



Challenges of profit-and-loss sharing financing in Malaysian Islamic banking

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Abstract

There are challenges faced by the profit-and-loss sharing (PLS) financing in Islamic banking institutions in Malaysia. PLS financing is comprised of *mudharabah* and *musharakah* contracts. This study evaluated the application and modus operandi of *mudharabah* and *musharakah* contracts before dwelling into the challenges. While *musharakah* contract involves contribution of capital and labor by both the investor and the entrepreneur, *mudharabah* contract allows the investor to provide the capital and only the entrepreneur operates the business. In terms of return on investment, both partners share the profit or loss based on the pre-agreed ratio for *musharakah*; but only the capital provider bears the loss for *mudharabah* as the entrepreneur already forgone his or her effort for the project. In examining the challenges, we had conducted several interview sessions with Malaysian Islamic banks that offer PLS financing. The findings showed that there were four major obstacles to PLS financing such as high risk of investment; difficulty in selecting appropriate partners; demand comes from low credit worthiness customers; and lack of capital security.

Keywords: capital security, challenges, Islamic banking, *mudharabah*, *musharakah*, profit and loss sharing financing

Introduction

The Islamic banking industry has demonstrated growth and resilience in the more challenging international financial environment. This is measured through the various developments of products and services in the Islamic banking industry, the maturity of Islamic financial markets, development of infrastructure and financial institutions, as well as a comprehensive framework of legal, regulatory and *Shariah*. The development in the Islamic banking industry is in line with the current economic goals of broad economic prosperity, full and optimum level of economic growth, justice in socio economy, a balanced distribution of income and wealth, and currency stability (Setiawan, 2006).

The demand for Islamic banking products to meet the ever increasing needs of the community is seen as an alternative to conventional banking, known for its multiple elements of *gharar* (uncertainty), *riba* (usury) and *maisir* (gambling). The introduction of Islamic banking products has opened the door preventing the Muslims from participating directly in the banking world that is not *shariah* compliant. Various Islamic financing products in the Islamic banking industry have been successfully implemented and are seen to have great potential for further growth and are able to solve the problem of *gharar*, *riba* and *maisir*. Among the products currently offered by the Islamic banking are *ijarah*, *murabaha*, *bai' bitaman ajil*, *Istisna*, *tawaruq* and others. However, there are still loopholes that need to be filled by the Islamic banking; that is, by way the *musharakah* and *mudharabah* contracts that apply the PLS concept in line with the spirit of Islamic banking system of upholding the concept of justice, the eradication of

oppression, whilst preventing capitalism to rear its ugly head that makes the rich becoming richer and the poor becoming poorer.

Musharakah and *mudharabah* are partnership contracts in conducting business; based on capital and labor contribution by the investor and entrepreneur, through PLS agreement. These concepts are also similar to conventional venture capital principle, which is expanding in Malaysia¹. According to Ibnu Arfa (1984), *musharakah* is defined as an agreement between two or more persons carrying on a particular business in order to share profits in their investments. Meanwhile, according to Mohammad Akram Khan (1990), *musharakah* is a contract between two people making a financial business to make a profit. For *mudharabah*, there are scholars who also give the same definition. Although *musharakah* and *mudharabah* are both based on partnership and collaboration, there are differences that need to be clearly understood between the two contracts. *Musharakah* involves the contribution of capital and labor by both the investor and the entrepreneur; while for *mudharabah*, the investor provides the capital and only the entrepreneur conducts the business.

Financing based on partnership and PLS such as *mudharabah* and *musharakah* are still less accepted by Islamic banking institutions in Malaysia. Although *musharakah* and *mudharabah* concepts are presently practiced, the number and amount financed are very small compared to the overall financing. According to Bank Negara Malaysia's (BNM) Feb 2014 monthly statistics, the total aggregate financing of Islamic banking system in Malaysia through *musharakah* and *mudharabah* contributed only 6 per cent of the total aggregate financing despite their noble concepts often being preached by Islamic economic scholars who uphold the spirit of Islamic banking in helping the community to achieve fair and equitable distribution of profit and reduce the gap between the rich and the poor. As such, the Islamic banking institutions should offer more financing opportunities through the concept of *mudharabah* and *musharakah* which are based on the spirit of collaboration that will improve the economy of the Muslims. At the same time, PLS financing portrays its critical role in helping the alleviation of the living standard of society through business activities promoted by Islam.

