



# Uqud in Islamic Financial Transactions

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Uqud in financial transactions

Classification of Uqud

Islamic Banking Products

Takaful Products

CBA  
2009  
Section 2

- “Islamic financial business” means any financial business in ringgit or other currency which is subject to the laws enforced by the Bank and consistent with the Shariah;

# IFSA 2013

## Section 2

- “Islamic banking business” means the business of—
- (a) accepting Islamic deposits on current account, deposit account, savings account or other similar accounts, with or without the business of paying or collecting cheques drawn by or paid in by customers; or
- (b) accepting money under an investment account; and
- (c) provision of finance; and
- (d) such other business as prescribed under section 3;

# IFSA 2013

## Section 28

- (1) An institution shall at all times ensure that its aims and operations, business, affairs and activities are in compliance with Shariah.

# Shariah Standards (BNM Policy Document)

*Hibah*

*Bay` `Al-Inah*

*Kafalah*

*Wakalah*

*Wadi`ah*

*Qardh*

*Wa`d*

*Tawarruq*

*Bay' al-Sarf*

*Ijarah*

*Ibra*

*Mudharabah*

*Musyarakah*


*Al Rahnu*

# Introduction

As for evolution of Islamic law of contract, it starts with *al-Quran* which already prescribes several types of nominate contract as well as certain general contractual maxims.



Thereafter, the traditions or *al-Sunnah* supplement the Quranic groundwork as a support or additional explanation to its general provision.



The Muslim jurists in all Islamic school of law later developed the principles of contract.

## Uqud in al-Quran

- In *al-Quran*, there are only over forty verses out of 6666 verses on a dozen types of commercial contract.
- Performing contract which enjoins believers to keep faith to contracts (Al-Quran: *Surah al-Maidah*, verse 1),
- Three verses with a common theme of keeping promise (Al-Quran: *Surah al-Isra*, verse 34)
- There are few verses which reveal a relatively advanced stage of commercial contracts, such as sale and hire, charges or personal guarantee as (security) and fiduciary contracts such as deposit.



# Concept of Uqud

*Al shahh* and *al rabt*: fastening and attaching accordingly

A connection between an offer and an acceptance in a lawful manner which has its effect on the Subject Matter.

Sanctity of the contract *'al maidah: 1*,  
O believers! Be true to your obligations.

# Uqud or Contract

***Uqud* or contract technically means as an expression of the matching between a positive proposal made by one of the contractors and the acceptance of the other contractor in a way which has an impact on the subject of the contract.**

**The Mejlle defined contract as little contracting parties obligating themselves with regards a given matter and binding themselves together with the same as a result of connecting an offer with an acceptance**

Types  
of Uqud

```
graph TD; A[Types of Uqud] --- B[Legality]; A --- C[Purpose]; A --- D[Reciprocity]; A --- E[Validity]; A --- F[Executability];
```

**Legality**

**Purpose**

**Reciprocity**

**Validity**

**Executability**

# Types of Uqud

## Legality

- *Aqd al masyru'*
- *Aqd ghayr al masyru'*

## Validity

- *Aqd sahih*
- *Aqd ghairu sahih*

## Executability

- Executable : *aqd al nafidh*
- *ahliyyah*
- Suspended: *aqd mawquf*
- guardian

# Reciprocity



## ***Aqd al muawadhat: exchange***

Property+ money= *Bay al mutlaq*

Service (by a person)= *ujr*

Usufruct of property= *Ijarah al manfaah*

Prop+Prop=*Bay al muqayadah barter*

Money+money= currency sale or *bay al sarf*



## ***Aqd al tabarru'at- hibah, will (wasiyyat), waqf (fund).***

# Purpose

*Uqud Tamlikat- Al-Mua'wadhat and Attabarua 't,*

*Uqud Isytirak- mudharabah, musyarakah and muzaraa ',*

*Uqud Tawsiqat (Securities)-Kafalah, Rahnu*

*Uqud Itlaqat (removal of restrictions)- wakalah and tauliah*

*Uqud Taqiydat (restrictions)- tafllis, al hajr*

*Uqud Isqatat (waiver)- ibra ', muqasah and*

*Uqud Hifz- refers to wadiah.*

# Modern Classification

Partnership Based

Exchange-Based

Security contracts

Charitable Contracts

Agency Contract

Supporting Contracts

Partnership  
Based  
Contracts

Mudharabah

Musharakah



# Mudharabah

[Refer the BNM Policy Document on Mudharabah](#)

