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Examining Issues on Islamic Shipping Guarantee

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Abstract

This paper is about the Shipping Guarantee (SG) facility in Islamic banks. The first objective is to describe the difference between the conventional and Islamic SG. Secondly, to investigate the establishment of Shariah issues and liabilities involving Islamic SG and the manner in which Islamic banks tackle those issues. The qualitative method is adopted, where the information on the operation of Islamic SG in twelve Islamic banks in Malaysia is gained, through semi-structured interviews conducted with the bankers. This paper discovered that there are similarities and differences between the conventional and Islamic SG, apart from the possible Shariah issue and liabilities from the operation of Islamic SG.

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1. Introduction

Islamic Shipping Guarantee (SG) in Islamic bank is a facility or product where the shipping company is guaranteed or indemnified by the Islamic bank using *kafalah* (guarantee) contract for the discharge of goods, to the buyer/importer in the case where the original bill of lading is not presented. It is explained in the Dictionary of Finance and Banking (2008) that a bill of lading is a document which represents the proof of shipment of goods for carriage by sea. The main function of the bill of lading is it acts as a document of title to the goods which states the terms of the contract carriage. Islamic SG is issued through *kafalah* (guarantee) contract. According to the classical jurists, *kafalah* is

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defined as “a conjoining of the guarantor’s liability to the liability of the guaranteed” (al-Zuhayli, 1997: al-Sharbini, 2003: Dusuki, 2012; Sharifah Faigah et al., 2014). Eventually, Islamic bank acts as the guarantor, on behalf of the buyer/importer to release their goods from the shipping company. More importantly, Islamic SG in Islamic banks is a service that protects the interests of customers, specifically, to release the goods after placing them with the shipping company, without the presence of bill of lading (Bank Islam Malaysia Berhad, 2015; Pang, 1988). Basically, the Islamic SG is defined similarly to the conventional Shipping Guarantee (SG).

Islamic SG facility is one of the important trade finance facilities offered in Islamic banks. Normally, the customer who is the buyer/importer has already received a financing facility from the Islamic bank namely Letter of Credit (LC) *Murabahah* (mark-up sale) financing, in order to pay for the goods to the seller/exporter. The Islamic banks will use the contract of *murabahah* to purchase the required goods from the seller/exporter at the cost price and sell them to the buyer/importer with a profit margin (Dusuki, 2012).The buyer/importer really needs Islamic SG particularly during the entrance of the ship that carries their goods to the port and the delivery of the goods by the buyer/importer must be done within the prescribed period (within three days) which has been allowed by the Port Authorities (Port Klang Authority, 2009). When the buyer/importer does not comply with this, he has to incur an additional cost such as the demurrage charges. Thus, in order to solve this problem, the buyer/importer has to get Islamic SG from a bank to release his goods from the Port Authority. It is a normal practice for the customer to get the Islamic SG from the same bank that offers him the LC *Murabahah* financing.

However, the operation of Islamic SG may involve two Shariah issues. Some responses were obtained from the interviews conducted regarding the issues. According to R1 (personal communication, 2009) from Standard Chartered Saadiq Berhad, the first Shariah issue seems to appear particularly through the inexistence of goods during the execution of LC *Murabahah* financing between the customer and the Islamic bank after the issuance of Islamic SG by the bank. One of the essential criteria of sale (*al-bay’*) in Islamic principle is that the goods must be in existence during the execution of contract (‘*aqd*) (Abdul Rahman, 2010). Since LC *Murabahah* financing is a sale contract, the existence of the goods during the contract execution is crucial to make the contract valid.

Eventually, there are two practices that are common among the Islamic banks with regard to this issue. The first practice is where the execution of the LC *Murabahah* financing contract by some Islamic banks is done together with the issuance of Islamic SG. On the other hand, the second practice comes to exist when some Islamic banks execute the contract only after the acceptance or arrival of the original bill of lading. Indeed, there is no apparent Shariah issue with the first practice. However, the concern would be on the second manner of practice since it involves Shariah issue, where there is an uncertainty or *gharar* element that may appear on the existence or possession of the goods is still with the customer particularly during the execution of the *murabahah* contract.

Another issue or concern in Islamic SG is with regard to the liability of the bank that issues the SG remains until SG is cancelled (R2, personal communication, Bank Muamalat Malaysia Berhad, 2010). This is due to the non-existence of expiry date in the Islamic SG contract. Eventually, this practice will obviously expose the bank to risk. Therefore, the first objective of the paper is to explain the difference between the nature of conventional shipping guarantee and Islamic SG. Secondly, to investigate the establishment of Shariah issues and liabilities involving Islamic SG and the manner in which Islamic banks tackle those issues.

2. Methodology

This research adopted the qualitative methodology where interviews were carried out with selected bankers from Islamic banks. These bankers are the trade finance facilities experts including Islamic SG. Face to face interviews which is also known as the semi standardized interviews were conducted with the bankers from twelve Islamic banks that offer Islamic SG in order to gain information because of scarcity of published materials on Islamic SG. Most of the Islamic banks are the full-fledged Islamic bank namely Bank Islam Malaysia Berhad, Bank Muamalat Malaysia Berhad, Al Rajhi Banking & Investment Corporation (Malaysia) Berhad, Kuwait Finance House (Malaysia) Berhad and Asian Finance Bank Berhad. The rest are the Islamic subsidiary banks such as Affin Islamic Bank Berhad, Alliance Islamic Bank Berhad, CIMB Islamic Bank Berhad, HSBC Amanah Malaysia Berhad, Maybank Islamic Berhad, RHB Islamic Bank Berhad and Standard Chartered Saadiq Berhad. All the bankers or the respondents were not willing to disclose their identities for this research and they chose to remain anonymous. They are marked as R1 to R10.