CHAPTER V

DEVELOPMENT OF CONTEMPORARY MURABAHAH
Development of Contemporary Murabahah

5.1 Murabahah in Theory:

During the second half of the first Hijrah century a new sort of business transaction developed which was reported by Imam Malik in his famous work "Al-Muatta" under the caption "Sale at a mutually agreed profit margin". This sale transaction has been widely accepted, adopted and practiced as a lawful business method by the Islamic Banks and financial Institutions (IFIs).

Let us begin by quoting what Imam Malik said:

"Yahya told me that Malik said": there is unanimity of opinion in our place (al-Madinah) regarding cloth purchased by a person in a town and then takes it to another town wherein he sells it at a mutually agreed profit margin. The money paid to the commission agent (the middle man) will not be computed (in the sale price) nor the cost of packing and building. (Moreover) the (personal) expenses (incurred by the businessman) will not be included nor the house rent. As far as it is concerned with the costs of transportation (of the cloth) they will be computed as a part of the basic price but no profit will be added to it unless the seller advises the bargainer about all of them. If they agree to let him have profit on all of them after knowing about them, it is not objectionable.

Malik said: So far as it is concerned with making the cloth white and tailoring charges and colouring costs and similar expense, a profit margin will be

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1 This section is mainly based on al-Kaff's work "Al Murabaha in Theory and Practice" published by Islamic Research Academy, Karachi, Pakistan.
allowed for them as they are just like cloth for which profit margin is computed...."}^{2}

Following points can be inferred from the above statement:

1) The seller himself took the initiative of buying cloth without the knowledge and consent of the would-be buyer.

2) The seller bought it in one town and transported it to another town to sell it.

3) This is a pure sale transaction which is concluded by exchanging goods and prices with mutually agreed profit margin then and there. No credit is involved.

4) Profit margin could not be added to certain items such as cost of transportation.

5) Certain items like workmanships are treated as the part of the basic price.

Thus, according to Imam Malik, Murabahah is conducted and completed by exchanging goods and price including a mutually agreed profit margin, then and there.}^{3} It is important to note that to him, no credit is involved in Murabahah. Malikis as a whole do not like this sale as it requires so many conditions, the fulfillment of which is very difficult. However, they do not prohibit it.}^{4}

Imam Shafi‘i extended this concept to include credit transaction as well as goods whose specifications have been described by the buyer to the seller. Imam Shafi‘i says:

"If a person shows another person a commodity telling him: purchase this (for me) and I shall give you such and such profit margin. This deal is lawful. The person who offered the profit margin enjoys the option of either completing the

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4 Al-Jaziri, 1973, p. 559 (as cited by Ayyub, ibid.)

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deal or leaving it complete. Similarly, if he tells: purchase for me a commodity which he specifies or any commodity you choose and I shall give you such and such profit margin, this is all the same and the first deal is lawful. He, in what he gives from his free will, shall enjoy option (to complete the deal or not). It is same in the case whose specifications are stated if he says: purchase for me that and I shall purchase it in cash or on credit. The first deal shall be lawful. They shall enjoy option in the completion or otherwise) of the second deal, it shall be lawful. If they conclude the deal on the condition that both commit themselves to the first deal, it shall be null and void for two reasons. First because they concluded the deal before the seller obtained the ownership (of the goods in question). Secondly because he (the would-be seller) is exposed to risk (in view of your condition): if you purchase at such and such price I shall let you have such and such a profit margin.\(^5\)

Thus, we notice that Imam Shafi‘i:

(1) Regarded the sale at mutually agreed profit margin involving goods with specifications as lawful and legally valid.

(2) Considered the sale at mutually agreed profit margin in which the seller purchases any goods he opts as lawful and legally acceptable if authorized to do so by the buyer.

(3) He regards “the order of purchase” a complete separate agreement from the actual contract to buy/sell. He, therefore, gives the option to the buyer only in the second sale deal while he grants option to both of them in the second sale deal because of the risk faced by the seller in his inability to acquire at the price fixed by the buyer in addition to the non-ownership and non-possession of the goods by the seller.

(4) He allowed the sale by means of cash or on the basis of credit (debt/deferred payment) (up to a certain period of time); but he did not clarify whether there is going to be a difference between the cash and credit price.\(^6\)

Taking all the above mentioned conditions stipulated by Imam Shafi'i into consideration, Dr. Sami Hassan Ahmad Hamoud first\(^7\) suggested a solution which leads to the expanded version of Murabahah concept visualized by Imam Shafi'i. In his presentation of the murabahah, Hamoud quotes Ibn Qudamah who defines it as follows:

*Murabahah* is selling for the cost prince plus a specified profit, provided that both the seller and the buyer know the cost price. The seller says, ‘my capital, or the cost price, is a hundred, and I sell it to you for a profit of ten’. This is permitted and there is no doubt about its legitimacy. No scholar is reported to have regarded it with legal dislike (*karahah*).\(^8\)

However, to incorporate a purchase order in this transaction, Hamoud turns to Imam Sahafi‘i.\(^9\) What Imam Sahafi‘i specified has led Hamoud to develop the financing mode called *bai‘ al murabahah li al ‘amir bi al shira* (sale with declared profit to the purchase order i.e. the mark-up).

Sami states as follows:

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\(^6\) Al- Kaff, op. cit, p. 10 (Here al-Kaff remarks as: ‘However, the use of word ‘debt’ (by Shafa‘i) seems to suggest that he would not allow an addition to the cash price as any addition to the debt is unlawful.’

\(^7\) Here we mean that the first scholar who treated Murabahah at length is dr. Sami Hassan Hamoud who stated this type of sale assigning it the title “Sale at the mutually agreed profit margin” in his dissertation entitled “Development of a banking System compatible with the Islamic Law” for which he obtained his Doctorate from the Law College of the Al-Azhar University, Cairo. It appears from page 430 to 434 in the 2nd edition of his book carrying the same title published in Cairo in 1402-1982 under the caption: “Third-Sale at the mutually agreed profit margin for the order of the purchaser”.


\(^9\) Hamoud quotes Shafi‘i thus: “If a man shows certain goods to another and says, ‘buy this for me and I will give you so much profit’, and the second man buys it; then the transaction is permitted. However, the one who has made the promise has the right of withdrawal. If he buys, it makes no difference whether he pays immediately or at a later date. So, the first sale is valid but there is no commitment as to the pother; they are at liberty.” (ibid)
“Therefore, when we look at a solution to this problem, we find that it opens door for the interest free bank for assisting a person in obtaining the commodity he is in need of on the basis of monthly installments or some similar arrangement but the initiative must come from the consumer and not from the businessman.

