

## **Response to feedback received *Bai` al-Sarf* (Currency Exchange)**

### **Introduction**

As part of a series of policies under the Shariah contract-based regulatory framework, the policy document on *Bai` al-Sarf* outlines Shariah and operational requirements of *bai` al-sarf* to promote sound application of this Shariah contract in Islamic financial products and services.

The Bank received a significant number of responses from Islamic financial institutions during the consultation period that are supportive of the proposals outlined in the exposure draft. Several respondents highlighted implications of key proposals set out in the exposure draft that will require operational adjustments. This document provides responses to the comments received in the course of the consultation process. Where appropriate, the comments received on the exposure draft have been reflected in the final policy document.

**Bank Negara Malaysia  
11 April 2018**

## **1. Scope of policy document on gold and silver**

---

- 1.1 The exposure draft defined money as a medium of exchange that shall be in the form of gold, silver, currency notes or coins that have legal tender, or other forms accepted by Shariah. Several respondents requested for more clarity on the forms of gold and silver that are allowed for exchanges and subjected to the *bai' al sarf* requirements.
- 1.2 After deliberating on the above feedback, the Shariah Advisory Council of Bank Negara Malaysia (SAC) resolved to exclude gold and silver from the scope of policy document due to the specific features and requirements relating to the sale of gold and silver which are different from currency exchange contracts.
- 1.3 The final policy document therefore will only be applicable to currency notes and coins that are legal tender. For the avoidance of doubt, Islamic financial institutions may refer to existing SAC resolutions on gold and silver investments and its Shariah Committee on matters relating to gold and silver.

## **2. Contract session in *bai' al-sarf* and the conditions for extension beyond the contract session**

---

- 2.1 The exposure draft defined contract session to refer to the period of time during which the contracting parties enter into a contract, commencing with an offer (*ijab*), followed by an acceptance (*qabul*) to exchange monies between each other, and ending by the disengagement of the contracting parties physically or constructively, or through waiving of rights to revoke the contract. The exposure draft further specified that the delivery and taking possession of the exchanged money in all *bai' al-sarf* transactions shall take place on spot basis in full before the contract session ends.
- 2.2 Many Islamic financial institutions sought the Bank's confirmation whether the current standard settlement timeframe for foreign exchange spot transactions which is T+2 i.e. two business days from the trade date, would not meet the "on spot" requirement of the exposure draft and hence be construed as Shariah non-compliant practice. Several Islamic financial institutions suggested for the definition of "on spot" to be clearly provided whilst others suggested having the term removed.
- 2.3 The SAC deliberated on the situations that would result in delivery of money at T+2 which includes contracting parties not able to be physically present at the same place and *bai' al-sarf* is executed via electronic and online mediums instead. The delivery of money at T+2 is an established customary practice (*'urf tijari*) for currency exchanges via the electronic and online platforms. However, such extension shall not be allowed for an exchange via the physical medium such as via money changer/bureau de change which shall happen on spot i.e. T+0. Hence, the SAC resolved that the practice of the delivery of money at T+2 is construed to have taken place beyond the contract session. However, this practice may be allowed from Shariah perspective due to the established customary business practice arising from operational constraints. In addition, the delivery of money beyond the contract session may also be allowed in the event of unexpected operational disruptions.
- 2.4 The final policy document has been revised to reflect the SAC deliberation and provide clarity on the permissibility of the practice of T+2.

### **3. Applicability of the policy document to money services business conducted by Islamic financial institutions**

---

- 3.1 The exposure draft was made applicable to money services business operated by the Islamic financial institutions to comply with the Shariah and operational requirements of *bai` al-sarf*. However, many respondents highlighted the challenges to comply with certain operational requirements including documentation, settlement and disclosure of information considering the nature and conduct of the money services business. Several Islamic financial institutions had suggested for the minimum requirements to be in line with the policy document on Requirement for the Conduct of Money Services Business by Banking Institutions.
- 3.2 The Bank has reviewed and considered the comments from industry and decided that the money services business of Islamic financial institutions shall be subject to only the Shariah requirements under Part B of the policy document on *bai` al-sarf*. For avoidance of doubt, an Islamic financial institution operating the money services business is expected to observe all applicable policy documents issued by the Money Services Business Regulation department.