

Shari'ah Compliant Liquid Commodity Market: {An Expositional Study on Bursa Suq al-Sil'ah in Malaysia}

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Abstract

One of the major challenges before the emerging Islamic financial Institutions is the dearth of Shariah compliant money market platform for the management of their liquidity. However, a viable panacea to the problem has been developed in Malaysia. One of the measures that were taken for the solving of the problem in the country was the creation of Bursa Suq al-Sil'ah which is a Shariah compliant liquidity commodity market. The market is tremendously efficient and it can form a model for other countries. This paper submits that the creation of a similar commodity market in the emerging jurisdictions will mitigate the problem of Shariah compliant liquidity management to a great extent. The study adopts Shariah method in its analysis in view of buttressing the mechanism of Bursa Suq al-Sil'ah as a model for the emerging jurisdiction.

Keywords: Liquid Commodity Market; Bursa Suq al-Sil'ah; Emerging Islamic Financial Institutions;

1. Introduction

This paper studies the Malaysian Bursa Suq al-Sil'ah which is an integral part of the Islamic Interbank Money Market in the country. The market is a commodity based liquidity management platform at both the Malaysian local and international banking system. It is the first internationally accepted Shari'ah compliant market for commodity trading. In another word, Bursa Suq al-Sil'ah is an Islamic commodity trading platform for the Islamic money and capital markets. The market was established to serve as a multi-commodity and multi-currency platform, with the trading of CPO (Crude Palm Oil). Its entrance is

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through the internet and it is entrenched in multiple security features. Its activities are under the purview of 'Bursa Malaysia Islamic Services Sdn Bhd (BMIS) which is a subsidiary of the Bursa Malaysia Sdn Bhd, (Bursa Malaysia). The study relies on jurisprudential, conceptual and theoretical methods.

2. The Concept of Suq al-Sila'h

To start with, lexically, Suq al-Sila'h is an Arabic noun-phrase which literally means 'commodity market.' However, technically, it is a mechanism whereby a financial institution will buy a commodity at a known specified cost and sell it to a customer at a cost-plus-profit basis, while the customer itself, or through the proxy of the seller- institution, will sell the commodity back to the commodity market on the basis of spot cash payment. The transaction involves the sale and purchase of real physical assets (MIFC). It operates under the contracts of al-Murabahah, al-Tawaruq and al-Musawamah "negotiability," and the underlying asset is the Malaysian star product. That is, the Crude Palm Oil (CPO), (MIFC).

The Suq al-Sila'h was historically launched on 17th of August 2009 by Bursa Malaysia through its subsidiary Bursa Malaysia Islamic Services Bhd. Prior to the launching of the Suq al-Sila'h it was known as 'Commodity Murabahah House.' It serves the purpose of providing an internationalized Shari'ah compliant Islamic financing and short term instrument of liquidity management. It portrays Malaysia as the leading global Islamic finance hub. It is a Shari'ah compliant end-to-end system and it is designed to comply with the international standards of Shari'ah requirement (ICM, 2009).

Thus, Suq al-Sila'h is well accepted internationally, including in the highly selective GCC (Gulf Cooperation Council) market. Its uniqueness are embodied in the fact that it is the first global electronic platform for the facilitation of Shari'ah based commodity investment and financing transactions. Its activities are structured on the basis of the Shari'ah requirement of the real economic transactions. Thus, in the situation whereby an Islamic bank grants a financing on the basis of Suq al-Sila'h it must first of all purchases an asset and then sell it to the seeker of financing. The financing seeker will then sell such commodity by appointing the bank as its agent to carry out the sale. The proceeds of the sale will then be used for the purposes for the financing. Therefore, in Suq al-Sila'h the transaction of the sale of commodities, the transferring of its ownership and its delivery lends more credence to the activities of the Islamic financial market (ICM, 2009) under the auspices of Bursa Malaysia Bhd Sdn.

3. Bursa Malaysia Bhd Sdn

Bursa Malaysia Bhd is the Malaysian Exchange Holding Company which was established under the provision of Section 15 (2) of the Capital Market and Services Act 2007, which provides that; 'The Minister may in writing, on the recommendation of the Commission, approve a body corporate as an exchange holding company, subject to any terms and conditions as he thinks fit, if he is satisfied that it is appropriate to do so-', (Capital Market and Services Act, 2007). It is vested with the functions of exchange services such as selling, clearing, settlement and other depository services (MIFC, 2008).

