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TKBB

Participation Finance Standards

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MURABAHAH STANDARD

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Contents of the Standard

This standard contains the nature of the murabahah transaction in participation banking and the fiqh provisions that must be observed during the performance of the transaction.

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1. Definition of Murabahah

Murabahah is the act of selling a commodity in cash or on a deferred basis by stating its purchase price or cost to the client and adding a certain profit on it. As applied in participation banking, murabahah is a set of transactions consisting of the purchase of a commodity from the first seller by the participation bank, usually in cash, and the sale of it to the final client on a term basis by adding a certain profit to the purchase price or cost, with the client's order and promise to buy. In the current literature, this transaction set is called "murabahah", as well as "financial murabahah", "banking murabahah", "contemporary murabahah", or "murabahah to the purchase orderer" (بيع المرابحة للآمر بالشراء).

2. Provisions Regarding Murabahah Transactions

2.1. General provisions

2.1.1. The general conditions sought for the process of the formation and validity of the sales contract must be met in both of the sales contracts in the murabahah transaction set.

2.1.2. The purchase price or cost of the commodities and the profit added to them must have been stated to the final client by the participation bank.

2.1.3. In order to determine the purchase price or cost of the commodities objectively, the selling price in the first contract should be from the fungible commodities (money or standard commodities).

2.2. Provisions regarding the parties

2.2.1. The sales contracts between the first seller and the participation bank and then between the participation bank and the final client should be separate and independent from each other.

2.2.2. There should not be pre-made sales contracts between the first seller and the final client on the same commodities at the time of the murabahah transaction. In the event that such a contract exists, murabahah transaction cannot be performed with the participation bank. In order for this transaction to be performed, the existing sales contract must be mutually terminated in the way and manner it was made, and this issue must be documented. That the first seller and the final client make some preliminary negotiations regarding the purchase and sale and clarify their offers cannot

be considered as a contract unless it is an offering and acceptance that definitively forms a sales contract.

2.2.3. In the murabahah transaction, the first seller and the final client should not be the same (real or legal) person. In case there are legal persons with the same dominant shareholders, the participation bank should investigate this issue and determine that there is no collusion in the transaction.

2.2.4. In the event that there is a close relationship between the first seller and the final client, such as marriage, kinship, affinity, partnership, etc., it should be investigated and determined by the participation bank that there is no collusion in this sale.

2.3. Provisions regarding the promise

2.3.1. The verbal or written statement of the final client, stating that it will buy a specific commodity or a commodity whose qualities are known from the participation bank, is considered as a promise. The promise cannot contain statements that can be understood as a contract binding the parties, and it does not oblige the parties to form the contract later.

2.3.2. The client does not have to buy the commodity s/he had promised to buy. However, the client who withdraws from purchasing the commodities is obliged to compensate for all the actual losses suffered by the participation bank for this reason.

2.4. Provisions regarding the subject of the murabahah transaction

2.4.1. The general conditions sought in the commodities subject to the sales contract must also be found in the commodities subject to the murabahah transaction.

2.4.2. The commodities must be suitable for deferred sale, meaning that they cannot be gold, silver, or money.

2.4.3. Assets under construction cannot be subjected to the murabahah transaction on the basis of their completed states. The assets whose construction is partially completed can be subjected to murabahah in their current concrete state.

2.4.4. Multiple commodities can be the subject of a single murabahah transaction.

2.5. Provisions regarding the performance of the murabahah transaction

2.5.1. In order to conclude the final sales contract between the participation bank and its client within the murabahah transaction set, the commodities subject to murabahah must have been purchased by the participation bank and received in real terms or by default. It is more appropriate to make this purchase and sale through tools and methods that can be used as a means of proof when necessary. In the event that the participation bank purchases through an agent, the provision in Article 2.8.1 of this standard is taken into account.

2.5.2. The contract takes place with the offer and acceptance made between the parties. These statements of intent can be made verbally or in writing, provided that they can be proved, or can be made via audio and/or video communication tools or systems such as SMS, e-mail that provide electronic communication.

2.5.3. The participation bank must make the sales contract to be made with the final client in the murabahah transaction after purchasing the commodities in question and deliver the commodities to the final client or their agent following this contract.

2.5.4. When making a sales contract with the final client in the murabahah transaction, the participation bank may receive an earnest payment from the final client in cases where registration, etc. is needed for the contract to become official.

2.5.5. The final client must be clearly informed about the amount or type of profit added by the participation bank to the purchase price or cost of the commodity in the final sales contract. The mentioned profit can be a certain amount or it can be determined as a certain percentage of the cost of acquiring the commodity by the participation bank.

2.5.6. The sales price in the final sales contract should not be linked to an index to be formed at a future date but should be finalized at the time the contract is made.

