

## SHARI'AH APPROACHES TO PRODUCT DEVELOPMENT AND PRODUCT ENHANCEMENT IN ISLAMIC BANKING AND FINANCE : AN APPRAISAL

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### ABSTRAK

Perbankan dan produk-produk finansial di masyarakat tertentu tergantung pada permintaan dan budaya, serta ideologi yang dianut oleh masyarakat tersebut. Dalam konteks ini, produk-produk finansial bebas dari riba karena masyarakat menegakkan larangan riba. Shari'ah merupakan hukum yang bersifat ke-Tuhanan yang bersumber pada Al-Qur'an dan Sunnah. Hukum Islam secara historis dikembangkan melalui pendekatan orientasi-teks yang logis dimana para ahli hukum Muslim dipandu dengan bukti tertulis (bukan berdasar intuisi) yang tertulis dalam Al-Qur'an dan Sunnah. Hukum sebagai produk yang sudah selesai diorganisir yang terdiri dari kata-kata yang merupakan hasil interpretasi ahli hukum. Proses interpretasi ini dikenal dengan nama ijtihad. Ijtihad merupakan elemen integral bagi perkembangan produk. Ijtihad merupakan metodologi yang metodologi yang dapat menyelesaikan berbagai masalah dalam bidang finansial. Kombinasi muamalah, usul al-fiqh dan pengertian perbankan dan lembaga finansial modern merupakan unsur penting untuk perkembangan produk.

*Keywords : Shari'ah, Riba, Ijtihad, Muammalah, usul al-Fiqh*

### NOMENCLATURE OF ISLAMIC BANKING AND FINANCE

Islamic Banking or Islamic finance is a term that reflects banking business or financial business that is not contradictory to the principles of Islamic law. This has been statutorily mentioned in both Islamic Banking Act 1983 as well as in Banking and Financial Institutions Act 1989. The International Association of Islamic Banks equally underscores the same

concept saying that "(T)he Islamic bank basically implements a new banking concept, in that it adheres strictly to the ruling of the Islamic Shari'ah in fields of finance and other dealings". All of these definitions seem to give more emphasis on the very concept of Islamic banking or Islamic finance, as the case may be. These definitions, however, failed to describe precisely what is Islamic banking or Islamic finance. The definition of "Islamic banking business" or Islamic financial

business" finds no place either in relevant statutes or guidelines.

While the concept of Islamic banking is quite clear, the substance and the very essence of Islamic banking business are not. In Malaysia, this dichotomy was simply addressed by defining Islamic banking business as "banking business whose aims and operations do not involve any element which is not approved by the Religion of Islam". This attempt remains unsatisfactory as "Islamic banking business" was never explained or elaborated. Only the parameter of Islamic banking business was given but lacking the very substance of what is Islamic banking business.

Having said this, the existing legal provision of Islamic banking business, at least in Malaysia, gives some flexibility to practitioners, regulators and Shari'ah advisors to create and introduce unlimited Islamic banking products to support Islamic banking business as long as these products and instruments "do not involve any element which is not approved by the Religion of Islam". Equally interesting, the term of the "Religion of Islam" was never explained, thus giving wider scope for product development exercise provided the newly introduced product gains a kind of juristic basis in the body of Islamic positif law i.e. *fiqh*.

It is against this backdrop that this paper aims to explore how one could develop approaches to

further develop and enhance Islamic banking products to face not only the demand of modern banking environment but also, more importantly, the high expectation of Muslims around the globe that Islamic law is and ought to be always relevant and feasible in all times and space. Ironically, banking and finance are the most developed area which changes rapidly and costantly

### ISLAMIC BANKING AND FINANCIAL PRODUCTS: AN OVERVIEW

Banking and financial products in any given society depend very much on both the demand and culture, and to some extent, the ideological belief of that society. In this context, financial products were free from in those societies which upheld the prohibition of *riba*. On the contrary, *riba*-based financial activities will be prevailing in the society which accepted the practice of *riba* as it was during the pre-Islamic period where the tribe of *Thaqif* acted as lenders and merchants of *Quraysh* as borrowers. It is also worth nothing that in the society, credit sale and equity financing were also prevalent

However, in the modern time, factors such as legal framework, taxation, stamp duty, accounting treatment and other similar considerations could have

influenced approaches to product development and product enhancement. As a matter of fact, these factors pose significant and practical considerations prior to undertaking any product development and enhancement. This is because, apart from being shari'ah compliant, a financial product must also be legal and compatible to current practice in terms of stamp duty, taxation and the like. Otherwise, the product will be inferior to conventional financial product from many perspectives. This would undoubtedly render the customers shun away from Islamic banking and financial products as the product are not appealing enough.