- An agreement made between a capital provider and another party (entrepreneur), to enable the entrepreneur to carry out business projects, based on a profit sharing basis, of a pre-agreed ratio. In the case of losses, the losses are borne by the provider of the funds.
- On the basis of a contract of *mudharabah*, financial institution may provide financing to entrepreneurs who want to perform certain project in retail or corporate financing.
- A contract between a capital provider (*rabbul mal*) and an entrepreneur (*mudarib*) under which the *rabbul mal* provides capital to be managed by the *mudarib* and any profit generated from the capital is shared between the *rabbul mal* and the *mudarib* according to a mutually agreed profit sharing ratio (PSR) whilst financial losses are borne by the *rabbul mal* provided that such losses are not due to the *mudarib*'s misconduct (*ta`addi*), negligence (*taqsir*) or breach of specified terms (*mukhalafah al-shurut*).

# *Musyarakah*

- A partnership or joint venture for a specific business, whereby the distribution of profits will be apportioned according to an agreed ratio. In the event of losses, both parties will share the losses on the basis of their equity participation.
- A partnership between two or more parties, whereby all parties will share the profit and bear the loss from the partnership.
- Refer the BNM Policy Document on Musyarakah

# Exchange based Contracts

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*Murabahah*

*Bay' al-Istisna'*

*Bay' al-Salam*

*Bay' al-Dayn*

*Bay' al-Sarf-*

*Bay' al-Inah*

*Bay' al Tawarruq*

*Ijarah*

*Bay' al-Istijrar*

## *Murabahah*

- The sale of goods at a price, which includes a profit margin as agreed to by both parties. Such sales contract is valid on the condition that the price, other costs and the profit margin of the seller are stated at the time of the agreement of sale. Under this mode of financing the entrepreneur may approach any financial institution to provide his financing for working capital.

# Ijarah

- (a) a lease contract that transfers the ownership of a usufruct of an asset to another person for a specified period in exchange for a specified consideration; or
- (b) a contract for hiring of services of a person for a specified period in exchange for a specified consideration.

An arrangement under which the lessor leases equipment, building or other facility to a client at an agreed rental against a fixed charge, as agreed by both parties.

*Al-Ijarah Thumma al-Bai'* (leasing and subsequently purchase) refers to a contract to be followed by purchase. Under the first contract, the hirer leases the goods from the owner at an agreed rental over a specified period. Upon expiry of the leasing period, the hirer enters into a second contract to purchase the goods from the owner at an agreed price.

[Refer the BNM Policy Document on Ijarah](#)

# *Bai' al-Salam*

- An agreement whereby payment is made in advance for delivery of specified goods in the future. *Salam* is valid, subject to the condition that the quality and the nature of the subject matter, time, place of delivery and the price are clearly stipulated at the time of the contract.
- To acquire any asset for working capital by advance payment at a discounted price and subsequently sells the asset upon delivery.

# *Istithna'*

[Refer the BNM Policy Document on Istisna](#)



**A contract whereby a party undertakes to produce specific goods and services, and made according to certain agreed-upon specifications at a determined price and for a fixed date of delivery. The main objective of the *Istithna'* mode of financing is to promote manufacturing and construction**



A contract which a seller sells to a purchaser an asset which is yet to be constructed, built or manufactured according to agreed specifications and delivered on an agreed specified future date at an agreed pre-determined price.

# Bay' al-Inah (sell and buy back)

An arrangement that involves sale of an asset to the purchaser on a deferred basis and subsequent purchase of the asset at a cash price lower than the deferred sale price or vice versa, and which complies with the specific requirements of *bai` inah*.

