

## A PROPOSAL OF AMM (ADAPTED *MUDARABAH* MODEL) FOR SHARIAH COMPLIANT HOME FINANCING IN MALAYSIA

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### ABSTRACT

This study aims to propose a Shariah compliant mode of house financing named as “Adapted *Mudarabah* Model” or abbreviated as AMM. The proposal is made after discussing the most two common schemes for Islamic home financing i.e. BBA (*Bay' Bithaman Ajil*) dan MM (*Musharakah Mutanaqisah*) and their Shariah related issues. Thus, it is exploratory and conceptual in nature. This Shariah compliant financing model is proposed due to the shortfalls in the BBA and MM models where there are some unresolved and controversial Shariah and legal issues. This study uses the concept of *mudarabah* in this model and suggests that by implementing this model, all of the issues discussed in BBA and MM can be mitigated as the model does not require the Islamic banks to fulfill any of the conditions and obligations of counter-values. The proposal discussed in this article could contribute to the diversification of Shariah contracts for Islamic financing products. It is one of the celebrated ways in developing Islamic finance practices. The discussions of this paper focus on the Shariah aspects of the proposed model especially on *mudarabah* and *qard* contracts. The technical applications presented stand as illustrations and require further investigations and examinations for further application.

**Keywords:** AMM, home financing, BBA, Musharakah Mutanaqisah, Mudarabah

### INTRODUCTION

Islamic banks as financial intermediaries, in addition to their operating costs, are liable to pay a return to their depositors. Thus, when Islamic banks facilitate home financing using their depositors' money, there should be an acceptable legitimate return/profit to the bank. Hence, to attain this profit in a permitted way, Islamic banks currently use debts or equity-based Islamic concepts to facilitate home financing as an alternative to interest-bearing mortgage loans. Islamic banks frequently change their home financing models from one to another, particularly after 2012. Based on information collected through interview and the banks' websites, **Table 1** presents various home financing models used by Islamic banks in Malaysia from 1983 - 2015.

**Table 1:** Current and past models used for home financing in Malaysia

Existing models	Name of the Banks	1983 to 2012				End of 2012 - early 2013				2014-2015				
		BBA	MM	Shari'ah-compliant <i>ijarah</i>	BBA	MM	<i>tawarruq</i>	Shari'ah-compliant <i>istisna`</i>	<i>ijarah muntahia bi al-tamlik</i> <i>ijarah Mawsufah fi zimmah</i>	BBA	MM	<i>tawarruq</i>	BBA via commoditymurabahah <i>istisna`</i>	<i>ijarah muntahia bi al-tamlik</i> <i>ijarah mawsufah fi zimmah</i>
1	Alliance Islamic	√			√					√				
2	Bank Islam	√			√						√			
3	Bank Muamalat	√			√	√	√				√	√		
4	Bank Rakyat	√			√						√			
5	Public Islamic	√				√					√			
6	Affin Islamic	√			√	√					√	√		
7	RHB Islamic		√			√					√			
8	CIMB Islamic	√		√	√			√			√			√
9	Maybank Islamic	√	√		√	√	√				√	√		
10	Sadiq Islamic		√			√					√			
11	Al Rajhi Bank			√			√					√		
12	Asian Finance House			√			√				√			√
13	Kuwait Finance House		√	√	√		√	√	√	√				√
14	OCBC Islamic			√	√			√						√

**Source:** Interview Data and information in webpage of Islamic banks

As **Table 1** shows, Islamic banks in Malaysia facilitate home financing based on the concepts of BBA, MM, *tawarruq*, *ijarah mawsufah fi al-dhimmah*, *ijarah muntahiyah bi al-tamlik* and *istisna`*.

However, since 1983 until early 2012, the majority of the banks used the BBA model, while the MM model was facilitated only in four Islamic banks since 2006 till early 2012. The application of the BBA model started to diminish between the middle of 2012 and early 2013, particularly after the BNM imposed new resolutions on *bai`al-ina`b*. At present, the BBA seems not to exist in the market and most banks have replaced it with the *tawarruq* model, while others have replaced it with the MM and other models. However, the previous disbursed financing on BBA continues until the end of the tenure.

Additionally, due to custom and market needs as well as the country's regulatory requirements, Islamic banks are facing difficulties in fulfilling a number of the conditions required for pillars of the contract and counter-value obligations based on BBA (*Bay' Bithaman Ajil*) and MM (*Musharakah Mutanaqisah*) schemes of house financing (Arif & Rosly, 2011; Tariq, 2010; Abdus Samad et al., 2006).

Therefore, this paper aims to propose a Shariah compliant mode of house financing named as "Adapted *Mudarabah* Model" or abbreviated as AMM. The proposal is made after discussing the most two common schemes for Islamic home financing i.e. BBA (*Bay' Bithaman Ajil*) dan MM (*Musharakah Mutanaqisah*) and their Shariah related issues. Thus, it is exploratory and conceptual in nature. This Shariah compliant financing model is proposed due to the shortfalls in the BBA and MM models where there are some unresolved and controversial Shariah and legal issues. This study applied interview method and content analysis on the data obtained through interview and previous literatures. The interviewees comprise of practitioners of Islamic banking in the Malaysian Islamic Banks.