Before proceeding to discuss approaches to product development, one wonders whether we could have an Islamic alternative for each and every conventional banking and financial products. Theoretically speaking, the answer is affirmative. It is precisely in this regard that Islamic law declares *riba* as unlawful but trading as lawful. In practice, however, it is respectfully submitted that the answer to this question cannot be necessarily affirmative as some product features of which are very much conventional of which Islamic law cannot afford to emulate in one way or another.

The striking example is conventional Credit Card. The most obvious features of this facility is that it allows the card holders to pay

their purchases on credit as well as to withdraw instant cash whereby the repayment can be made within the grace period. The failure to repay the whole outstanding credit arising from purchases within the grace period would trigger the charge of *riba* known as financial charge. Not only that, the card holders are essentially given the facility not to pay the whole outstanding credit. Instead, they are just required to pay the minimum payment to remain as card holder. This feature is known as revolving credit facility which is very much conventional i.e. interest-based loan. Therefore, it has been observed that some Islamic Credit Cards that are currently available in the market, which are based on *bay' al-'inah* are not fully compatible to the features of conventional Credit Card particularly of that of revolving credit facility. Also, these alleged Islamic Credit Cards, as they are, are simply Debit Card instead of Credit Card.

Thus, the Shari'ah Standard on Credit Card prepared by the Accounting and Auditing Organizations for Islamic Financial Institutions (AAOIFI) which is based in Bahrain, is not in the position to approve the existing conventional Credit Card. The mentioned Standard concludes and declares that "(I)t is not permissible for an institution to issue credit cards that provide

an interest-bearing revolving credit facility, whereby the cardholder pays interest for being allowed to pay off the debt in installments.

The above proposition is somewhat different from another product that is Charge Card. Although Charge Card, like Credit Card, is conventional in origin and character, but its features are not "too conventional" to the effect that it can be tailored made to comply with the shari'ah principles. Therefore, according to the same Standard, it has been resolved that "(I)t is permissible for institutions to issue charge cards on the following conditions :

- a. The cardholder is not obliged to pay interest in the case of delay in paying the amount due
- b.....(not relevant)
- c. the institution must stipulate that the cardholder may not use the card for purposes prohibited by the shari'a and that the institution has the right to withdraw the card in case such a condition is violated

As a matter of fact, there is already one Islamic Charge Card which is currently available in Malaysia which is consistent with the above prescription. However, this product has also introduced some enhancement elements such as that the cardholder must pay a sum of money as service charge for cash withdrawal. This charge is already fixed in terms of amount and is not

based on certain percentage as to reflect the charge is imposed on actual cost incurred by the card issuer (bank). The basis of this charge is the decision of the International Islamic Academy of Fiqh on charging fees on loan (qard) whereby the permission is given on the basis of charging exact cost incurred by the lending institution due the lending money to third party

#### **ISLAMIC PERSPECTIVE AND METHODOLOGIES TO PRODUCT DEVELOPMENT AND PRODUCT ENHANCEMENT**

Shari'ah is the Divine Revealed Law. It starts from given or self evident premises which constitute the sources Islamic law that are the Qur'an and the Sunnah. The Shari'ah, as the divinely ordained blueprint for human conduct, is a self contained system, all comprehensive and all embracing; it encompasses all aspects of human life. All avenues of life, whether political, economic, or any other, fall within its sphere of jurisdiction. To the effect, the shari'ah has been described by a leading Western scholar as "the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islamic it self

Having said this, it is to be noted that Islamic law is not given

ready-made. Islamic law needs human involvement as to interpret the sources given by the Law giver. The divinity of the shari'ah is confined merely to the sources of law which act as the raw-materials for the qualified jurists to understand, interpret and extend their applications as the case may be. Therefore, it is correct to describe the development of Islamic law as a source-based development. Generally speaking, source denotes the place or the basis from which a ruler or legal argument is taken. In the case of Islamic law, both the Qur'an and the Sunnah of the Prophet (SAW) are the ultimate sources. Both are also clearly textual in character. Above all, they are sacred texts because they are the product of Divine revelation (*wahy*). For this very reason, Islamic law historically developed through the text-oriented approach in the senses that Muslim jurists are guided not by intuition but by textual evidence prescribed by both the Qur'an and the Sunnah. Strictly speaking, it is not the law which is interpreted, but rather the sources of law. The law as a topically-organised finished product consisting of precisely-worded is the result of juristic interpretation; it stands at the end, not at the beginning, of the interpretative process.

