



RESPONSIBILITIES OF CUSTOMERS AND ISLAMIC BANKS TO MANAGE AND RECOVER NON-PERFORMING FINANCING

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ABSTRACT

This paper is to study the responsibilities of the customers and Islamic banks in managing the non-performing financing in Malaysia. This research is also to examine the provisions of the facility agreement by three different Islamic banks to analyze the treatment of non-performing financing by the banks. The researcher employs qualitative methodology whereby this study is based on analysis of primary data from an interview with representative of Bank A to determine the mechanism used by Bank A to recover the non-performing financing as well as secondary data. Secondary data was obtained by looking up to the relevant provisions from the facility agreement of the three Islamic banks in respect of an event of default and compensation, collection of information from Bank Negara Malaysia's Policy Documents and Guidelines, case law from Lexis Nexis, books, articles and journals relevant with the research topic. This study is aimed to reveal the responsibilities of the customers and Islamic banks in managing and handling the non-performing financing as well as examine the measures taken by Bank A to recover its non-performing financing. This research is significant in attempt to highlight the obligations of the customers on their financing as well as the treatment by Islamic banks in assisting and dealing with the non-performing financing.

Keywords: Non-performing Financing, Islamic Banking, Islamic Banks, Recovery

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BACKGROUND OF RESEARCH

Islamic financing facility is becoming a significant demand in the market especially in Malaysia nowadays. The customers of Islamic financing facility consist not only Muslims but also non-Muslims. For Muslims, many opt for Islamic facility as it is interest-free since Islam prohibits any transaction involving *riba* as stated in one of the Quranic verses "*Oh you who believe. Fear Allah and give up what remains of your demand for usury, if you are indeed believers. If you do it not, take notice of war from Allah and His Apostle*" (al-Baqarah, 2:278). Due to this prohibition, Islamic financing products has been introduced by Islamic banks to suit the demands for Islamic financing by the customers which is suitable and legal within the context of Shariah law. The Islamic banks will grant financing to the customers upon their application and thereafter conclude a financing contract which bind both the Islamic banks and





customers respectively. In Shariah perspectives, parties who conclude a contract shall fulfil their obligations arising from the legal contract as provided in Quranic verses among others in Surah Al-Maidah verse 1 which states “*Oh you who believe, fulfill all of your obligation*”.

Notwithstanding that, Islamic banks are still facing the risk of delinquent financing or default by the customers in their repayment of financing to the banks which lead to creation of non-performing financing albeit clear obligations stated in the financing contract entered into by the customers and the Islamic banks. Delinquent financing occurs as a result of missing or delaying monthly repayment by certain number of days and in the event the financing is not paid and in arrears for one or two months then it will become default.

Default of the customers can create non-performing financing whereby the caused is due to the inability and failure of the customer as the debtor to fulfil his monthly repayment or debt due and owed to the Islamic banks. The outbreak of pandemic Covid-19 is one of the examples which has caused the increase of non-performing financing in Malaysia. Based on the data provided by Bank Negara Malaysia in January 2021, the non-performing financing in Malaysia has reached RM29.43 billion in which it had been gradually increased since October 2020 and the Islamic banks need to offer alternatives to the customers in curbing the non-performing financing from becoming more critical.

Despite measures taken by the Islamic banks to strengthen its credit risk and recovery mechanism, it is pertinent to note that default of the customers is a common risk faced by any bank regardless of Islamic or conventional banks (Mohammad Kabir Hassan et al 2021). This study is aimed to explore the responsibilities of the customers and Islamic banks on non-performing financing specifically by analyzing the relevant provisions under property financing agreement of three Islamic banks which are Bank A, Bank B and Bank C as well as analyzing the recovery action taken by Bank A to recover its non-performing financing.

