

Bangladesh Bank
Head Office
Motijheel,
Dhaka-1000

IBRPD: Circular No. 01

Date: -----

Managing Director/Chief Executives Officer
All Scheduled Banks in Bangladesh.

Dear Sir,

Investment products: Bai-Murabaha.

Bai-Murabaha means a sale of goods under an arrangement whereby the seller is obliged to disclose to the buyer the cost of goods either on cash or deferred payment basis with a defined and agreed profit included in the sale price.

2. Prior Procedures of Bai-Murabaha Contract:

2.1 Expression of the customer's willingness to purchases an item through the Bank:

- a. Full-fledged Islamic banks and Islamic banking branches/windows of conventional banks shall purchase the item only in response to its customer's willingness and application as long as the product is compatible with Shari'ah principles.
- b. Goods to be traded must be real, but not necessarily tangible only. Credit Documents must not be a Murabahah goods.
- c. Customer may request the bank to purchase the item from a particular source of supply other than customer or his agent. However, the bank may decline the request if the customer refuses the offer from other sources of supply that are more suitable for the Bank.
- d. Bai-Murabaha requires an offer and acceptance which will include certainty of price, quantity, quality of goods, place of delivery, and date on which the price (if deferred) will be paid.
- e. A standardised unilateral undertaking (Annexure-----) to be signed by the customer that the customer shall buy the items from the bank after purchase from the supplier.
- f. The bank may receive Hamish Jiddiyyah (security deposit); Arboun (Earnest money) and promissory note as securities of Murabaha transaction from the purchase orderer (customer). In addition to that any eligible security as per laws and regulations of the country may be used as security purpose.
- g. If customer fails to execute Murabaha sale contract, bank will deduct the amount (difference between the cost of the item borne by bank and the price at which the item is sold to the third party) from the Hamish Jiddiyya. In case of Arboun, bank may retain the whole amount, but treatment like Hamish Jiddiyya is preferable
- h. When the customer has fulfilled his promise and executed the contract of Murabahah, the Bank must refund Hamish Jiddiyyah to the customer. The Bank is not entitled to receive any amount out of Hamish Jiddiyyah except in the case of breach of promise as laid down in item.

- i. The invoice issued by the supplier will be in the name of the Bank as the commodity would be purchased by bank or by an agent on behalf of such Bank. It is preferable that the payment for such commodities must be made by the Bank directly to the supplier.

2.2 Responsibilities of a bank regarding the application of customer:

- a. If a customer accepts an offer from supplier whether the offer is addressed to that customer or is open, the sale is concluded directly between the supplier and customer. In such case, the bank is not permitted to undertake a murabaha transaction on the same item.
- b. If a sale transaction takes place by supplier, the item be wholly or by way of majority [more than 50%] owned by the customer, such transaction must be void as it is tantamount to 'Inah (buy back).
- c. If the supplier (owner) of the item has a blood relationship or marital relationship with the customer, before entering into Murabaha, the bank shall ensure that the sale is not fictitious and not a trick for Bai al-Inah.
- d. If Murabaha goods are gold, silver or similar kinds, the payment must be on spot basis.
- e. Issue of negotiable Sukuk where the underlying asset consists of Murabaha receivables or other receivables only is prohibited.
- f. It is not permitted to renew a Murabaha contract on the same commodity that was the subject matter of a previous Murabaha contract with the same customer.

2.3 The responsibility of the customer:

- a. The document of promise to purchase (signed by the customer) should not include a bilateral promise which is binding on both parties (the Bank and the customer). Whether Bilateral promise is permissible if both parties have option to cancel the promise unilaterally.
- b. Terms of the promise (deferment of payment, the mark-up or other terms) may be revised by mutual consent of the both parties before execution of the Murabaha transaction.
- c. The Bank may purchase the item from a supplier on a "sale or return" basis, i.e., with the option to return it within a specified period. If the customer then does not purchase the item, the Bank is able to return it to the supplier within the specified period with the compliance of Shari'ah.

