Evidenced by appropriate documentation or record





Asset

- 
- Known,
 - In existence
 - Deliverable and
 - Owned by the contracting parties





EXCHANGE CONTRACT - SALE

TRADING OF GOLD AND SILVER



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Price



- Shall be determined
- Mutually agreed by the contracting parties
- Agreed at the time of entering into the sale and purchase contract



EXCHANGE CONTRACT - SALE

TRADING OF GOLD AND SILVER



OTHER CONDITIONS

- For the exchange of two *ribawi* items of the same type and same effective cause (*'illah*)
 - a. The exchange must be for equal quantity of the counter-values.
 - b. Must be “on the spot” transaction.
 - c. Both of the counter-values must be handed over at the time of the contract.
- For *ribawi* items with the same effective cause but of different type, it must be done “on the spot” where the exchange of counter values takes place at the time of the contract.
- “On the spot” and equal exchange, do not apply if the exchange involves different *ribawi* items of different categories. For example money with wheat.

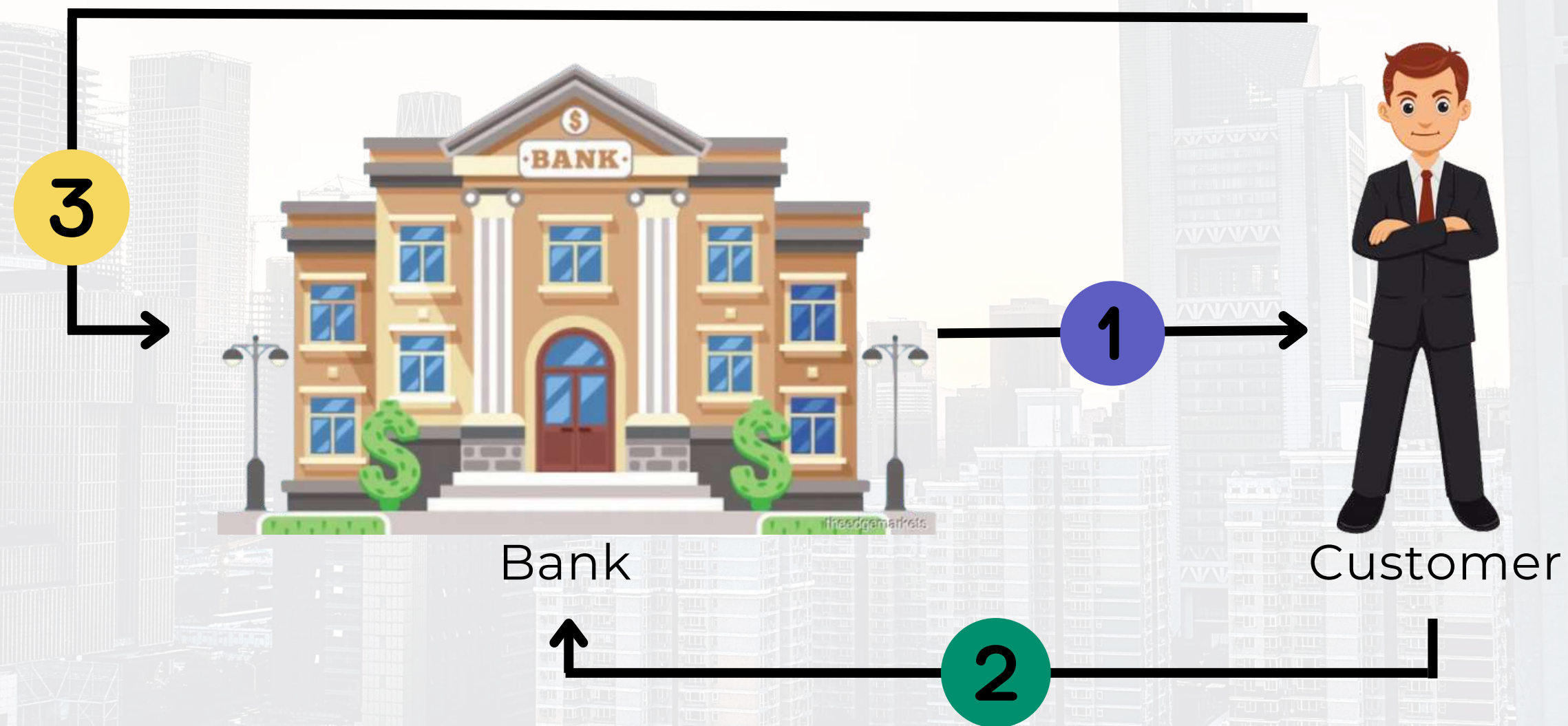


EXCHANGE CONTRACT - SALE

TRADING OF GOLD AND SILVER



APPLICATION





EXCHANGE CONTRACT - SALE

TRADING OF GOLD AND SILVER



PRODUCTS



Islamic Gold Account -i

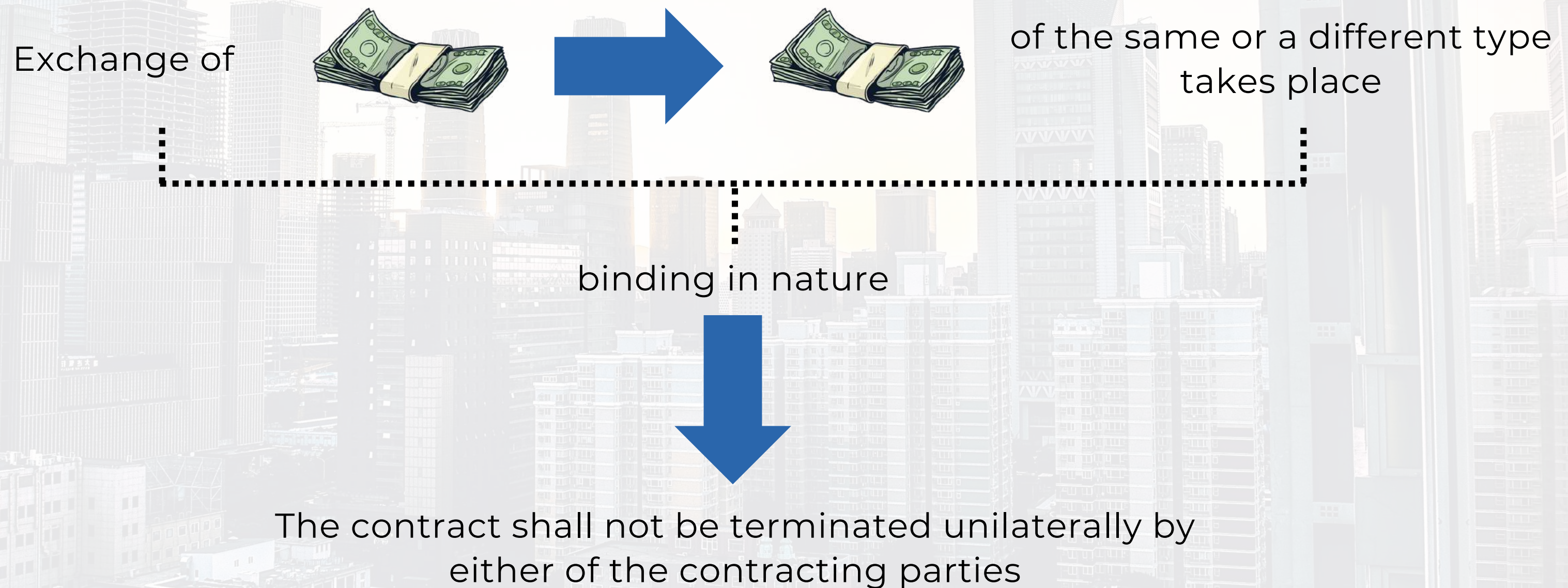