2.5.7. In case there is a change in the direction of decrease or increase in the cost price due to the first sale following the completion of the murabahah

transaction, this change is reflected in the price in the sales contract made with the final client. The parties may waive their rights arising from the price change and the party that does not give consent to the price change may terminate the contract.

2.6. Provisions regarding liability and right of option arising from defects

2.6.1. In case the client detects a pre-contractual defect in the purchased commodity, then they can use their rights from the right of option on the defect. In the event that the client is aware of any defects of the commodity before or after the contract, the consent of the client voids the right of option.

2.6.2. Although the liability arising from the defect lies with the participation bank, which is in the position of the seller, as a rule, it can be added to the contract between the bank and the final client that the participation bank will not be liable for the defect.

2.6.3. In the event that the client wishes to apply to the first seller due to the defect, conditions that the bank will give the client power of attorney and the costs required by this will be borne by the client can also be included in the contract.

2.7. Provisions regarding the payment

2.7.1. It is essential that the payments are made on time. A contract that increases the amount of debt in return for maturity extension cannot be concluded between the participation bank and the client.

2.7.2. An article may be added to the final sales contract stating that in case of debts are not paid on the specified dates, the participation bank will receive a certain amount as a delay penalty. However, the participation bank cannot benefit from this amount, which is taken as a delay penalty, except up to the inflation rate and the expenses it has incurred for the collection of its receivables.

2.7.3. In case the client pays its debts before the maturity date, the participation bank may make a reasonable discount for these installments paid before the maturity date. In this discount, the profit amount taken into account by the participation bank for the mentioned installments is taken into

consideration. As a creditor, the participation bank can also make discounts regardless of any conditions.

2.7.4. The participation bank may stipulate that all installments will become due in the event that the client fails to fulfill his/her contractual obligations, does not pay the installments, or delay them without a valid excuse even after a certain period of time has passed, or in case it is understood that his/her financial situation will deteriorate depending on the concrete data and that s/he will delay the payment of the installments. However, the profits of the installments that are not matured yet are deducted from the receivables that became due based on this condition. The participation bank reserves the right to claim losses arising from the default of the client.

2.8. Provisions regarding the power of attorney

2.8.1. It is essential that the participation bank purchases the commodities subject to murabahah itself and in case it is to buy them through its agent, this agent should be a third person other than the final client to whom the participation bank will sell the commodity in question afterward. In cases where this provision is not applicable, a power of attorney limited with purchasing can be given to the client. In both cases, the sale of the commodities to the final client must be made by the bank, and the price of the commodities must be paid to the first seller by the bank.

2.8.2. In the event that it creates a serious difficulty for the bank to make separate payments for each purchase due to the fact that the first purchase transactions to be made on behalf of the bank in the transaction set are occasionally related to many sellers and/or products, a power of attorney for payment on behalf of the bank may also be issued to the final client, provided that it is relevant only with this obligatory situation.

2.9. Provisions regarding assurances

2.9.1. The participation bank may request any kind of assurance that does not violate the principles and standards of participation banking from its clients, in order to secure its receivables originating from the murabahah transaction.

2.9.2. The participation bank may obtain a security deposit to be used to compensate the loss it may suffer in the event that the client withdraws from fulfilling its purchase promise. For this purpose, a certain amount can be blocked in the client's private current or participation account in the participation bank, or a new account can be opened, and the blocking transaction can be made on this new account. The security deposit is only used to compensate the loss caused in the event that the client does not purchase the commodities from the participation bank, and it is not used to compensate the profit deemed to be deprived (see Article 2.3.2). Following the compensation of loss, the remaining part of the security deposit is returned to the client. In case the client fulfills its promise and completes the murabahah transaction, the security deposit can be deducted from the sales price.

2.10. Provisions regarding commissions and expenditures

2.10.1. While the participation bank determines the cost in the murabahah transaction, it can only add the direct expenses related to the commodity to the commodity, to the price it pays for the commodity that it purchased. Research expenses and operation expenses regarding the reliability of the client and the nature of the commodity can be added to the total sales cost of the commodity within this framework. Apart from this, no commission or fee can be charged to the client under the name of expense or cost.

2.11. Provisions regarding insurance

2.11.1. The participation bank is responsible for any damage that may occur in the period until the purchased commodities are delivered to the client. In case the participation bank wishes to insure this commodity, it must first do so through participation insurance.

2.11.2. In the event that the commodity is subject to the murabahah transaction is to be insured, it is essential that this is performed by the current owner of the commodity. Accordingly, the insurance liability and expenses of the commodities subject to murabahah belong to the participation bank before it is sold to the final client.

2.11.3. In cases where the participation bank purchases a commodity with the client's commitment in accordance with the rules of fiqh but cannot

officially own it because of the legislation and therefore cannot insure it on its own behalf, the insurance of the commodity can be performed by the client as an agent, the cost of which will be covered by the participation bank.

