IS THE BAN ON “ORGANISED TAWARRUQ” THE TIP OF THE ICEBERG?

Rafe Haneef
Research Fellow
International Shari’ah Research Academy for Islamic Finance (ISRA)
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Rafe Haneef*

Introduction

The *tawarruq* transaction, which is also widely known as “reverse *murābahah*” trade, is often perceived as the Achilles’ heel of Islamic finance. Many customers and practitioners alike find the *tawarruq* trade as the least credible of contemporary Islamic financial products. Although there have been many criticisms from various quarters against many other contemporary Islamic finance transactions like *murābahah lil āmir bil shirā* and most recently some *şukūk* structures, the *tawarruq* contract has undoubtedly faced the fiercest criticism. In the face of mounting criticisms, the International Islamic Fiqh Academy¹ commissioned several research papers on the operations of contemporary *tawarruq*, and in April 2009² the august body passed a ruling banning the contemporary forms of “organised *tawarruq*”. In this article, “*tawarruq*” refers to organised *tawarruq*; and “classical *tawarruq*” refers to the form of *tawarruq* where the seller (*muwarīq*) sells goods already in his ownership directly to the buyer (*mutawarriq*) and the buyer then directly sells the goods to another party not connected to the *muwarīq*.

The author will discuss and analyse the perspectives of both the opponents and proponents of *tawarruq* with the view of ascertaining the soundness of the Fiqh Academy ruling. Interestingly, the *tawarruq* ruling epitomises the growing divide between the proponents and opponents of the contemporary Islamic finance industry as a whole. Generally, those who oppose *tawarruq* also abhor *murābahah lil āmir bil shirā*, *ijārah muntahiah bittamlīk*, contemporary *şukūk al-mudārabah*, *mushārakah* and *wakālah* and many other contemporary Islamic finance products (hereinafter referred to as “Contemporary Contracts”). The critics view the ban on *tawarruq* as the tip of the iceberg. The critics want the whole iceberg, the contemporary Islamic

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* Rafe Haneef is the Managing Director of Fajr Capital Pte and a research fellow at ISRA. He can be contacted at rafe.haneef@fajrcapital.com. This article represents solely the views of the author and does not necessarily reflect the views of Fajr Capital Limited or ISRA.

¹ The Academy is an initiative of the Organization of the Islamic Conference (OIC).

² The ruling was made in its 19th session held in Sharjah, United Arab Emirates, from 1-5 of Jamadil Ula 1430 AH, corresponding to 26–30 April 2009.
finance industry itself, to be exposed and transformed in its totality. Many of the critics believe that the transformation can only be realised by banning all Contemporary Contracts and rejuvenating the classical *muḍārabah* and *mushārakah* contracts. Hence, it is important to discuss the *tawarruq* ban within the overall Islamic finance context.

**Mechanics of Classical Tawarruq**

The juristic meaning of *tawarruq* is “the act whereby a person purchases a commodity on credit and then sells for cash to a third person at a lower price than the price at which he/she bought it, so that he may acquire cash”. In classical *tawarruq*, a customer will buy the commodity from a supplier on credit terms (say, $100), and the customer will then sell the commodity in the market (but not to the original supplier) on a spot basis at a discount (say, $90). The customer will be able to utilise the $90 to meet his liquidity needs and will pay the $100 to the supplier on the deferred date.

All the four *madhhabs*, except a few dissenting jurists like Ibn Taymiyyah and Ibn al-Qayyim of the Ḥanbālī school, have approved the above classical *tawarruq* trade. Analysed from a purely contractual basis, the customer has merely entered into a valid classical *murābahah* contract with the supplier. The key distinction here is that at the point of entering into the *murābahah* trade, the customer had the intention to sell the goods immediately to another party at a discount to obtain cash. When buying with such intention, the customer is classified in *fiqh* as a *mutawarriq*. The supplier (*muwarriq*) on the other hand, may not be privy to the intention of the customer. Given that the nature of the transaction is essentially *murābahah*, the majority of jurists have declared such a contract to be valid even if it is established subsequently that the customer had sold at a discount the *murābahah* goods to another party (not connected to the *muwarriq*). Hence, the majority of jurists have allowed the classical

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4. See id. at 5 for a discussion of the opinions of the two scholars.
tawarruq contract since it is a valid trade and neither the supplier nor the customer has any intention to engage in ribā.