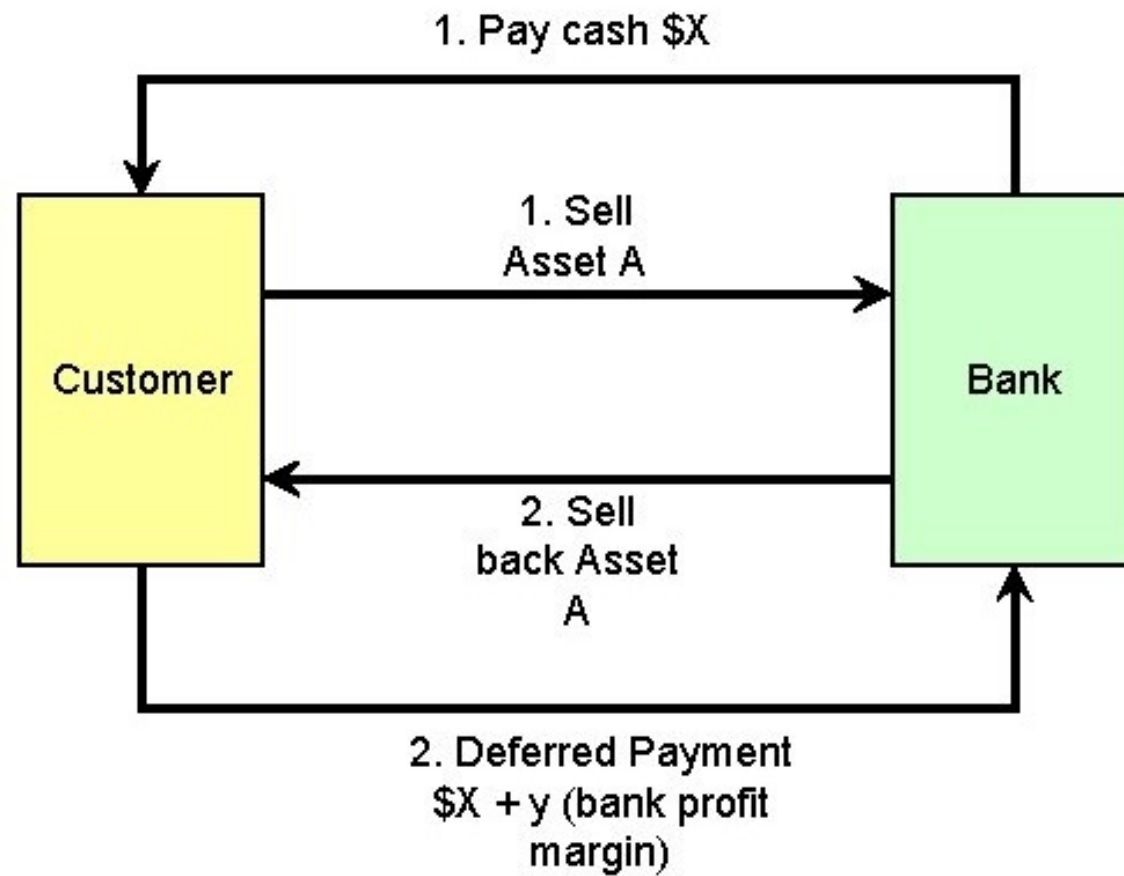
A contract which involves sell and buy back transactions of an asset by a seller to the customer. The seller will sell the asset on cash basis but the customer will buy back the asset on deferred payment at a price higher than the cash price.

In the first agreement, the bank sells an identified asset to the customer at an agreed price on deferred payment basis while for the second agreement the bank re-purchases the same asset from the customer at a lower price in cash.

[Refer the BNM Policy on Bay al-Inah](#)



# *Bay' al-'inah*



# *Bay al Tawarruq*

*Refer the BNM  
Policy Document on  
Tawarruq*



A contract to obtain money. Monetisation, cash financing or cash procurement.