2.11.4. Insurance costs incurred by the participation bank can be added to the cost of the commodities.

2.12. Provisions regarding the termination of murabahah

2.12.1. Murabahah can be terminated with the mutual consent of the parties. In addition, in case there is a right of option or condition that authorizes one of the parties to terminate the contract, the authorized party may exercise its right of termination.

Sharia Bases of the Murabahah Standard

1. Sharia Bases of the Definition of Murabahah

The subject of this standard is a financial murabahah transaction that consists of the purchase of a commodity from the first seller in cash by the participation bank and the sale of it to the client on a maturity basis by adding a certain profit on the client's order and promise of purchase. Even though it is not a common form of contract in the classical fiqh books, the murabahah was brought to the agenda from time to time and was considered legitimate by the majority of the fuqaha. In classical sources, when one looks at murabahah, they will see mostly that it refers to a special contract of sale that resembles today's murabahah in some aspects but also has aspects that are different from it. In order to distinguish these two transactions from each other in contemporary literature, it should be explained that classical murabahah, fiqhî murabahah/simple murabahah (المرابحة العادية) are commonly used for murabahah in classical fiqh books, and financial murabahah and contemporary murabahah are used for the murabahah that is the subject of this standard. Accordingly, classical murabahah is the act of selling a commodity in cash or on a deferred basis by stating its purchase price or cost to the client and adding a certain profit to it. There are two parties in this transaction, namely the seller and the client. On the other hand, financial murabahah is the purchase of a commodity from the first seller in cash by the participation bank with the order of the client and the promise of purchase, and the sale of it to the client on a maturity basis by adding a certain profit to it. Therefore,

in classical murabahah, there is only a single sales contract between the seller and the client, whereas, in financial murabahah, there is a set of transactions that start with the purchase promise of the final client and get completed with two sales contracts. What is meant by the term murabahah in the text of this standard is financial murabahah.

2. Sharia Bases of the Provisions Regarding Murabahah Transactions

2.1. Sharia bases of the general provisions

In a sales contract, the seller can either sell the commodities subject to the contract without specifying any cost regarding the commodities on a negotiated basis or sell the commodities by stating the cost or purchase price. Sales performed as a result of the seller stating the cost of the commodities or the purchase price and the client purchasing the commodities by relying on this statement are called trust-based sales. In the murabahah transaction, the final client knows the cost of the commodity to be purchased and the profit added to it by relying on the seller's statement and acts accordingly. Therefore, in case the seller does not correctly inform the client about the cost of the commodities and misleads them since the murabahah is a trust-based transaction, then the final client gets certain powers such as terminating the purchase transaction.

In the murabahah transaction set, a commodity purchased in line with the buyer's purchase promise is sold to the buyer by adding profit to its price or cost. The cost must be known clearly in order to determine the profit to be added to the cost of the first sale. For this reason, the price in the first sale must be from the fungible commodities. In case the price in the first contract is non-fungible since the cost price of this non-fungible commodity cannot be known clearly, the added profit cannot be determined clearly. The client must know the purchase price or the cost of the commodity subject to the sale so that the transaction can be a valid murabahah. As a matter of fact, there is no such requirement in a sale contract (musawamah) made without stating the purchase price or cost to the client.

2.2. Sharia bases of the provisions regarding the parties

The murabahah transaction set consists of a promise and two separate sales contracts that involve the purchase of the commodities from the first seller by the participation bank and then the sale of these commodities to the final client, upon the client's

purchase promise. These contracts should be independent of each other and in a specific order. The client's purchase promise is not a sales contract.

It is necessary for the final client and the first seller to have a preliminary meeting before the transaction, to negotiate and clarify their offers to each other, etc., in order for the contract to be concluded properly, and this may be the case before each contract as well. However, that the final client and the first seller freely negotiate such matters before the murabahah to be made with the participation bank does not mean that they have made a contract. These are considered as part of the negotiation and bargaining required before each contract.

That the final client makes a commodity s/he bought before murabahah the subject of the murabahah transaction with the participation bank is actually a loan transaction that is financing of a previously completed trade. In this transaction, even if the delivery or payment of the commodity has not been realized, the sale of the commodity gets completed and the ownership passes to the final client. It is not possible for a person to purchase a commodity in their own possession, and such a transaction cannot be considered as a new contract legally. However, in case the sales contract between the first seller and the final client has been completed and then the idea of performing murabahah with the participation bank has emerged in the final client, the existing sales contract must be terminated by the mutual consent of the parties in order to perform murabahah. This mutual termination should be performed in the manner and form in which the previous sales contract was concluded, and this should be proven with a document.