PROBLEM STATEMENT

Islamic banks are one of the financial intermediaries for customers to obtain financing. Islamic banks face the risk of non-performing financing which is also known as impaired financing as a result from the customers inability to pay their debts owed and due to the Islamic banks. This issue indicates that both the customers and Islamic banks shall have their significance roles in reducing the non-performing financing which led to this research to study the relevant provisions under the facility agreement as well as the responsibilities hold by the customers and Islamic banks in managing the non-performing financing and to examine the methods used by one of the Islamic banks to recover its non-performing financing. This study is significant to highlight the duties of the customers and the Islamic banks in managing and handling non-performing financing. Both parties play significant roles in handling the situation. This study will enlighten the readers to understand the responsibilities of the customers in their obligations under the financing contract including in the situation where the customers may face difficulty in fulfilling their monthly repayment which subsequently will lead to the occurrence of non-performing financing. This study will also analyse the recovery steps taken by Bank A in dealing with its non-performing financing.

LITERATURE REVIEW

Non-Performing Financing

Non-performing financing occurs as a result of an event of default made by the customers due to their liabilities in performing the repayment of the financing to the banks. The default had





caused the customers to breach their obligations under the facility agreements entered into between the customers and the Islamic banks. No-performing financing has been defined by Bank Negara Malaysia (BNM) as the situation when the principal or interest payment has been in arrears for three months and above. The non-performing financing has led to formation of credit risk to the banks which caused them to suffer for reduction of profit and increase of losses and this will bring negative effect to the Islamic banking industry.

According to (Hassan et al 2020 and Amirudin et al 2020) Islamic banks may face limitation on part of the customers whereby the customers often disregard their defaults under the Islamic facility due to the fact that Islamic banks can only charge late payment penalty as compensation for the failure of the customer to meet their repayment which is less in amount compared to conventional banks whereby the conventional banks will charge interest which can be compounded over the defaults made by the borrowers. Henceforth, it is important for the Islamic banks to manage the default risk by the customers in accordance with the Policy Documents issued by the BNM for Credit Risk.

Credit risk is defined under BNM's Policy Document as the risk of counterparty's failure to perform their obligations under the facility in repayment of the financing. Therefore, in order to mitigate the credit risk, the Islamic banks shall establish its credit risk management which responsible to manage the credit risk including to create a comprehensive credit risk strategy, to exercise a sound credit risk assessment, to arrange for a complete credit risk mitigation, to create an appropriate credit risk measurements methodology and credit risk monitoring.

This Credit Risk management is significant for Islamic banks to control and assess their operating system efficiently in order to manage the possible issues of non-performing financing. This is due to the reason that high non-performing financing will result to deterioration of the Islamic banks' assets and can decrease the banks' income as they are unable to collect the repayment of the financing in accordance with the obligations under the facility agreements from the customers (Alias Mat Nor and Nor Hayati Ahmad, 2015).

Measures Taken to Recover Non-Performing Financing

As non-performing financing will affect the Islamic banks financial growth and profit, the Islamic banks need to immediately act upon occurrence of any event of default by demanding from the customers to remedy the default before recovery action is taken through any necessary means including legal proceedings. There are two approaches which can be taken for recovery based on the strategies provided by Danaharta Nasional Berhad which are soft approach and hard approach which can be applied by Islamic banks.

The soft approach involves the voluntary arrangement for settlements made between the customers and the Islamic banks among others includes restructuring and rescheduling of the financing and moratorium. By looking at the soft approach and Shariah approach for debtors who are in difficulty, it can be seen that the approach is in line with the objective of Shariah (*Maqasid Shariah*) whereby the Islamic banks shall provide assistance to the customers in time of difficulty. The Quran in Surah Al-Baqarah verse 280 states that "*And if someone in hardship, then let them be postponement until a time of ease*". The verse clearly shows that Shariah has encouraged the creditor to provide an extension of time to debtor who is having difficulty to settle his debts.

On the other hands, in the event there is no voluntary arrangement being made or in case of default of the arrangement, the Islamic banks may proceed with legal action or foreclosure proceedings against the customers and their guarantors (if any) to recover the outstanding sum owed by the customers to the Islamic banks. The previous researchers had





discussed many factors which contributed to the occurrence of the non-performing financing. However, there was less study on the responsibilities of the customers and Islamic banks in managing the non-performing financing and action taken by the Islamic banks to recover the non-performing financing from the customers. Henceforth, this study intends to fill the gap by examining the relevant provisions provided under the facility agreements and analysing the duties and measures taken by both the customers and Islamic banks in handling the non-performing financing.