Nevertheless, the history of Bursa Malaysia Bhd Sdn went back to the year 1930 when it was established as the first formal securities' business organization in Malaysia, under the name 'Singapore Stockbrokers Association.' However, its registration was under the name 'Malayan Stockbrokers' Association' in 1937. Moreover, in 1964, the Stock Exchange of Malaysia was established to create an avenue for the public trading of shares. However, after the separation of Singapore from Malaysia in 1965, the Stock Exchange of Malaysia became known as the Stock Exchange of Malaysia and Singapore. More so, in 1973, when currency interchangeability between Malaysia and Singapore stopped, the Stock Exchange of Malaysia and Singapore was divided into the Kuala Lumpur Stock Exchange Bhd and the Stock Exchange of Singapore. The Kuala Lumpur Stock Exchange was incorporated on December 14,

1976 as a company limited by guarantee and it started the operations as the Kuala Lumpur Stock Exchange Bhd in the same year. It was the Kuala Lumpur Stock Exchange that changed its name to Bursa Malaysia Bhd on April 14, 2004. The organization focused on various initiatives, which were aimed at improving product and service delivery, improving the liquidity and increasing velocity of the markets, as well as the efficiency of business operations in Malaysia (Bursa Suq Al Sila', 2013).

Moreover, the regulatory framework of Bursa Malaysia Bhd is inclusive of the Capital Markets and Services Act 2007, Securities Industry (Central Depositories Act) 1991, Securities Commission Act 1993, Companies Act 1965, Offshore Companies Act 1990, and Labuan Offshore Securities Industry Act 1995, as well as the Memorandum and Articles of Association. The stakeholders of the company are the Securities Commission which is the regulator of Bursa Malaysia Bhd, the MIFC (Malaysian Islamic Financial Centre) which is the main coordinator of Islamic financial services, Bank Negara Malaysia which is the regulator of the Islamic bank that are the participants in the market and also uses it as instrument of liquidity management, Bursa Malaysia which is in the position of the counterparty to the buyer and the seller of commodity in the market, the suppliers of crude palm oil (CPO) which is the underlying asset of the instrument, the Islamic banks and the Islamic windows in the conventional bank that utilize it for the management of the liquidity of their various portfolios, as well as the brokers who are the agents of the banks and the suppliers (Bursa Malaysia).

3.1 The Mechanism of Bursa Suq al-Sila'h

Bursa Suq al-Sila'h is designed to accommodate multiple currencies and many types of commodities as well as the issuing of E-certificate that represents the ownership of commodities in the depository of the Bursa Suq al-Sila'h (BSAS). In addition, only the participants that are registered by the Bursa Malaysia Islamic Services Bhd (BMIS) can participate in the trading activities of the market. The categories of the parties in the trading includes, the commodity trading participants (CTP), the commodity supplying participants (CSP) and the commodity exchange participants (CEP). The procedure of the delivery of the commodity includes the indication of intention of interest by the buyer through its broker or directly to the Bursa Malaysia Islamic Services Bhd directly. Then, the delivery date will be negotiated with the commodity suppliers through the assistance of Bursa Malaysia Islamic Services Bhd, within the period of a week before the date of the purchase of the commodity (Bursa Malaysia).

In addition, the procedure of settlement to the commodity suppliers' participants (CSP) is through the Bursa Malaysia Islamic Services (BMIS) which is the settlement agent. Such settlement includes trading and brokerage fee which are settled on a monthly basis and the delivery price as well as the delivery process fee which must be settled on the spot. In short, the trading session in the market is between 10.30am to 6.00pm on Monday to Thursday. However, there are two sessions on Friday. The first session on Friday is between 10.30am to 12.30pm, while the second session starts after the break which is between 12.30pm to 2.30pm. The session holds between 2.30pm and 5.30pm (Bursa Malaysia). The trading agreement is on the basis of Murabahah.