In this respect, classical tawarruq can be contrasted to ʿīnah where the supplier will usually sell the goods to the customer on a murūbahah basis (say, $100) payable on deferred terms and the customer then immediately sells them back to the same supplier (or another buyer who is connected to the first supplier) on a spot payment basis (say, $90). Although, if viewed independently, the first trade is a valid murūbahah and the second is a valid waqlah, the jurists have not allowed them when they are entered into between the same parties. It was quite obvious to the jurists that both parties were conniving to enter into the two trades with the intention of engaging in ribā.

**Modes of Contemporary Tawarruq**

**Tawarruq as a Liquidity Placement Facility**

In contrast to classical tawarruq, the seller-financier (muwarriq) in a contemporary tawarruq actively promotes the sale of commodities on deferred terms to the buyer-customer (mutawarriq) with the clear knowledge that the customer will resell the commodities for cash. And, in most cases the financier will facilitate the customer’s re-selling the commodities for cash. This form of active promotion and intermediation has been seen by the tawarruq opponents as a disguise to engage in ribā; the initial part of this paper will, therefore, focus on the forms of promotion and intermediation prevailing in contemporary tawarruq.

In general, the tawarruq contract is being used today as either a liquidity facility (for example, as an inter-bank placement) or a credit facility (for example, customer credit financing). The following are some of the prominent modes of tawarruq contracts prevailing in the Islamic finance industry today.
Tawarruq Liquidity Facility 1

Diagram 1: Tawarruq Liquidity Facility 1

Usually, both Bank A and Bank B would have negotiated the general terms of tawarruq inter-bank placements between them before any tawarruq contract is executed. Normally, Bank A (muwarraq) with surplus cash will call on Bank B (mutawarriq) to seek its interest in buying commodities on a murābahaḥ basis from Bank A under the tawarruq arrangement. If Bank B has the interest to buy commodities on a murābahaḥ basis, Bank A will buy the commodity from Supplier A and sell the commodity to Bank B. Bank B will then sell the commodity to Buyer B on a spot payment basis. From a fiqh perspective, Bank B has entered into a valid murābahaḥ contract with Bank A and Bank B has independently sold the commodity to a third party, Buyer B, who is not connected to Bank A (the first seller). This transaction is hence very much similar to classical tawarruq except that instead of the mutawarriq approaching the muwarraq for a murābahaḥ transaction, the muwarraq is now approaching the mutawarriq first. But, is this reverse approach prohibited by Sharīʿah? None of the tawarruq opponents have been able to adduce any evidence to establish that a reverse approach is contrary to Sharīʿah. Hence, unless clear Sharīʿah evidence is produced against such a reverse approach, this form of tawarruq should be considered as permissible under Sharīʿah.

However, a prominent Islamic jurist, the learned and respected Sheikh Taqi Usmani, recently stated that: “Tawarruq, as it was conceived by the jurists when they ruled that it is permissible, is [the sale of a] commodity available with a seller who has true and real possession of it. Then the right of possession is transferred to the buyer by a
real sale with all the attendant rules of sales.” This statement is perhaps true from a historical perspective, for the mutawarriq in classical tawarruq would usually approach a local supplier (muwarriq), known to the mutawarriq, to sell certain commodities on murābahah terms. And the muwarriq would usually sell the commodities that he already owned in his possession.