For example, this consumer (a doctor who wishes to acquire some medical equipment for his new dispensary) approaches the bank with a request to purchase the required equipment with the specifications stated by the Doctor and on the basis of his promise to purchase those equipment actually needed by him at a mutually agreed profit margin say (2% or 3%) repayable by monthly installments as per dictation of his income.

This deal is made of a promise to purchase and sell on the basis of mutually agreed profit margin. (This is the opinion of Sheikh Faraj Al- Sinhori when the matter was presented to him at at his residence in Al- maadi District of Cairo on 9/8/1975).

It is not one of those cases in which a person sells what is not owned and possessed by him because the bank is not offering something for sale but receiving a purchase order. It is not selling until it owns what has been ordered and displays it to the buyer to see whether it is according to specifications stated by him. Moreover, this operation does not entail profit against what he could not guarantee because the bank after its purchase becomes its owner carrying the risk of damage or are broken down before their delivery to the doctor, their loss is to be borne by the bank.

......a disagreeing person may ask: What happens if, for example, the doctor falls back and does not keep his promise?
We say: how much percentage from those who do not keep their promises? If once a train derails, does the railroad company decide not to operate the trains so that the same experience does not occur?"\textsuperscript{10}

He further goes on to say:

"Both the bank and its client have opted to abide by their promises and to shoulder the consequences of going back on their commitments. Moreover, the copy (of the goods in question) agreed between the bank and its client is a "Delayed Value". Mostly, in the determination of (delayed) value, the repayment period is taken into consideration as done by anyone who sells (on the basis of) delayed payment."\textsuperscript{11}

Mr. Al-Kaff has pointed\textsuperscript{12} some possible objections to Sami's theory that may be raised, as follows:

1) Primarily banks are financial intermediaries whose main intention is to provide finance to the commerce and commercial community. Their interests do not lie in becoming business institution engaging in trading practices.

2) Dr. Sami has failed to mention whether the cash value and the installment (credit) value of the commodity would be the same in both cases or there would be a difference? This is a vitally important question because the second margin, if any, would turn the whole operation into an interest generating deal in which the bank would be charging interest against the time granted.

\textsuperscript{10} Sami Hassan Ahmad Hamoud (1982), "Tatweer al-Amal al- Masrafiaya", Cairo, second edition (as cited by al-Kaaf, op. cit, pp. 11-12
\textsuperscript{11} Hamoud (1984), "Development of a banking System compatible with the Islamic Law", 2\textsuperscript{nd} ed., Cairo, pp. 36-37
To conclude, the concept of Murabahah[^13] li'l Amir bi-al Shira was first introduced in contemporary Islamic finance in the mid 1970s by Sami Hamoud (a well known Jordanian economist and banker), based on a *fatwa* by Sheikh Faraj al-Sanhuri.[^14] Pointing out the limitations of classical mudarabah principle in its application to the modern needs of financing, Hamoud invited attention to the cases where it is incapable to provide financing e.g., consumer’s goods, goods supplied to government and industry, etc. Hamoud was searching for an Islamically acceptable financial instrument capable of competing with conventional consumer finance.[^15] Islamic financial Institutions welcomed the addition of this new alternative from *fiqh* that allowed them to replace a significant part of their practice of high-risk financing. Since the publication of Hamoud ‘*Tatwir al-A’mal al-Maṣrafīyyah*’ (1982) murabahah emerged as a technique different from profit & Loss sharing (PLS) modes consisting of Mudarabah and Musharakh. It also became the backbone of contemporary Islamic banking. Murabahah is shown for the first time in Islamic Development Bank (IDB) operations in the year 1397 H (1976). The quantitative value of this operation was US $ 50.52 million, substantially high compared to other modes of operations. This operational mode became popular among the Islamic banks to the extent that in 1984 it covered 84 % of the operations of five Islamic banks on average.[^16] According to Tamimi, the use of Murabahah as a major method by IBs was approximately estimated 75% of their assets.[^17] This percentage is roughly true for

[^13]: As mentioned that Murabahah financing is one of the most commonly used means of Islamic Finance. The full technical name of this contract is “a credit sale with mark-up to one who ordered the initial purchase” (al-murahah lil-amir bi-l-Shira ma'a bay bi-thaman 'ajil). Sami Hamud envisioned this early transaction by adapting it as a substitute for bank loans in his book ‘*Evolution of Banking Operation in a Manner that Agrees with Islamic Law (Shari ‘ah)*’ (which was based on his Ph.D. dissertation). Over the years, a number of additional alterations have been added to make it a better alternative to interest bearing loan.


[^15]: Ibid., pp. 476-481.


[^17]: al-Tamimi, ‘*Experience of Islamic Banks in the Middle East*’, p. 33 (as cited by Saeed, A., 1999, p. 78)
many Islamic banks as well as the Islamic banking system in Pakistan and Iran. As early as 1984, in Pakistan, *murabahah*-type financing amounted to approximately 87% of total financing in the investment of PLS deposits. In the case of Dubai Islamic Bank (the earliest private sector Islamic bank), *murabahah* financing amounted to 82% of the total financing for the year 1989. Even for the Islamic Development Bank (IDB), over a ten year period of financing, 73% of its total financing was on *Murabahah* basis, that is in its foreign trade financing.

5.2 *Murabahah* in Practice

Having taken a brief glance at classical *Murabahah* contracts in general, we may now discuss how this concept could be applied in financing. It is essential to note at the outset that being a trading product in its origin, *Murabahah* is never the ideal mode advocated by Muslim jurists for financing. It should be restricted to occasions where the proper modes of financing are not adequate. Due to the same reason, adopting *Murabahah* for financing purposes is never without difficulties. For its acceptability from a Shari'ah point of view, the numerous conditions imposed should be strictly fulfilled. If these conditions are not followed, *Murabahah* financing may become similar to an interest bearing loan.