However, in the context of the Islamic interbank money market, the commodity Murabahah program is the newest of all the Islamic interbank money market instruments in Malaysia. The instrument was developed in 2007 as a commodity based instrument of liquidity management. The underlying asset is Crude Palm oil (CPO). The mechanism is that an Islamic bank will purchase palm oil from a broker and sell it to Bank Negara Malaysia, the Central Bank of Malaysia, based on the contract of al-Murabahah, which is a 'cost plus profit contract'. The agreement between the bank and the Central Bank will include a term that will stipulate that the buyer which is the Central Bank will pay on differed basis. Meanwhile, the Central Bank will appoint the seller as its agent to sell the commodity on its behalf. Thus, the bank will sell the commodity to another broker, and credit the proceeds of the sale in the account of the Central

Bank. The activities signify that the Islamic bank has placed its excess fund in the Central Bank. The activities can also be done in reverse in the situation whereby a bank is in need of liquidity. However, the Commodity Murabahah certificate is not tradable in the secondary market (Oiyathulla, 2009). The Commodity Murabahah Program (CMP) is of various types. The most prominent types are as follows (FSTP):

3.1.1 Bank Negara Malaysia (BNM)/ Murabahah Tender

This is the Commodity Murabahah Tender which is commonly referred to as ‘Commodity Murabahah Programme.’ It is a part of the initiative of Bank Negara Malaysia to facilitate liquidity management in the Islamic financial institutions. It is a cash deposit that is based on the internationally accepted contract. Its objective is to bridge the gap of the liquidity mismatch between the surplus and the deficit financial institutions. The CMP is designed to utilize ‘Crude Palm Oil’ (CPO) as its underlying asset (Commodity Murabahah Programme, 2012).

The CMP under Bank Negara Malaysia (BNM) is auctioned through the Fully Automated System for Issuing/Tendering (FAST) as part of the Islamic interbank Money market. The institutions that participate in the Islamic interbank money market are the participants in the activities of the commodity Murabahah programme. Thus, the CMP projects Malaysia as the international Islamic financial centre (CMP, 2012).

3.1.2 Commodity Murabahah Deposit (CM Deposit-I)

The second type is the CMD-i. According to the agreement of the Commodity Murabahah Deposit, the commodity Murabahah deposit (CM Deposit-I) is a deposit system that operates in accordance with the principles of the Islamic law. That is, the contracts of al-Murabahah and al-Tawaruq. The mechanism of the system is that the customer of the bank will appoint and authorize the bank, and the bank will accept the authorization to act as its agent. The authorization of the agency agreement will include the purchase of commodities or other goods in the local market on its behalf. The agency contract includes the authorization of the bank to determine the price of the commodity (RHB Islamic Bank, 2013).

However, the bank will buy the goods from the customer on deferred payment basis by cost plus the profit method. That is al-Murabahah contract. The commodity must be Shari’ah compliant. Thus, it cannot be alcohol, pork, narcotic, and it cannot be substances that are considered as currency, such as gold and silver. Therefore, since the only contentious among the underlying contract is al-Tawaruq contract the following section is dedicated for its jurisprudential position.

4. Contract of al-Tawaruq

‘al-Tawaruq’ is a legal terminology under Islamic law of transaction which is derived from the Arabic word ‘al-Wariq’ that is ‘silver coin’(Rawwas, 1985). Technically, it refers to the practice of mobilization of liquidity. That is, the seeking for cash for the purpose of financing of trade or other project. Thus, al-Tawaruq is the practice of obtaining cash or liquidity through the method of Shari’ah compliant sale contract as contrary to the practice of conventional interest based loans. It is a contract in which the al-Mustawriq, that is, the seeker of financing or liquidity, adopt to avoid dealing in interest while mobilizing the required funds for its project or trade. In another word, it is a ‘tripartite method of the purchasing of commodity on deferred payment basis from a seller, and its resale to a third party for cash,’ (Sukuk Guidelines, 2011). It is a contract in which when people are in need of cash, for instance, they will purchase commodity of the value of one hundred by one hundred and fifty. The contract is a lawful sale contract that is known as al-Tawaruq (al-Buhuti, 1982).