But, with due respect to the learned jurist, is it contrary to Sharī‘ah if the supplier first goes out and buys some commodities from the market and then sells them on a murābahah basis to the mutawarriq? Such activities have been clearly allowed under murābahah contracts and are still being practiced by Islamic banks globally. For example, when a customer approaches an Islamic bank to finance a car purchase, the bank will first buy the car from the supplier and then sell it to the customer at a higher price under a murābahah contract. Clearly the Islamic bank does not own the car at the time the customer first approached it. Are the tawarruq opponents now saying that a murābahah contract is not valid unless the Islamic bank already owns the car from the very beginning? The same analysis will apply for an ijārah transaction where a customer approaches an Islamic bank to finance a house purchase. The Islamic bank will first buy the house chosen by the customer from the seller and then lease the house to the customer on an ijārah muntahiah bittamlīk basis. The Islamic bank clearly does not own the house when the customer first approached it for financing. Why then is the contemporary murābahah and ijārah muntahiah bittamlīk allowed under Sharī‘ah? If contemporary tawarruq is prohibited on this ground, should not the prohibition also equally apply to murābahah and ijārah contracts as well? Surprisingly, this requirement was only imposed on tawarruq, and the reasons for this will become clear in the latter part of this paper.

5 Supra note 3, at 15.
Diagram 2: Tawarruq Liquidity Facility 2

In this mode of tawarruq, Bank A (mutawarrig) with surplus funds appoints Bank B (mutawarrig) to first buy the commodity as Bank A’s agent. Upon Bank A paying Supplier A, Bank A (mutawarrig) will then enter into the murābahah trade with Bank B (mutawarrig). Usually, this form of tawarruq is conducted when Bank B does not have the expertise or resources to deal directly with the commodity suppliers. The rest of the transaction is identical with Tawarruq Liquidity Facility 1. Interestingly, this form of agency has also been prohibited by the recent ruling on tawarruq by the Fiqh Academy.

The learned Sheikh Taqi Usmani also stated that:

Many of the banks and the institutions add another agreement, which is tawkil (authorization). For instance, if one of the bankers requests for the financing on the basis of tawarruq, surely the bank will not sell a commodity available under its possession, but rather will only be required to buy it from the market. But if the bank itself buys it through one of its workers, then this may be possibly accepted. However, in most cases, the bank will not buy it itself. It will authorize the agent, who is himself the mutawarrig, to buy it from the market on behalf of the bank. Then, the mutawarrig will buy it from the bank at a delayed price. He will later sell it to a third party. The custom adopted in
many banks is that the bank will not pay the price to the original seller, but rather pays the amount to the *mutawarrij*, as he is its agent in buying and selling the commodity.

Because of the addition of this *tawkil* (authorization) to *tawarruq*, the procedure becomes something similar to usurious financing, because the *mutawarrij* will take the smaller amount from the bank, while the higher amount will be paid by him) when the fixed time lapses. If he takes it for a lesser amount, then that only occurs as a result of his being an agent for the purchase, and not as loan seeker. But this accurate difference cannot distance the procedure from the similitude of usurious finance, as this issue of *tawkil* (authorization) may turn the contract agreement to either *mahu̇r* (prohibited) or *makrāh* (disliked).”

It is truly intriguing why similar agency agreements have been allowed and are still being practiced in contemporary *murābahah* and *ijārah* contracts. For various reasons, financiers rarely buy the *murābahah* goods themselves. Financiers will usually appoint the customers to buy the goods required under an agency arrangement, and, upon the customers acquiring title to the goods as agents, the financiers will immediately sell such goods on a *murābahah* basis. The same modus operandi is adopted in contemporary *ijārah* transactions as well. The financiers will appoint the customers as agents to buy the assets required, and, upon the customers acquiring title to the assets, the financiers will lease such assets to the customers. In most such *murābahah* and *ijārah* contracts, the financiers will pay the consideration for such goods or assets directly to the customers as agents and the customers will make the payment to the sellers of such goods or assets. Now, if this type of agency is Sharī‘ah permissible in *murābahah* and *ijārah* contracts, why then is such agency not permitted for *tawarruq* contracts? The opponents of *tawarruq* have not been able to substantiate their stand with any specific evidence from the Qur‘ān, Sunnah or *ijmā‘*. Their only key evidence seems to be that in classical *tawarruq* contracts, the seller only sells goods already in his possession to the *mutawarrij* and does not: (i) buy from the market after the *mutawarrij* has approached the seller; or (ii) appoint the *mutawarrij* to buy the goods on his behalf.
With utmost respect to the learned *tawarruq* opponents, this line of reasoning lacks any merit. The Shari‘ah principle in *mu‘āmalāt* is that everything is permissible (*mubāh*) unless clearly prohibited by the Shari‘ah. The fact something was not done in the past does not create any barrier for innovation in the future. Is there any evidence from the Qur‘ān, Sunnah or *ijmā‘* that unequivocally prohibits a seller from appointing an agent (the *mutawarrīq*-to-be) to buy certain goods and then selling the goods to the *mutawarrīq*? If there is any such evidence, surely that evidence will be extended to contemporary *murābahah* contracts as well, in which the customer acts as an agent to buy the goods on behalf of the financiers. Why do the *tawarruq* opponents then rely painstakingly on such remote points to prohibit *tawarruq*? Again, the rationale for such a narrow juristic approach will become clearer in the latter part of this paper.