Review of literature: *Musharakah* and *mudharabah*

Past studies revealed that there are similar characteristics between *musharakah* and *mudharabah* in Islamic financing contracts.

In a study done by Noraziah (2010), a review was done on the parameters set by BNM through specific definition in identifying important features; so as to understand the needs of *Shariah* contract. This includes the parameters in *musharakah* covering capital, management, PLS and partnership. The features identified in these parameters can help the financial services industry to identify, understand, offer and distinguish this contract from other contracts prevalent in the industry. *Shariah* parameters for *musharakah* and *mudharabah* in Islamic financial institutions will help and contribute to the socio-economic development, especially in helping small entrepreneurs.

According to Al-Suwailem (1998), there is a great potential in *musharakah* venture capital for Islamic financial institutions to invest their funds into because this type of investment will improve the country's growth. However, Al-Suwailem is of the opinion that it does not mean *musharakah* based venture capital would not fail or be involved in activities which are deemed illicit or '*haram*'. It just presents an attractive alternative for the financing of investment other than debt-based financing, especially in Muslim countries.

According to Kamaruzaman (2005), the *mudharabah* and *musharakah* Islamic venture capitals do not differ much from any conventional venture capital.² However, what set them apart are the principles,

¹ Securities Commission Malaysia (2013) mentioned that the number of venture capital companies continues to increase from 2004 to 2013; from 38 companies in 2004 to 61 companies in 2013.

² Boocock and Presley (1993) suggested that venture capital concept is an equity capital suitable for Malaysian Small and Medium sized Enterprises.

implementation and operation that become the foundation of the financings granted. Both *musharakah* and *mudharabah* contracts are seen to be in line with the spirit of venture capital and have a positive potential to continue to grow in line with the development of the Islamic financial system in Malaysia.

In the study done by Siti Noor Aini and Hassilah (2012) on the principle of *mudharabah*, the elements of uncertainty and speculation that exist in the conventional derivatives can be avoided. According to them, in conventional derivatives, the investors do not need to know in detail the business involved and they only get their share of the benefits at the end of maturity period. This situation clearly demonstrates the element of injustice because it involves *gharar* (uncertainty) as the entrepreneur's practices are questionable, i.e. whether the business is conducted in the right manner or otherwise. Therefore, the author suggested that the principle of conventional options in derivatives be converted to *mudharabah* principles.

According to Erni Susana and Annisa Prasetyani Erni (2011), the *mudharabah* funding by PT. Bank Muamalat Indonesia is *Shariah* compliant. The guarantee provided by the bank to the entrepreneur is allowed according to the Fatwas of National *Shariah* Board (DSN), Indonesian Ulama Council (MUI) 2003. In addition, the financing decision was based on the 6Cs (character, capacity, capital, collateral, condition of economy, constraints). The usage of *mudharabah* financing in all sectors of the economy can provides benefits and prohibits business that contains non-*halal* elements.

According to Maheran (2010) and Rosly (2010), the *musharakah* model takes into account the rate of profit sharing as to ensure a fair investment and reasonable joint venture between capital provider and the entrepreneur. This will certainly open up opportunities for entrepreneurs to also invest and provide their own start-up capital. This will also indirectly reduce incompetence and mismanagement of businesses as they had initially contributed their own capital. When profits are shared, so are the risks which are shared accordingly. The implementation of *musharakah* in new products will increase the possibility of dynamic activities by Islamic investment, especially Islamic finance and banking. In fact, both conventional and Islamic financial institutions can adopt this model in creating new products. It can be a catalyst for product innovation and research on new financial products.

Ruhaini and Abdul Ghafar (2010) presented three proposals to achieve optimal conditions for equity based financing contract (profit and loss sharing) in Islamic banks. First, in the *mudharabah* contract in which the Islamic banks act as *rabbul mal* (capital provider), banks should provide incentives for entrepreneurs, if the value is positive, net profit is expected to be achieved. Second, if the Islamic bank acts as *mudharib* (entrepreneur), the bank will be appointed as a representative, and depositors should be charged for the cost of information processing in the *mudharabah* investment account. Third, for *musharakah* contract, Islamic banks are recommended to bear the cost of monitoring as to maximize net profit and increase value to their shareholders.