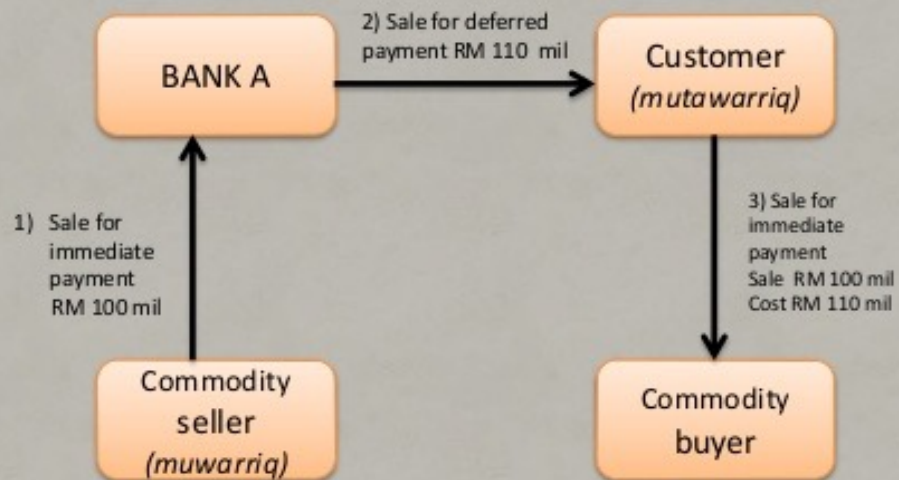
A *tawarruq* consists of two sale and purchase contracts. The first involves the sale of an asset by a seller to a purchaser on a deferred basis. Subsequently, the purchaser of the first sale will sell the same asset to a third party on a cash and spot basis.



The purchase of commodity possessed and owned by the seller for a delayed payment, whereupon the buyer will resell the commodity for cash to other than the original seller in order to acquire cash.