Moreover, al-Tawaruq is defined by the Islamic Fiqh Academy as the purchase of the commodity that is under the ownership and possession of a seller by a deferred payment, and its subsequent sale by the purchaser to a party that is not the seller on a cash basis, for the purpose of obtaining cash, that is ‘wariq’ (Islamic Fiqh Academy, 1989). However, al-Tawaruq can take various forms. One is the situation whereby a seeker of liquidity will purchase a commodity on credit and then sell it to another party on spot cash payment, without any prior arrangement or disclosure of intention. Another format is the situation whereby a seeker of liquidity will approach a trader for a loan, however, such trader will sell certain goods or commodity to him on credit instead of advancing the loan, and the fund seeker will at his option, sell the goods at any price that suites him to secure his required cash. Moreover, it can also be in the format of a situation whereby the fund provider will purchase a commodity and sells it to the fund seeker on credit basis with a price that is higher than the purchased price (market value) against the delay of payment (Islamic Fiqh Academy, 1989). However, while the first two formats of al-Tawaruq are generally accepted, the permissibility of the third format remains a matter of divergent of opinions between the scholars of Islamic commercial jurisprudence (Islamic Fiqh Academy, 1989).

In the same vein, the Shari’ah Advisory Council of Bank Negara Malaysia defines al-Tawaruq as a ‘transaction with two stages of sales. At the first stage, the buyer will purchase an asset on credit from the original seller, and at the second stage, the buyer will then sell the asset on a cash basis to a third party’ (Shariah Resolutions in Islamic Finance).’ This definition is similar to the definition of the Ministry of Awqaf in Kuwait which states that, al-Tawaruq is ‘the purchasing of a commodity on credit and selling it to a person other than the initial seller for a lower price on cash. That is, ‘a sale by a seller to the customer on deferred payment, and after the ownership of the commodity is taken; the seller sells it to the customer on deferred payment at a specified negotiated price,’ (Awqaf of Kuwait). Thus, ‘if a person is in need of cash and he buys a commodity that is valued at 100, for 150, the practice is permissible. This is referred to as al-Tawaruq (Awqaf of Kuwait). It is discussed by the scholars alongside the subject of al-Inah in the various schools of Islamic law’ (al-Buhuti, 1982).’ However, having discussed the concept of al-Tawaruq from various viewpoints, we shall look into the juristic opinions on the permissibility of the contract as follows.

4.1 Shari’ah Ruling on al-Tawaruq

The scholars of Islamic jurisprudence are of two opposing opinions on the permissibility of al-Tawaruq. While the majority of scholars allow it, some scholars disallow it. The argument between the scholars is as follows:

4.1.1 The group that permit the contract of practice of al-Tawaruq

The scholars that allow the practice of al-Tawaruq include both the classical and the contemporary scholars. The classical scholars are the scholars of the Hanafi, Shafi’i and Hanabilah schools of law who hold the opinion that al-Tawaruq is permissible, while the contemporary scholars that permit al-Tawaruq are Shaikhs Abdul Aziz Bin Baz, Muhammad Bin Salih al-Uthaymin, as well as scholars of institutions such as the Islamic fiqh academy, that is the classical al-Tawaruq in its 15th session in Makah where it issued a resolution in support of the practice of al-Tawaruq with the condition that the purchaser who is the fund seeker that purchases the commodity on deferred payment and resells it to a party other than the original seller with a price that is lower than the initial purchase price, in order to avoid dealing with interest ‘al-riba’. Others scholars that permit it are the scholars of the Shari’ah advisory Council of the Bank Negara Malaysia and etc.

4.1.1.1 Proofs on the legality of al-Tawaruq

That the word ‘al-bay’ in the verse ‘Allah permits sale and prohibits usury’, (Surah al-Baqarah, Verse 275) which legalizes trade and prohibits dealing in al-riba, indicates the general permissibility of sale contracts without any restriction except that which is explicitly prohibited by textual revelation. Thus, al-Tawaruq is implicitly included in the general understanding of the permissible sale contracts since there is no any proof from the Qur’an or Sunnah that prohibit it (Uthman).