EXCHANGE CONTRACT - SALE

BAY' SARF



INTRODUCTION





EXCHANGE CONTRACT - SALE

BAY' SARF



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Contracting Parties

- Have the legal capacity to enter into contract.
- Legal capacity is defined as the capacity to assume rights and responsibilities; to give legal effect to his action.
- Sound of mind and able to distinguish what is harmful and beneficial to one's interest.



EXCHANGE CONTRACT - SALE

BAY' SARF



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Offer and Acceptance



- Shall be entered into by an offer and acceptance between the contracting parties
- Expressed orally, in writing or by action.
- Evidenced by appropriate documentation or record



EXCHANGE CONTRACT - SALE

BAY' SARF



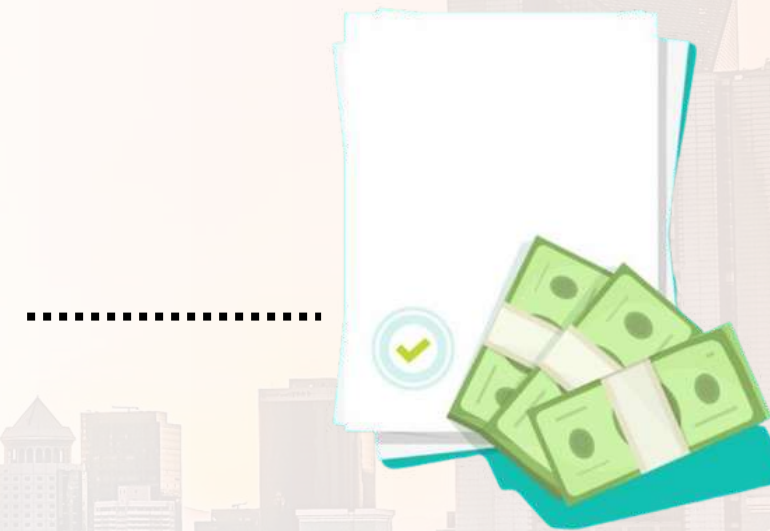
ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Asset



The money is known, in existence, deliverable and owned by the contracting parties.

The money shall be determined and mutually agreed upon by the contracting parties during the execution of the contract



The money shall be owned by the principal





EXCHANGE CONTRACT - SALE

BAY' SARF



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Price



Shall be determined and mutually agreed by the contracting parties at the time of entering into each of the respective sale and purchase contract.



