30. Financing Based on *Musyarakah Mutanaqisah*

There was a proposal from an Islamic financial institution to offer Islamic house financing product based on the concept of *musyarakah mutanaqisah*. In general, the modus operandi of the house financing product based on *musyarakah mutanaqisah* is as follows:

i. A customer who wants to buy a real property applies for financing from the Islamic financial institution;

ii. The Islamic financial institution and the customer will jointly purchase the real property based on a determined share (for example 90:10) depending on the amount of financing requested;

iii. The deposit paid by the customer is deemed as his initial share of ownership;

iv. The Islamic financial institution’s share of ownership will be leased (based on *ijarah*) to the customer; and

v. The monthly instalment by the customer will be used to gradually purchase the share of the Islamic financial institution until the entire share of the Islamic financial institution is fully purchased by the customer.

In this regard, the SAC was referred to on the following issues:

i. Whether the collective usage of *musyarakah* and *ijarah* agreements in one document of *musyarakah mutanaqisah* is allowed since such collective usage may be perceived as having two transactions in one sale and purchase contract (*bai`atain fi al-bai`ah*) which is prohibited in Shariah; and

ii. Whether a pledge may be imposed by one of the owners of the asset over the jointly owned asset.
Resolution

The SAC, in its 56th meeting dated 6 February 2006, has resolved the following:

i. Collective usage of contracts of *musyarakah* and *ijarah* in one document of agreement is permissible as long as both contracts are concluded separately and clearly; and

ii. A pledge in *musyarakah mutanaqisah* may be imposed if the pledge document involves only the customer’s shares being pledged to the Islamic financial institution. This is because beneficial ownership is recognised by the Shariah.

Basis of the Ruling

The aforesaid resolution has considered that a *musyarakah mutanaqisah* contract that uses both *musyarakah* and *ijarah* contracts is deemed as one form of contemporary contract (`uqud mustajiddah) recognised by fiqh scholars in order to fulfill the contemporary needs of Islamic *mu`amalah*.39

Shariah allows certain forms of management (tasarruf) of *musyarakah* assets. Among others, both partners in a *musyarakah* contract are entitled to transact or lease the *musyarakah* asset because partnership carries wakalah features. Thus, each partner may become an agent for the other partner in transacting or leasing, including selling and purchasing or leasing each other’s shares of the *musyarakah* asset among themselves.40 In addition, a partner is also allowed to give and receive a pledge of the *musyarakah* asset with the permission of the other partner. This is in line with the following fiqh maxim:

كل عين جاز بيعها جاز رهنها

“All items that can be sold, can be pledged.” 41