## **REVIEW OF THE CRITIQUES ON BBA AND MM MODELS OF HOME FINANCING**

BBA home financing was introduced to the Malaysian market in 1983, as an alternative to conventional interest-bearing mortgage loan. Since then, for more than two decades, it has been the single dominant model in the market (Razak, Mohamed, & Taib, 2008). Over time, the BBA model has been largely criticized on *Shariah* related issues, e.g., on *bai`al-ina`b* (buy back contract) (Zulkifli Hasan, 2009; Rosly & Seman, 2003; Shaharuddin, 2012, 2015); *bay' wa sharth* (conditional sale) (Mahmood, 2007); *bai` al-ma`dum* (sale of something which ceases to exist) (Dahlan, Shuib & Noor, 2017; Dahlan, Zubaidah & Aljunid, 2011); *khayar al-'ayb* (option to rescind the sales contract because of defect) (Noor et al., 2013; Rosly, Sanusi, & Yasin, 2001); default and early settlement penalty (Hassan, 2011); uncertainty in ownership of selling object (Dahlan & Syed Abdul Kader 2010); uncertainty in object's price (Meera & Razak, 2009; Shahwan, Mohammad, & Rahman, 2013); and risk and liability avoidance (Dahlan & Syed Abdul Kader 2010; Rosly, 2011; Rosly & Ariff, 2011). Then, the public as well as judges in several court cases also criticized this practice on its legitimacy (Hashim & Hassan, 2011). Besides that, some scholars, particularly those from the Middle East, have viewed that the current practice of BBA is just a trick used to facilitate interest-bearing loans (Meera & Abdul Razak, 2005).

As an alternative, and to mitigate Shariah issues in BBA practices, several scholars (Dahlan & Syed Abdul Kader 2010; Meera & Razak, 2005, 2009; Osmani & Abdullah, 2010; Razak et al., 2008; Shuib, Borhan, & Bakar, 2011) have suggested implementing the MM home financing model.

In 2006, Kuwait Finance House (KFH) launched the MM model in the Malaysian market. Subsequently, a few banks, such as HSBC Amanah Malaysia, Maybank Islamic Bank, Citibank Islamic Bank and RHB Islamic Bank, also launched this facility in the market (Aris et al., 2012). However, like BBA, the MM model has also been criticized on a number of legal and Shariah issues, such as the issues of purchase undertaking (Naim, 2011); uncertainty in ownership of the object (Boon Ka, 2009; Haneef, Kunhibava, & Smolo, 2011; Sadique, 2008); uncertainty in rental

amount/price (Zubair Hasan, 2012; Meera & Razak, 2005, 2009); default and early settlement (Naim, 2011); forward rental (Sadique, 2008); and risk and liability avoidance in MM and *ijarah* contracts (Boon Ka, 2009; Haneef et al., 2011).

Boon Ka (2009), Noor & Abdullah (2010), Hasan (2011 & 2012) and others argued that even though the MM model theoretically seems fairer than the BBA model, it is similar to *riba*. Ariff & Rosly (2011) viewed Islamic financing products in general as the mirror image of conventional products; in particular, the fixed-rate BBA home financing is similar to the conventional fixed-rate home loan. Similarly, the variable rate of BBA and MM home financing is similar to the floating-rate conventional home loan.

However, until the BNM's updated Shariah resolutions for *bai`al-ina`b* on 19<sup>th</sup> December 2012, the MM model was not favored by the Malaysian market, except by a few Islamic banks. The *bai`al-ina`b* resolution mainly demands that the bankers fulfill the conditions required in the sales contract and maintain an acceptable gap between both the Property Purchase Agreement (PPA) and Property Sales Agreement (PSA) in the BBA model. The resolutions also require them to conclude BBA contracts, free from any invalid conditions. Thus, the *bai`al-ina`b*-based BBA model started to diminish in the market, and some Islamic banks launched the MM model, either concurrently with BBA or with other models, while some banks moved to *tawarruq*, *ijarah* and other models.

At the end of 2012 and early 2013, the official webpage of Islamic banks started to showcase various Islamic models for home financing, such as: *tawarruq*, *murabahah*, *istisna`*, *ijarah mawwsufah fi zimamah* (Forward *ijarah*), *ijarah muntabiah bi al-tamlik* and *musharakah mutanaqisah*. In addition, in 2012, a new model "Zubair Diminishing Balance Model" (ZDBM) was proposed by Zubair Hasan (2012) as an alternative to all the existing models. This model was developed based on *musharakah* and *murabahah* contracts and it introduced a new structure and calculating formula. However, prior to Hasan's ZDBM, a similar home financing technique was suggested by Dahlan et al. (2011). Nonetheless, some banks, like Alliance Islamic Bank, are still using the BBA model to facilitate financing for under-construction projects (Alliance Islamic Bank, 9 September 2016). Even though various home financing models have been introduced in the market under various labels claiming to facilitate financing for under-construction projects, issues concerning the fulfillment of the earlier mentioned conditions on the subject matter of the contract remain.

Although some critical Shari'ah issues related to the subject matter of the contract exist in the BBA and MM models that need to be resolved, and due to lack of proper alternative applicable models, Islamic banks still facilitate home financing through these two models. Besides that, as stated by Hasan (2011); Meera & Razak (2005); and Dahlan & Abdul Kader (2010), Islamic banks are not willing to take risks or liabilities, such as constructional risk, defect liability and others, that might occur in these types of transactions; instead, the customers are expected to bear them.