2.4 Fees and expenses:

- a. The Bank will not receive any fee for commitment and credit facility from the customer.
- b. The expenses (at actual) of preparing the documents of the contract between the Bank and the customer are to be borne evenly by the two parties (the Bank and the customer), provided they do not agree that the expenses are to be borne wholly by one party,
- c. Under syndicated financing Murabaha contract, the members will pay the arrangement fee to the lead arranger

2.5 Guarantees related to Murabaha transaction:

- a. It is not permitted to impose a guarantee on a customer regarding hazards that may affect the item such as damage and destruction during a period of shipment or storage.
- b. The buyer may be required to furnish security in the form of pledge, hypothecation, lien, mortgage or any other form of encumbrance on asset. However, the mortgagee or the charge-holder shall not derive any financial benefit from such security

3. Acquisition and Possession of the Asset:

3.1 The acquisition of the asset:

- a. The subject matter must be in existence at the time of sale.
- b. The Bank shall sell any item in a Murabahah transaction after purchase contract and acquisition. The Murabahah is considered void in case the contract with the supplier is void, because in this case the Bank would fail to acquire complete title to the item.
- c. The contract should be completed through exchanging of the notices of offer and acceptance, either in writing or by any form of modern communication customarily practiced according to known principles.
- d. The Bank itself purchases the item directly from the supplier. Bank may carry out the purchase by authorizing an independent agent, other than the customer (purchase orderer), and the customer should not be appointed to act as an agent except in case of a dire need. Furthermore, the agent must not sell the item to himself. Rather, the Bank must first acquire title of the item and then sell it to the agent(customer).
- e. If bank appoints customer as an agent, in case of dire need, the following conditions must be abide:
 - (1) Bank shall appoint customer as an agent according to the manual that prepared by the management, vetted by the SSC, approved by the board and approved policy must be submitted to the IBRPD;
 - (2) Bank must pay to the supplier's account directly not to the agent's (customer's) account; and
 - (3) The Bank should obtain from the supplier the documents that confirm that a sale has taken place.
- f. The liability of the Bank and the liability of the customer as agent regarding risk attaching to the purchased item must be separate by having an interval in time between the performance of the agency contract and the execution of the contract of Murabahah.
- g. All documents and contracts concerned with the execution of the sale of the item must be in the name of the Bank and not in that of the customer, unless the latter acts as the Bank's agent in acquiring the item.
- h. It is permissible, at the time when the Bank appoints someone as its agent for the acquisition of the item, that the two parties agree to authorize the agent to carry out the acquisition of the item as agent, without disclosing the existence of the agency agreement. In this case, the agent will act as principal in dealing with other parties, and will undertake the purchase directly in his name but on behalf of the Bank as principal. However, it is preferable that the agent's role be disclosed.

3.2 The Bank's taking possession of the asset or good, prior to its sale by Murabahah.

- a. Being a sale transaction, it is essential that the commodities which are the subject of sale in a Murabaha transaction, must be existing, owned by the seller and in his physical or constructive possession. Therefore, it is necessary that the seller must have assumed the risks of ownership before selling the commodities to the buyer/customer.
- b. The possession of commodity should be in the physical or constructive (bill of lading, warehouse receipt, registration of mortgage, hypothecation of movables, bank draft or personal cheque, credit card payment, deposit by the depositor etc.) or determined by the customs.

- c. As the Bank is the owner of the subject matter of Murabahah its insurance lies with the Bank before selling it to the customer. Any amount recovered from insurance at this stage will belong to the Bank exclusively and the customer has no claim to it even if the recovered amount exceeds the purchase price. The Bank is entitled to include the expenses of insurance in the Murabahah cost price to be subsequently added to the price of Murabahah. Insurance must be on the basis of Takaful whenever possible.
- d. Agency in carrying out the procedures of obtaining insurance cover for the item at the stage of the Bank's acquisition of ownership of the asset is permitted. However, it is obligatory that the Bank should bear the cost of insurance.