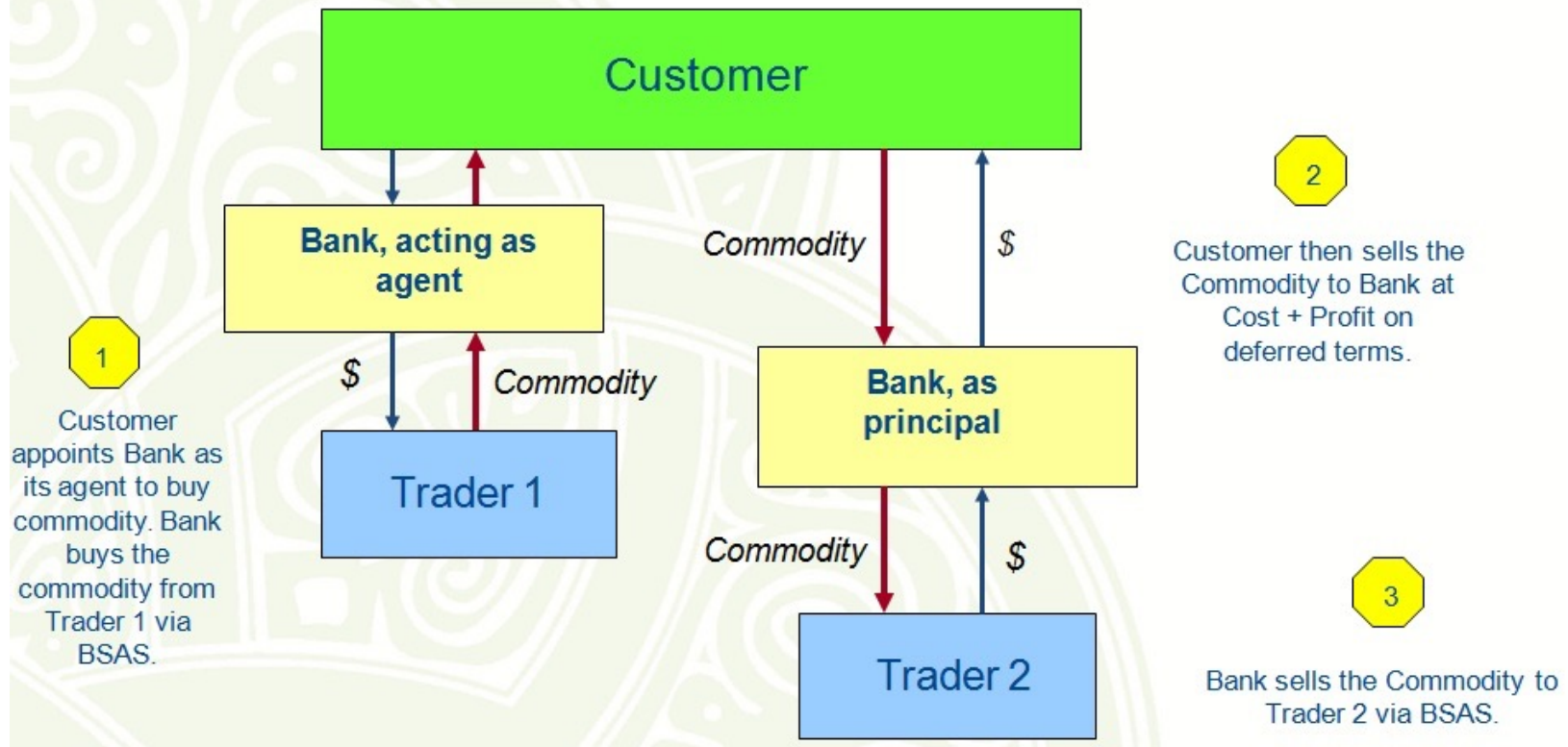
# Modus operandi of Tawarruq

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Source 1: Money, Islamic Bank and Real Economy (2010)

# Commodity Murabahah Deposits



1

Customer appoints Bank as its agent to buy commodity. Bank buys the commodity from Trader 1 via BSAS.

2

Customer then sells the Commodity to Bank at Cost + Profit on deferred terms.

3

Bank sells the Commodity to Trader 2 via BSAS.

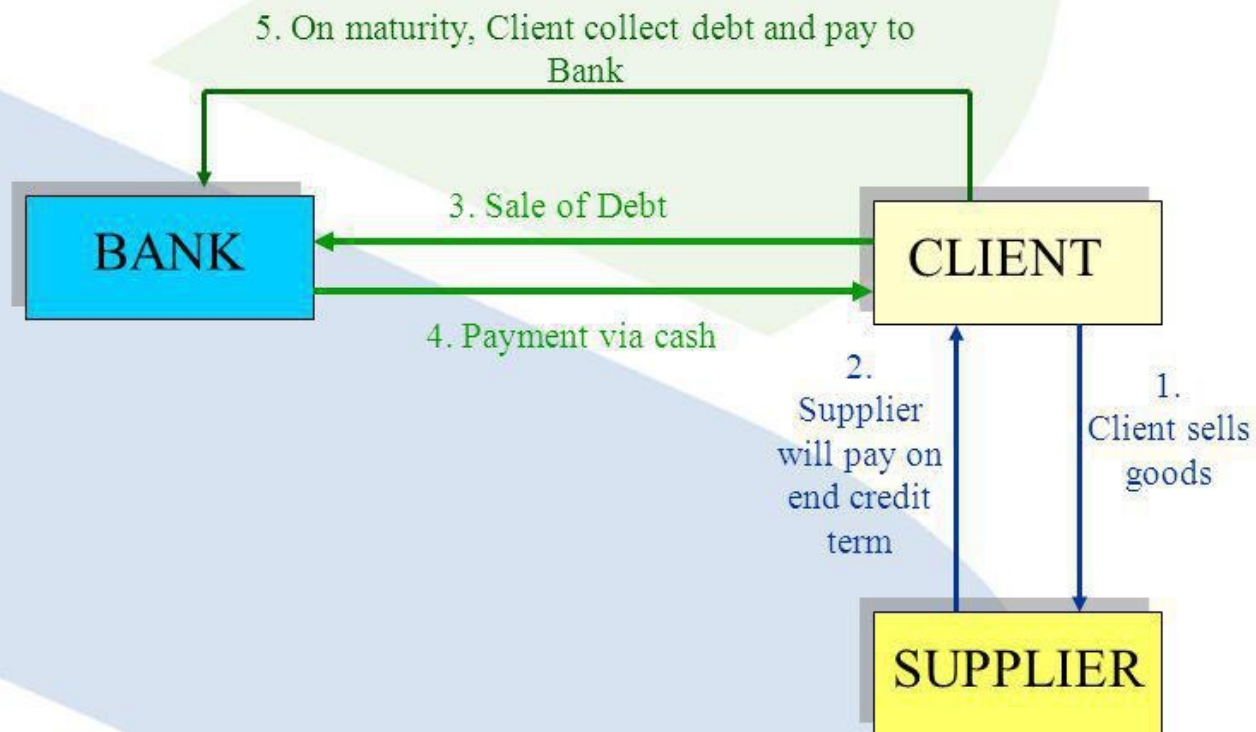
*Bai'*  
*Istijrar*  
(supply  
contract)

- An agreement between the client and the supplier, whereby the supplier agrees to supply a particular product on an on going basis, for example monthly, at an agreed price and on the basis of an agreed mode of payment.