In terms of the relationship between PLS financing and bank profitability, *mudharabah* financing has a significant relationship with return on equity (Ziqri, 2009; Satriawan & Ariffin, 2012), operating profit margin (Satriawan & Ariffin, 2012), and net profit margin (Satriawan & Ariffin, 2012), but not significant with return on asset (Ziqri, 2009) of the Indonesian Islamic banks. In addition, Satriawan and Ariffin (2012) found that *musharakah* financing only significantly influences the gross profit margin for Indonesian banks. In short, *mudharabah* and *musharakah* financings affect the profitability of Indonesian banks differently, depending on the financial measures adopted.

Methodology

This study was based on several interviews as its primary data source. The study was done on two Islamic banks in Malaysia; namely Bank Islam Malaysia Bhd (BIMB) and Bank Rakyat (BR). For BR, the respondent was the *Shariah* adviser to the bank; while for BIMB, the respondent was the Assistant General Manager cum *Shariah* Head of Department. The two banks were chosen to be sampled for this research as the two banks granted both the *mudharabah* and *musharakah* financings. Many Islamic banking institutions in Malaysia have yet to offer this product; hence, left us with no choice in increasing

our data sampling. The information was obtained from the two professionals who were very experienced individuals with wide knowledge in the Islamic banking sector and directly involved in the activity and product development of their respective Islamic banks.

Prior appointments were made for each interview of the selected panel. Interviews were carried out in the workplace and voice recorders were used for each interview session to record all information provided. Each of the interviews took thirty to forty minutes. Copies of transcripts of all recorded conversations for each of the interviews are in the attachment. The purpose was to gather a general idea of each member of the interviewed panel on their experiences and all pertinent information. After all the interviews had been fully transcribed, the thematic analysis was performed on all information given by the interviewed panel.

Analysis of results and discussion

Based on the interview and in-depth review of the transcripts, several challenges are highlighted. In theory, the financing contracts of *mudharabah* and *musharakah* are perfect and appropriate whereby they help to promote the development of Islamic economics through collaborative business that emphasizes on the sharing of profits and losses. Both parties are responsible to each other and this prevents the occurrence of fraud or oppression by either party.

However, in reality it is very difficult to implement Islamic banking in this technological age. Through interview with respondent A, BIMB used to grant *musharakah* and *mudharabah* based financing, although the number was small BIMB did tried this method of financing. However, there were some who were successful and some who failed. The Islamic bank had granted various portfolios based on *musharakah* and *mudharabah*. One of them is the *musharakah* financing of asset-based construction such as a building that was subsequently sold, and profits were distributed between the entrepreneur and banker according to *shariah*. *Musharakah* had also been implemented in the form of venture capital by many firms as encouraged by the government. *Mudharabah* was also implemented with the entrepreneurs, similar to what BIMB had done in which BIMB acted as *rabbul mal* and customers as entrepreneurs in setting up the Ar-Rahnu. These projects are clear proof that *musharakah* and *mudharabah* financings have high potential for the full implementation of Islamic banking.

According to BIMB, although *musharakah* and *mudharabah* based financings are not widely available to customers as both are of a relatively high risk, the bank is always looking for the most suitable candidates to grant financing based on these concepts. The financings of *musharakah* and *mudharabah* which are based on profit and loss sharing, require customers who have the potential to manage the capital wisely as to generate profit, and not to incur loss. This is because the funds invested by the banks are owned by depositors. Therefore, Islamic banks should be very careful in investing their funds as this is highly risky. Normally smaller companies without adequate business capabilities and strength will try to obtain the *musharakah* and *mudharabah* financings, however large corporations such as Petronas and TNB will shy away. This will definitely increase the risk of default in the Islamic banks. Based on the findings from the interviews, in summary, there are four challenges that could lead to obstacles in the implementation of *musharakah* and *mudharabah* financing concepts in general. Among them are:-

i. High risk

Musharakah and *mudharabah* financings could be classified as high risk investments. These concepts of financing are difficult to be implemented due to their high probability of failure; as a result of various factors such as the entrepreneurs' lack of skills and experience in doing business. The concept of a partnership through profit and loss sharing could cause Islamic banks to be very cautious in providing financing through the *musharakah* and *mudharabah* concepts. The invested funds are largely owned by depositors who always expect their money to be safe. The Islamic banks have to replace the depositors'