The interpretative process is known as *ijtihad*. The key player of *ijtihad* is the jurists who endeavour to derive or formulate a rule of law

on the basis of evidence found in the sources. The end product of this process is known as *fiqh*, the Islamic positive law, which differs significantly from the shari'ah. While the shari'ah is the Divine law, *fiqh* is the product of human understanding of the shari'ah. Kamal Faruki has rightly pointed out that "the difference between shari'ah and *fiqh* is between the divine law as it is and the divine law as human beings understand it". *Fiqh* has now become the legacy of Islamic law which covers almost all areas of law pertaining to the "Islamic way of life" including financial contracts and banking products

Although *fiqh* depends heavily on the skills of *ijtihad* which is human in character, Muslim jurists (*fuqaha* plural of *faqih*), are not free to speak on Islamic *fiqh* or Islamic positive law as rooted in positivist conception of law. That is to say that the human judgement made within a humanly established frame of reference; it does not proceed from a human senses of equity, or from a perception of previous human judgements. On the contrary, the human judgement which we are concerned with is an exclusively exegetical judgement. In other words, the validity of arguments in Islamic law rests primarily upon the epistemological value of the revealed premises from which they are

constructed. Thus, one can safely conclude that Islamic law has been all the way conceptual knowledge and text-oriented rather than intuitive perception. This can be seen clearly in the writings of great Muslim scholars such as al-Shafi'i, Ibn Rushd and al-Ghazali respectively. These scholars have constantly insisted on the centrality of the epistemological value of the revealed premises in legal arguments.

Having said that, one perspective of Islamic law remains interesting. Although no qualified jurist would presume to claim exegetical finality for a rule constructed by him through his intelligence, he would insist that the rule is normative for himself and his followers in the same school of law by virtue of the intended objectivity of his scholarly endeavours, namely the exposition of non-positive law of Allah. He would insist, in other words, that his point of departure in the formulation of all rules is divine revelation.

The foregoing discussion is very crucial to understand not only the past experience of Muslim jurists in arriving at many different views and contentions but also, more importantly, to move forward in bringing creativity in the sphere of Islamic positive law. As *fiqh* is approximation, albeit a human and close one, to the law of Allah, then contemporary Muslim jurists and scholars, guided by both theories of interpretation of sources and broad

objectives of the previous scholars. As they have encountered the challenges of their time successfully, so is with the contemporary Muslim scholars. The fatwa of Ibn Taymiyyah on the permissibility of lease of orchard deserves some consideration to reflect how a new 'instrument' can be introduced and how an existing 'instrument' can be enhanced further.

It is however, useful to bring forth some of the principles that are already integral in Islamic law before we look at specific *fatwas* as these principles, unlike specific *fatwas*, are ever lasting. These selected principles are deemed instrumental to enable Islamic *fiqh of mu'amalah* to face new and unprecedented issues. The first of these principles is the principle that Islamic law declares that the original status of each and every contract or term and the like is permissibility unless proven otherwise. This is known as *al-asl fi al-ashya' al-ibahah hatto yarid al-man'*. However, it is to be noted that this principle does not, in any way, apply to cases of ritual worship and marriage as Islamic law assumes that the original status of these actions is prohibitory unless proven otherwise. Therefore, in cases of commerce, banking, finance, insurance, capital market and the like, one can assume that each and every new contract or term is

lawful unless stated or proven otherwise. In practical sense, a product, be it an existing one or a potential product, is *prima facie* lawful. The subsequent search and investigation are just confined to examining elements or features that this product may have which are not compatible to the shari'ah principles. If found latter that this product does contain one or more element which is not shari'ah complaint, the status of permissibility, which is essentially based on presumption of law, would change to prohibitory status on the basis of balance of probability. If this element cannot be later modified, in one way or another, to satisfy the shari'ah requirement, then the product remains unlawful and must be avoided

The other principles which is equally interesting is that the principle of law in commerce is that of analogy and ratiocination (*al-asl fi al-mu'amalah al qiyas wa al-ta'lil*). This again gives the space for Muslim jurists and practitioners to extend the law mentioned in both the Qur'an and the Sunnah as well as the Ijma' (consensus) to new case by applying the *ratio decidendi* of the former case of law to the latter case as both share the same *ratio decidendi* ('*illahi*). Examples of this exercise are many and the subsequent discussion on a few fatwas of Ibn Taymiyyah will be self explanatory of this principle.