![Diagram 3: Tawarruq Liquidity Facility 3](image)

The above mode of *tawarruq*, although not very prevalent, is practiced in some jurisdictions. Most scholars have not allowed this mode of *tawarruq* given that it has a close resemblance to the prohibited *‘inah* contract as stated by the learned Sheikh Taqi Usmani: “The permissibility of this type of sale is on the condition that the buyer should not sell [to the first seller] the commodity at a price lower than the price of its purchase from its first seller, whether directly or through an intermediary. If he does, then both of them would eventually fall into the unlawful credit sale (*bay‘ al-‘inah*),
according to the legal ruling, because of its embodiment of the trick of ribā (interest), and it may thus become an unlawful contract/agreement."

**Tawarruq as a Credit Facility**

1. The Bank buys, on a spot basis, $100 worth of Commodity from Supplier A
2. Bank sells the Commodity to Customer at $110 payable on deferred terms in 1 year
3. Customer sells the Commodity to Buyer B, on a spot basis, for $100.

**Tawarruq Credit Financing 1**

Diagram 4: *Tawarruq* Credit Financing 1

This mode of *tawarruq* is similar to classical *tawarruq* in which the *mutawarriq* approaches the *muwarriq* for a credit sale or *murābahah* trade, and, upon such trade, the *mutawarriq* will sell the commodity to a third party in the market. The key distinction between the contemporary mode and classical mode of *tawarruq* is that the financier in the contemporary mode does not have the commodity in his possession at the very inception. The *tawarruq* opponents have again used this difference as a ground to ban contemporary *tawarruq*. As analysed above, this line of reasoning is not supported by any clear evidence from the Qur’ān, Sunnah or *ijmā‘*. This mode of *tawarruq* should be considered as being in compliance with the standards of Shari‘ah as applied to other Contemporary Contracts.

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Under this mode of *tawarruq*, the Customer (mutawarriq) appoints the Bank (muwarrij) as its agent to sell the commodity to a third party (i.e., Buyer B); this is usually due to the *mutawarriq*’s lack of experience or expertise to sell-down the commodity. As discussed above, given that an agency arrangement was not allowed by the *tawarruq* opponents, this mode of *tawarruq* was also banned. As analysed above, it is rather intriguing that this form of agency has only been prohibited in *tawarruq* transactions and not in *murābahah* and other Contemporary Contracts.

Like the *Tawarruq* Liquidity Facility 3, this form of *tawarruq* has close resemblance to ‘*inah* and should be considered as not permissible under Sharī’ah.
Analysis of the Rationale for Banning *Tawarruq*

The above discussion clearly evinces the following:

(i) from a *fiqh* perspective, the *tawarruq* opponents have applied a different standard to *tawarruq* compared to other Contemporary Contracts;

(ii) the *tawarruq* opponents have not allowed the *muwarriq* to buy the commodity after being approached by the *mutawarriq*, but clearly they have allowed similar practices for the sellers and lessors in contemporary *murābahah* and *ijārah* contracts; and

(iii) whilst the *tawarruq* opponents have not allowed the *muwarriq* to appoint the *mutawarriq* as agent to buy the commodity, evidently they have allowed similar practices in contemporary *murābahah* and *ijārah* contracts.