Financing on *Murabahah* can be employed only when a client genuinely requires procuring an asset from an outside source. The term ‘financing’ is used here to indicate purchasing the item required by the client from the indicated source and later selling it to the client. It does not mean extending a loan facility to the client so that he may purchase the item himself. Thus, when an asset such as a vehicle, land, building, raw material, merchandise, etc is needed to be purchased, it may be financed on the basis of *Murabahah*. Instead of assets, if

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18 Khan, *Profit and Loss Sharing*, p. 145 (as cited by Saeed, p. 78)
21 This section greatly benefits from the elements of Section ‘Murabahah’ of Muhammad Taqi Usmani’s book ‘*An Introduction to Islamic Finance*’ 2005, Idara Isha’at-e-Diniyat, (P) Ltd., New Delhi
22 Usmani, op. cit., p. 105

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money is required for some purpose, Murabahah financing cannot be employed. This is because Murabahah is a genuine sale transaction where actual commodities are sold, and not a transaction of lending. Therefore, if cash is required for overhead expenses such as settlement of utility bills, payment of wages, transport, processing etc, or for purposes such as settlement of loans and payment for goods already purchased, Murabahah financing may not be employed. Similarly, if a service or usufruct is required, Murabahah may not be used for financing it.

In financing, Murabahah takes the form of a complex procedure comprising of several transactions, reflecting several relationships between the parties involved. In this type of financing, the financial institution sells the commodity required by the client on deferred payment basis through a properly executed contract of Murabahah sale. This necessitates the financial institution having come into ownership of the necessary commodity beforehand, and having the item at its risk at the time of sale. If the financial institution concerned happens to own stocks of the commodity required, this could be facilitated with ease, which would be welcome from a Shar'i point of view too as some questionable practices could be avoided. (Indeed, in a proper Islamic set up, rather than being content with providing finance, Islamic financial institutions are expected to play an active role in trading as well, and currently there are Islamic banks that also maintain trading wings dealing in vehicles etc for providing Murabahah.) However, since financial institutions in the current set up typically do not own stocks, the article required by the client has to be purchased from elsewhere, usually from a source indicated by the client himself. This results in the introduction of several further intricacies to the Murabahah procedure, resulting in the complex product known as “saie on Murabahah to the orderer-to-purchase” (Bay’ al-Murabahah li-al-Āmir bi-al-Shirā’).
5.2.1 Major Phases in Murabahah Financing:

The major phases in this procedure at the primary level could be stated in brief as follows.25

First, the client requests the financial institution to purchase a certain commodity from an external source for subsequent sale to him.

Second, the financial institution purchases the commodity, usually on cash terms, and takes possession.

Third, the client purchases the commodity from the financial institution on deferred payment basis, and later settles the price on the due date in instalments as agreed.

It would be seen that this procedure consists of an initial agreement by the financial institution to buy the item required by the client followed by two transactions of sale. If each of these steps takes place in a manner acceptable in Shari’ah, the transaction would be complete.

The initial request made by the client that the financial institution procures the required commodity from the market could, when necessary, take the form of a unilateral promise made by the client to the bank. Here the client promises that when the bank purchases the asset from the market, he would subsequently purchase it from them at a pre-agreed price calculated on cost plus mark-up basis. This is to eliminate the possibility of the client refusing to purchase the asset from the bank after the latter had procured it from the market. It is essential here that only the client binds himself to purchase the asset from the bank, while the bank does not promise to sell the asset to the client. This is to avoid entering into a bilateral promise binding both parties to contract a sale on a future date, resembling a forward sale which is prohibited in Shari’ah.

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25 Usmani, p. 107
The two transactions of sale that follow this promise, where the bank purchases the commodity from the market first and sells it to the client second on cost plus mark-up basis, should both complete the relevant conditions for sales in Shari‘ah. Thus, the bank should unequivocally purchase the item preferably through its own channels and take possession of it, either physically or constructively. Here constructive possession means having the item in the bank’s risk for a period of time, so that if the item is destroyed in that period the full responsibility devolves on the bank. The bank may procure the item from any supplier at its discretion, or purchase from a source indicated by the client. The subsequent sale to the client should take place after the bank had thus purchased it first and had borne its risk for some time. The bank transfers ownership of the asset to the client through a properly executed contract of sale, whereby the risk is transferred to the client for the first time.\footnote{Usmani, op. cit., pp. 107-109}

5.2.2 Possible Procedure of Murabahah:

Trading and other real sector business intensely need particular expertise. For Islamic banks, it is too difficult to train all staff in trading, marketing and other real sector activities needed for banking practices. Banks may set up some specialized concerns to carry out trading activities and involve in buying and selling commodities to customers on the basis of deferred payment and the staff with relevant specific expertise may be assigned the job of trading in goods so as to fulfil the Shari‘ah prerequisites of Murabahah- Mu‘ajjal. It would help them use their entrepreneurial expertise to earn more profit. The other options to conduct such trading activities may be either through the client as agent or through a third party agency. These possible options for conducting Murabahah are briefly discussed below.

5.2.2.1 Direct Trading by Bank
Direct trading by bank itself is the most ideal option with regard to meeting the murabahah prerequisites, but involving the banks in such business activities directly could lead to a lot of managerial problems and other predicaments which requires the induction of effective internal controls to sort out the issue.

In the absence of such controls, this structure could be used only in cases of selected certain goods, wherein banks could buy any high value asset or specific goods with trademarks in bulk for building inventory and sell on a cost-plus basis. For example, a bank’s subsidiary dealing with agriculture finance may purchase fertilizer/pesticides and provide them to farmers on the basis of murabahah through dealers. In such wholesale business, an additional benefit would be that the bank’s sale price could be closer to the cash market price.

5.2.2.2 Bank Purchases through a Third Party/Agent

Another option may be to buy goods through a third party agent to maintain inventory or to purchase according to customers’ request for Murabahah operations. This structure would most likely to meet Shari’ah requirement of taking possession and business risk by the bank for the period between procuring the goods from the supplier and selling them to the customer on Murabahah. After purchase from the supplier, banks stand liable if anything goes wrong until transferring the goods to the client. The customer can not guarantee the risk of transportation of the goods because the safety of the goods is the liability of the owner, i.e., the bank. Banks can mitigate this risk by instructing to get delivery at their godowns.

Banks may appoint qualified suppliers as agents for purchase according to their inventory-creating plans or as and when required by their clients. For the latter agreement, the package would comprise (i) an MoU or agreement to sell: the

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27 According to AAOIFI standard, the option of a third party agent is better, it recommends that the customer should not be appointed to act as agent for purchase of the items for Murabahah except in situations of dire need (clause 3/1/3, p. 117).