RESEARCH METHODOLOGY

This study is based on qualitative methodology whereby the researcher used primary and secondary data to gather information on the topic concerned. The primary data is gathered from an interview with a representative of Bank A from the recovery department. Meanwhile, the other primary data was obtained through primary sources which are the BNM's Policy Documents and Guidelines specifically on the Credit Risk, Classification and Impairment Provisions for Loans/Financing, Disposal of Non-Performing Financings, Late Payment Charges and Transfer of Business, the relevant provision on compensation and event of default clauses in the facility agreements of three separate Islamic banks and case law from Lexis Nexis. Meanwhile, the secondary sources are gathered by looking up into books, articles, journals and other relevant sources from the Internet and online database to find any material and information relevant to this study.

DISCUSSION AND FINDING

Provisions under the facility agreements

The researcher has analysed the relevant provision in facility agreements particularly on property financing agreement of three (3) Islamic banks namely Bank A, B and C. The provisions referred to are specifically in relation to event of default and compensation (*ta'widh*) to be paid as a result of non-payment by the Customers to the Islamic banks as shown in Table 1 and 2 below:

Table 1: Provisions on compensation as a result of late payment

Compensation (Ta'widh)	
Bank A	• Customers to pay the late payment compensation in the event of delay or failure to pay the monthly installment or any payment on the due date
Bank B	• Customer to pay the compensation for failure on the customer's part to pay the payment due under the facility • The amount of the compensation shall not be compounded
Bank C	• The customers to pay for any delay or failure to pay any payments under the facility on the due date • The amount of compensation shall not be compounded

Referring to Table 1, all the Islamic banks have clearly provided the provisions relating to the compensation to be paid by the customers due to the late payment of the facility within the due date of repayment to the Islamic banks pursuant to the facility agreements.





Even though provision on compensation for Bank A is silent on the compoundable of the compensation but it is known by the Islamic banks from the BNM's Guideline that the imposition of the compensation shall not be compounded. Henceforth, once the customers have started defaulting in their repayment, the Islamic banks shall have the rights to charge *ta'widh* as compensation but it is to be noted that the compensation shall not be compounded unlike conventional loan as it is considered as non-compliance with Shariah law which prohibits imposition of interest (*riba*) to the customers.

Table 2: Provision on event of default

Event of Defaults	
Bank A	- Item (a) to (s) shall constitute event(s) of default: (a) Non-payment: The Customer fails or defaults in the payment of any sum of money (i) on its due date, whether formally demanded or not; or (ii) (if due on demand) when demanded by virtue of the provisions of the Security Documents - If any of the events described in event(s) of default occurs: (a) the Selling Price will become and be deemed to be immediately due and payable, regardless of any provision of this Agreement to the contrary; (b) the Bank is also entitled with notice to the Customer to take such action as may be appropriate against the Customer, including action to terminate the Facility or to sue for the recovery of the Selling Price either before, after or concurrently with the action to enforce any of the Security Documents
Bank B	- The bank may by notice to the customers declare that the indebtedness shall become immediately due and payable, the facility shall be recalled and cancelled and the rights of the bank upon default shall apply if any one of the events of default under item (i) to (xvii) occurs, among others (i) the Customer and/or the Security Party shall default in the payment to the Bank of the Indebtedness or any payment due and payable after the same shall have become due. - The bank may forthwith enforce and exercise the powers conferred under the security documents to recover all sums payable under the security documents.
Bank C	- If the customers does any one of the acts under item (a) to (s), the Bank may by notice to the Customers declare that an Event of Default has occurred and may by written notice declare that the financing to be terminated and declare that the outstanding amount becomes immediately due and payable, among others by the occurrence of the following events:- (a) Non-payment: The customers fail to make payment of monies owing to the bank under the security documents; (b) Default in payment: the customers or any security party default in the payment on due dates





	• The Bank shall be entitled to exercise its rights available under the transaction documents upon occurrence of event of default including to sue and institute by way of civil suit or action for recovery of the outstanding amount whether first realizing the property or otherwise concurrently with any other rights and remedies provided under the agreement or the law.
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*Source: Commodity Murabahah Property Financing-i Facility Agreement of Bank A
Ijarah Property Financing-i Facility Agreement of Bank B
Home Financing-i Facility Agreement of Bank C*

Pursuant to Table 2 above, it can be construed that the Islamic banks adopt almost similar contents of the provision for the occurrence of event on default on non-payment of the financing due by the customers. In accordance with the provision, the customers have agreed that in the event of non-payment or default in payment of the financing, the Islamic banks shall have the rights to terminate the facility upon notice being given to the customers and thereafter proceed with the necessary action to recover the outstanding sum due from the customers.