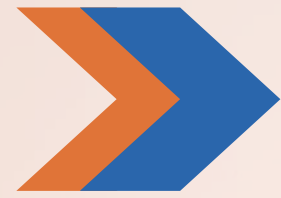
EXCHANGE CONTRACT - SALE

BAY' SARF



OTHER CONDITIONS

- Specific requirements:
 - a. The transfer of ownership of money must take place during the session
 - b. The transaction is affected on a spot basis
 - c. The exchanged counter-values are of the same type of money must be done by an equal unit of measurement (RM with RM)
- The possession of the money shall be either in the form of physical possession (*qabd haqiqi*) or constructive possession (*qabd hukmi*)
- The possession of the money shall take effect through any mechanism permitted by Shariah, as practice by the market (*'urf tijari*)



EXCHANGE CONTRACT - SALE

BAY' SARF

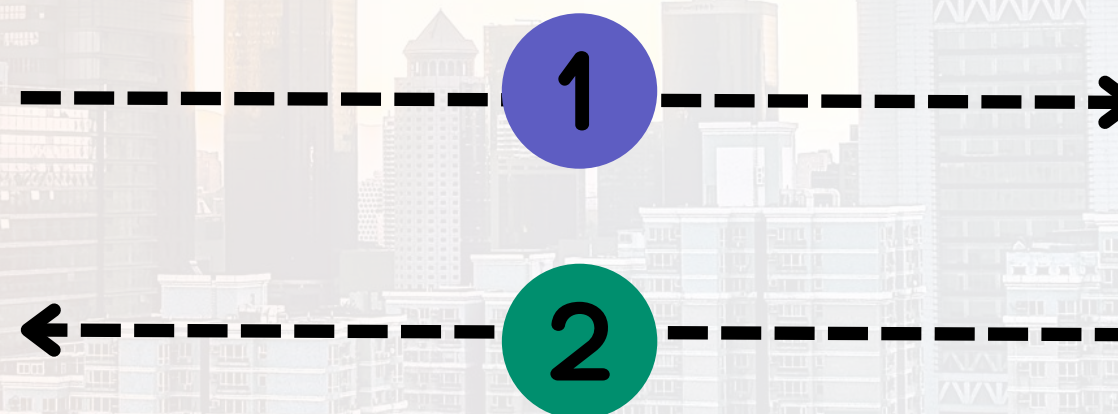


APPLICATION

Foreign Currency Exchange



Bank



Customer



EXCHANGE CONTRACT - SALE

BAY' SARF



PRODUCTS



1. Foreign Current Account - *i*
2. Foreign exchange spot transaction (FX spot)



EXCHANGE CONTRACT - SALE

BAY' TAWARRUQ



INTRODUCTION

- Involves the sale of an asset to a purchaser on a deferred basis
- Involves the sale of the asset to a third party on a cash basis
- Each sale and purchase contract in tawarruq is the transfer of ownership of the asset from the seller to the purchase for a consideration. Each of the sale and purchase contract shall not be terminated unilaterally by any of the contracting parties.



EXCHANGE CONTRACT - SALE

BAY' TAWARRUQ



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Contracting Parties

- Have the legal capacity to enter into contract.
- Legal capacity is defined as the capacity to assume rights and responsibilities; to give legal effect to his action.
- Sound of mind and able to distinguish what is harmful and beneficial to one's interest.
- The contracting parties may enter into the sale and purchase contract through an agent (*wakil*).
- The seller in the first sale and purchase contract shall not be the purchaser in the second sale and purchase contract



EXCHANGE CONTRACT - SALE

BAY' TAWARRUQ



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Offer and Acceptance



- Each sale and purchase contract shall be entered into through an offer and acceptance between the contracting parties.
- The offer and acceptance may be expressed verbally, in writing or any other methods together with appropriate documentation or record



EXCHANGE CONTRACT - SALE

BAY' TAWARRUQ



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Asset

- Known,
- In existence
- Deliverable
- Owned by the contracting parties
- Not *ribawi* items, asset under construction or debt in nature





EXCHANGE CONTRACT - SALE

BAY' TAWARRUQ



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Price

- Shall be determined and be mutually agreed by the contracting parties at the same time into each of the respective sale and purchase contract.
- Must disclosure the cost price and profit.
(*Murabahah sale*)