28 AAOIFI, 2004-5, p. 129
client's request and his promise to buy the specified commodity from the bank; it may also include a term about the profit margin to be taken by the bank and, if possible, the sale price (that will include the cost price), the contract price and the payment date; for the profit margin, the bank may specify at this stage any reference rate provided a definite price is fixed at the time of execution of Murabahah;\(^2^6\) (ii) the sale deed executed at the time when the commodity is in the ownership and risk of the bank; and (iii) the 'promissory note' signed by the customer to the effect that he will pay the price of the goods purchased on a specific date. In addition to this the agreement may include the clauses about the security/collateral, description and quality of goods and the way out in case of defect in the goods and non-payment by the client at the due date. According to the AAOIFI standard, a promissory note or other guarantee can be obtained from the customer at the promise stage also.\(^3^0\) Of course, it is better that promissory notes be obtained after execution of the sale, because these generally have the wording “against value received”.

5.2.2.3 Bank Appoints the Client as Agent to Purchase

The above illustrates the preferable procedure for Murabahah which could be adopted by financial institutions. However in practice, an additional dimension is usually added to the above transaction that further complicates the matter and makes the procedure immensely vulnerable to abuse and foul play. This is the appointment of the client himself as the agent of the institution for purchasing the asset on latter's behalf. Due to the introduction of this element, the distinction between the two sales and therefore between the two distinct ownerships, i.e. the ownership of bank first and the ownership of the client second, becomes marginal, making the involvement of the bank in the transaction similar in appearance to that of a conventional financier who takes no part in the risk. We shall see below how this development affects the Murabahah transaction.

\(^{2^6}\) AAOIFI, 2004-5, p. 120
\(^{3^0}\) AAOIFI, 2004-5, p. 121
As stated above, the bank procuring the required asset through its own channels and keeping it in its own possession is preferable to getting the client involved in the process. There is no harm in purchasing from a supplier indicated by the client, as long as the client does not play any role in the purchase. This would make the bank’s ownership of the goods more pronounced, and the subsequent sale to the client would appear more genuine. Any additional cost involved in the process could be added on to the cost of Murabahah for mark-up calculation.

However, due to various reasons, most financial institutions do not find this method convenient. Therefore, they prefer appointing the client himself who sought the Murabahah facility as the agent of the institution for purchasing the required asset on behalf of the institution. While this practice is correct in theory and therefore could be adopted when direct purchase from the supplier is not practicable due to some reason, it invariably results in increasing the complexity of the transaction, as now the bank and the client have to act in different capacities in different stages, and makes the point of transfer of the asset’s ownership to the client become somewhat obscure.

In appointing the client himself as the purchasing agent of the bank, it is necessary to understand that when the client first purchases the asset from the supplier in this capacity, the asset enters into the ownership of the bank, and not the ownership of the client himself. When he takes possession of the asset as the bank’s agent, it would be regarded as possession by the bank, and the risk of the asset is transferred to the bank. Any loss befalling the asset at this stage would be borne by the bank solely, provided the client had discharged the duties of agency diligently, as the client is only a trustee holding assets belonging to the bank. Consequently, the client is not permitted to consume or utilise the asset in any way at this stage, as this would amount to breach of trust.
The asset would enter the ownership of the client only when the second contract of sale is finalised between the bank and the client, whereby the bank would sell the asset to the client on Murabahah terms as agreed. With this sale, the client would become owner of the asset, and start to bear the risk of the asset. Utilising the asset or consuming it becomes lawful for the client only after he purchases the asset thus from the bank through the second contract.

To conclude, the structure of trading through a client as the bank's agent appears to be the safest mean to avoid commodity-based risks and related problems. But this arrangement to make Murabahah transaction a back door to interest, and therefore requires extra care to keep it shariah compliant. The foremost requirement is that goods come under the ownership and risk of the bank. Further, the customer should clearly explain to the supplier about his agency status. If the bank does not purchase and own the goods and only makes payment for any commodity directly bought and received by the customer from the supplier, that will be a remittance of the amount of money on behalf of the customer, which shall be nothing but a loan to him and any profit on this amount shall be nothing but interest.

The Client as Bank's Agent to Buy and Related Matters:

The general structure of contemporary Murabahah is the following:

1. The customer approaches the bank with a request for the purchase of any commodity.
2. The bank appoints the client its agent to buy the item.
3. The bank purchases the commodity through the client as agent.
4. The bank makes payment to the supplier.
5. The client takes delivery of the item on behalf of the bank as agent.

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32 Ayub, Muhammad G. (2007), Understanding Islamic Finance, op. cit p. 222
6. The client makes an offer to purchase and the bank accepts the offer; the transfers the title over to the customer upon execution of Murabahah.

7. The customer makes payment on a deferred basis without any rollover, discount or rebate.

The above structure involves the following stages/steps: pre-promise understanding; promise stage, agency stage; acquiring possession, execution of Murabahah, post-execution of Murabahah. Each of these steps is crucial on its own right and neglecting essentials of any stage would render the whole arrangement unacceptable from shari’ah angle:

1. The client and the bank sign an MoU or ‘agreement to sell’,33 whereby the bank undertakes to sell and the client promises to buy a commodity for a purchase price plus a profit margin of X % that may or may not be tied with any benchmark, or a stipulated amount over the known cost.

2. The bank appoints the client as its agent for purchasing the commodity on its behalf, and both the parties sign an independent specific or general purpose agreement of agency.

3. The client purchases the commodity on behalf of the bank and takes its possession, for which the bank makes payment to the supplier. This is obligatory according to the AAOIFI Standard.34 However, some Islamic banks do not follow this instruction due to some procedural problems. The purchase order, material receiving report and delivery cahallan, under whatever title, should be in the name of the bank.35

4. The client informs the bank that he has purchased the commodity on its behalf, has taken possession thereof, and makes an offer to purchase it from the

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33 This is different from the ‘actual sale agreement’ in which ownership rights are transferred to the buyer upon signing of the agreement. In an ‘agreement to sell’, a promise is made to sell any commodity in the future and it does not involve conveyance of the ownership rights.

34 AAOIFI, 2004-5, Standard on Murabahah, 3/1/4, pp.117, 118

35 Usmani, 2000a, pp. 107, 108 (as cited by Ayub, op. cit., p. 226)
bank at a profit margin over the cost, as agreed to in the agreement to sell’. This must be before the goods are consumed, otherwise the Murabahah will be invalid.

5. The bank accepts the offer and the sale is concluded, whereby the ownership as well as the risk of the commodity is transferred to the client.

The nature of the relationship in the above arrangement would be:

2. Bank and client: promisor and promise.
3. Bank and supplier: buyer and seller.
5. Bank and client: creditor and debtor.