Therefore, looking at both provisions concerned, it is undeniable that the provisions are a common provision used by Islamic banks in their facility agreements which still cannot curb the customers inability to pay their monthly repayment. However, the provisions are significant and bind the customers that they shall meet their obligations under the facility agreement with the Islamic banks among others by servicing their monthly repayment failing which necessary action may be taken by the Islamic banks to remedy the default including by civil suit as well as foreclosure proceedings for facility which is secured by charge or assignment of property.

Responsibilities of Customers & Islamic Banks

In the case of *Sigur Ros Sdn Bhd & Anor v Maybank Islamic Bhd & Anor [2018] MLJU 244*, the First Plaintiff had requested for extension of time from the First Defendant as the First Plaintiff was having difficulties in servicing its repayment of the financings to the Defendant. Subsequently, the First Defendant granted four (4) times of extensions to the First Plaintiff. Despite the extensions given, the First Plaintiff still did not manage to settle its indebtedness and even requested more extension of time from the First Defendant. Unable to meet the request from the First Plaintiff, the First Defendant issued a letter of termination of the facilities and demand for the outstanding sum from the First Plaintiff within fourteen (14) days from the date of the notice failing which the First Defendant would initiate with all legal action against the First Plaintiff. Based on the case, it is proven that Islamic banks do consider their customers' application for time assistance in the repayment of the financing before the matter was brought to the court of law. It can be construed that it is the duty of the customers to approach their respective banks to discuss on their inability to fulfil the obligation under the facility and to find an amicable solution with the banks.

Therefore, in attending to the issue on the non-performing financing, the customers main responsibility is to perform the obligation under the facility agreement with the Islamic banks specifically in meeting the monthly repayment on every due date. However, in the event the customers have suffered difficulty in fulfilling the repayment terms, the customers shall immediately reach their respective Islamic banks to discuss and find a proper solution to curb the problem. Meanwhile, the Islamic banks' duties on non-performing financing are to mitigate the loss suffered as well as to recover the outstanding sum from the non-performing financing. Notwithstanding that, this study agrees with the opinion by Abdul Muneem et al (2020) that if the customers faced difficulty in fulfilling the repayment obligation, the customers may refer to the bank for an assistance. Hence, in the event the customers approach the banks to seek for





relevant assistance in respect of their financing, the banks and the customers may negotiate to find an amicable settlement in dealing with the issue in order to prevent any risk of prolong non-performing financing.

There are a few measures that can be taken voluntarily by both the customers and the Islamic banks which is also supported by Syuhaeda Aeni et al (2020), among others that the customers can apply for rescheduling or restructuring of the existing financing with the Islamic banks or apply for a deferment of financing known as moratorium for a period of time in order to reduce the customers' inability to pay off the debt due to the Islamic banks. This is also in line with the BNM's Policy Documents on Classification and Impairment Provisions for Loans/Financing.

Rescheduling and restructuring of financing is the approach taken to modify the original repayment terms and conditions under the existing facility. The rescheduling and restructuring will benefit the customers as the financing will be restructure or reschedule to suit the customers' current financial situation. However, the Islamic banks shall have the obligations to access and determine the suitable methods for rescheduling and restructuring process to ensure the requirements comply with the Shariah law (Abdul Muneem et al (2020).

Meanwhile, in the event the Islamic banks grant moratorium to the customers, the requirements under Paragraphs 9.4 of the BNM's Policy Document of Classification and Impairment Provisions for Loans/Financing provides that the moratorium shall not be for more than a period of six (6) months. Albeit all the assistances given by the Islamic banks to the customers, the banks have the duties to monitor and review the performance of the customers upon the granting of the assistance by the banks.