In the event that the first seller and the final client are the same persons, the client would have sold a commodity in its ownership to the participation bank and have bought it back from the participation bank in a murabahah transaction to be performed. This renders the transaction into the sale and buyback (bey‘u’l-‘îne), which refers to the return of a commodity sold for cash supply to its original owner and is prohibited by rules of fiqh due to the possibility of violating the interest prohibition. In addition, in the case of transactions between legal persons with the same dominant partners, and in the event that there is a close relationship between the first seller and the final client, such as marriage, kinship, affinity, partnership, etc., it is also aimed to investigate whether there are collusions or not in these transactions.

2.3. Sharia bases of the provisions regarding the promise

Arranging the promise to be binding for both parties (final client and participation bank) gives the transaction a contractual nature. In this case, in the event that a participation bank sells the commodity to the client, it means that it sells a commodity that is not in its ownership, which is not permissible.

The participation bank may have suffered some expenses for the purposes, such as determining the value of the commodity to be purchased upon the promise of the final client and so on. In the event that the final client ceases to purchase the commodities after such expenses are incurred, the participation bank that is unable to return the commodity to the first seller without a justification may suffer a loss as a result of this. In this case, it is equitable for the final client to compensate the actual loss suffered by the participation bank due to the non-fulfillment of the final client with its own promise. It is not permissible to hold the final client responsible for matters in which it is not yet clear whether there is a loss or not.

Contract and contract promise are different things. The contract promise is the act of stating that one is ready to make a contract in the future. This statement differs from the contract. In case the promising party fails to fulfill its promise, it is deemed to have withdrawn from its promise. Such an action is not morally acceptable, and a promise that is not fulfilled cannot be bound to the consequences of an unexecuted contract. Because, when the results of the contract are bound to the promise, there will be no difference left between these two transactions, which is incompatible with the relevant fiqh rules.

Although there are different opinions about whether the promise will be binding or not in the fiqh literature, those who accept that the promise is binding generally discuss the issue in the context of transactions such as mutuum and vows that aim to gain merit and do good. The preferred view in the Mâlikî sect that stands out more in this issue is as follows: In case the promise is bound to a reason and the other party has undertaken an obligation by relying on this promise, this promise is legally taken into account. In this context, all examples such as "buy the commodity and I will lend you a loan", "get married and I will lend you a loan" that Qarafi (d. 684/1285) reported from Sahnun (d. 240/854) are all related to the promise of lending, and the other party undertakes a burden by relying on this promise (see Qarafi, *el-Furûk*, IV, 25, Kuwait, 1431/2010). Ibn Arafe (d. 803/1401), one of the fuqaha of the Mâlikî sect, describes

promise as "a person's announcement that they will do something good (maruf) in the future." (see Ibn Arafe, *el-Muhtasaru'l-fikhî*, IX, 42, Muessesetu Halef Ahmed el-Habtûr li'l-a'mâl el-hayriyye, 1435/2014). Again, according to Qarafi's report, Umar ibn Abd al-Aziz (d. 101/720) says that the person who promises to delay their receivable will be bound by this promise. However, the purchase promise is different from those. Moreover, in the Mâlikî sect, a murabahah contract made by the final client making a purchase promise is not considered as legitimate by rules, and the issue is attributed to the prohibition of interest (see İbn Rushd, *el-Mukaddimât ve'l-mumehhidât*, II, 57, Beyrut, 1988; İbn Cuzey, *el-Kavânînu'l-fikhiyye*, p. 257, Beyrut, 1989; Desûkî, *Hâshiyetu'd-Desûkî ale'l-Sherhi'l-kebîr*, III, 89, Dâru'l-fikr, nd.). In this case, it is not appropriate to attribute the provision that the promise is binding for the final client in the murabahah contract to the Mâlikî sect. On the other hand, it is not obligatory to accept the promise as binding in order to compensate the loss of the participation bank in case the client withdraws from its promise.

In the decision numbered 40-41 of the Islamic Fiqh Academy, affiliated to the Organization of Islamic Cooperation, dated December 15, 1998, it was stated that financial promise is only permissible in case the promise is not binding, but in the event that this promise is not fulfilled without any excuse, the other party can compensate the expenses suffered as a result, and the promise will cause liability in this sense.

Actual losses refer to the real losses due to the failure to fulfill a promise that is believed/trusted to be followed and fulfilled, and the subsidiary losses that may arise from items such as public liabilities, communication, road, notary expenses, penal cause paid to the seller, compensation, earnest payment, costs arising from the return, costs of proceedings, etc.

2.4. Sharia bases of the provisions regarding the subject of the murabahah transaction

Based on the statements of the Prophet Muhammad (PBUH) on the subject (Muvatta, "Buyû", 34-35; Bukhārī, "Buyû", 77-81; Muslim, "Musâkât", 79-85; 101-103), Islamic jurists said that exchange of money and precious metals (gold and silver), which is like money, should be made in advance. In case this principle is not respected, it leads to interest. For this reason, the commodity that is subject to

murabahah should not be money or in the form of money and must be suitable for deferred sale.