Prerequisites of various stages of Murabahah to purchase orderer with the client working as agent are discussed below:

*Pre-Promise Stage- Facility Approval*

The following points have to be kept in mind while approving the facility; it is essential that the transaction between the bank and the client must be genuine, involving the trade of goods. Murabahah can not be used for providing liquidity or for cash financing. At the time of facility approval, banks should ensure that the client needs some goods. Further, this should exclude any prior contractual relationship between the client and the supplier whom the client is indicating for supply of the goods. It is not permissible to transfer a contract that has already been executed between the client and the supplier because this is tantamount to *Bai’ al-‘inah*, which is prohibited. However, if any, such prior understanding has not been finalized, the bank can enter into Murabahah arrangement. The bank must also ensure that the supplier or the party from whom the item is being purchased is a third party and not the customer, his agent or any entity with more than 50% ownership by the customer.
The nature of the required commodity should be in the scope of valid Murabahah. Commodities that are subject to the rules of Bai' al-Sarf, like gold, silver and currencies, are not valid for Murabahah, because in such commodities and monetary units, exchange has to be hand to hand.\textsuperscript{36} The bank should also analyse the nature of goods from a risk management point of view, their marketing, any uniqueness that could affect their profitability and the cash flow and risk profile of the client.

\textit{Promise Stage – Master Murabahah Facility Agreement}

After the initial analysis of the customer’s request, the bank will enter into a master Murabahah facility agreement, or MoU, in which the limit of the facility, the nature of the commodity, the profit margin to be taken by the bank, the schedule of payment, the security to be submitted by the customer and other terms and condition will be mutually stipulated. On the basis of one MoU there could be a number of consignments for purchase of the asset from time to time under sub-Murabahah. The MoU should also include the specimens of purchase requisition, a delivery report, a promissory note and the nature of collateral required. If both parties agree, the agency agreement can also be signed at this stage.

\textit{Purchase Requisition}

As per the MoU, the client will submit a requisition to the bank to purchase the commodity as per his specifications. The requisition will contain details of the goods required to be purchased from the bank and if possible the name of the supplier, cost price and the expected date of delivery. Also at this stage, the bank should ensure that the goods are not already owned by the client, otherwise the shari’ah advisor might ask the bank to credit the income from this transaction to the Charity Account. The customer will also give an undertaking to the bank that he will buy the goods which the bank will acquire on his request. Normally, a purchase requisition contains this promise. If the supplier is nominated by the

\textsuperscript{36} AAOIFI, 2004- 5, Standard on Murabahah, clause 2/2/6, p. 119
client himself, the bank may demand a performance bond or guarantee for good performance to the effect that the goods provided by the supplier indicated by the client will be acceptable to him.

Earnest Money (Hamish Jiddiyah) can be demanded from the customer to assess his sincerity to purchase the goods and as a security deposit. If the bank purchases the goods and the client backs out and does not purchase, the bank may sell the goods in the market and recover the actual loss, if any, from the Hamish Jiddiyah. However, the bank can not recover the conventional “cost of funds” or liquidated damages in the form of “opportunity cost”.

For purchasing the commodity it is advisable that the bank makes payment directly to the supplier to ensure that the funds are used for the actual purpose. Experience has shown that if funds are given to the client, there is a chance of misutilization that could also involve non-Sharia'h compliance. Advance payments can also be made to the supplier, and in this case, the bank would charge a higher profit margin than the case of post-supply payment.

**Agency Stage**

An agency agreement can be signed side by side with the signing of an MoU. But it should invariably be before the purchase of goods by the client. If the client purchases the goods before the agency agreement, it would mean the goods are already owned by him and the transaction would become Bai-al-‘inah, which is prohibited. An agency agreement could be “specific agency”, when the purchase of the commodity is not of a consistent nature.

**Purchase Stage**

The client should purchase the goods as the agent of the bank and as per the specifications already decided. A number of situations could evolve at this stage. If the cost price is already given and the supplier gives some rebate, it should be

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37 AAOIFI, 2004-5, Standard on Murabahah, clause 4/2, p. 119
passed on to the client at the time of execution of murabahah sale by reducing the cost of sale. If there is a rise in prices and the amount escalates from the amount agreed in the Murabahah limit, the bank or the principal must be informed in order to make the decision on whether to accept it or not. The bank has the right to reject the purchase if made at other than the agreed price. If the goods to be purchased are different from those given in the agency agreement, the change of the commodity can be made with mutual consent. Normally, banks indicate a time within which purchase has to be made and if there is a delay, the bank may ask the client to refund the cost of goods without any opportunity cost.

Acquisition of Title and Possession of the Asset

For Shari’ah compliance, it is necessary that the bank takes ownership and actual or constructive possession of the goods before the execution of Murabahah. The forms of taking possession of items differ according to their nature and customs. The requirement from the shari’ah angle is that the goods must come under the responsibility and risk of the bank. The Islamic Fiqh academy of the OIC resolved, in its sixth session, in respect of the form of possession:

Just as the possession of commodities may be physical, by taking the commodity in one’s hand or measuring or weighing the eatables, or by transferring or delivering the commodity to the premises of the buyer, the possession may also be an implied or constructive possession, which takes place by leaving the commodity at one’s disposal and enabling him to deal with it as he wishes. This will be deemed a valid possession, even though the physical possession has not taken place. As for the mode of possession, it may vary from commodity to commodity, according to its nature and pursuant to the different customs prevalent in this behalf.

The time when the risk of the item is passed on from the supplier to the bank, and subsequently from the bank to the customer, must be clearly identified.

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38 Council of the Islamic Fiqh academy, 2000, p.107
This is why Sharia'h scholars normally do not approve Murabahah of natural gas in pipes; the gas company can not say that from ‘this’ point possession of the gas and its risk has been transferred to the bank, and then from the bank to the client. Further, the goods must exist at the time of execution of Murabahah. Sometimes, it happens that the client takes delivery of the goods as agent and uses them in his process of production even before informing the bank and “offer and acceptance”. This creates a Shari’ah objection. Before execution of Murabahah, the bank must ensure that the item exists in its form and for this purpose it is advisable that the bank appoints any person for physical inspection. Further, all ownership related expenses like Takaful until this point need to be paid by the bank. Any loss before that date also belongs to the bank, being the principal owner of the goods.