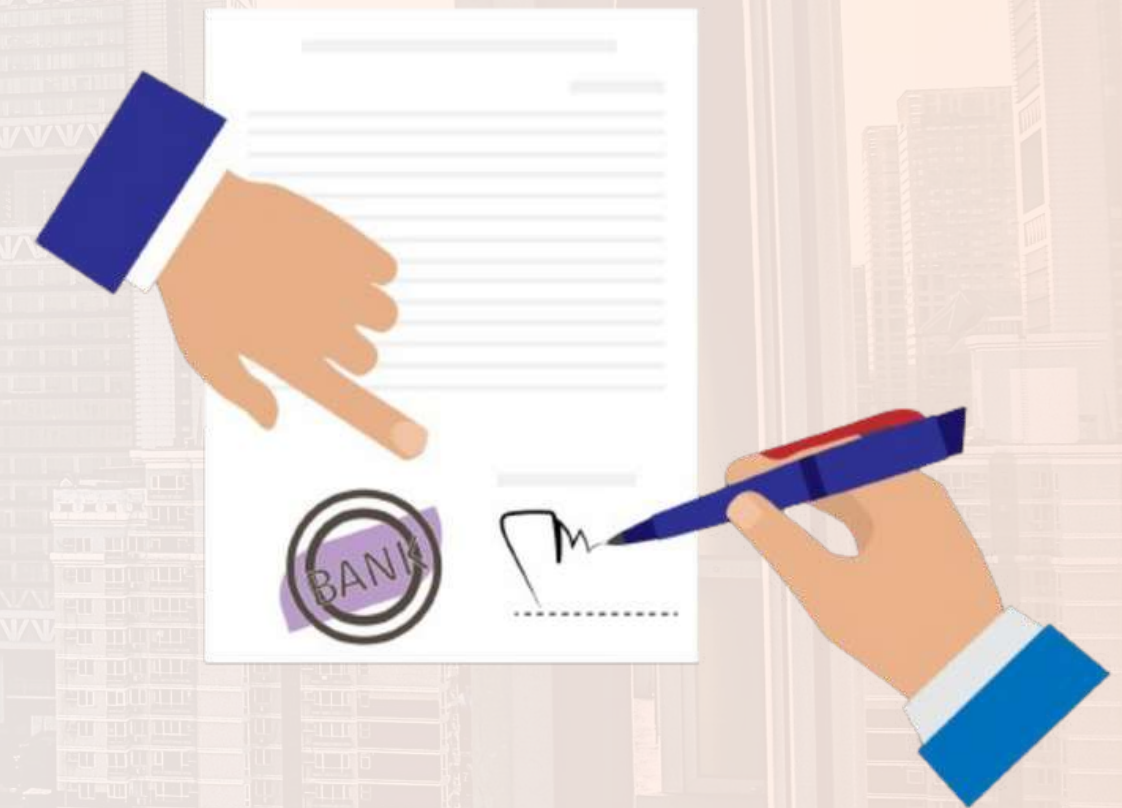
EXCHANGE CONTRACT - SALE

BAY' TAWARRUQ



OTHER CONDITIONS

- All sale and purchase contract shall be executed by entering into separate and independent sale and purchase contracts.
- No sale and purchase contract shall stipulate terms that restrict the purchaser from taking delivery of the asset or create an obligation to sell the underlying asset.