## **SHARIAH ISSUES IN BBA AND MM**

With due respect to the proponents of BBA and MM models for house financing and their arguments, this section discusses some of the main issues raised in practices. As discussed in the previous section, Islamic banks are unable to fulfill some conditions required for the contract and counter-value obligations in the BBA and MM practices. This is due to custom and market conditions as well as regulatory requirements of the country. Firstly, in under-construction BBA and MM practices, it is a tradition that the contract is concluded on non-existent houses, even where the below ground level and foundation work is yet to start. Therefore, it is impossible for Islamic banks to fulfill the condition of existence of the subject matter/object as required in the contracts of *murabahah* in BBA and *musharakah* and *ijarah* in MM. However, the bankers (interviewees) are aware that concluding contract on a non-existent object is not permissible due to uncertainty, but in order to meet the needs of market, the facility agreement in MM and BBA is still concluded on non-

existent objects. At the same time, bankers opined that taking responsibility of delivery and other property-related risks and liabilities in an under-construction facility would lead to high-risk weight and impose extraordinary stress on banking capital.

Moreover, even though the issue of *bai' al-ma'dum* could possibly be avoided through *istisna`* and Build-Then-Sell (BTS) concept, none of these concepts seems to exist in the market, due to taking into account financiers' liabilities in the *istisna`* concept and some negative impacts on customers and small developers in BTS.

Secondly, in a true *murabahah* sale in BBA, Islamic banks should obtain ownership of the house directly from developers, while in a partnership MM model, both partners should purchase the ownership of the house from the developer. Due to custom, country laws and ownership-related responsibilities, Islamic banks do not get involved in S&P agreement. Besides, in *murabahah*, *musharakah* and *ijarah* contracts, the property owner is responsible for all the risks and liabilities related to that particular house. However, the banks are not willing to bear ownership-related risks or liabilities as according to them, it is not suitable in the banking business. Hence, if the banks facilitate BBA or MM model in this condition, the fulfillment of Shariah requirements is questionable.

Thirdly, Islamic banks cannot fix their price or rental in BBA and MM as required in Shariah-based contracts, because their BFR (Base Financing Rate) is highly dependent on OPR (Overnight Policy Rate). When they provide long-term financing in a competitive dual banking market, they have to adjust their returns according to the liabilities that they have to pay their investors and depositors. Therefore, to transfer inflation risk and early settlement losses to the customer, Islamic banks are obliged to show the real price in LO (Letter of Offer) and to conclude the contract at ceiling rate. Similarly, the issues of forward rental are also not avoidable in the MM practice when the bank collects this rental based on disbursed amount at BFR and uses that as first month rental or part of the rental.

Based on literature and findings of the interviews study, it is evident that the existing products have been developed to meet market needs, undermining the Shariah requirements by using some legal devices. However, to mitigate the issues that arise in BBA and MM models, a number of home financing models have been suggested by previous studies such as ZDBM and others. But due to market conditions and other obstacles that arise when these models are applied, practitioners do not implement any of these models and suggestions. Therefore, the study proposes an adapted model concerning Shariah norms and taking significant account of the market conditions and customs of the country.

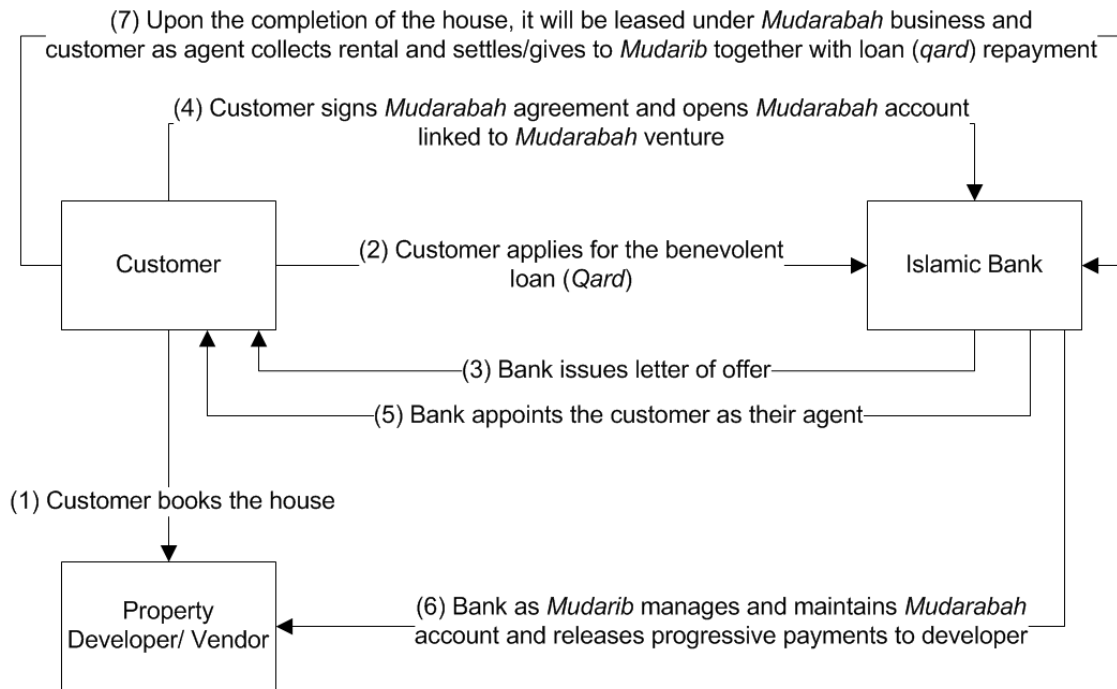
Based on interviews findings, the study suggests that facilitating home financing for an under-construction project through BBA and MM is not suitable in the market because in these two models, the contract must fulfill the following conditions: existence of the object at the time the contract is concluded; obtaining full ownership and possessing the object; and a fixed price. The former two conditions are not easy to fulfill in an under-construction project, while the latter is not possible in the market where the interest rate is not stable. Also, when the banks use these two models based on *murabahah* or *musharakah* or *ijarah* contracts, they are obliged to bear risks and liabilities related to these contracts. The interviewees opined that taking risks and liabilities is not appropriate for the banking business.