There are two consecutive separate sales contracts in the murabahah transaction set. In order to conclude the second contract, the participation bank must first purchase the commodities (see Article 2.5.1). Since the assets that are under construction but not yet completed can only be subject to the second sale after they are finished, these assets cannot be sold before their construction is completed. However, in case such an asset is sold in its current form and collected and received by the client, this inconvenience gets eliminated. A contract of construction (istisna' contract) can be used for the sale of assets under construction in their planned forms.

It is permissible to sell more than one commodity, each of which is permissible for sale, with a sale contract, and it is also permissible to be subjected to a single murabahah contract collectively.

2.5. Sharia bases of the provisions regarding the performance of the murabahah transaction

The stability of ownership on the purchased commodity depends on the collection and receipt of the commodity in question. On the other hand, selling a purchased commodity without the collection and receipt may cause some uncertainties regarding the completion of the delivery. For this reason, it was prohibited by the Prophet Muhammad (PBUH) to sell the commodity that a person does not own (Bukhārī, “Buyû”, 54-55; Muslim, “Buyû”, 29-41). For this reason, the participation bank's conclusion of the final sales contract depends on whether it actually or by default receives and collects the commodities subject to murabahah. Considering the developments and changes in the way today's legal-commercial transactions are carried out, it is seen that the default collection and receipt are also valid as the real collection and receipt. In order to prevent uncertainties and potential disputes regarding ownership, it is conforming with the prudence to realize the purchase and the collection and receipt of the participation bank through provable means.

According to the principle of freedom of contract that prevails in fiqh, statements of intent in contracts made between the parties can be made by any means expressing mutual consent. Accordingly, statements of intent in the murabahah transaction can be made verbally and in writing, as well as by means of electronic intermediaries, data loggers, etc. Therefore, it is a natural practice to use communication tools that

are widely used today and do not lead to trust issues under normal circumstances. However, care should be taken to ensure that these transactions are carried out with provable means in order to avoid possible disputes that may arise in the future and to be able to easily resolve them within the legal framework in case they arise.

While making the final sale contract in the murabahah transaction set, in cases where registration, etc. is required for the contract to become official, the fact that it is permissible for the participation bank to receive an earnest payment from the client is based on Umar ibn al-Khattab's (RA) making a deposit agreement in the presence of witnesses and to the jurisprudence of the fuqaha who approved the receipt of an earnest payment referring to this incident. However, it is not permissible to take an earnest payment at this stage, since there is no mention of a contract established while it is still in the promise stage, and it is possible to withdraw from the promise. The earnest payment mentioned here is different from the security deposit (هامش الجدية) regulated in Article 2.9.2.

The provision that the profit added to the purchase price or cost of the commodities in the final sales contract must be notified to the buyer by the seller originates from the nature of the murabahah transaction. Because murabahah, one of the "trust-based sales", is a transaction based on the condition that the client knows the purchase price or cost of the commodities and the profit added on it clearly. The mentioned profit can be a certain amount, or it can be determined as a certain percentage of the cost of acquiring the commodity by the participation bank. Because there is no deception or uncertainty in either case.

The provision that the sales price cannot be linked to an index to be formed at a future date but must be finalized at the time the contract is concluded, is based on the principle that both the price, which is a condition of the general sale contract, and the purchase price or cost of the commodities and the profit to be added it on it are clearly determined. The condition that the sales price is not determined exactly at the time of the contract will bring up the reasons such as ignorance that deprave the contract, and the uncertainty of the net profit will cease to be contractual murabahah.

This general principle does not prevent the payment amount from being revised by taking inflation into account and being re-determined to be downstream, especially when using funds according to the finalized price and payment table. Because, while making a murabahah contract, the participation bank may promise that it will reflect

this difference to the client as a discount in case the inflation realized in the process of paying the debt is lower than the estimated inflation rate, which is taken as a basis for determining the price of the commodities sold (see TKBB Advisory Board Decision No. 15, dated 22.08.2019).

In case there is any discount or increase in the purchase price or cost stated in the final sales contract, the provision that this will be reflected in the final sale price originates from the condition that it is a transaction based on mutual trust and in which the purchase price and profit must be clearly defined (see Kâsânî, *Bedâi al-Sanâi' fî Tertîb al-Sherâi'*, V, 222, Dâru'l-kutubi'l-ilmiyye, 1406/1986).

2.6. Sharia bases of the provisions regarding liability and right of option arising from the defect

In the event that a defect previously existing in the commodity subject to the contract of sale occurs after the contract has been completed, the client can terminate the contract unilaterally by using the right of option on defect in order to prevent the loss to arise due to the unknown defect during the contract. Necessary arrangements are made to compensate for the loss in line with the established principles of Islamic law. This condition is expressed as a general rule in Majalla as "Loss is compensated" (Article 20). Otherwise, the client buys a product without realizing its true properties and often at a price above its true value.