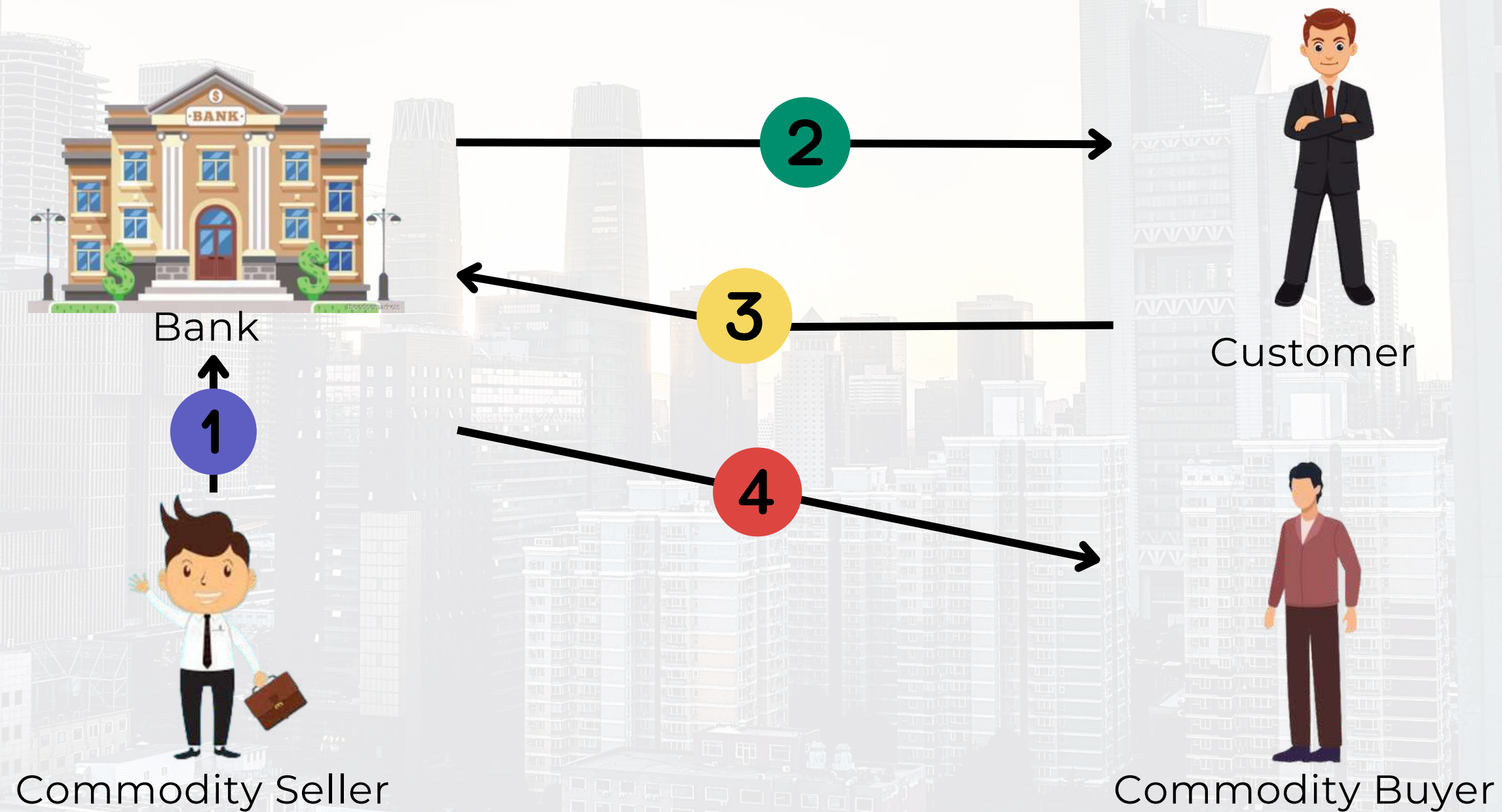
EXCHANGE CONTRACT - SALE

BAY' TAWARRUQ



APPLICATION

Modern Application of *Bay' Tawarruq*: Personal Financing-i





EXCHANGE CONTRACT - SALE

BAY' TAWARRUQ



PRODUCTS



- Personal Financing -*i*
- Cash Line -*i*
- Credit Card -*i*
- Term Financing -*i*
- Revolving Credit -*i*
- Property Financing -*i*
- Term Deposit -*i*
- Islamic Interbank Money Market
- Structured Product
- *Sukuk*



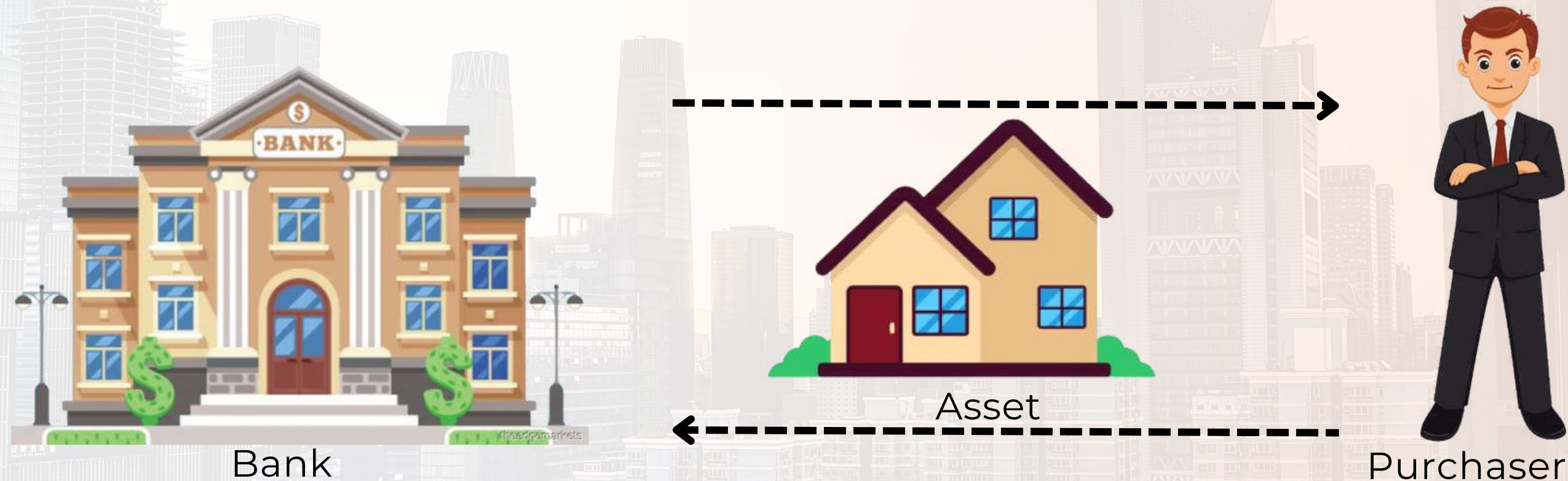
EXCHANGE CONTRACT - SALE

BAY' INAH



INTRODUCTION

The sell of an asset to the purchaser on a deferred basis



Each sale contract in *Bay' Inah* arrangement is binding in nature. Thus, neither of the sale contracts shall be determined unilaterally by any of the contracting parties.



EXCHANGE CONTRACT - SALE

BAY' INAH



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Contracting Parties

- Have the legal capacity to enter into contract.
- Legal capacity is defined as the capacity to assume rights and responsibilities; to give legal effect to his action.
- Sound of mind and able to distinguish what is harmful and beneficial to one's interest.





EXCHANGE CONTRACT - SALE

BAY' INAH



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Offer and Acceptance



- Offer and acceptance entered and agreed upon between the contracting parties
- Expressed orally, in writing or by action
- Evidenced by appropriate documentation or record



EXCHANGE CONTRACT - SALE

BAY' INAH



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Asset

- Must be recognized by the Shariah, valuable, identifiable and deliverable
- Already in existence and owned by the seller
- Trading of *ribawi* items shall strictly follow the exchange of ribawi items rule
- The ownership in the *Bay' Inah* asset must be effectively and exclusively transferred from the seller to the purchaser without any restriction or encumbrances



EXCHANGE CONTRACT - SALE

BAY' INAH



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Price

- The price and the currency used shall be determined and mutually agreed at the time of execution of each of the two independent sale contracts.