## **PROPOSED ADAPTED *MUDARABA*H MODEL (AMM) FOR HOME FINANCING**

This section constitutes the main objective of this study.

**Process Flow of the Proposed AMM**

Under this AMM facility, banks play the role of the entrepreneur (*mudharib*) and the customer is the capital provider (*rabb al-mal*). Prior to initiating a *mudharabah* venture between two partners, the customer obtains an amount of money from the bank based on the concept of *qard*, and this amount is used as the *mudharabah* capital. Once the *mudharabah* agreement is concluded, the *mudharib* (bank) appoints the customer as its agent through the agreement of *wakalah* to work in the *mudharabah* venture. During the construction period, the one who wishes to rent the property pays a fixed amount as part of future rental under the principle of forward *ijarah*. After completion, the tenant pays rental to the *mudharabah* venture based on the principle of *ijarah*. These processes are illustrated in **Figure 1**.



**Figure 1:** Illustration of AMM  
Source: Interview

**Main Applied Shari’ah Principles in the Proposed AMM**

The proposed AMM model uses the following Islamic contracts, namely: *qard* (simple loan), *mudharabah* (profit sharing), *wakalah* (agency), forward *ijarah* (forward leasing), *ijarah* (leasing) and *ibra’* (releasement). However, the first two contracts are considered as the main contracts used in AMM, while others are sub-contracts.

***Aqd al-qard-al-hasan (Zero-return loan)***

As illustrated in **Figure 1**, in the initial stage of the AMM facility, Islamic banks provide an interest-free loan to customer based on the principal of *qard*. Islam does not permit any kind of *qard*, except the charitable act of beneficence loan, which is mainly given for welfare purposes. Based on this, the current study suggests that providing zero return loans for people in need to fulfill their dire needs of possessing a house is considered as a moral duty of every Muslim. The beneficence loan is a loan provided to the needy for an agreed period of time without any condition to pay profit or interest to

the lender. It is not permitted in this AMM facility to stipulate any condition that additional amount should be repaid as profit for the loan amount. However, it is to be noted that a loan beneficial to creditor is forbidden only when it is stipulated in the contract as a condition or expected by convention (al-Zuhayli, 1997). The contemporary scholars view that Islamic banks can charge administrative cost and whatever other charges related to loan agreement, but this amount should not be calculated based on time value or loan amount. Islamic banks are not permitted in AMM to link the loan agreement with *mudarabah* contract. Even if they stipulate this condition in the loan agreement, this condition is void and does not have any legal effect, yet the loan contract would remain valid.

Taken together, it can be summarized that when Islamic banks conclude loan agreement under AMM facility, the following important points should be taken into account: first, it must be free from any inter-conditional clauses and it should be concluded separately from all other financing agreements; second, banks should not charge any extra payment from customers, except the actual cost that is required to conclude loan agreement; third, the loan repayment should be paid separately; fourth, the amount and schedule of loan payment should be stated in the agreement; fifth, repayment of loan should not take place during construction period because some practitioners may use collected loan repayment as profit for disbursed amount; and seventh, when Islamic banks calculate their profit/rental, the loan amount should not be used to determine their profit, but it should be calculated at 10 percent (as an example) of market value of the house. The method of calculating monthly installment and banks' profit/rental is discussed later.

A question may arise here. To what extent is application of zero return loans possible in banking business because the banks are not charitable organizations? Firstly, even though bank creates interest-free loan in AMM model, in fact, at the end of financing tenure, the earning of the bank remains the same, because bank generates its profit from the rental of *mudarabah* venture. Secondly, deposits are major sources of funds in banking business. Islamic banks collect their deposits from people based on the concepts of safekeeping (*wadi'ah yad al-damanah*) and partnership (*mudarabah*). In the former concept, banks do not have any legal obligation to pay return on deposit. But in order to motivate depositors to place their surplus, Islamic banks provide *hibah*, while in the latter method; the depositors are entitled for contractual return based on the performance of the business. Hence, the Islamic bank can create long term zero return loans to help people in need to obtain ownership of their dream house by using appropriate debt-based deposits. However, if Islamic banks use *wadi'ah yad al-damanah* as a source to create zero return loans, the bank should pay *hibah* from its general profit without referring to the *mudarabah* venture.