- i. The Hadith of Abu Hurairah and Abu Sa’id al-Khudiri (R.A) that the holy Prophet (S.A.W.) appointed a man for the management of the farmland in Khaybar. The man once came to the holy Prophet (SAW) and brought with him a high quality ‘dates’. Then the Prophet (SAW) asked him that whether all the dates of Khaybar are of the same quality. The man replied that, they used to barter one sa’in (According to the Hanafi School of law, 1 Sain is equal to 3261 gram, while in the other schools of law, one Sain is equal to 2172 gram, (Muhammad Rawwas,1982)) of the high quality dates with two Sa’ins of other low quality dates, or two Sa’ins for three Sa’ins. Then the holy Prophet (SAW) said; ‘do not do that. You can sell the low quality dates for cash and then use the cash to purchase a high quality dates (al-Bukhari, No. 1593).’ Thus, it is argued that this Hadith indicates the permissibility of the adopting of a method that can lead to the avoidance of dealing in al-riba. Thus, given that, the practice of the person constitutes dealing in al-riba al-fadh ‘barter trade al-riba’. The Prophet (SAW) taught him a method of avoiding such prohibited al-riba by the adopting of sale method to arrive at the desired objective. More so, the intention is not considered. Thus, the mobilizing of liquidity through the practice of al-Tawaruq which is a sale contract that fulfills its condition is permissible (Ri’asah al-‘Amah li al-Ifta, Majalah al-Buhuth al-Islamiyah, No. 2, Rajab & Shawal).
- ii. That the rule that guide commercial transaction is the ‘presumption of the permissibility of all transactions, except that which is explicitly forbidden’, ‘al-Asl fi al-Mu’amalat al-Ibahah.’ Therefore, since al-Tawaruq is among the contract upon which there is no any divine text from the Qur’an or Hadith which implicitly or explicitly prohibits it, it should be considered as a permissible contract. Thus, al-Tawaruq is permissible pursuant to the general rule of the ‘presumption of the permissibility of all transactions, except upon that which there a text that explicitly prohibits it is, (Muhammad al-Amin Shinqiti, 1426 AH).’
- iii. The necessity of the availability of such contract in order to ensure the mobilization of fund without dealing in al-riba. Such necessity purports the legality of al-Tawaruq. More so, according to al-Kasani; ‘the transferring of the ownership of the sale object constitutes the exchange of the commodity. This negates the claim of the practice on the basis of al-riba from some scholars (Abdullah al-Mani’, 2012).

4.1.2 The group that disallowed the contract of practice of al-Tawaruq

The groups that disallow al-Tawaruq are the scholars of Maliki School of law. Their argument is that the sale of a commodity by the price that is higher than the market price in such manner is a al-riba. This condition is also the contention of the scholars that frown at bay’ al-Inah within the Maliki School of law. Other scholars that disallow it are Umar Bin Abdul Aziz and Muhammad Bin Hasan of the Hanafi School of law, as well as Shaikh Islam Ibn Taymiyah and his disciple Ibn Qayim al-Jaoziy (I’lam al-Muwaqi’n). They all consider it as a way of circumventing al-riba and that it is similar to al-Inah. The scholars of the

International Fiqh Academy also prohibit al-Tawaruq that is referred to as al-Tawaruq al-Munazam ‘organized Tawaruq’ which is practiced by the Islamic financial institutions. This is contained in the resolution of the Fiqh academy in its 17th Session. The proofs of the opponents of the contract are as follows:

4.1.2.1 Proofs on the prohibition of al-Tawaruq

- i. al-Hiyal al-Shara’iyah: That al-Tawaruq practice is similar to al-Inah, and that it amounts to the adoption of legal trick for the circumvention of the dealing with al-riba, while the intention is to generate increase or interest on a loan which is al-riba that is prohibited in the Qur’an (Ibn Rushd). However, this argument is answered that according to the legal maxim of Shafi’i School of law that, ‘when the wording of a contract is explicit and is not in need of any further explanation, the intention of the parties is irrelevant, and that the verification of intention is only important where the wording is ambiguous.’ Therefore, the matter of the intention of the party whether it is a legal trick or not is not relevant here.
- ii. Sad al-Dhari’ah’: that since the purpose of al-Tawaruq is to obtain liquidity like that of al-Inah contract, precautionary measure should be taken against the practice because of its similarity of purpose with al-Inah and that, that is an indication that the rule of al-Inah is applicable to it. They also sighted the Hadith that prohibits al-Inah with a strong warning. Thus, pursuant to that, precautionary measure should be taken against the practice of al-Tawaruq. This is in order to avoid falling into the trap of the warning of the Hadith that prohibits al-Inah contract. However, this is answered that the invocation of Sad al-Dhari’ah ‘precautionary measure’ or ‘the principle of closing the means to the commission of the prohibition’ here, is not acceptable because such principle can only be invoked when there is a clear means to the commission of a prohibited act, which is not the case here. Thus, since al-Tawaruq falls under the general rule of the ‘presumption of the permissibility of transaction except where there is a clear prohibition’ it cannot be considered as a ‘means’ to the commission of the prohibited act. Therefore, the principle is irrelevant here, and al-Tawaruq remains permissible (Ibn Rushd).
- iii. Bay’ al-Mudtar: That is ‘sale under duress,’ and that Bay’ al-Mudtar is prohibited by the holy Prophet (S.A.W.), (Abu Daud, Sunan, Hadith No. 3384). There should not be a compulsion for any person to enter a sale contract when he is looking for a loan. However, this is refuted that a sale under duress that is prohibited is either (1) when a person is compelled under threat to enter into a sale contract to sell his belongings or (2) when a natural need compels him to enter into a sale contract to sell his belongs. This is not the case in al-Tawaruq. Thus, a seeker of fund under al-Tawaruq is none of these categories. Rather, he is usually in need of liquidity for business expansion or investment. Therefore, al-Tawaruq is permissible because it does not fall under the purview of Bay’ al-Mudtar (Abdullah al-Mani’, 2012).