EXCHANGE CONTRACT - SALE

BAY' INAH



COMPLIANCE REQUIREMENTS

Shariah Advisory Council of Bank Negara Malaysia
Requirement on *Bay' Inah*

- Both sale contracts must be concluded in two clear and separate agreements and comply with the following:
 - a. The agreements must satisfy all necessary conditions of a valid sale and purchase contract
 - b. The agreements may be constructed based on accepted market practiced ('urf) mechanism (written documentation or verbal recording)
 - c. The agreements must be prepared and represented by two separate set of documents
- Both sale contracts must not create an obligation for both transacting parties to repurchase or resell the assets of sale.
- Execution or signing of both sale contracts must be done at different intervals.
- The seller must completely execute the first sale contract before both parties agree to enter into another sale contract.
- The transfer of ownership of the asset shall result in the purchaser having absolute rights and control on the asset.



EXCHANGE CONTRACT - SALE

BAY' INAH



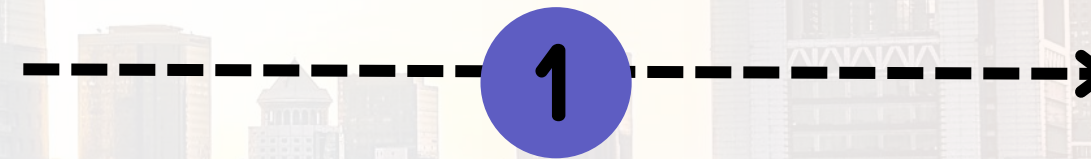
APPLICATION

Personal Financing - *i*

First Sale



Bank



Customer

Second Sale



Bank



Customer



EXCHANGE CONTRACT - SALE

BAY' INAH



PRODUCTS



- Personal Financing-*i*
- Cash Line -*i*
- Credit Card -*i*
- Term Financing -*i*
- Revolving Credit -*i*
- *Sukuk*



EXCHANGE CONTRACT - LEASE





EXCHANGE CONTRACT - LEASE

IJARAH



INTRODUCTION

The term ijarah is used for a different situations.

Ijarah al-'Amal

It refers to a hire contract to employ the services of a person on wages given as a consideration for his hired services

Ijarah Al-Ayn

It refers to a contract to transfer the usufruct of a particular asset to another person in exchange to a rent claimed from him



EXCHANGE CONTRACT - LEASE

IJARAH



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Contracting Parties

- A lessor and a lessee
- Shall have the legal capacity to enter into contract
- Shall be a natural person or a legal entity





EXCHANGE CONTRACT - LEASE

IJARAH



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Offer and Acceptance

- Shall be concluded by the contracting parties
- Must be expressed by appropriate documentation or any other methods which is acceptable by Shariah





EXCHANGE CONTRACT - LEASE

IJARAH



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Asset and Usufruct

- The asset and usufruct shall be valuable, in existence, identifiable, accessible and deliverable
- The asset and usufruct shall be owned by the lessor
- The usufruct must be accessible to the lessee within less period
- The leased asset must exist at the time of execution of contract except for *Ijarah Mausufah fi Dhimmah* (advanced rental)
- The leased asset shall be non-perishable



EXCHANGE CONTRACT - LEASE

IJARAH



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Rental

- Determined and agreed at the point of execution of the contract
- For rental with is determined by a specified benchmark or formula, the rental for the first period shall be specified
- The subsequent rental may be determined based on the agreed benchmark or formula and subject to minimum and maximum limit
- The lessor shall not increase the rental unilaterally
- The rental must be made timely, promptly with the agree method
- Any outstanding rental arising from non-payment shall be deemed as debt due from the lessee



EXCHANGE CONTRACT - LEASE

IJARAH



OTHER CONDITIONS

- The corpus (asset) of the leased property remains in the ownership of the lessor, its usufruct is transferred to the lessee
- The liabilities emerging from the ownership shall be borne by the lessor
- The liabilities emerging from the use of the property shall be borne by the lessee
- Lessor may appoint lessee as his agent to settle the expenses with reimbursement later via Service Agency Agreement
- Defect of the asset for reasons attributable to the lessee must be repaired and borne by the lessee
- Security deposit (*hamish jiddiyyah*) may be required to guarantee lessee's commitment to lease the asset after the lessor has purchased the property
- Compensation can be claimed from the security deposit in the event of refusal by lessee to fulfil his commitment. The excess must be returned.



EXCHANGE CONTRACT - LEASE

IJARAH



OTHER CONDITIONS

- Lessor may appoint lessee as his agent to settle the expenses with reimbursement later via Service Agency Agreement
- Defect to the asset for reasons attribute to the lessee must be repaired and borne by the lessee
- Lessor may demand lessee to provide security deposit (*hamish jiddiyah*) to guarantee lessee's commitment to lease the asset after lessor has purchased the required asset. Compensation can be claimed from the security deposit in the event of refusal by lessee to fulfil his commitment. The excess must be returned.