money if loss occurs. In any *musharakah* and *mudharabah* financing, all risks should be analysed comprehensively as to minimize losses. There are numerous measures to be undertaken in order to reduce risks which will ultimately lead to increased operational cost. The bank should consider several factors before approving these types of financing such as market demand, production costs, competition, economic and industry's conditions, regulatory support³ and the financial leverage of the company seeking financing. The analysis of all these complex factors need a high level of expertise, not only from the aspect of economy, business and finance, but years of financing experience to assess the authenticity of the proposed financial plan as to reduce the issue of asymmetric information which can lead to adverse selection and moral hazard.

The high risk factor in implementing the *musharakah* and *mudharabah* financings was elaborated by the following respondents:

Respondent A, "... difficult for banks to implement *musharakah* or *mudharabah* because the risks are very high.....especially when it is associated with operating and monitoring costs, production costs, current economic conditions and so forth ..."

Respondent B, "... it is not impossible for banks to implement *musharakah* and *mudharabah* despite the many obstacles and risks which are quite high. Banks need to be cautious when offering such products as it involves the issue of asymmetric information, adverse selection and moral hazard ..."

ii. Selection

The selection process poses a big challenge to Islamic banks in providing financings that are based on *musharakah* and *mudharabah*. The Islamic bank needs to find the right partner as to ensure the shared business is generating profit because Islamic financial institutions are not charitable organizations that grant free capital, instead they need to be profitable so that they can remain competitive. Islamic banks must ensure that the selected business partners have the right experience and huge business potential to expand. The selection is difficult because it requires the study of various aspects of risk. Islamic banks should choose a company that has a long track record and an acceptable financial performance before offering capital to selected partners.

In the current context, to ensure the safety of depositors' funds from being lost, the Islamic banking institutions will only offer profit and loss sharing- based financings to recognized big corporations. However, the spirit of the establishment of an Islamic bank that upholds the concept of fairness and justice and to contribute to the community in need of financial assistance will not be achieved if Islamic banks are only providing *musharakah* financing to big corporations with good financial position. If this scenario continues, Islamic banking will be no different from conventional banking with the rich getting richer, the poor getting poorer. Islamic banks need a paradigm shift, from the role of a financial intermediary to the real entrepreneur for the benefit of society as a whole and to ensure the sustainability of Islamic banking in the long term. Islamic banks can still offer *mudharabah* and *musharakah* financings to small companies as long as the partners or the companies are able to convince them through the planning and operation of the business that they have the potential to be jointly developed. These challenges were shared by the following respondents:

Respondent A, "...If the bank offers financing to projects based on *mudharabah* and *musharakah*, the selection criteria should be of concerned. Banks need to assess the capabilities of the company to run the project ..."

³Akhmad et al. (2014) found that regulatory support is one of the crucial factors in ensuring the success of Indonesian banking system, which has offered higher equity financing as compared to Malaysia.

Respondent B, "... it is not easy to choose partners who are honest and able to complete the project that has already been agreed upon by the bank and the entrepreneur ... especially when the company or the entrepreneur is not a big corporation of which the financial records are unknown to us ..."

iii. Demand

In general, the demand for *musharakah* and *mudharabah* contracts is largely requested by clients who are lacking in capital to grow and still in the early stage of their businesses. Clients interested in *musharakah* and *mudharabah* financing are not companies that have a long business track record and strong credit standing. Those who seek *musharakah* and *mudharabah* financing are usually from small and medium industries that are still new in the business.