## *Bay' al-Dayn*

- Sale of debt on cash basis or deferred payment basis.

# Financing of Sales/Exports - Bai' Dayn



# *Bay' al-Sarf*

Refer the BNM Policy Document on Bay al Sarf



Sale of currency



A contract of exchange of the same or different currency.



Eg. The bank sells US40 million to the C on a spot basis and the customer buys RM100 million from the Bank on a spot basis.



# Security Contracts



KAFALAH (GUARANTEE)



AL RAHN (MORTGAGE)

# *Kafalah* (Guarantee)

- **A contract of guarantee by the contracting party or any third party to guarantee the performance of the contract terms by contracting parties.**
- **A contract where the guarantor conjoins the guaranteed party in assuming the latter's specified liability.**
- **[Refer the BNM Policy Document on Kafalah](#)**



## Al Rahn (Mortgage)

- Pawning, mortgage, collateral, charge and pledge.
- A contract where a party, as pledgor (rahin) pledges an asset as collateral (marhun) to another party, a pledgee (murtahin) to fulfil an obligor's liability or obligation (marhun bih) owing to the pledgee in the event of default of such obligor.
- Taking a property as a security against a debt whereby the secured property can be utilised to repay the debt in the case of non-payment.
- [Refer the BNM Policy Document on Al Rahn](#)



# Gratuitous Contracts

Hibah

Wadiah  
(Deposit)

Al-Qardh

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# HIBAH

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A voluntary contract that results uncompensated ownership transfer between living individuals.

A transfer of ownership of an asset from a donor (wahib) to a recipient (mawhub lahu) without any consideration.

[Refer the BNM Policy Document on Hibah](#)

<b>Time of Tabarru'</b>	<b>SM</b>	<b>Contract</b>	<b>Purpose/Rule</b>
<b>Lifetime</b>	<b>Property</b>	<b>Hibah</b>	<b>General</b>
		<b>Hadiyah</b>	<b>Respect or love</b>
		<b>Waqf</b>	<b>Perpetual</b>
		<b>Sadaqah</b>	<b>needy and poor</b>
<b>After Death</b>	<b>Property</b>	<b>Wasiyah</b>	<b>Not exceeding 1/3rd</b>

# *Wadiah Yad Dhamanah*

Refer the BNM Policy  
Document on Wadiah



**Goods or deposits, which have been deposited with another person, who is not the owner, for safekeeping.**



**As wadiah is a trust, the depository becomes the guarantor and, therefore guarantees repayment of the whole amount of the deposits, or any part thereof, outstanding in the account of depositors, when demanded.**



**The depositors are not entitled to any share of the profits but the depository may provide returns to the depositors as a token of appreciation.**

Qard  
(Loan)

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**A contract of lending money by a lender to a borrower where the latter is bound to repay an equivalent replacement amount to the lender.**

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[Refer the BNM Policy Document on al Qard](#)






# Agency Contracts

[Refer the BNM Policy Document on Wakalah](#)