Thirdly, according to Rosly (2011) and Rosly & Ariff (2011), even though Islamic bank facilitate financing based on various principles, in actual practice, all financing facilities are treated as collateral loan. This is because according to regulatory framework, financing facilities should be supported by 8 per cent of banks' own capital (economic capital). Besides, the required economic capital is dependent on risk weight of the financing facility. Accordingly, the collateral loan comes with 50 per cent of risk weight, while true sales and *musharakah* financing come with 100 per cent and 150 per cent risk weight, respectively. So according to regulation, a RM100,000.00 loan should be supported by RM8,000.00 of bank's own capital. Similarly, the same amount of true sales should be supported by RM16,000.00 and *musharakah* financing should be supported by RM24,000.00 (Rosly, 2011).

Based on the above, it is apparent that riskier facilities stress on banks' capital and reduce their financing portfolio. Therefore, to create more facilities from their own limited capital, none of the Islamic banking facilities is reported as *bona fide* sale or equity financing in their financing book; all these are treated as collateralized loan (Rosly, 2011; Rosly & Ariff, 2011).

### ***Mudarabah (Silent Partnership Contract)***

In this *Mudarabah/AMM* model, the existence of the house is not the condition at all and financing bank is not responsible for delivery, defects and any other risks or liabilities, since according to this model, all the risks and liabilities go to the *mudarabah* venture and all expenses and costs related to property in *mudarabah* venture and *ijarah* agreement fall under the cost of *mudarabah* venture. Instead, the bank obtains a portion of profit as *mudarib* by investing the effort in the business.

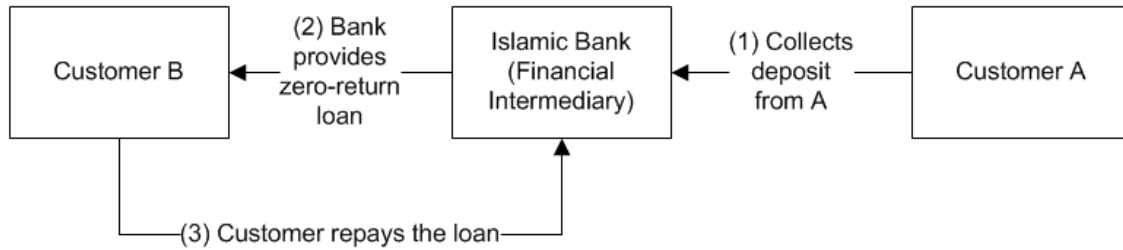
Under this new AMM model, Islamic banks play the role of entrepreneur and the customers play the role of capital provider/investor. As illustrated in **Figure 1** of this model, once customer's loan (*qard*) is approved by bank, customer opens special investment *mudarabah* deposit account with bank, by depositing a few thousand Ringgit. This amount is equal to all fees and other expenses related to purchase of *mudarabah* asset, in addition to the remaining 8 percent of house price which should be paid to developer when S&P agreement is concluded. It should be noted that the S&P agreement requires customers to pay 10 percent of house price, but in this model, customer pays 2 percent of house price as booking fee prior to applying for financing. Subsequently, bank deposits approved loan amount into same account progressively as remaining *mudarabah* capital of the customer.

### ***Capital***

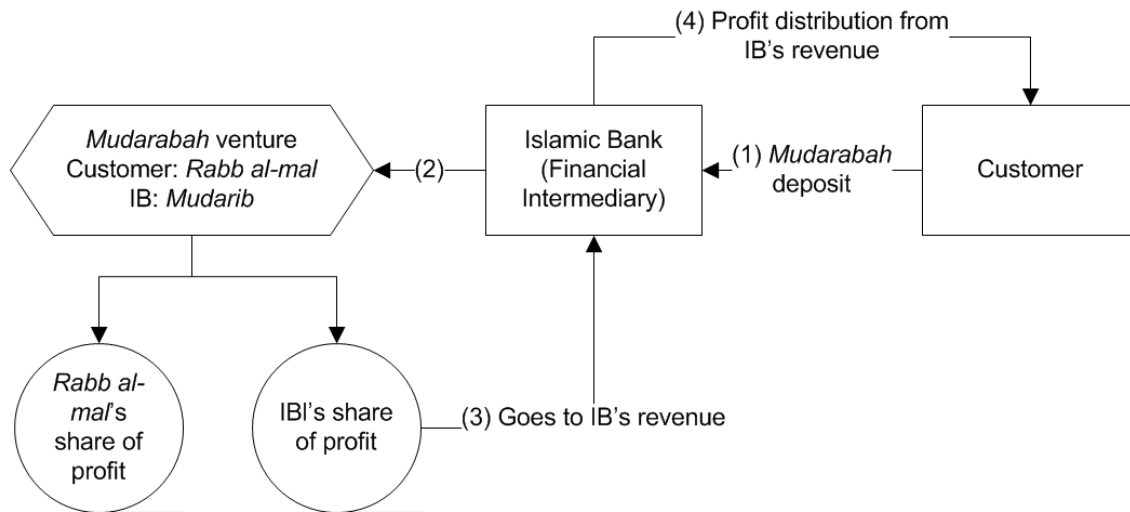
First, according to majority opinion, *mudarabah* capital should be a monetary asset (al-Zuhayli, 1997). Based on this, the money deposited in *mudarabah* investment account is considered as capital of *mudarabah* venture. Second, the capital of *mudarabah* should be known and defined, because profit is recognized depending on capital. So, a *mudarabah* contract cannot be concluded on an unknown capital, as this may lead to dispute among contracting parties with regards to profit. It is to be noted that the profit is also considered as subject matter of *mudarabah* contract. So, lack of knowledge about profit would render the contract invalid. Third, all jurists are unanimous that *mudarabah* capital must be present/existent. So, a creditor cannot ask a debtor to use the money that he/she owes to him/her as *mudarabah* capital. This is because even though it is under the possession of debtor, the money still belongs to the creditor and it is similar to extending the loan period to get additional consideration by using *mudarabah* contract as a legal devise. However, according to majority opinion (Hanafis, Shafi'is and Hanbalis), the deposits can be used as *mudarabah* capital with the consent of the depositor (al-Kasani, 1986).