**Execution of Murabahah Stage- Offer and Acceptance**

After the customer acquires possession of the goods, as an agent, he should give a possession report and make an offer to purchase the goods acquired by him on the bank’s behalf. The bank will accept the offer and the transaction will be completed. All the terms of the murabahah transaction, such as contract price (cost plus profit), due date or schedule of payments, etc. must be mentioned in the bank’s letter of acceptance. Upon execution of murabahah, the relationship of buyer and seller between the customer and the bank changes into the relationship of debtor and creditor. After this, the bank will not be liable for any harm to the goods.

Having taken delivery of the goods as per the purchase requisition, the customer should confirm that the goods have been examined and are satisfactory in respect of quality and suitability for his use. He should also relieve the bank from any loss or third party liability in respect of the goods sold to him. The AAOIFI Standard recommends that the bank should assign to the customer the
right of recourse to the supplier to obtain compensation for any established defects which would otherwise be recoverable by the bank from the supplier.\textsuperscript{39}

**The complete procedure of Murabahah financing**

Incorporating the aspect of agency, too, the procedure of Murabahah could be outlined as follows.

*First Phase – Request by Client*

Stage 1. The client indicates to the bank the asset required by him, and agrees to purchase it from the bank on Murabahah terms after the bank had purchased it;

*Second Phase – Bank Purchases from Supplier*

Stage 2. When purchasing the asset directly from the supplier through its own channels without the involvement of the client is not feasible, the bank appoints the client as its agent to purchase the asset and to take possession on behalf of the bank.

Stage 3. The client purchases the asset on behalf of the bank and takes possession, the risk of the asset now being borne by the bank. Payment to the supplier is made by the bank directly to the supplier’s account, without any involvement of the client in handling the funds. The client informs the bank of the completion of purchase on its behalf.

*Third Phase – Bank Sells to Client*

Stage 4. The client forwards an offer to purchase the asset from the bank on Murabahah terms.

Stage 5. The bank accepts the offer, completing the sale of the asset to the client. With this sale, the ownership of the asset is transferred to the client, who becomes responsible for the risk of the asset there onwards.

\textsuperscript{39} AAOIFI, 2004- 5, Standard on Murabahah, clause 4/9, p.120

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Proper execution of each of these stages is vital for the validity of the Murabahah transaction. The most crucial element of this whole procedure is the asset remaining in the risk of the bank during the intervening period between Stage 3 and Stage 5. If this aspect is absent, the transaction is unacceptable in Shari’ah. The above mentioned procedure of the Murabahah financing is a complex transaction where the parties involved have different capacities at different stages.

- At the first stage, the institution and the client promise to sell and buy a commodity in future. Hence, the relation between them is that of a promisor and a promise.

- At the second stage, the relation between the parties is that of a principal and an agent.

- At the third stage, the relation between the institution and the supplier is that of a buyer and seller.

- At the fourth and fifth stage, the institution and the client become buyer and seller, and the sale is concluded on deferred payment basis, thereby have the relation of a debtor and creditor.

It is very important that all these capacities must be properly processed with all their resulting effects, each at its relevant stage, and these different capacities should never be mixed up or confused with each other.

5.2.3 Conditions of Murabahah Financing:

1. Murabahah, as a mode of financing can be used only where the customer requires funds to acquire some merchandise. For example, if he needs funds to buy leather as a raw material for producing shoes, the Bank can sell him the leather on murabahah basis. But if he wants funds for some other purposes, like paying the price of goods already bought, or the bills of electricity or other utilities or for paying the salaries of his staff, murabahah
cannot be concluded, because murabahah entails a real sale of some commodities, and not merely advancing a loan.

2. The financier must have owned the commodity before selling it to his client.

3. The commodity must be in the possession of the financier, whether physical or constructive, and thus take risk responsibility.

4. The best way for murabahah is that the financier himself purchases the commodity and keeps it in his own possession, or buys the commodity through a third person appointed by him as agent, before selling it to the customer. However, in exceptional cases, where direct purchase from the supplier is not practicable for some reason, the customer can be an agent to buy the commodity on behalf of the financier and take its possession as such. Then, he could purchase the commodity from the financier for a deferred price. In the first instance taking possession over the commodity as an agent he is only a trustee, while the ownership with risk bearing responsibility goes to the financier. But once the client purchases the commodity from his financier, the ownership, as well as the risk, is transferred to the client.

5. The financier takes the full responsibility of the risk during intervening period unless the commodity is fully acquired by the customer.

6. The commodity is bought from a third party. The purchase of the commodity from the client himself on 'buy back' agreement is not allowed.

7. In the case of default by the buyer in the payment of price at the due date, the price cannot be increased. 

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5.2.4 Important aspects of Murabahah financing:

*Overall Agreement*

An overall agreement could be signed between the client and the bank at the inception of the Murabahah facility. This agreement does not signify the sale of any particular asset. Rather, it is an agreement to carry out transactions based on Murabahah on different assets in the future from time to time. The type of the facility, e.g. financing for the purchase of commodities, vehicles etc or financing import purchase, the limit of the facility, and the ratio of profit etc could be stipulated in the agreement.

*Supplier Should be a Third Party*

Murabahah can be employed only when the client needs to purchase an asset genuinely, either for consumption or for the purpose of trade. This is only possible when the asset is purchased from a third party. In no instance can an asset belonging to the client himself be purchased and then sold back to him on Murabahah. The financial institution should be vigilant that clients do not attempt to abuse Murabahah facilities through such practices.

*Sale of Company Shares on Murabahah*

As Murabahah is a kind of sale, it could be carried out only with regard to items which are permitted to be sold in the Shari’ah. Company shares that fulfil Islamic requirements could be sold on Murabahah basis. It is essential that the financier owns the shares and has their possession by bearing their risk, before the sale to the client on Murabahah terms.

*Currencies cannot be sold on Murabahah*

Currencies of different denominations cannot be sold or purchased on Murabahah. Similarly, Bills of Exchange or other documents evidencing debts may not be the subject of Murabahah, because these could be exchanged only at face value.
Agency should be Specific

The agency given to the client by the bank may be for the purchase of a specific quantity of a specific item from a specified supplier, or for purchasing unspecified quantities of a type of commodity from unspecified suppliers. In the latter case, it would form a general agency, authorising the client to make several purchases on behalf of the bank. However, since what the client purchases on behalf of the bank remain at the risk of the bank, it should be ensured that the client exercises proper care in storing the commodities belonging to the bank separately, and duly purchases them from the bank on Murabahah before using them for his own purposes. Since general agency makes monitoring of the client's activities difficult and also is highly vulnerable to abuse, it should be granted only when necessary. Site visits should be undertaken regularly to ensure compliance.