The Islamic banks shall have absolute powers in accordance with the financing agreement to initiate any appropriate action against the customers in the event of default on the rescheduled or restructured financing. On the other hand, Paragraph 13.2 of the BNM's Policy Document states that the customers' financing status shall be considered as not impaired only if the customers have fully settled the arrears to the Islamic banks but if moratorium is granted to the customers, the arrears period will be excluded from the moratorium period.

Mechanism to Recover Non-Performing Financing

The Islamic banks shall have its own internal policies on how to deal with the non-performing financing. Notwithstanding that, the Islamic banks may have similar approaches in managing and recovering its non-performing financing. According to Syuhaeda Aeni et al (2019) and Mohammad Kabir Hassan et al (2021) agree that the usual approach taken by the Islamic banks is to proceed with civil suit and foreclosure proceedings against its customers to claim for the outstanding sum due and owed to the banks. In the case of *Maybank Islamic Bhd v Sanshan Capital Sdn Bhd & Ors [2021] MLJU 1173*, the First Defendant was granted a Master Commodity Murabahah Financing and secured with Joint and Several Guarantee by the Second and Third Defendants in which they had agreed to be treated as the principal debtors for the First Defendant's indebtedness to the Plaintiff.

As a result of failure by the First Defendant to pay the facility, the Plaintiff had issued to all the Defendants termination and demand letters for the entire indebtedness together with ta'widh charge on the account. However, the Defendants still failed to remedy the default and thereafter the Plaintiff had proceeded with legal action to claim the outstanding sum due and owed from the financing and the Plaintiff was granted Judgment in default against the Defendants. The Third Defendants filed an application to set aside the judgment on the ground of irregularity as he was not served with the Writ of Summon and Judgment in default. He





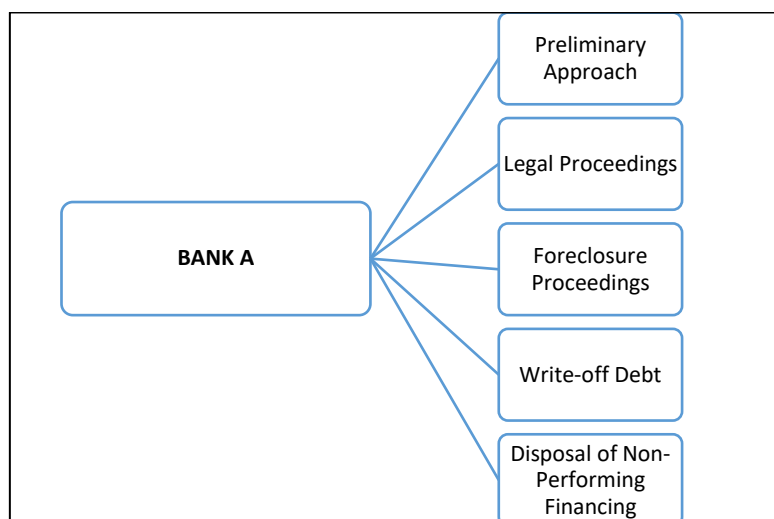
claimed that he had no knowledge on the legal action and Judgment in default made against him.

The court held that the Plaintiff had successfully served the Writ of Summon and Judgement in default vide registered post to the Third Defendant as per the Joint and Several Guarantee executed by the Third Defendant and the Plaintiff, hence the Third Defendant's application to set aside the Judgement was dismissed by the Court. It can be extracted from this case that the financing agreement executed between the bank and the customers provides authority and power to the bank to proceed with civil action in the event the customers fail to perform its obligations under the agreement.

Meanwhile, in the event the financing is secured by charge or assignment of property, the Islamic banks shall have the rights to foreclose the property in accordance with the facility agreement and security documents entered into by the customers and the Islamic banks. This is also in line with the case of *Maybank Islamic Bhd v Insamadu Sdn Bhd [2020] MLJU 2265* in which the Court had granted an Order for Sale to the Plaintiff to foreclose the Defendant's property charged to the Plaintiff as security for four financings granted to the Defendant. The Defendant had argued that the Originating Summon files by the Plaintiff was irregular and the amount claimed by the Plaintiff was inaccurate. However, the Court held that the Plaintiff's application for the Order for Sale is in order and the Plaintiff had submitted certificate of indebtedness to the Court for the amount outstanding by the Defendant to the Plaintiff in which the Defendant failed to prove that the amount stated was inaccurate as per its allegation.