Other than these two great principles of law, there are some

legal techniques and considerations such as *istihsan* (equity), *maslahah* (benefit and welfare of the society) and '*urf* (customary pactice). These legal techniques have contributed significantly in the past and would continue contributing in modern times as well as in the future. Islamic law, for example, has endorsed forward sale that is *bay' al-salam*. *Bay' al-salam* being differed delivery sale is deemed to depart from a principle of law that the subject matter of sale must be available at the time of the contract. The permissibility of *bay' al-salam* has been argued, at least by the Hanafis, on the basis of *istihsan* being a departure from an original principle of law to another for a reason which is more apparent, appealing and more comfortable to the society. This departure is called *ihstisan* whose corresponding English legal terminology is known as equity.

A good example of *ihstisan* in modern time is the way how dividend is distributed to shareholders in the stock market. Ideally speaking, or as far as the principle of investment is concerned, the declared percentage of profit distribution or better known as dividend should be based on actual amount of investment contributed by each and every shareholder or investor. However, in actual practices, the rate of dividend declared will

apply to the initial price or value of one unit of share rather than the market value of this share at the time when dividend is declared. This is a departure from original accounting principle in Islamic investment be it *mudharabah* or *musharakah*, but this departure is justified as this way of dividend distribution is more appealing and comfortable to all parties in the stock market. Otherwise, the amount of dividend must be based on actual contribution made by each and every shareholder at different points of market value fluctuation which is very much difficult and complicated if not impossible. The present writer failed, after a series of academic investigations, to find any authority on the permissibility of this practice in the existing literature. The writer is personally convinced that this is simply a perfect *istihsan* as already defined by the Hanafis.

Also, many new contracts or terms in the past are heavily based on *maslahah* consideration. *Maslahah*, as a principle of law, according to one scholar, is to argue that good is lawful and that lawful must be good. The type of *maslahah* which attracts the attention most is the so-called *maslahah mursalah* (unrestricted benefit and good); it neither expressly conforms to nor contradicts the textual sources of Islamic law. The usefulness of this principle is beyond doubt since contemporary commercial issues are not textually covered by both the

Qur'an and the Sunnah. The requirement for Sale and Purchase Agreement as well as attestation, for instance, is undoubtedly *maslahah*-based requirements which support the broad objectives of Islamic law in securing the rights of the parties.

Apart from *istihsan* and *maslahah*, custom and public usage are also appealing and significant in commercial transactions. The term custom generally means "that which a people or a section thereof have been accustomed to doing". Custom enjoys a significant place in Islamic law particularly in the area of commercial activities to the effect that one of the legal maxims has clearly stated that "a matter recognized as customary amongst merchants is regarded as if agreed between them". Above all, custom in Islamic law is binding and could be appealed to in settlement of disputes. Therefore, if merchant sold a commodity to a purchaser without agreements as to the time and manner of payment and it was customary for merchants to obtain the price by weekly installments, then the contract of sale should be interpreted according to this particular custom. The principle of custom applies to almost every aspect of Islamic *mua'alah* as the daily transactions in the Muslim society are related to what is common and comfortable to the



society. It includes, among other examples, aspects of delivery, damage and defect, conclusion of contract, warranty and condition, termination and revocation of a contract and the like. It seems that customary practice in the light of this explanation is more relevant to product enhancement instead of product development.

Now, it is appropriate to see how Ibn Taymiyyah for his case of *daman*.

### **PRACTICAL ISSUES IN PRODUCT DEVELOPMENT AND PRODUCT ENHANCEMENT**

In this section of discussion, the paper will examine how a product development or product enhancement can be undertaken successfully and what are the success factors behind this exercise. Issues involved are various. To organize the present discussion, we shall first look at product development and later product enhancement.