4. Execution of a Murabahah Contract

- a. Bank must not consider that the contract of Murabahah is automatically concluded by its mere taking possession of the asset. The Bank may not force a customer to take delivery of the asset and pay the Murabahah selling price, if the customer refuses to conclude the Murabahah transaction.
- b. The Bank is entitled to receive compensation for any actual damage it has incurred as a result of the customer's breach of a binding promise. The compensation consists of the customer reimbursing the Bank for any loss due to a difference between the price received by the Bank in selling the asset to a third party and the original cost price paid by the Bank to the supplier.
- c. The Bank is obliged to disclose to the customer if purchased on deferred payment basis. The Bank has the obligation to disclose any normal (transportation expenses, storage expenses, fees for letters of credit and insurance premiums) expenses relating to the item accepted by customer.
- d. The Bank is entitled to calculate only the direct costs that are paid to a third party. i.e. its own staff expenses, fixed cost of the Bank and the like should not be added. .
- e. Discounts from supplier (If any) would be passed on to the customer at the time of Murabaha Sale by reducing the cost of sales.
- f. Both the price of the item and bank's profit on the transaction must be fixed and known to both parties at the time of signing the contract of sale. Determination of price by making the profit dependent on any future variable condition is not permitted
- g. Bank must not charge any extra payment due to extra time or delay payment.
- h. Bank shall be responsible for pre-existing hidden defects which appear after the conclusion of the contract, but not responsible for new defects after conclusion of the contracts when goods are belongs to the customer's custody.
- i. In Murabaha goods can sold either on cash basis (payment will be made within 5 working days) or deferred payment basis. in case of defferd payment, payment will be made within 24 months, duration of every deals will depend upon business cycles but not more than 6 months..

5. Guarantees and Treatment of Murabahah Receivables

- a. If one or more installment (deal/s) as per agreement become overdue without any valid reason the remaining amounts will become overdue.
- b. The guarantee of Murabaha may be cheques, promissory notes, third party guarantee or any type of mortgaged property. In case of third party guarantee, only documentation charge shall be reimbursed by the customer, without payment of any guarantee fee. It is stipulated

that if customer becomes default, bank may able to sell the mortgaged property for the purpose of recovering the amount due without recourse to the court. Bank will not execute this guarantee before the due date.

- c. The contract of Murabahah must consists of an under-taking from the customer to pay an amount of money or a percentage of the debt, on the basis of undertaking to donate it in the event of a delay on his part in paying installments on their due date. The Shari'ah Supervisory Board of the Bank must have full knowledge that any such amount is indeed spent on charitable causes, and not for the benefit of the Bank itself.
- d. Extend the date of payment of the debt in exchange for an additional payment in case of rescheduling/re-fixing of deals is prohibited, irrespectively of whether the debtor is solvent or insolvent.
- e. When there is default in payment by the customer with regard to installments of the selling price that are due, the amount due is just the amount of the unpaid selling price. Bank must not impose any additional payment on the customer for the Bank's benefit. This provision is, however, subject to item 4.c.
- f. If the customer makes early payment the Bank has the sole discretion in allowing them the rebate but it must not mentioned in the agreement and should not proportionate to time and amount it must be lump-sum.
- g. If the customer wishes to pay in a currency different from Murabahah currency, it is permissible, with the agreement of the Bank at the time of payment on condition that the payable debt is paid in full or the amount agreed to be paid in different currency is paid in full and no part of the currency exchange amount remains due. This currency exchange may not be stipulated in the contract of Murabahah.

6. Deferred Murabaha payment method is called the murabaha muajjal. It is not a separate bai mode in Islamic banking. As Bai muajjal is not worldwide recognized and there is no international or local standard on this issue. So it is preferable that Bank should not invest or make finance by the name of Muazzal but it should be Bai Murbah;

7. Import financing operations

7.1 Import under bai-murabaha

7.1.1 Investment Products for Import under Murabaha Mode

In the import business, Bai-Murabaha investment mode shall be a single deal concept at the time of opening L/C, Bills and Shipment. Bai-Murabaha import businesses are as:

A. Murabaha Import L/C

- This investment is allowed while the client needs payment of import in advance at the time of opening LC or during the LC stage.
- For purchasing the Foreign Currency before receiving import Bills.