EXCHANGE CONTRACT - LEASE

IJARAH



APPLICATION

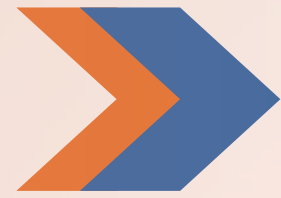
Types of Leasing

- **Operating Lease**

A lease contract without option of asset ownership transfer from lessor to lessee i.e. (the ownership of leased asset will remain with the lessor even after the lease period)

- **Financial Lease**

A lease contract with an option to transfer the ownership of the asset to the lessee

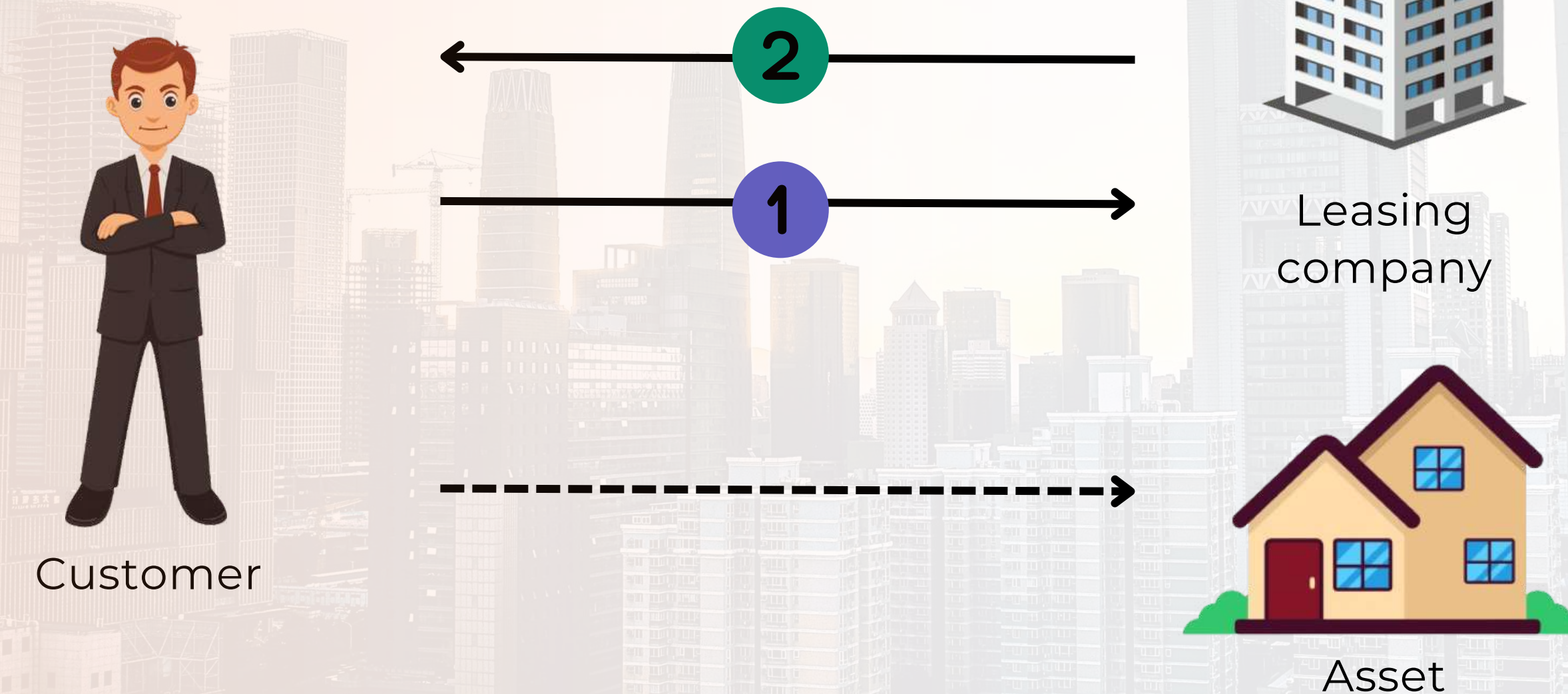


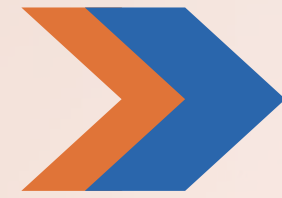
EXCHANGE CONTRACT - LEASE

IJARAH



APPLICATION





EXCHANGE CONTRACT - LEASE

IJARAH

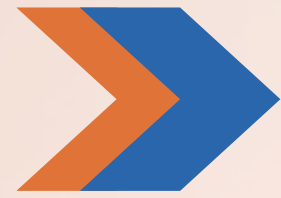


PRODUCTS



Example of *ijarah* based products are as follows:

- Equipment Financing
- Fleet Leasing



EXCHANGE CONTRACT - LEASE

IJARAH THUMMA BAY'



INTRODUCTION



Customer with car dealer



Customer with car



Customer



Bank



EXCHANGE CONTRACT - LEASE

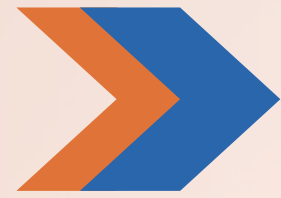
IJARAH THUMMA BAY'

ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Contracting Parties (Lessor and Lessee)

- A lessor and a lessee
- Shall have the legal capacity to enter into contract
- Shall be a natural person or a legal entity





EXCHANGE CONTRACT - LEASE

IJARAH THUMMA BAY'



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Offer and Acceptance

- Shall be concluded by the contracting parties
- Must be expressed by appropriate documentation or any other methods which is acceptable by Shariah