A question that may arise here is: how can a bank play the role of *mudarib* in a transaction in which a major part of the *mudarabah* capital is provided by the bank as a benevolent loan to the *rab al-mal*? To answer this, banking business is different from individual transactions. Islamic banks do not facilitate financing or create loans from their own capital. Banks, as financial intermediaries, mobilize deposits from various sources and use that money to create various financing and loans. So, on the one hand, banks as financial intermediaries take deposit from customer A and provide interest-free loan to customer B in an independent contract without stipulating any tying arrangements in the agreement (See **Figure 2**). On the other hand, customer B deposits the loan amount in *mudarabah* account and the bank invests that money in real estate on the basis of *mudarabah*. It is noteworthy to highlight here that in this *Mudarabah* venture, the bank appoints the customer as its agent to render services and be paid a fee (*Ujrah*). The return will be distributed among partners according to agreed *mudarabah* profit sharing ratio (See **Figure 3**).





**Figure 2:** Financing contract  
**Source:** Developed based on Literature



**Figure 3:** *Mudarabah* venture and bank's profit  
**Source:** Developed based on literature

The fourth condition of *mudarabah* capital is that the capital should be fully released to laborer/entrepreneur, in order to establish the trust and enable him/her to work flexibly in order to attain the objective of the contract. Al-Khatib Al-Shirbīniy, the Shafi'i jurist, said that this does not mean to say that he/she has to release the capital at the time when contract is concluded, but the capital should be available when *mudarib* wants to initiate the work (Al-Shirbīniy, 1997). Similar to Al-Khatib Al-Shirbīniy's view, the Malikis also permit making multiple contributions to *mudarabah* capital (Zuhaili, 2003). In the new AMM model, bank as *mudarib*, uses customer's capital flexibly whenever it is needed for the *mudarabah* venture. In addition, Al-Kasani said that any condition stipulated to keep the capital under *rabb al-mal's* control, renders the contract invalid (Al-Kasani, A., 1986).

With regards to this condition, the current study suggests that even though in the loan agreement, the ownership of approved loan amount is transferred to customer, the money remains with the bank. According to Malikis, even though the debtor does not receive and possess the loan amount from creditor, once contract of loan is concluded, the ownership of the loan is transferred to debtor (al-Shawkani, 1993). Though this view contradicts the majority opinion, if one takes into account the market conditions and urgent needs of customers for having this facility, the study takes Malikis' view of the approved *qard* amount with bank to be released to *mudarabah* account progressively, especially whenever capital is needed.

### ***Duties and Power of Contracting Parties***

The *mudharabah* contract can be concluded on an unrestricted or restricted basis. In the former, the *mudharib* can freely act based on his/her professional skills, to attain the objective of the contract, such as: engaging in any kind of permissible trading, trying out a business by himself/herself or appointing others to work on his/her behalf according to custom, choosing appropriate market to conduct the business and depositing the capital with trustworthy person or bank. He/she is also entitled to take expenses related to *mudharabah* venture. But, it is not permissible for him/her to provide loans, charity and gift from *mudharabah* capital (AAOIFI, 2015). Similarly, the capital provider has the power to stipulate some restrictions on *mudharabah* operations, such as limiting the time, place, investment sectors and others. However, the capital provider does not have the right to stipulate the conditions to take part in *mudharabah* operations (AAOIFI, 2015).

All jurists are unanimous that *mudharabah* contract is mutually non-binding and it can be terminated unilaterally anytime, except in the following two conditions: if *mudharib* commences the business or both parties have agreed upon a particular time period. So, based on this ruling, once the *mudharabah* agreement is concluded between bank and customer for a particular period of time, and *mudharib* has commenced the S&P order with developer in the effort to purchase *mudharabah* asset, it is not permissible to terminate the contract without the mutual agreement of the contracting parties (AAOIFI, 2015; al-Qurtubi, 1964).

In the new AMM model, the *mudharabah* contract is concluded between customer and bank with the condition that it is invested in real estate for a specific period of time. In *mudharabah* venture, bank appoints the customer as its agent to conclude purchase order and to maintain the house. A question may arise regarding whether or not the customer (*rabb al-mal*) is allowed to work in the *mudharabah* venture. According to *fiqh* rule, as long as *rabb al-mal* does not stipulate the condition to interfere in *mudharabah* venture, it is permissible for *mudharib* to appoint him/her as his/her agent to carry out some work on his/her behalf. In addition, some classical scholars have viewed that since it is permitted for *mudharib* to appoint any one as his/her agent in *mudharabah* venture, appointing *rabb al-mal* as agent is much better, because he/she will be more sincere and concerned about this business than anyone else.