4.2 Types of al-Tawaruq

Al-tawaruq is of various types. Some of such types are as follow:

4.2.1 al-Tawaruq al-Fiqhi (the Classical Tawaruq)

al-Tawaruq al-fiqhi which is otherwise known as classical Tawaruq is a process whereby a seeker of funds or liquidity 'al-Mutawariq' will approach a fund provider 'al-Muwariq' for loan. However, instead of advancing the loan, the fund provider will sell some commodity that is valued at the requested funds to the fund seeker on a deferred payment basis, in one hand. In the other hand, the fund seeker will sell the commodity, at his discretion, to a third party on a lower or higher price. The money that is secured from such sale transaction will then be utilized by the fund seeker for his desire. This will take place between the three parties without any prior agreement, and the first seller of the commodity is not concerned by the intent of the fund seeker while selling the commodity. Thus, except for the opinions of Sheikh Islam Ahmad Ibn Taymiyah and his disciple Ibn Qayum al-Jaozy, as earlier discussed, all the scholars of the notable schools of Islamic law, both classical and contemporary, agree that this type of sale transaction is permissible under Shari'ah (Taqi Utmani, 2012).

This practice of al-Tawaruq is the earlier unsophisticated system of al-Tawaruq. This shows the practice of al-Tawaruq is not a new phenomenon. It had been widely practiced in the earlier time. However, the practice then was not as sophisticated as the contemporary practice. During the early time, the mechanism is that, a person will merely purchase commodities and make an agreement to pay on deferred payment basis. Then such person will sell the commodity to a third party for lower price and with cash spot payment. Then the fund seeker will use the money for his need, while being obliged to pay the original seller on deferred payment basis. Thus, al-Tawaruq is considered permissible by an overwhelming majority of scholars so far it fulfills the condition of sale contract, (Aznan Hasan, 2012). This slightly differed from the modern organized Tawaruq as discussed below.

4.2.2 al-Tawaruq al-Munazam (Organized Tawaruq)

al-Tawaruq al-munazam (Organized Tawaruq) is embodied in the practices of Islamic banks in the situation whereby a client who is in need of cash will approach the bank for loan. However, instead of loan application, the client will purchase a commodity from an Islamic bank on the basis of the sale contract of cost plus profit and deferred payment. Thus, the client will delegate the bank as its agent to sell the said commodity to a third party on the spot cash payment basis with lower price. The bank will then deposit the cash to the account of the client (Fiqh Academy, 2009).

In another word, al-Tawaruq as practiced by the Islamic bank is a procedure whereby a commodity which is neither gold, nor silver, considering that both are considered as currency, will be purchased by the bank from the international market or local market and then be sold to the seeker of fund which is its client on a cost plus deferred payment basis. The bank will also act as the agent of the client to sell the commodity to another party with lesser price, on a cash spot payment basis. Then, the cash will be delivered to the client to fulfill his need. Thus, the practice of al-Tawaruq al-munazam (Organized Tawaruq) is more complicated than the classical Fiqhi Tawaruq. This is because the practice is not only between the buyer and seller. Rather, it includes the transfer of the ownership of the commodity by sale, regulation of the financial intermediaries which is the bank that intermediates between the purchaser and the seller and the method of the payment of the prices, (Fiqh Academy, 2009).