Exact Cost incurred should be known

It is essential for the validity of Murabahah that the exact cost incurred by the financier is known. If the cost incurred by the financier cannot be precisely established, the relevant asset cannot be sold on Murabahah terms. This is because Murabahah is a sale based on complete transparency with regard to cost, which should be accurately stated in the contract of sale.

Price Difference between Cash and Credit sales

An asset may be sold on credit at a price higher than its usual cash price. The overwhelming majority of Islamic jurists allow this. The only requirement is that the exact credit price should be clearly spelled out in the contract of sale, and may not be left to fluctuate. If the exact price to be paid by the client not fixed in the contract of sale, but is left to be calculated later based on the period of time he takes for full settlement, the sale is not valid in the Shari’ah.
Extension of Period at no Extra Charge

If the client is unable to make full payment of the Murabahah price on the due date and requires an extension of the period, it could be granted without charging anything additional. Any mark-up over and above the agreed Murabahah price could not be added due to the extension, nor could any increase be made in the price of a subsequent Murabahah transaction with the same client in view of the extension given previously.

Murabahah Outstanding may not be rolled over

In the case of Murabahah sales involving payment of periodical instalments, if the client finds it difficult to pay the original instalments duly, the remaining instalments may not be rescheduled at any extra payment. If the bank is willing to reschedule the instalments, it should be done without causing any change in the original Murabahah price fixed at the outset. The price may not be increased due to default, as it would tantamount to interest, which is prohibited in the Shari‘ah. If the Murabahah price has not been fully settled at the end of the term, it may not be rolled over for a further term.

Rebate on early Settlement at the Bank’s Discretion

The client is not entitled to claim any rebate if he is able to complete settlement of the Murabahah outstanding before it falls due. The Murabahah agreement should not incorporate any clause that allows the client to settle early against a discount. However, the financial institution may grant a rebate to the client in this instance at its own discretion, especially in the case of clients who are needy.

The above two points will be discussed in detail in the next chapter.

5.2.5 Market Scenario:

Murabahah as described above could be used to finance the purchase of a variety of assets. It could be employed wherever assets are needed to be
purchased from a third party. From financing consumer items such as washing machines and vehicles, it could be used in corporate financing where building complexes, factories and real estate are to be purchased. Trade financing, both for local purchase as well as import, is widely done on Murabahah based structures. We shall briefly analyse below the procedure adopted in each of these.

*Consumer Financing on Murabahah*

Murabahah is popularly employed for financing the purchase of consumer items such as furniture, computers, vehicles, etc. Here, subsequent to approval of the facility and signing the overall agreement with the client, the client produces a quotation or pro forma invoice from the supplier indicating the price and other details of the item. Usually at this stage, the client makes an undertaking to purchase the asset from the bank, which, as described above, is a unilateral promise made by him, so as to protect the bank from being left with the goods if the client refuses to purchase them.

If the financial institution is satisfied with the genuineness of the request, it purchases the item from the supplier and takes possession using its own agents and means, prior to selling the item to the client on Murabahah. If this is not convenient, it appoints the client as its agent for purchasing the asset on its behalf. The payment is released directly to the supplier without the involvement of the client, through a medium such as a crossed account-payee cheque. After the client purchases the asset and takes possession on behalf of the bank, the bank is informed of this, and the bank preferably verifies the receipt of the goods through its own means. It is highly preferable that the bank requires the client to bring the asset to the bank’s own stores and lets it remain there for at least a day, so as to establish the risk of the bank beyond all doubt.

Subsequently, the bank sells the asset to the client on Murabahah terms through duly accepting a specific offer to purchase forwarded by the client, where the cost of the asset, the profit, the total Murabahah price, the due dates of
payment for the full price or instalments etc are clearly stated. The asset becomes
the property of the client only upon the acceptance of the bank, until which the
asset remains at the risk of the bank.

The credit period for the settlement of Murabahah price starts from the date
the sale to the client is completed, i.e. the date when the bank accepts the offer to
purchase forwarded by the client. The period does not start from the day the bank
releases funds to the supplier of goods, as goods are purchased by the bank itself
initially. The client becomes a debtor to the bank only after he purchases the
goods from the bank on Murabahah. Due to this reason, when the profit margin of
the Murabahah price is calculated on the basis of the period of credit, the time
elapsed prior to the sale to the client in which the goods were in the possession of
the bank may not be taken into consideration.

_Murabahah in Trade Finance_

Murabahah could be used for financing the purchase of trade goods,
including both raw material as well as stock. The basic features of Murabahah are
similar in essence to those of consumer financing. However, the payment periods
are usually shorter here. The number of transactions carried out under a single
facility is considerably higher than in consumer finance, as the purchase of each
consignment constitutes a separate Murabahah transaction. Due to this, ensuring
meticulous observance of all necessary conditions becomes a hard task, requiring
the sincere intent both of the client as well as the financial institution.

In Trading Murabahah, usually a limit is approved for client, limiting the
maximum amount that may become outstanding at a single time through entering
in to a number of Murabahah transactions. After the overall agreement, whenever
a consignment is to be purchased, the client submits the relevant quotation or pro
forma invoice together with an undertaking to purchase, as described above in
consumer financing.
It is important to ensure that the client does not apply for Murabahah for goods that have already been purchased by him. This is of especial concern in Murabahah for trading, where consignments are purchased by clients on a daily basis. There is a possibility of an application for Murabahah being made by the client for consignments he had purchased directly from suppliers and had taken delivery, for the purpose of obtaining funds for payment to suppliers. Therefore, verifying the dates of quotations and making enquiry as to whether the goods have already been purchased is essential. Traders sometimes do so on the assumption that goods that have not yet been paid for still belong to the suppliers.

After verification, agency is granted to the client for purchase on behalf of the bank. Each undertaking to purchase requires a separate agency. When the client effects the purchase from the supplier on behalf of the bank and takes possession the goods enter the bank’s risk. In this stage, the client is not allowed to sell or utilise the goods, as they still belong to the bank. If retaining the goods in the bank’s own storing compounds prior to the sale to the client is not feasible, the client should be emphatically required to store them separately, distinct from other merchandise belonging to him, until his purchase from the bank is complete. Site visits should be made periodically to ensure compliance in this respect, as sometimes traders hastily sell such consignments before purchasing them from the bank.