Moreover, customer, as the appointed agent, concludes the S&P agreement on *mudharabah* asset with developer. In fact, S&P agreement is an agreement to purchase an asset, and it does not provide the ownership to customer. Even though S&P agreement is concluded under customer's name, throughout the tenure, the house belongs to the *mudharabah* venture. Therefore, the tenant should pay rental for the house. It is not necessary for customer to rent the house but as appointed agent, he/she is free to rent it to any third party with the consent of *mudharib*. However, it is customer's duty to collect rental and settle monthly payment to *mudharib*. The way of determining rental and method of payment is discussed in detail in the following section.

### ***Profit***

To avoid uncertainty in *mudharabah* venture, it is a condition that both contracting parties should know the ratio of profit and it should not be fixed in lump sum or based on a certain percentage of capital. However, according to majority view, if *mudharabah* agreement is concluded without specifying profit sharing ratio, the contract is still considered valid but the profit will be distributed equally among partners (al-Khaṭīb al-Sharḥī al-Shāfi'ī, 1994).

Under this model, rental paid to *mudharabah* asset is considered as the profit of *mudharabah* venture. So, with reference to rental, some scholars have viewed that to avoid uncertainty in price, the rental must be determined for the entire period of the tenure. Also, the lessor should not be

given the option to adjust it when needed. However, they viewed that it is permissible if the rental is fixed at the beginning with different amounts for various phases (al-Zuhayli, 1997; Usmani, 1998).

Since cost of fund in Islamic bank is based on variable rate, it is not practical to fix the rental for the entire tenure, because it may lead to liquidity risk-related problems. Therefore, the rental amount should be reviewed periodically every five years (Meera & Razak, 2009). The present study suggests that periodically reviewing rental based on outstanding amount is similar to conventional practice. Therefore, concerning the principle requirement and market conditions, the current study determines the rental based on the value of the property at the beginning of the contract at a ceiling rate and adjusting the profit sharing ratio according to market condition as illustrated in **Table 2**. The previous studies also show that some Shariah advisers as well as a number of scholars of Islamic economics and *fiqh*, have preferred to fix the rental based on property value than benchmarking with interest rate (Meera & Razak, 2005).

**Forward Ijarah, Ijarah and Ibra'**

It is noteworthy that the forward *ijarah*, *ijarah* and *ibra'* principles are not treated in this model as in BBA and MM models. In BBA and MM models, the forward *ijarah* and *ijarah* leasing are calculated based on disbursed amount and margin of financing at BFR accordingly. But in this model, the former is a fixed amount, while the latter is 10 percent of the property value. Similarly, in BBA and MM, the *ibra'* amount depends on BFR, while in AMM, the *ibra'* is not given based on BFR, but with the concern of the *rabb al-mal* (customer) in mind, the *mudarib* (bank) increases the proportion of the profit. It is to be noted that at the initial stage of AMM facility, the rental is fixed with different amount for various phases and it is not permitted in this facility to do any amendment to the proportion of the profit in the middle of the agreed phases.

**Method of Payment**

**Table 2:** Installment of *mudarabah's* profit and *qard* repayment

Existing BBA and MM		AMM Model			
Financing Amount RM180,000.00		<i>Qard</i> Amount RM180,000.00			
Property Value RM200,000.00		Property Value RM200,000.00			
Financing rate: 4.65%		<i>Mudarabah</i> Share: 4.65%			
Number of payment (Month): 240		Number of payment (Month): 240			
Paid During Construction: RM10,075.00		Paid during construction: RM10,756.91			
Paid After Completion: RM96,815.50		Paid After completion: RM96,815.40			
Total profit to bank: RM106,890.50		Total profit to Bank: RM107,571.91			
AMM Model: Payment During Construction period					
<b>Year 1</b>	448.21 per Month × 12 = 5378.52				
<b>Year 2</b>	448.21 per Month × 12 = 5378.52				
AMM Model: Payment After Completion					
Phases	Monthly fixed payment	Rental 10 per cent from property value	<i>Mudarib's</i> Share 4.65 per cent	<i>Rabb al-mal's</i> Share 5.35 per cent	Payment for <i>Qard</i>
Year 1	1160	1479.69	687.66	792.03	472.34
Year 2	1160	1448.14	665.53	782.61	494.47
Year 3	1160	1409.61	642.36	767.25	517.64

Year 4	1160	1368.36	618.08	750.28	541.92
Year 5	1160	1324.19	592.65	731.54	567.35
Year 6	1160	1276.85	566.02	710.83	593.98
Year 7	1160	1226.06	538.11	687.95	621.89
Year 8	1160	1171.56	508.88	662.68	651.12
Year 9	1160	1113.03	478.27	634.76	681.73
Year 10	1160	1050.11	446.2	603.91	713.8
Year 11	1160	982.44	412.6	569.84	747.4
Year 12	1160	909.61	377.41	532.2	782.59
Year 13	1160	831.16	340.55	490.61	819.45
Year 14	1160	746.61	301.94	444.67	858.06
Year 15	1160	655.41	261.49	393.92	898.51
Year 16	1160	556.98	219.12	337.86	940.88
Year 17	1160	450.67	174.74	275.93	985.26
Year 18	1160	335.76	128.25	207.51	1031.75
Year 19	1160	211.48	79.55	131.93	1080.45
Year 20	1160	76.97	28.54	48.43	1131.46
Total	23200×12	18624.69×12	8067.95×12	10,556.74×12	15169.91×12
<b>Total Payment</b>	278,400	223,496.28	96,815.40	126,680.88	182,038.92