The author strongly believes that the *tawarruq* ruling is a direct result of the mounting disappointment among Islamic jurists regarding the development or rather, the lack of positive development, in the Islamic finance industry. The *tawarruq* ban appears to many as just the tip of the iceberg. By targeting *tawarruq*, the *tawarruq* opponents hope that the Islamic finance industry will receive a strong message that it has to seriously transform itself from the prevailing “conventional” platform to a truly Islamic platform. *Tawarruq* was, unfortunately, an easy target, given the outwardly superficial nature of the transaction. Unlike *murābahah* and *ijārah* contracts by which the customers will be requiring the goods or assets financed, *tawarruq* customers only require the commodity as a means to raise cash and usually do not bother whether the commodity is a hard commodity (like copper), a soft commodity (like cotton), a security (like shares), or even an intangible commodity (like airtime). The lack of material association with the underlying commodity makes *tawarruq* appear to many as an artificial contract resulting in a ribawi transaction.

Hence, to better understand the rationale for banning *tawarruq*, we need to first understand the concerns and frustrations of the *tawarruq* opponents relating to the Islamic finance industry as a whole.
Again the true concerns of the *tawarruq* opponents can be gleaned from the following statement of the learned Sheikh Taqi Usmani:

“More than thirty years have passed since the establishment of Islamic financial institutions. During that time their number has increased, their size has grown and the number of those who transact with them has multiplied. The time has now come for the Sharī‘ah boards of these institutions to press for a minimization of *murābahah* and *tawarruq* and a greater concentration on the preferred procedures of *shirkah* and *muḍārabah*. Also, the percentages of various procedures in the totality of their transactions should be subject to permanent monitoring so that Islamic banks can move towards the objectives of Islamic legal legislation and represent the Islamic economy in its bright, integrated form. They should not appear to the world as companies that specialize in legal tricks and ways to evade [Sharī‘ah restrictions] because that will lead to sullying the reputation of these institutions and the Islamic economy that they represent.”

The above statement, which is a profoundly important one, epitomises the growing frustration with the contemporary approach of Islamic finance, which conforms to the ways of conventional debt finance through “legal tricks and ways to evade [Sharī‘ah restrictions]”. Such a conformist approach will “lead to sullying the reputation of these institutions and the Islamic economy that they represent.” It is only by minimising *tawarruq* and maximising *mushārakah* and *muḍārabah* transactions that,

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7 *Supra* note 3, at 18. Interestingly, the learned Sheikh Taqi Usmani also shared a similar perspective in an article *Sukūk and their Contemporary Applications* (www.faulaka.com/downloads/Usmani_SukukApplications.pdf) which subsequently gave birth to a ruling by the Sharī‘ah Committee of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) that banned contemporary *sukūk al-mudārabah* and *sukūk al-mushārakah*. Explaining the irregularities and the need to ban contemporary *sukūk al-mudārabah* and *sukūk al-mushārakah*, the learned jurist stated the following (at 14):

“Actually, the number of Islamic banks and financial institutions today is not to be overlooked, and thank God! The numbers increase day after day; and the growth of Islamic banks in many countries is greater than that of conventional banks. It is now incumbent upon these Islamic banks and financial institutions to cooperate among themselves for the purpose of developing authentic products that are far removed from empty stratagems, free from all association with *ribā*, and that aim to serve the higher purposes of Islamic law in the spheres of economics, development, and social justice. None of this will come about without the guidance and encouragement of Sharī‘ah supervisory boards. If these boards continue with their present policies, however, Islamic banks will stumble on the road, and there is a danger, God forbid, that this virtuous movement will fail.”