It is essential that the possibility of the funds being channelled to suppliers through the clients is prevented in Trade Murabahah as far as possible. This is for the purpose of ensuring that only genuine transactions take place. If funds are released to the client at the time of agency, this would result in the bank losing its control over the transaction, due to the possibility that the client could use the funds for other purposes, or negotiate credit terms with the supplier for partial or delayed payment. If due to some compelling reason funds are released to the client for payment to suppliers, it should be done only with clients whose sincerity
in carrying out genuine Murabahah transactions is established. It is imperative that properly drawn receipts are obtained from the suppliers in this instance. If the bank knowingly approves Murabahah facilities for fictitious transactions, or the laxity of the system leads to such transactions being carried out, the profit earned may not be permissible.

When the offer to purchase from the bank is forwarded by the client, it should be promptly accepted, as the client may start using the goods for his own purposes only after this. It should not be forgotten that the Murabahah period starts from the date of acceptance. It is best that the bank arranges to complete the sale to the client after a site visit and verification of the goods purchased.

It is possible that after the initial agency is granted and the client effects the purchase on behalf of the bank, the bank may find that the client has reached the limit of his facility. However, as the bank has already become the owner of the goods, it may not refrain from payment to the supplier at this stage.

The documentation in many Murabahah cross-border trades is similar to customary international trade documentation such as freight documents, invoice, certification, Insurance, and so on. These follow the sale agreement (the murabahah) which may be a master agreement for revolving facilities or multiple shipments.\footnote{Thomas Abdulkader S., Thomas Abdulkader, Stella Cox, Bryan Kraty (2005), ‘Structuring Islamic Finance Transactions’, Euromoney Books, p. 68}

\textit{Murabahah for Import Purchase}

A large portion of import transactions are financed by Islamic financial institutions on the basis of Murabahah. Instead of providing an interest based credit facility for imports as done by conventional banks, the Islamic bank is expected to import the consignment in its name first and thereafter sell it to the client on Murabahah. The procedure here is more complex as compared with Murabahah for local trade due the involvement of Letters of Credit, import
documents such as Bills of Lading and Airway Bills as well as foreign exchange conversions. Ensuring the ownership of the bank over the consignment and bearing its risk prior to the sale to the client are points of concern in this procedure. Since there remains an amount of uncertainty over whether the shipping documents being in the name of the bank alone is enough to ensure complete ownership of the bank over the goods, Murabahah is not recommended for import transactions. We shall discuss below how Murabahah is usually practised by Islamic banks in financing import purchases.

An overall agreement for providing Murabahah facilities for import purchases is signed between the bank and the client. When the client wishes to import a consignment of goods, he obtains the Pro Forma Invoice from the supplier and forwards it to the bank together with the undertaking to purchase. The undertaking to purchase only provides an approximate indication of the cost, mark up and the Murabahah price etc, as these are subject to change due to possible differences in shipping documents and exchange rate fluctuations.

The bank issues a Letter of Credit initiating the process of import. Upon receipt of the Letter of Credit through the negotiating bank, the supplier ships the goods and forwards the Bill of Lading, Invoice and other shipping documents to the L/C opening bank. The Bill of Lading and other documents are expected to be in the name of the L/C opening bank, thus purportedly establishing the bank's ownership over the consignment.

The bank releases the shipping documents to the client by endorsing them in his favour to facilitate port clearance, at the same time effecting a sale transaction to the client through offer and acceptance. From the point of time when the supplier surrenders the goods to the shipping company until the L/C opening bank sells the goods to the client, the goods purportedly are in the ownership of the bank (i.e. the L/C opening bank) and at its risk. If the consignment is damaged or is destroyed during this period, the bank may not
claim any compensation from the client. Even if the consignment is insured through some Islamic arrangement such as Takaful or through conventional insurance, this would not change the party that bears the risk primarily, as insurance only facilitates compensation to the owner if a loss occurs, and does not eliminate possibility of loss.

Import on L/C Sight Terms

In the case of import on L/C sight or D/P (documents against payment) terms where remittance to the supplier is immediate, the sale takes place after the bank had remitted payment, and the amount of local currency spent by the bank for the purpose is known. Therefore, the Murabahah sale could be carried out with ease on the basis of local currency.

Import on D/A Terms

However, when the import is on D/A (documents against acceptance) terms where the supplier himself extends a credit period, payment to the supplier is to be remitted at a future point of time. If the Murabahah sale to the client is planned to be carried out in the local currency, this would require knowledge of the exact amount to be remitted in the local currency, which is not possible due to fluctuation of exchange rates. Therefore, it is not possible to effect a Murabahah sale to the client in local currency in D/A imports. If remittance is to be done in foreign currency, the Murabahah sale also could be carried out in the same currency. On the due date of payment, the client could either settle the Murabahah price in the relevant foreign currency, or pay the equivalent in the local currency based on the exchange rate prevailing on the date of payment.

However, if the client is not willing to carry out the Murabahah purchase in foreign currency due to his apprehension that an unexpected rise in exchange rates could affect him adversely, there remains no possibility of a Murabahah transaction being carried out in this instance. The only option in this situation is to
carry out a Musawamah sale where the bank sells the consignment to the client at a lump-sum price fixed through negotiation. The Musawamah contract does not provide any indication of the cost and profit elements. The sale in this instance could be carried out in the local currency.

However, a sale on Musawamah basis requires the existence of a Musawamah agreement between the bank and the client beforehand, where the nature of the Musawamah transactions to follow is clearly stated. Therefore, if imports are to be done on D/A basis, a Musawamah agreement should be in place, and the import could be financed on the understanding that the consignment will be sold to the client on Musawamah.

In Murabahah for imports, the bank may not charge the client anything other than the Murabahah profit mark-up calculated on cost. No separate charges such as L/C opening fee, handling charges etc could be levied from the client. This is because importing the consignment is expected to be done by the bank itself. These aspects could be kept in view when agreeing on the profit ratio for Murabahah. Apart from the Invoice amount remitted to the supplier, other actual costs incurred by the bank such as custom duty could be included in the cost of the consignment for mark-up calculation, provided the bank undertakes to pay these before the Murabahah sale to the client.

The Murabahah/Musawamah period should start from the date the consignment is sold to the client, i.e. the date the offer to sell forwarded by the bank is accepted by the client, and the shipping documents endorsed in his favour, as this is the point when the client becomes the owner of the goods. The period may not start from the date money is remitted to the supplier, nor could mark-up be calculated for the intervening period if there is any delay in the acceptance by the client.