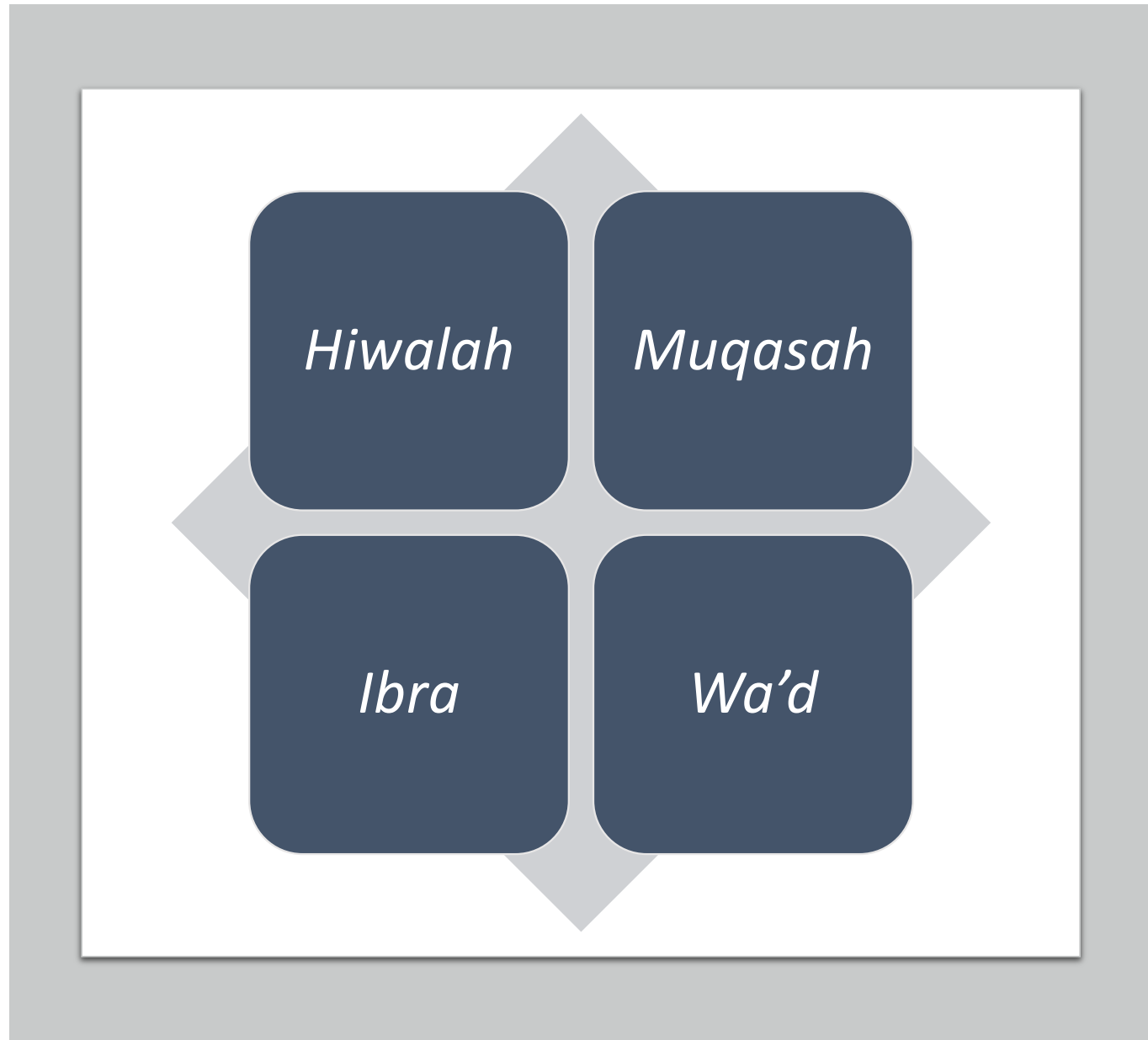
Wakalah

Wakalah means protection or remedying on behalf of others.

A contract where a party, as principal (muwakkil) authorizes another party as his agent (wakil) to perform a particular task on matters that may be delegated, with or without imposition of a fee.



Supporting  
Contracts



# *Hiwalah*

**Transferring a debt from  
one debtor to another.**

A is indebted to B and has  
claim against C. He can  
settle his debt by  
transferring his claim  
against C to the benefit of  
B.

# *Muqasah*

Debt settlement by  
contra-transaction or set-  
off

Eg. Ahmad owes Ali  
RM500. Then Ali owes  
Ahmad the same amount.

# Ibra'

- An act of absolving or dropping one's financial rights (to collect payment) from a person who has the obligation to repay the amount borrowed from him.
- [Refer the BNM Guidelines on Ibra](#)

# Wa'd



Wa'd means a unilateral promise which refers to an expression of commitment given by one party to another to perform certain action(s) in the future.