B. Murabaha Post Import (MPI)

Subject to the client's application, bank may allow a Bai-Murabaha investment facility under one agreement (a single deal) concept to the importer after shipment of the goods for payment of the invoice values of the goods to the seller/supplier including custom duty, VAT, and other expenses.

- It involves purchase of a commodity by the bank on behalf of its client and resale of the same to the client later on a Cost-plus-profit basis.
- Trading items and raw materials for working capital are usually dealt.
- Sale of Murabaha goods may be on cash or credit basis

C. Murabaha Import Bills (MIB)

- This is an interim investment under Bai-Murabaha mode.
- This investment is allowed while the client fails to place funds for foreign payment in time.
- MIB is not an intended investment; rather, this is a situational or forced investment.
- The governing rules and procedures of MIB are the same as MPI.
- Investment under MIB is made in BDT.
- Bank is allowed to charge penalty/fees or anything like this but it is not permitted to credit to income account.

D. Murabaha Investment in Foreign Currency (MFCI)

To settle the import bills getting investment facilities in Foreign Currency is allowed under Bai-Murabaha mode. Export and Import clients having limit and ability to repay/adjust F.C. investment from their export proceeds, exporters who are eligible for the Export Development Fund and The clients of the Offshore Banking Unit (OBU) are eligible for this Investment.

Features of the MFC Investment:

- The investment is allowed for settlement of usance/sight import Back to Back (BB) bills and import bills under OBU operation.
- Duty, VAT and other related expenses payable in BDT shall be borne by the client.
- The FC investment is recovered from the export proceeds of the clients, from the client's own FC balance, or by purchasing the FC from other sources.
- The profit/income is realized at the time of adjustment of the deal and transferred to Treasury Division, as fixed on a deal-to-deal basis.
- The FC Investment, if it becomes overdue due to export failure / non-repatriation of export proceeds, is adjusted by purchasing FC from the client's own sources or creating Quard as per Head Office/Management approval on a case-to-case basis.

7.2 Imports Under Bai-Muajjal

7.2.1 Bai-Muajjal Back-to-Back Bills

For some unavoidable situations, the export proceeds are not available for such payment, the bank is required to settle matured Back-to-Back import bills payment by creating a forced investment. This sort of forced payment of matured Back-to-Back import bills is settled by creating a Bai-Muajjal Back-to-Back Bills investment.

7.3 General Terms and Conditions for Import under Bai-Muajjal Mode

- Signing a Bai-Muajjal Agreement (Deal-wise) between the bank and the client for allowing the investment facility for import.
- The Bank must import the goods as per specifications of the Client to acquire ownership of the same before signing the Bai-Muajjal agreement with the Client.
- The Bank must deliver the specified Goods to the Client on the specified date and at the specified place of delivery as per Contract.
- In case of import/ Purchase/ Lifting or import against permit/ License/ IRC/ Allotment(s) which is in the name of the Client, the Bank must obtain a valid Letter of Authority from the allottee/ permittee/ IRC holder to import / purchase / lift the goods by the Bank before opening L/C and making payment. Otherwise, import/purchase of those goods by the Bank will not be valid as per Shariah.
- Title of goods in all transport and delivery documents should be in the name of the bank/branch to acquire ownership of the goods by the Bank.
- All agreements and contracts must be filled up accurately. Blank and unsigned agreements and contracts do not complete the formalities of Shariah.
- Profit on the bank's investment in the purchase of Foreign Currency Funds or involvement of the Bank's Funds, as the case may be, should not be charged separately.
- The sale price should include the cost price as per indent/ proforma invoice plus other anticipated items of costs/expenses up to the time of delivery of the consignment plus the profit of the bank.
- Duration of the investment deal of import under Bai-Muajjal mode should be 6 Months to 1 year or as determined by Bangladesh Bank.
- For early adjustment of the Import under Bai-Muajjal Investment, the bank may allow a rebate/ Ihsan.
- The bank must comply with all terms and conditions of the Guidelines for Foreign Exchange Transactions 2018 of Bangladesh Bank, Import Policy Order (IPO), and other related instructions/conditions/formalities of the regulatory authorities for performing import business under Bai-Muajjal mode.