This case shows that Islamic banks also has another option to recover the non-performing financing based on the facility agreement and relevant documents to the financing such as Memorandum of Charge (Form 16A) or Deed of Assignment (by way of security). For example, in the event the customer's property has been charged at the land office or assigned to the bank as security for the financing granted, the financing documents will authorise the Islamic banks to proceed with foreclosure proceeding or auction of the customer's property to recover the outstanding sum owed by the customers to the Islamic banks.

In addition to the above, this research also illustrates the mechanism adopts by Bank A to recover its non-performing financing as per Figure 1 below:



Source: Interview conducted on 13th July 2021 with an officer from Recovery Department of Bank A

Figure 1: Mechanism to Recover Non-Performing Financing by Bank A





Preliminary Approach.

In order to reduce the credit risk, Bank A has taken steps to initiate preliminary action to approach the customers in repayment of the financing by issuing reminders and notices to demand for the outstanding payments owed to the bank. Bank A has also engaged external debt collector to assist in the collection of the repayment.

Legal Proceedings.

In the event the customers fail to remedy the default, Bank A will exercise its rights under the facility agreement and security documents in accordance with the provision of 'Event of Default' as stated in Table 2 by terminating the facility agreements or recalling the facility and thereafter proceed with the necessary legal action against the customers and his guarantors (if any) to demand the total outstanding debt by the customers. Bank A will proceed with summon to claim for the outstanding sum and record judgment against the customers.

However, if the customers approach the bank to resolve the issue amicably, the bank will consider withdrawing the summon filed in the event the customers settle all the outstanding arrears or record Consent Judgment with the customers before the Court on any agreed settlement reached by both parties. It must be observed that the legal action filed in respect of the default of the facility agreements shall be within six years from the limitation period as prescribed by Section 6(1)(a) of the Limitation Act 1953.

Upon securing judgment from the Court against the customers and its guarantors (if any), the bank will serve the judgment to the customer and demand for the outstanding sum in which failure of the customers to settle the judgment sum will entitle Bank A to proceed with enforcement of the judgment. Therefore, if the customers fail to comply with the judgment obtained, Bank A will continue with execution proceedings to execute the judgment.

This is the action where the bank could compel the customers to perform the judgment obtained from the Court. There are a few options provided under the laws for the judgment creditor (which in our current context is Bank A or the Islamic Bank) to execute the judgment against the judgment debtor among others through Judgment Debtor Summon, Writ of Seizure and Sale, Garnishee Proceedings under Rules of Court 2012, Winding Up Proceedings (in case if the customers are companies) under Companies Act 2016 or Bankruptcy Proceedings against individual customers under Insolvency Act 2017.

According to Bank A, the usual enforcement action made by the bank are Bankruptcy and Winding up proceedings if the total outstanding sum under the judgment reach the threshold provided under the law to proceed with the proceedings. This is because the other proceedings will need the bank to reach the customers (Judgement Debtor Summon or Writ of Seizure and Sale) or to have the details of the Customers' accounts at third party banks (Garnishee Proceedings) which sometimes cause difficulty to Bank A to locate the customers or to trace the information.

Foreclosure Proceedings.

In case of default by the customers who have charged or assigned their properties as security for the repayment of the financing, Bank A will proceed with foreclosure proceedings to obtain an Order for Sale against the property of the affected customers to recover the total outstanding sum owed by the customers to the bank. The foreclosure proceedings undertaken by Bank A will depends on the type of Individual Issue Document of Title of the Property. There are two types of Issue Document of Title which are Registry Title and Land Office Title. According to





the National Land Code (Act 828), Registry Title is titled evidenced by a grant or a state lease or by any document of title registered in a Land Registry whereas Land Office title is title evidenced by a Mukim grant or Mukim lease or by any document of title registered in a Land Office.