Product development is essentially an exercise to create new product or instrument to meet specific requirement, be it customer's, regulator's, industry's or all of these factors. In most cases, the creation of new product, other than for diversification purposes, is to satisfy the needs of the customer under certain circumstances of legal framework, taxation treatment and the like. Therefore, we find that financial institutions have constantly

developed and launched new products in order to be on competitive edge with other financial institutions in the industry. However, it is the writer's personal observation that in conventional banking industry, all of those developments are more of product enhancement rather than product development. This is simply because all financing as well as deposit products in conventional banking, at least up to date, are simply based on loan contract as indicated by the leading case of *Foley v. Hill*. The conventional banking tends to add some new features to the already existing products and then describe them as a new product. It is true that this is a new product with new features but the underlying concept or contract remains the same that is lending and borrowing. This is not the case in Islamic banking business as new product must be fundamentally based on new concept or contract. Otherwise, it is just a product enhancement.

We may examine the product of sell and lease back agreement. This product that combines two contracts to form a new financing facility is worthy of consideration. This product, as a combined feature, has no precedent in the history of Islamic law discourse. However, this product is based on two contracts which are already approved by the

Shari'ah that are sale and lease contract respectively. From the Shari'ah perspective, this product has already enjoyed the approval from many Shari'ah boards of many Islamic financial institutions.

This product, being new in approach and presentation, is deemed to assist the customer to liquidate his assets into cash or cash equivalent. The requirement of liquidity is very much relevant as the customer needs, in some given circumstances, to convert his assets into cash or cash equivalents without suffering from significant loss. This process known as *al-suyulah*, is important to provide the customer with the immediate ability to meet his financial obligations. Under this arrangement, a customer needing a financing will start selling his assets to potential 'financier' and will subsequently hereafter lease back the same assets from the 'financier', probably on the basis of *al-ijarah thumma al-bay'* (Islamic financial lease or hire purchase). Upon selling the assets, the customer will be able to obtain some cash money to meet his financial obligations. This arrangement will however render the customer to lose his ownership over the asset but he will entitled to use the usufruct of the assets under the purview of lease contract. The rental payment will be the income for the 'financier'. To ensure the returns of ownership to the customer or lessee, the 'financier' or the lessor will agree to an option given to the

customer to buy back the assets after the expiry of the lease period. The arrangement is different from sale and buy back agreement or better known as *bay' al-inah* or lease and lease back agreement or *al-ijaratan*. These two contract, unlike sale and lease back, are contentious contracts in Islamic law as well as in modern Shari'ah Standard adopted by a few Islamic financial institutions such as that of AAOIFI.

Another investigation on product development will be on *musyarakah mutanaqisah* (decreasing partnership). This product which is a combination of *musharakah* and *ijarah* will lead the customer to acquiring the whole share of the joint-owned property under *musharakah* through redemption of shareholding of the 'financier'. Although the product looks simple, it has some distinctive purposes that many existing Islamic banking products particularly of that of debt financing, are not in the position to achieve. Among other objectives, it aims at allowing the 'financier', being the investor and co-owner of the asset, to involve actively in the management of the business along with the customer. This is not possible under simple financing instruments using sale or lease transactions. The product like *musharakah mutanaqisah*, being new in packaging, is not

new however in terms of contracts upon which the product is based. Obviously, respective contracts of *musharakah* and *ijarah* are old contracts. The ultimate result of this product development is to construct these two contracts jointly to form a new financing instrument for a specific purpose i.e. financing, active participation of the financier in the project/business, fixed income to the financier via lease rental and transfer of ownership through shareholding redemption. The combination or consolidation of these two contracts and the result intended from this exercise are new as this exercise leads to the creation of another instrument which has the legal features and effect not intended by these two contracts by themselves.

Now, we may devote the discussion to discussing some examples of product enhancement. Product enhancement is to add more values to existing product so that it becomes more viable and more appealing. Product enhancement does not change the very concept of the product but simply bringing or inducing one or more feature to the product for one purpose or another. Examples are many in the experience of Islamic banking and finance. In the case of *mudarabah* which is an equity financing, the often-quoted problem is the possibility of the loss of capital that is provided by the capital provider. The fact that the capital provider (*rabb al-mal*) is supposed to bear the financial loss

renders this type of financing not popular from capital provider's perspective. Obviously, the manager (*mudarib*) cannot guarantee any profit or even the capital as this goes against the very meaning of profit and loss sharing. Given this scenario, there have been many discussions on the possibility of having a third party guarantee on the capital in *mudarabah* financing and the fatwa issued by the Dallah al-Barakah seems to support the notion of third party guarantee in *mudarabah*. This fatwa, if taken and applied, will add more strength and value-added to *mudarabah* equity financing.