8 Which, in this context refer to *mubārīf* and *hiyāl*. 
“the Islamic banks can move towards the objectives of Islamic legal legislation and represent the Islamic economy in its bright, integrated form.”

It is quite evident from this statement that the real focus of the tawarruq opponents is on the lack of positive development in the Islamic finance industry. Instead of deploying more mushārakah and muddārabah contracts in commercial transactions, the Islamic finance industry is relying predominantly on debt contracts based on “legal tricks and ways to evade [Shari‘ah restrictions]”. The learned Sheikh Taqi Usmani also advocated that, “if the seller knows that the buyer of tawarruq (mutawarriq) is in need of cash liquidity for his commercial purposes, his aim being to achieve means of financing, then the best thing for the seller is to engage in the contract of shirkah (partnership) or muddārabah (profit sharing) with him, because they are the two ways preferred for financing and capitalization.”

The prominent scholar also emphasised that:

“[T]he ideal way for commercial financing in the Shari‘ah is financing on the basis of shirkah (partnership) and muddārabah (profit sharing), because it is the one that achieves fair distribution of wealth among the people and directs the flow of excess money from the rich to the people in general. Expansion in the procedures of murāba‘ah, tawarruq and the like, especially when those procedures are structured with reference to the interest rate benchmark, narrows the scope for partnership and muddārabah operations and encourages the usurious mentality, which aims at profit-taking without bearing any risk. This will not bring about any significant change in the current prevalent capitalistic system.”

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9 In Šukūk and their Contemporary Applications, see supra note 8 at 7-8, the learned jurist emphatically stated: “From the perspective of the higher purposes of Islamic economics, such [irregularities] in today’s Šukūk actually defeat the purpose of an Islamic economic system in which wealth is equitably distributed among investors. Šukūk that are based on such [irregularities] distribute profits to investors on the basis of prevalent interest rates, and not on the basis of actual returns from an enterprise... If Shari‘ah supervisory boards have tolerated such irregularities (mājūs) when Šukūk began to be issued, and at a time when Islamic financial institutions were few in number, the time has now come to revisit the matter... and to rid Šukūk from now on from such blemishes. Either Šukūk should be free of all such [irregularities] or these should be based the enterprise’s expected profits. These should certainly not be based on prevalent interest rates. This will then become a truly distinguishing characteristic of Islamic financial institutions and one that sets them apart from their conventional, interest-based counterparts.”

10 Supra note 3, at 15.

11 Id. at 18.
In discussing the permissibility of tawarruq contracts in the past, the scholar stated as follows:

“The fiqh academies, symposia and the Shari’ah boards of Islamic financial institutions issued fatwas in favor of the permissibility of murābahah lil āmir bil shirā’ (a mark-up sale for a purchase orderer), tawarruq, and other ways around [Shari’ah restrictions] in consideration of the conditions encompassing Islamic banks at their inception. They started working in a market jam-packed with totally usurious procedures. It would have been very difficult for their financing activities to have been conducted purely on the basis of partnership and mudāraba. Therefore, permission was given to them to resort to procedures of this type in order to enable them to take their preliminary steps to avoid clear and explicit usury and to enable the general population of Muslims to benefit from financing channels that are not clearly prohibited.”

Tawarruq was, therefore, approved at the beginning, when Islamic banking was in its embryonic stage, on the basis of necessity, given the surrounding circumstances where the Islamic banks were competing in a “market jam-packed with totally usurious procedures” and where mudāraba and mushārakah practices would have been difficult to implement. However after 30 years, “it was not in the calculation of the jurists who ruled to permit these procedures that these institutions would sit contentedly satisfied with these ways out [of Shari’ah restrictions] for an unlimited time, adopting them as the targeted goal for the establishment of Islamic banks and the basic activity around which their dealings would center forever.”