That the client did not object to the existence of the defect in the commodity that is the subject of the sales contract before or after the conclusion of the contract indicates that they are willing to purchase the commodities with their current qualities. Hence, the principle "No statement is imputed to a man who keeps silence, but silence is tantamount to a statement where there is an absolute necessity for speech" (Majalla, Article 67) also gives this result. In case the client in this circumstance gives its consent to the defective commodities, it will no longer have the opportunity to terminate the contract on the ground of a defect.

At the stage of the murabahah transaction that is realized between the participation bank and the client, the participation bank is the seller of the commodity, and the client is the buyer. According to the jurisprudence of the fuqaha, who accept the condition that the seller will not be liable for any defect that may arise in the commodities, that the participation bank stipulates such a condition in the contract

with the final client is in compliance with the principles and standards of participation banking.

Before the participation bank purchases the commodities subject to the murabahah transaction from the first seller, in case the above-mentioned defect exists, the right of option on defect belongs to the participation bank, this time to be put forward against the first seller. The participation bank may exercise its right of option itself or by granting a power of attorney to the client.

Considering that the client who wants to have the loss of value caused by the defect in the commodities compensated by recourse to the first seller has previously consented to the participation bank to be irrelevant of the defect and that it will benefit from this compensation as well, it is not contrary to the principles of participation banking that the costs required by recourse and power of attorney transactions are covered by the client.

2.7. Sharia bases of the provisions regarding the payment

The payment of debts at maturity is a requirement of the basic principle indicating that promises made must be respected. Increasing the amount of the debt in return for the extension of the maturities is not permissible since it is a type of interest-bearing transaction called maturity interest (ribe'n-nesîe). However, depending on the mutual consent of the parties, it is possible to extend the maturity provided that the debt amount is kept constant. In this case, the participation bank may demand the inflation difference arising from the extension of the maturity. This does not mean that the amount to be paid at the end of the extended maturity is left uncertain or an unrequited excess is stipulated. On the contrary, this practice is an equitable way as it aims to ensure the repayment of the debt amount with the same value for the convenience of the client.

Participation banks should strive to find methods that comply with the principles and standards of participation banking in order to provide ease of payment to clients who have difficulty in repaying their debts on time. Until these methods are found, it may be considered necessary to apply Article 2.4 of the Tawarruq Standard for the client who is determined to have difficulty in payment, within the framework of the records specified in the rationale for the article and in a way that does not contradict the spirit of the article.

In case the client fails to pay the debt on time by showing default, there is no objection for the participation bank to charge a delay penalty as a sanction. Because the participation bank will not consider the amount obtained from the delay penalty as profit and will not benefit from it. This nature of it indicates that the delay penalty collected from the client is not an excess added to the actual debt, but a sanction aiming to prevent the client from delaying its debt.

However, the participation bank may collect the loss in value of the original debt amount due to inflation and the necessary and actual expenses related to this default through the delay penalty. Because although the amount paid in case of late payment by the client corresponds numerically to the actual debt, considering the value and purchasing power it expresses, the participation bank becomes aggrieved. Therefore, the amount that the participation bank can receive due to the penal clause is limited to the amount it has lost because of inflation and the actual and obligatory expenses it has made to collect its receivables. The participation bank can return the remaining amount other than this amount to the client or it can use it for charity as well.

In case the client pays the debts arising from the murabahah transaction before the maturity date, the discounts to be made by the participation banks are considered as a waiver of the right.

In a sales contract, it is legitimate to stipulate terms that are the natural legal consequences (muqteza) of the contract or that are compatible with and confirm them (mulâim). Apart from these issues, the conditions that provide additional usufructs to one of the parties, in principle, render the contract peccable. In this context, when making a sales contract, the parties may stipulate that the price has a maturity and/or it is in installments, with mutual consent. In practice, it is generally seen that the payment time is also effective in determining the price, and in the event that the maturity is extended, the price gets increased.

In a murabahah transaction that is made over the sale price determined by considering the maturity period and the number of installments, and whose payments are continuing, the participation bank cannot be authorized to impose a condition that grants the right to make the installments matured at any time it wishes without any reason. However, it is a different circumstance in case the client fails to fulfill his/her contractual obligations, fails to pay any of the installments even though a certain

period has passed since the maturity date and does not have a valid excuse, or in case it is foreseen that his/her financial situation will deteriorate depending on the concrete data and that s/he will delay the payment of the installments. It is not contrary to the idea of justice to stipulate the condition that the remaining installments become matured in order to protect the rights of the creditor for such cases. However, in cases where the delay is due to a valid excuse, it is both a religious and humanitarian requirement to allow the debtor who is having difficulty to pay a reasonable time (Al-Baqarah 2/280). In this respect, while determining whether the conditions of maturity are fulfilled, the participation bank also takes into account the condition of its predicted client, whom it recognizes in principle.