Also, in the case of asset financing using either deferred payment sale or *murabahah* sale or some other sale financing techniques, a need is felt to incorporate a clause of right to recall the facility. Right to recall is a clause in legal documentation that states that in the case of non-payment or default of the customer to make the payment on schedule, the financier being the seller is entitled to impose on the customer being the buyer to accelerate the whole outstanding payment of installment. This is the widely accepted Shari'ah standard which is practised by many Islamic financial institutions. The AAOIFI has also endorsed the practice.

The foregoing discussion on a few exercises of both product

development and product enhancement in Islamic banking and finance has the following impressions. On one hand, a new product is sometimes created by reference to existing and available contracts but these contracts are being combined or consolidated to form a new instrument which will have a new perspective altogether. The example of this is *musharakah mutanaqisah*. The purpose of progressive redemption of shareholding

Contractor as the ultimate contractor. The same logic applies to some other products in Islamic banking and finance such as parallel *salam* sale, *murabahah* sale where the payment is deferred, *al-mudarib yudarib* (the manager reinvest the investment capital), etc.

The other common methodology of product development is simply based on a few fatwas which are very much peculiar to a specific school of law or perhaps to a particular jurist though this has no support from the overwhelming majority of the jurists. The concern of this methodology, it is respectfully submitted, is merely to seek some legal justification or authority to reinforce the Islamicity of some new products that are deemed to be feasible and viable in modern Islamic banking and finance. Concern was never given as to whether this fatwa is strong and a preferred one in Islamic law discourse (*rajih*). The most

interesting example of this is the fatwa of Imam al-Shafi'i on *bay' al-'inah* that is based on "sell and buy pack" premise. This concept of buying and selling has been viewed and perceived by many scholars particularly in the South East Asia region as the most feasible instrument to avoid practising *riba* in modern banking environment. The facility of giving credit under this approach is simply based on the basis of trading which is allowed under the generic meaning of *al-Baraqah* : 275 ; "Allah has made trade lawful and *riba* unlawful". In short, the basis for this product and instrument is simply the fatwa of Imam al-Shafi'i in which he has positively endorsed the practice of sell and buy back as it satisfies all essential elements of a valid sale. In practice, the structure and purpose of sale of *'inah* are very much accommodative to modern practices of credit facility. This gives various advantages in Islamic banking in terms of practicality and easy implementation of Islamic banking in an environment which is not that accommodative to many features and requirements of Islamic banking products.

Recently, one of the Shari'ah Standard issued by the AAOIFI that is Shari'ah Rules for Investment and Financing Instruments No (2) has also endorsed on the concept of

forward lease (*al-ijarah al-mawsufah fi al-dhimmah*). This contract cannot be found in the mainstream of Islamic law writings. This notion of forward lease was advocated only by a minority in the Hanbali school of law. However, given the relevance of this contract in modern times, the Standard has adopted this view as this is believed to ease the modern Islamic financing arrangement.

Also, it has been observed that the Shari'ah scholars and practitioners have also resorted to *ijtihad* to solve a particular problem in Islamic banking and finance. The example of third party guarantee in *mudarabah* equity financing is one of good examples of this approach. This is a plain *ijtihad* based on general principles as well as broad objectives of Islamic law (*maslahah*). Although the principles of law prohibit the manager in *mudarabah* to guarantee either capital or profit, no prohibition was found for a third party to guarantee the preservation of capital in all circumstances. This is a good and commendable approach as scholars are expected to do their level best to extract or formulate a fatwa that would solve modern problems. In this regard, perhaps a *takaful* instrument can be created to put this fatwa into practice.

Having said that, there are issues that are still waiting a solid Shari'ah perspective in product development. These include, inter

alia, *musharakah* preference share, future market both commodity and stock and perhaps index, some hedging instruments such as options, swaps and the like. As far as product enhancement is concerned, the same is expected in some other issues like compensation payment for default payment by a solvent debtor, collateral in equity financing in the case of negligence and fraud, etc.

## CONCLUSION

It seems that *ijtihad* is the integral element to product development and product enhancement. We have seen how the earlier jurists have done their level best in coming up with some new products such as *daman* (Ibn Taymiyyah), *bay' al-wafa* (Hanafis), etc. *Ijtihad* remains the ever lasting methodology to solve modern problems be it financial or otherwise. A Shari'ah advisor to Islamic financial institution, apart from being well versed in *mu'amalah*, *usul al-fiqh* and understanding of modern banking and finance is the essential ingredient for a successful product development and product enhancement.

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