Small and medium companies are exposed to high risk of failure because of the unknown business potential. As previously discussed, the funds that are invested belong to the depositors and not the bank. When a profit and loss sharing contract is entered, any loss incur by the business should not be questioned unless there is proof of negligence and malpractice against the *shariah*. This is a major challenge to Islamic banks. If the demand for *musharakah* and *mudharabah* financing is made by big corporations that have solid business track record, definitely more of such financings could be offered. However, the demand from the high-risk small and medium companies is not a valid reason for Islamic banks to refuse to provide *musharakah* financing; and thus, eliminate the spirit of Islamic banks of being fair to all. In addition, the cost of monitoring companies is lower than monitoring individuals. Risk taking relates to returns in any financing given. Despite the cost, monitoring is an important aspect in reducing risk. Being a large entity, the Islamic banks have the advantages of sourcing an efficient management compared to the individual investors. To ensure the success of *musharakah* financing, Islamic banks should be transformed into a genuine entrepreneur, starting with the selection of bankers who do not only have the skills to assess the financial position, but also understand the intricacies of the business that will influence the business risks of an industry while working to ensure that all transactions are *Shariah* compliant. As a short term plan, Islamic banks can outsource to a third party while training its officers to have the characteristics mentioned earlier. These challenges have been explained by the following respondent:

Respondent A, "It cannot be denied that there is demand from small and medium sized companies to obtain financing based on this partnership concept and the risk is quite high because we do not know the financial records of the business. Bank needs to find ways to reduce those risks if they want to offer such financing. "

Respondent B, "... there is demand from small and medium sized industry ... to reduce the risk of default or failure of the project, there should be a strategic mechanism to monitor ..."

iv. Capital security

The safety of the capital has to be ensured in any investment made. Without any capital guarantee, the Islamic banking usually will not want to offer *mudharabah* or *musharakah* contract to clients. The guarantee for the safety of capital may take in the form of collateral such as housing or landed assets that have high value and secured. Guarantee is extremely important in protecting the capital in the event of fraud and mismanagement by the partners. The capital guarantee will also demonstrate the genuine determination and commitment of both parties in conducting the business. As such, the probability of fraud can be reduced while ensuring the business is on the right track. However, not all partners can afford to provide capital guarantees since those requesting for financing are clients who lack the capital. This is a big challenge for Islamic banks in providing financing through *musharakah* and *mudharabah* if the Islamic banks' mindset is still based on the framework of financial intermediaries. On the other hand,

from the entrepreneurs' view point, financing without the capital guarantee can still be implemented with an efficient and effective risk management. Furthermore, the absence of capital guarantee is absolutely in line with the spirit of Islam as promoted by various Islamic scholars. This statement was supported by the following respondents:-

Respondent A, "... most banks do not want to offer *musharakah* and *mudharabah* financings since they are worried about the security of their capital. What type of collateral or security is needed in ensuring the banks' capital will be safe? This issue has to be scrutinized and analyzed in detail before bank approves the project ..."

Respondent B, "... the key question to the bank is what type of capital guarantee is available? This is a very big risk ... risk such as moral hazard could happen, especially to small companies that have just started their businesses ... not sure of profit ..."

Conclusion

The intentions of Islamic banking instruments are not solely based on the motivation of profit but also to meet the socio-economic objectives. In conventional banking, most of the funds or capital only flows to large industries, multinational companies and large enterprises. This is due to the fact that for the interest-based system, the sole criterion for the distribution of credit is the credibility of the entrepreneur. Through a profit-sharing system of *mudharabah* and *musharakah*, a more fair and proper flow of funds can be ensured.

Although *musharakah* and *mudharabah* contracts face huge challenges, they still have the potential to flourish in the Islamic banking industry. This is because *mudharabah* and *musharakah* contracts are able to provide and promote opportunities to collaborate between entrepreneurs and Islamic banks; towards upgrading the country's economy mainly the Muslim economy, while ensuring Muslims are not engaged in activities which are against the *Shariah*. Contracts based on partnership could also promote the cooperation in business and eliminate selfishness through risk sharing. In a partnership, the risks and the profits are shared proportionately. *Mudharabah* and *musharakah* contracts are envisaged to have great potential to expand in the Islamic banking sector. All the challenges that have been discussed will be overcome in the future if the Islamic banks take the role as 'genuine entrepreneurs'. Besides meeting the spirit of Islamic banking in achieving *Maqasid Al-Shariah*, this can lead to a paradigm shift for the realization of *Shariah* based Islamic banking products (through contract of profit and loss sharing); rather than offering products that presently are merely *Shariah*-compliant (through sale and purchase contracts at 'marked-up' pricing). If all the challenges could be overcome, then *musharakah* and *mudharabah* contracts would be able to provide the impetus to product innovation in the financial research to support Malaysia to become an international Islamic financial hub.

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