**Source:** Based on interview and standard scheduled payment in variable rate of financing.  
 (Note: The amount shown in the **Table 2** is not accurate but based on forecast)

As the above **Table 2** illustrates, the AMM model does not refer to financing amount to determine profit. But at the initial stage of the facility, the house rental is calculated based on property value. For example, if the property value is RM200,000.00, the rental of *mudarabah* asset is set at 10 per cent of the house value per annum and this amount is shared between *rabb al-mal* (customer) and *mudarib* (bank) at 4.65 per cent and 5.35 per cent, respectively.

During construction period, part of calculated rental is paid to bank as forward rental for future use of the property. The difference between forward rentals paid in existing models and AMM model is that in the existing models, Islamic banks collect forward rental based on disbursed amount which is equal to progressive interest payment in conventional banks. Besides, the collected forward rental is not redeemed at any point throughout the financing tenure. On the contrary, in the suggested new model, the forward rental is part of the rental which should be paid in future. Similarly, the amount paid as forward rental is not dependent on the disbursed amount, but it is equal to the fixed amount regardless of how much the bank has disbursed to developer. For example, if the house value is RM200,000.00 and the banks' portion in *mudarabah* profit is 4.65 per cent, after completion, the tenant has to pay a total rental of RM107,571.91. So, the portion of total rental amount paid to *mudarabah* venture during construction period would reduce the burden of high repayment obligation upon completion of the project. Accordingly, tenant pays RM448.21 every month during construction period.

The present study acknowledges that the AMM model only uses market BFR as benchmark to determine competitive market price. But, the model does not depend on interest rate and outstanding balance of the debt in the entire financing tenure. If there is any change in the market

BFR, the profit sharing ratio will be adjusted without referring to the remaining outstanding balance. According to AAOIFI (2010), it is permissible to change profit sharing ratio at any time and fix the profit at particular ceiling with the agreement that the amount below or equal to ceiling is distributed among the partners according to agreed ratio (AAOIFI, 2010).

Moreover, in the AMM model, it not permissible for Islamic banks to collect loan repayment from customer during construction period, to avoid the doubt of using this amount as progressive interest payment for the disbursed amount, which is not acceptable in Shariah.

In general, the middle-class customers' income is very limited and fixed (Meera & Razak, 2009). Settling debt obligation and loan payment at once is a big burden for them. On the other hand, in banking practice, a major part of monthly installments in the early stage of financing tenure goes to payment of profit and to settle banks' liabilities towards their depositors. Even though paying two different fixed amounts is more preferable to show the true nature of loan and *mudarabah* rental, considering the financial situation of needy customers and considering the market condition, the AMM model also uses the excel formula (automated calculations) to divide monthly installments for rental and loan. Even though AMM uses excel formula, the profit of the bank is not dependent on outstanding balance of loan amount as in BBA and MM models, because the rental in AMM is periodically fixed and making changes in mid-phases are not allowed.

### **The Non-Existence and Non-Completion of the House**

In this AMM model, the existence of the house is not the condition at all and financing bank is not responsible for delivery, defects and any other risks or liabilities, since according to this model, all the risks and liabilities go to the *mudarabah* venture and all expenses and costs related to property in *mudarabah* venture and *ijarah* agreement fall under the cost of *mudarabah* venture. Instead, the bank obtains a portion of profit as *mudarib* by investing the effort in the business. This model also does not require any sale or joint ownership agreement in which the condition of full ownership is required and where owners should bear risks and liabilities. Additionally, the house is purchased as *mudarabah* asset and S&P agreement concluded in customer's name to avoid double legal charges, but the house still belongs to the *mudarabah* venture. In addition, all the risks and liabilities related to this house are considered as a loss in *mudarabah* venture.

### **CONCLUSION**

In this condition, considering market condition, urgent need for Shariah compliance in under-construction home financing facility to fulfill dire needs of the people to possess a home, the study has come up with an adapted *mudarabah* model (AMM). The study uses the concept of *mudarabah* in this model and the study suggests that by implementing this model, all of the issues discussed in BBA and MM can be mitigated as the model does not require the Islamic banks to fulfill any of the conditions and obligations of counter-values which have been criticized by some scholars. However, some critics that have been raised against this AMM model are: (i) the practice of *qard* combined with *mudarabah* is a form of prohibited *qard* as it derives extra benefit to the lender and (ii) the issues of *bay'* (sale) and *salaf/qard* (loan) combination where the lender is appointed as *mudarib* in other contract between them. These two issues are actually related to the combination between sale and loan contracts which is prohibited by the Shariah. However, *mudarabah* is a not a sale or exchange contract. Indeed, it is a partnership contract. The combination between partnership and *qard* contracts is allowed by Hanafis and prohibited by the majority of Islamic jurists. Since this combination is a subject of disagreement between Islamic jurists and not consensually disallowed by them, the potential of this model does prevail especially if it really fulfills the needs of the society for Islamic house financing. Finally, since this paper is still exploratory and conceptual in nature; it needs further investigations and examinations by the industry.

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