However, in the event that there is such a condition in the contract, the profits of the installments that are not yet matured should be deducted from the receivables that have become matured based on the said condition.

A condition that any delay in one of the installments will automatically make the remaining debt matured with the canceled maturity profits, is incompatible with the natural legal consequences of the contract and also with the measures of justice. This situation results in the fact that the contract, which was initially established according to the maturity-price balance, leading to unfair gain due to the deterioration of the maturity. For example, the price of a commodity that can be purchased for TRY one hundred thousand in cash can rise to TRY one hundred and fifty thousand in case it is paid in 60 months in monthly installments. In case there is a delay in the payments after a few installments, it is not a merciful practice to make this debt cash based on the same amount, that is, TRY one hundred and fifty thousand. Although it is said that this is possible and permissible based on the general statements in some Hanafi fiqh books in this regard, these statements are actually about the repayment of a debt that was originated from a pre-established contract between the parties and is to be paid in advance or was already matured due to the maturity by the creditor over the same amount of debt, and about the condition of maturity attributed to the default in the payment of these installments. Otherwise, this information in Hanafi sources has nothing to do with the issue that the profits of the installments that are not yet due can be collected in the overdue installment receivables (see Muhammed b. Hasen al-Sheybânî, *el-Mehârij fi'l-hiyel*, Kâhire, 1419/1999, p. 81; Ahmed b. Muhammed al-

Shelebî, *Hâshiyetu al-Shelebî*, yy. (el-Matbaatu'l-kubra'l-emîriyye), 1314, IV, 13); also see *el-Fetâvâ'l-Hindiyye*, Beyrut, 1421/2000, VI, 407).

2.8. Sharia bases of the provisions regarding the power of attorney

As in many other contracts, murabahah, which is a sales transaction, in essence, can be performed by the parties in person or through their agents. In the murabahah transaction set performed with the participation bank, the bank is firstly a client against the seller, and then it is a seller against the final client who wants to buy that commodity and applies to the participation bank for this. The seller and the buyer or their agents have mutual rights and obligations in the contract of sale. In order to clearly differentiate the rights and obligations of the institution and the client, it is the basic principle that the final client does not act as the agent of the bank. However, in cases where this provision is not possible to apply in any way, a *power of attorney only for the purchase* can be given to the client. In the event that such a circumstance occurs, the client is appointed by the bank as an attorney to buy the commodity it has ordered from the bank. When the client purchases the said commodity on behalf of the participation bank, the commodity becomes the property of the participation bank, and the bank then sells this commodity to the client. This final sale contract in which the participation bank and the client are two separate parties can be made by any method where the parties notify their statement of intent via text message, etc. This provision is also valid for the execution of the above-mentioned power of attorney agreement.

However, it does not seem in line with the principles of participation banking that the participation bank's purchase of the commodities from the first seller and the transaction through a double attorney by giving a power of attorney to sell the commodities purchased on behalf of the bank. In such a case, the client represents both sides of the contract as an agent who sells the commodities on behalf of the bank and as the party that receives the commodities and has to make a de facto contract with itself. It is generally unfavorable for the same person to represent both sides of the contract. In addition, this circumstance does not comply with the principles of participation banking as it will prevent the bank from achieving the real buyer and seller qualification. It is a measure for the participation bank to execute the final sale transaction, separate the obligations of the buyer and the seller, and ensure that the

murabahah transaction does not have an appearance of a transaction that is made for showing. This measure does not pose any difficulties in terms of implementation.

In addition, in the first purchase and sale transaction in the murabahah transaction set, regardless of the provisions regarding the power of attorney, since the participation bank will actually have purchased a commodity, it must also make the payment to the seller itself. The rule stipulating that the bank makes the payment directly to the first seller is likewise introduced in order to ensure that the murabahah transaction does not look like a transaction for showing made solely to obtain financing.

In some cases, since the first purchases to be made on behalf of the participation bank in the murabahah transaction set are related to a large number of sellers and/or commodities, it may be seriously difficult for the participation bank to make separate payments for each purchase transaction. In such compulsory cases, it is possible to make the payment to the seller by the end by proxy to the participation bank.