Commitment made by one person to another to undertake a certain actual or verbal disposal beneficial to the second party. Or undertaking something to the benefit of another person.



[Refer the BNM Policy Document on Wa'd](#)

List of  
Islamic  
Banking  
Products

**Products /  
Services  
(Deposit)**

**Applicable Concepts**

**Current account- i**

*Wadi'ah Yad Damanah/Tawarruq/  
Al Qardh*

**Savings account-i**

*Wadi'ah Yad Damanah/ Al Qardh/  
Tawarruq*

**General investment  
account-i**

*Mudarabah/ Tawarruq/ Wakalah  
bil istithmar*

**Special investment  
account-i**

*Mudarabah/ Wakalah bil  
istithmar*

**Specific investment  
account-i**

*Mudarabah/ Wakalah bil  
istithmar*

<b>Products / Services (Financing)</b>	<b>Applicable Concepts</b>
<b>Cash line facility-i</b>	<i>Bay<sup>c</sup> cInah / Bay<sup>c</sup> Bithaman Ajil /Murabahah/Tawarruq</i>
<b>Computer financing-i</b>	<i>Bay<sup>c</sup> Bithaman Ajil/Tawarruq</i>
<b>Education financing-i</b>	<i>Murabahah / Bay<sup>c</sup> Bithaman Ajil / Bay<sup>c</sup> cInah/Tawarruq</i>
<b>Equipment financing-i</b>	<i>Bay<sup>c</sup> Bithaman Ajil/Tawarruq</i>
<b>Fixed asset financing-i</b>	<i>Bay<sup>c</sup> Bithaman Ajil/ Tawarruq</i>
<b>Hire purchase-i</b>	<i>Ijarah Thumma Bay<sup>c</sup></i>
<b>Home/house financing-i</b>	<i>Bay<sup>c</sup> Bithaman Ajil / Istisna<sup>c</sup> /Variable Rate Ijarah/Tawarruq/ Musharakah Mutanaqisah</i>
<b>Land financing-i</b>	<i>Bay<sup>c</sup> Bithaman Ajil/Tawarruq</i>
<b>Leasing-i</b>	<i>Ijarah</i>



**Products / Services (Treasury/  
Money Market Instrument)**

**Applicable Concepts**

**Negotiable debt certificate-i**

*Bay<sup>c</sup> Bithaman Ajil/*

**Negotiable instrument of deposit-i**

*Mudarabah*

**Sell and buy back agreements (Repo-i)**

*Bay<sup>c</sup> 'inah/ Tawarruq*

**Foreign exchange**

*Ujr*

**Products / Services (Trade Financing)**

**Applicable Concepts**

**Accepted bills-i**

*Murabahah / Bay<sup>c</sup> Dayn/ Tawarruq*

**Bank guarantee-i**

*Kafalah*

**Export credit refinancing-i**

*Murabahah/ Bay<sup>c</sup> Dayn/ Tawarruq*

**Letter of credit-i**

*Wakalah/ Murabahah //Ijarah/Bay<sup>c</sup> Bithaman Ajil/ Tawarruq*

**Shipping guarantee-i**

*Kafalah*

**Trust receipt-i**

*Wakalah/Murabahah*



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## Products / Services (Card Services)

## Applicable Concepts



**Charge card-i**

*Qard*


**Credit card-i**

*Bay' al'Inah/Tawarruq/Musharakah  
Mutanaqisah/ Ujrah*

**Debit card-i**

*Ujr*





**PRODUCTS/SERVICES (BANKING SERVICES)**

**APPLICABLE CONCEPTS**



**Stockbroking services**

*Ujr*

**TT/funds transfer**

*Ujr*

**Travellers' cheques**

*Ujr*

**Cashiers' order**

*Ujr*

**Demand draft**

*Ujr*

**Standing instruction**

*Ujr*

**ATM service**

*Ujr*

**Telebanking**

*Ujr*



# Takaful Products

<b>Products</b>	<b>Applicable Concepts</b>
<b>Family Takaful</b>	<b>Mudharabah Wakalah Waqf Hybrid</b>
<b>General Takaful</b>	<b>Mudharabah Wakalah Waqf Hybrid</b>