4.2.2.1 Categories of the procedures of the Organized Tawaruq

a. International Market Procedure:

The Organized Tawaruq in the international commodity market is carried out in commodities such as crude palm oil, crude petroleum oil, flour, iron, sugar, copper and etc. the mechanism of this practice of Tawaruq is that the bank which is the fund provider will purchase commodity from the international

market, through its appointed broker in the market on a cash basis. After the taken of the possession of the commodity, the bank will sell it to the fund seeker (al-Mutawariq) on the basis of al-Murabahah (cost plus profit) basis. Then the bank will act as the agent of the client and sell the commodity, through its broker again, to another party in the commodity market on the spot cash basis and then deliver the proceeds of the sale to the account of the client. The client will pay the bank installmentally (Fiqh Academy, 2009).

b. Banking Liquidity Procedure:

This is the procedure for the facilitating of liquidity to the banking institutions: The mechanism is that the bank will deposit money in a foreign account of foreign banks. It will also appoint the oversea bank as its agent as well as entering into an agreement with the bank to purchase commodity from the international market on the basis of spot cash payment. The oversea bank will then sell the commodity to itself while still acting as the agent of the local bank on a deferred payment basis. The said oversea bank which now owns the commodity will sell the commodity in the international market on the spot cash payment basis. It will then utilize the cash to cater for its liquidity needs. With this process the bank, that is, fund provider will earn increase on the money it deposited in the foreign bank on a legitimate sale contract basis, as opposed to the interest-based method, which is prohibited under Islamic law.

5. Conclusion

To sum up, the foregoing is an expositional study on the Malaysian Bursa Suq al-Sil'ah which is a globally acceptable Islamic commodity market for the management of liquidity. The under pinning contracts of the commodity transaction are -Murabahah, al-Tawaruq and al-Musawamah. However, the implementation of al-Tawaruq remain contentious. Nevertheless, it agreed that even in the situation that it is utilized, its use must be premised on necessity and genuine need of liquidity, that is, in the situation where interest free loan is not obtainable. The opponent of the contract compared it with al-Inah. However, it should be observed that both al-Inah and al-Tawaruq are only similar in the sense that they are both sale contracts which purpose is to mobilize liquidity in order to avoid transaction on the basis of al-al-riba 'interest, nevertheless, nevertheless, the contracts defers in essence. Thus, while al-Inah involves two parties which are the buyer and the seller, al-Tawaruq is involved of three parties. This differentiates it from al-Inah. al-Tawaruq involves the seller, the buyer, and the second buyer. This makes it more legitimate as opposed to the opinion of the scholars that views it as the same al-Inah which is alleged to be utilized as a legal rick to circumvent transaction on the basis of al-al-riba. In short, the Malaysian Bursa Suq al-Sil'ah can be adopted as model for the emerging markets.

References

- Abdullah al-Mani', al-Ta'asil al-Fiqihi li al-Tawaruq fi Daw' al-Ihtiyat al-Mu'asirah, Research Paper, 2, see, < <http://www.salmajed.com/node/11311> >, (12/12/2012).
- Abu Daud, Sunan Abi Daud, Hadith No. 3384.
- al-Buhuti, Muhammad Bin Idris, Kashaf al-Qana' 'an Matin al-Iqna', (Bairut: Dar al-Fikir, 1420/1982), Vol. 3, at 186.
- al-Bukhari, Sahih al-Bukhar, Hatith No. 2089 & Muslim, Sahih al-Muslim, Hadith No. 1593.

al-Kasani, al-Imam ‘Alaudin Bin Abi Bakir Bin Mas’ud, al-Kasani al-Hanafi, Badai’u al-Sanai’u, fi Tartib al-Sahrai’u, (Bairut: Dar al-Kutub al-‘Arabi, 2nd Ed., 1394 AH/1974AD), vol. 5, at 135.

Aznan Hasan, Why Tawarruq Needs to Stay, Strengthen the practice, rather than prohibiting it, Islamic Finance News, 18th Septmeber 2009, at 16, see, <www.islamicfinancenews.com>, (10/12/2012).

Bacha, Oiyathulla I, The Islamic Inter-bank Money Market and Dual Banking System: the Malaysian Experience, INCEIF The Global University in Islamic Finance, 2008, MPRA, Munich Personal RePEc Archive, Online at [http://mpa.ub.uni-Muenchen.de/12699/MPRA Paper No. 12699](http://mpa.ub.uni-Muenchen.de/12699/MPRA_Paper_No._12699), Posted 13 January 2009 / 09 :41, at 30.