In Malaysia, Registry Title is issued by the relevant Land Registry such as Pejabat Pengarah Tanah dan Galian Selangor while Land Office title is issued by the relevant Land Office depending on the area of the property such as Pejabat Tanah Daerah Hulu Langat. In the event the foreclosure proceedings involve property under the Registry Title, the proceedings will commence in the High Court under Order 83 of the Rules of Court 2012 and Section 256 of the National Land Code. Meanwhile, the application for an Order for Sale in relation to the property held under the Land Office Title shall be made by submitting Form 16G to the relevant land office pursuant to Section 260 of the National Land Code. Apart from that, if the property was assigned to the bank and has yet to be issued with an individual document of title by the land office, hence Bank A will commence an auction pursuant to the Deed of Assignment (by way of security) executed by the Customers in favour of the bank.

Write-off Debt.

One of the ways adopt by Islamic banks in case of unrecovered debt owed from the customers is to write-off the debts. The non-performing financing which incapable of being recover is known as bad debt. Pursuant to the interview with Bank A representative, the bank may opt to write-off the non-performing financing from its portfolio if the bank decides that the debt due is incapable to be remedied and collected from the customers. It is significant to note that the decision to write-off the debt needs to be presented and approved by the Board and the approving authority of the banks before the non-performing financing can be written-off.

Disposal of Non-Performing Financing/Impaired Financing.

Lastly, among the approach taken by Bank A in reducing the non-performing financing of the bank is by disposing the non-performing financing to another third party. The bank will sell the non-performing financing to the eligible third party either to another Islamic banks or other third-party company. This is in line with BNM's Guidelines on the Disposal/Purchase of Non-Performing Financing by Islamic Banks whereby the bank must fulfil the conditions stipulated by the BNM including obtaining the approval from the BNM in the event the bank intends to proceed with the disposal of the non-performing financing.

Currently, Bank A is in the midst to conclude a sale and purchase transaction of the non-performing financing with third-party company whereby among the requirements provided by the BNM that needs to be fulfilled are that the buyer shall establish a special purpose vehicle to manage the Islamic financing facility upon purchase of the same from Bank A. Moreover, the buyer of the non-performing financing also shall establish a Shariah Committee to ensure that the operational and management of the financing is in compliance with Shariah requirements. In taking the option to proceed with this transaction, the Islamic banks also need to comply with BNM's guidelines on Transfer of Business as well as Part VII Division 4 of the Islamic Financial Services Act 2013 on Transfer of Business.





CONCLUSION AND RECOMMENDATION

In conclusion, this study has shown that non-performing financing occurs as a result of the customers' default in servicing monthly repayment which led to the facility to be in arrears for three months and above. This research also revealed that as the non-performing financing will impact the Islamic banks' profit growth hence, recovery strategies need to be implemented by the Islamic banks in order to reduce the loss suffered due to the non-performing financing. Notwithstanding that, the customers are also responsible to inform and approach their respective Islamic banks to discuss and find an amicable solution in settling the repayment issue.

The non-performing financing will not only impact the Islamic banks but also the customers as they are exposed to legal suit which can affect their credit history and to make it worst also cause them to be declared bankrupt and losses their properties as a result of recovery action made by the Islamic banks. This research also find that the Islamic banks treat non-performing financing in more or less similar approaches whereby they will firstly issue notices for the customers to remedy their default and failure on part of the customers will entitle the Islamic banks to exercise their rights under the facility agreements or security documents in regard to the financing to proceed with suitable legal action and if applicable together with foreclosure action.

This study has highlighted the responsibilities of the customers and the Islamic banks in managing and handling non-performing financing as well as the measures taken by the banks to recover the non-performing financing. It is highly recommended for customers to approach their respective Islamic banks if they realise the risk of inability to fulfil the obligation under the facility agreements to avoid any recovery action being made by the banks which can cause greater harm to the customers in future. It is suggested for future researchers to analyse the credit risk mechanism and credit risk mitigation of a few other different Islamic banks to find out any difference approaches taken by the Islamic banks in managing the credit risk as well as their recovery strategies to avoid or reduced the occurrence of non-performing financing.

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