2.9. The rationale for the provisions regarding assurances

Since it is permissible to take and give assurances that comply with the principles and standards of participation banking in areas deemed legitimate by fiqh, it is also appropriate to obtain assurance in sales performed through murabahah. Because obtaining assurance in such a transaction is a condition that confirms the legal consequence (muqteza) of the contract. Nowadays, in some practices, it is seen that the bank receives a security deposit (هامش الجدية) from the customer due to the possibility that the customer will not buy the commodity and cause loss to the bank after s/he has made a promise to buy and applied to the participation bank. As a rule, it is permissible for the participation bank to receive such a security deposit at the promise stage of the murabahah transaction. This permissibility is based on the fact that the security deposit acts as an assurance for future losses. This is because the receipt of this security deposit will, on the one hand, ensure that the client is able to pay, and on the other hand, will enable the institution to compensate for the actual loss to be faced in case the client withdraws from its promise.

This security deposit, taken in order to see the earnestness of the client, is not a down payment. Because the down payment is a price taken during the contract against the possibility of the parties withdrawing from a contract. The security deposit is collected to be used to compensate for the potential loss that may arise in the event that the person who made the purchase promise before the contract does not fulfill

this promise. Since the bank does not have the right to confiscate this amount unless it suffers an actual loss, and since it cannot collect more than the actual loss, when it is incurred, this security deposit cannot be regarded as an unfair gain.

The promise is not legally binding. However, making a promise that cannot be fulfilled or acting contrary to the promise also leads to moral responsibility. Compensation of the actual loss suffered by a person who withdraws from its promise after making a promise to buy a commodity without any justification is considered as a fair provision that is not contrary to fiqh. This issue can also be correlated to the provision of compensation for the loss incurred. For example, the participation bank may not be able to easily sell this commodity, which it has purchased upon the promise, to another person in case the promise owner withdraws from buying it, and may also have to sell it at a price lower than the price it has made the purchase with. In this case, it would be fair and legal for the participation bank in the position of the seller to have the party that caused the loss by withdrawing from its promise compensate this loss. The security deposit to be paid at the beginning of the transaction has the nature of assurance for the losses that may be caused by the withdrawal from the promise. The security deposit received can only be used to compensate for the actual loss to be suffered. The fact that this price will not be used for any other purpose will prevent it from turning into an unjust gain.

2.10. Sharia bases of the provisions regarding commissions and costs

While the participation bank sells the commodity to the final client, it can either specify the purchase price or sell it by specifying its cost. In both cases, the final client knows the profit amount of the participation bank clearly. In the option of sale of the commodities by stating the purchase price to the final client, there is no important condition affecting the validity of the transaction, except that this statement of the participation bank is correct. In sales made over cost, the issue of what will be included in the cost price is important

Expenditures that can be added to the cost price are expenditures, which are directly related to the murabahah transaction. The expenses incurred by the participation bank in relation to the nature of the commodity subject to murabahah, the research expenses related to the determination of the institutional quality, reliability, solvency, etc. of the client, and the operational expenses incurred during the completion of the transactions are within this scope. The participation bank can collect these costs,

which it adds to the cost of murabahah, directly from here by specifying it as an individual expense item. Unless the transaction does not take place, the participation bank cannot collect any commission or fee from the client. However, the participation bank may demand the compensation of the actual losses that occur due to the failure of the murabahah due to the reasons arising from the client. In the final sales contract, it is not permissible for the participation bank to show high costs and low profits by adding some expenses that are not related to both commodities and murabahah to the cost price, and it affects the validity of the contract as it will mean to mislead and deceive the client.

2.11. Sharia bases of the provisions regarding insurance

The participation bank is responsible for any damage that may occur to the commodities in the process from the purchase and delivery of the commodities from the first seller until it is sold to the client and delivered to the client, in fact, or by default. Although the insurance of the commodity is not a legal obligation, in case the participation bank wishes, it should do so primarily through Islamic insurance. In case Islamic insurance is not available or this opportunity is inadequate, other insurance methods can be used.

Since the risks related to the commodity concern the owner, the insurance transaction is performed by the owner of the commodity in principle. For this reason, the insurance obligation, and expenses of the commodities subject to murabahah belong to the participation bank before it is sold to the final client.

In cases where insurance is obligatory and the participation bank cannot officially take over the purchased commodities and therefore cannot insure it on its own behalf, the insurance of the commodities may be made by the client at the participation bank's expenses.

In the murabahah transaction, the insurance expense made by the participation bank can be added to the cost of the commodities subject to murabahah. Because this is directly within the scope of costs related to the commodities. The insurance compensation to be paid due to the damage or destruction of the commodities at the stage until the delivery to the final client belongs to the participation bank.

2.12. Sharia bases of the provisions regarding the termination of murabahah

Since it is a sales contract, in essence, murabahah has a binding nature. However, binding contracts can also be terminated in case the parties agree. This termination is considered within the scope of mutual termination of a contract.

The murabahah contract may also be terminated due to certain rights of option or conditions that give one of the parties the right to terminate. For instance, in the event that a defect that has existed before the sale of the commodity occurs after the purchase, the client may terminate the contract unilaterally, or in the case of right of option on condition, the party holding this right may also exercise its right of termination.