EXCHANGE CONTRACT - LEASE

IJARAH THUMMA BAY'



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Asset and Usufruct

- The asset and usufruct shall be valuable, in existence, identifiable, accessible and deliverable
- The asset and usufruct shall be owned by the lessor (owner)
- The usufruct must be accessible to the lessee (hirer) within lease period
- Asset shall not include an asset which is debt in nature
- The asset shall be non-perishable



EXCHANGE CONTRACT - LEASE

IJARAH THUMMA BAY'



ESSENTIAL ELEMENT AND NECESSARY CONDITIONS

Rental

- Determined and agreed at the point of execution of the contract
- For rental with is determined by a specified benchmark or formula, the rental for the first period shall be specified
- The subsequent rental may be determined based on the agreed benchmark or formula and subject to minimum and maximum limit
- The lessor (owner) shall not increase the rental unilaterally
- The rental must be made timely, promptly with the agreed method
- Any outstanding rental arising from non-payment shall be deemed as debt due from the lessee (hirer)



EXCHANGE CONTRACT - LEASE

IJARAH THUMMA BAY'



OTHER CONDITIONS

- The lessor (owner) leases the asset to the lessee (hirer) for an agreed period and amount
- The lessee (hirer) promises to buy the asset at the end of the rental period
- At the end of the rental period, the lessor (owner) shall sell the asset to the lessee (hirer) for an agreed price



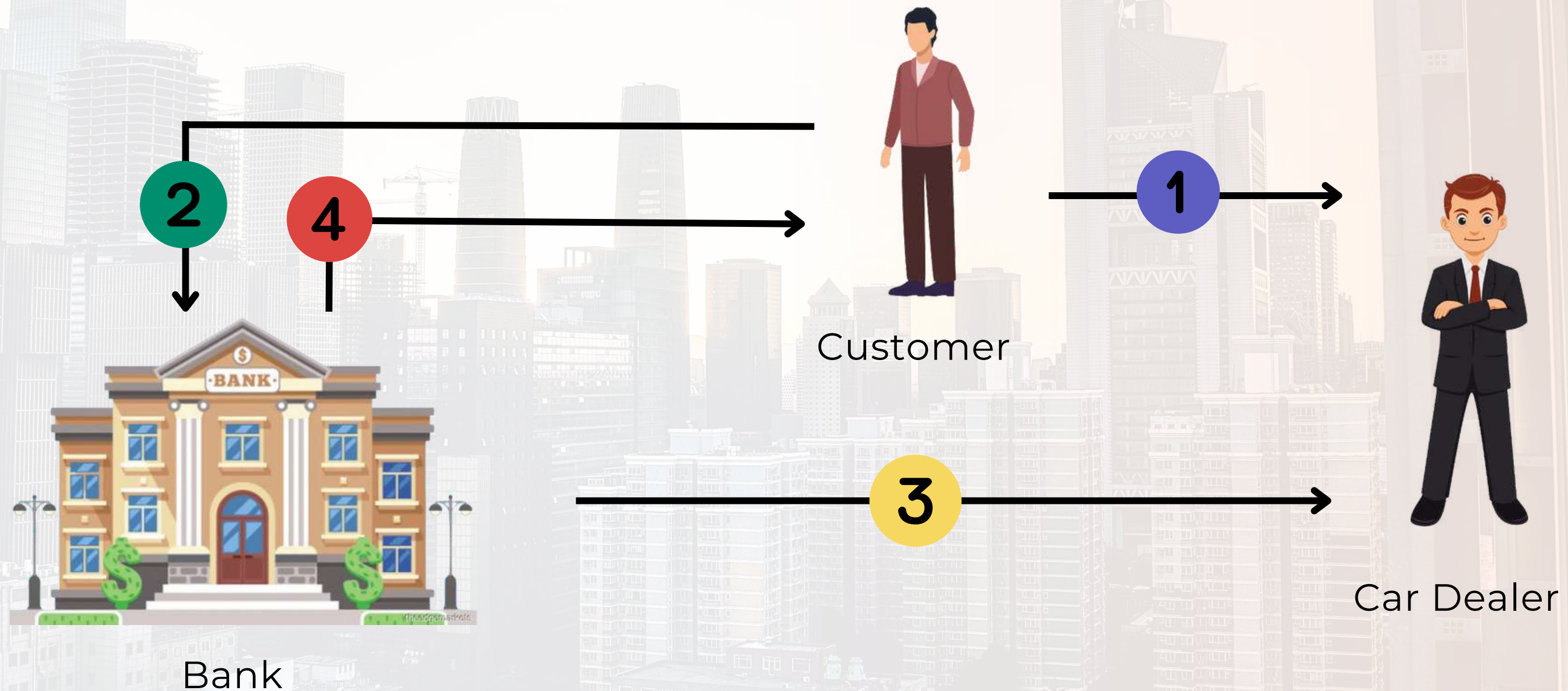


EXCHANGE CONTRACT - LEASE

IJARAH THUMMA BAY'



APPLICATION





EXCHANGE CONTRACT - LEASE

IJARAH THUMMA BAY'



PRODUCTS



- Vehicle Financing -i
- Home Financing -i

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**THANK
YOU**

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