Bank Negara Malaysia (Central Bank of Malaysia), Shariah Resolutions in Islamic Finance, 2nd Ed., at 94.

BNM,

<http://iimm.bnm.gov.my/view.php?id=72&dbIndex=0&website_id=14&ex=1216289403&md=%C3%88%E2%80%9Em>, (02/12/2012).

Bursa Malaysia, Commodity murabahah in Deposit, at 10.

Bursa Suq Al Sila’, see, <http://www.multienergyresources.com/wordpress/?page_id=132> ,(01/11/2013).

Capital Markets and Services Act 2007.

Companies Act 1965.

Ibn Qyim al-Jaozi, I’ ilam al-Muwaqi’n, Vol. 3, at 22.

Ibn Rushd, Bidayah al-Mujtahid wa Nihayah al-Muqtasid, Ibid., Vol. 2, at 116.

Ibrahim Ahmad Uthman, al-Tawaruq Haqiatuhu –Anwa’ihu (al-Fiqhi al-Ma’aruf wa al-Masrafi al-Munazam), al-Daorah al-Tasi’ah ‘Asharah, Imarah al-shariqah, Daolah al-Imarah al-‘Arabiyah, at 5.

Islamic Securities Guidelines (Sukuk Gidelines) Securities Commission Malaysia, Revised Edition 12 July 2011, at 26.

ISRA, <<http://www.isra.my/fatwas/topics/treasury/interbank/tawarruq/item/262-oic-fiqh-academy-ruled-organised-tawarruq-impermissible-in-2009.html>>, (11/12/2012).

Labuan Offshore Securities Industry Act 1995.

MIFC (Malaysia International Islamic Financial Centre), Bursa Malaysia, Press Release on World first shariah-based commodity trading platform to facilitate Islamic finance goes live, at 1.

Muhammad al-Amin Shinqiti, Mudhakhirah Usul al-Fiqh, (MAkkah: Dar al-‘Alam al-Fawaid, 1426), at 24.

Muhammad Rawwas al-Qal’aji and Hamid Sadiq Qunaibi, Mujam Lughat Fuqaha (Dictionary of Islamic Legal Terminology) Arabic-English with Index of Arabic English, (Bairut: Dar An-Nafae, 1985), 270.

Muhammad Taqi Utmani, Verdicts on At-Tawaruq and its Banking Applications, at 1-2, see, <http://www.wisra.my/Index.php?option=com_content&veiw=article&id=360&Itemid=185> ,(12/12/2012).

Offshore Companies Act 1990.

Resolution of the Islamic Fiqh Academy, an affiliate of OIC, on Bay' al-Tawaruq, No. (4), in a session the was convene in Makkah on 11th of Rajab 1419AH/31st of Oct. 1998.

RHB Islamic Bank – Commodity Murabahah Deposit-I General Terms and Conditions, see, <
http://www.rhb.com.my/islamic_banking/deposit/RHBiB_CMD_TNC.pdf > , (02/01/2013).

Ri'asah al-'Amah li al-Ifta, Majalah al-Buhuth al-Islamiyah, No. 2, Rajab & Shawal, at 235 – 238, see also, <
<http://www.alifta.net/Fatawa/fatawaDetails.aspx?BookID=2&View=Page&PageNo=1&PageID=7235>>, (10/12/2012).

Securities Commission Act 1993.

Securities Industry (Central Depositories Act) 1991.

Security Commission Malaysia, Quarterly Bulletin of Malaysia Islamic Capital Market (ICM), September 2009, Vol. 4, No. 3, at 2.

Shariah Advisory Council, Central Bank of Malaysia, see, <
<http://www.isra.my/fatwas/topics/treasury/interbank/tawarruq/item/260-deposit-and-financing-products-based-on-tawarruq.html> > , (10/12/2012).

The Encyclopedia of Islamic law, Ministry of Awqaf of Kuwait, see, <
<http://www.isra.my/fatwas/topics/treasury/interbank/tawarruq/item/511-international-commodity-murabahah.html>>, (12/12/2012).

The International *Fiqh* Academy for Muslim World League; 15th session held in Makkah, 11-15 Rajab, 1419 H.A.