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12 Id. at 18. Again, the learned jurist expounded a similar line of thought in his Sukuk and their Contemporary Applications, see supra note 8 at 13:

“Undoubtedly, Shari’ah supervisory boards, academic councils, and legal seminars have given permission to Islamic banks to carry out certain operations that more closely resemble stratagems than actual transactions. Such permission, however, was granted in order to facilitate, under difficult circumstances, the figurative turning of the wheels for those institutions when they were few in number [and short of capital and human resources]. It was expected that Islamic banks would progress in time to genuine operations based on the objectives of an Islamic economic system and that they would distance themselves, even step by step, from what resembled interest-based enterprises. What is happening at the present time, however, is the opposite. Islamic financial institutions have now begun competing to present themselves with all of the same characteristics of the conventional, interest-based marketplace and to offer new products that march backwards towards interest-based enterprises rather than away from these. Oftentimes these products are rushed to market using ploys that sound minds reject and evoke the laughter of enemies.”

13 Id. at 18.
Tawarruq as Makhraj

From the writings of the learned jurist and other Islamic scholars, it appears that the tawarruq opponents acquiesced to the usage of stratagems like makhārij (literally: ‘ways out’) to permit organised tawarruq during the initial stage of the Islamic finance industry in order to facilitate the industry’s growth. Certain allowances were made at the inception of the Islamic finance industry to kick-start its development; however, this did not mean that the leeway provided dispensed with the requirements of the higher objectives of the Sharīʿah (maqāsid al-Sharīʿah). The noble objectives of the Sharīʿah are critical requirements, but they need to be nurtured and applied gradually due to the overwhelming reach and influence of the prevailing interest-bearing systems. These allowances should, however, be lifted when the Islamic finance industry has reached a mature stage. The tawarruq opponents seem to believe that the industry has now reached that stage. Based on that belief, they ruled that the higher objectives of the Sharīʿah should now be the overriding consideration in Islamic financial products and, consequently, organised tawarruq should not be permitted.

Based on the learned jurists’ line of reasoning, contemporary murābahaḥ lil-ʿāmir bil shirā, ijārah muntahiah bittamlīk and other Contemporary Contracts will also be categorised as stratagems because all these products also closely resemble the risk-reward profile of a conventional loan and neither conform to nor promote the profit-and-loss-sharing ideals of Sharīʿah. Does this mean that all these Contemporary Contracts will suffer the same fate as organised tawarruq?

The author, with due respect and utmost humility, would like to differ from the views taken by the tawarruq opponents. The author strongly disagrees with the fundamental assumption made by the tawarruq opponents, based purely on the number of Islamic banks operating today, that the Islamic finance industry has now reached the stage of maturity that should invoke the full force of the higher objectives of Sharīʿah. The author appeals to the learned jurists to consider not the number or even the growth rate of Islamic banks in the world, but to compare the current market share of Islamic
banking to conventional banking in the Muslim world. Numbers and growth figures are often misleading, particularly when the base level of the Islamic finance industry is very low. On the other hand, market share offers a true indication of where the industry is today.

Why Size Matters

The development of Islamic banking in Malaysia provides a clear illustration of the true state of maturity of the industry. Islamic banking has been actively promoted by the government of Malaysia since the 1980s and after more than two decades the size of Islamic banking market share is merely 13% of the total banking market. The Islamic banking market share is targeted to achieve 20% of the total banking market in year 2010. During the same time the number of dedicated Islamic banks has increased from one bank (from 1983 to 1993) to 17 full-service Islamic banks (from 1993 to 2009). It is evident that the number of banks has increased rapidly but the market share has grown only marginally. With a 13% market share, it is hardly surprising if the Islamic banks are forced to play second fiddle to the conventional banks. Islamic banks currently do not have the clout to, among other things:

(a) dictate the pricing benchmark in the market;
(b) influence the shift in consumer behaviour in terms of pricing and risk appetite for profit-and-loss sharing products;
(c) pressure the regulators to make meaningful changes to the legal, regulatory and other infrastructures, which have all been shaped towards promoting a debt-based financial system; and
(d) offer truly indigenous Islamic products such as the classical *mudārabah* or *mushārakah* due to the well-entrenched conventional financial system.

All these hurdles ultimately force the Islamic banks to modify their Islamic products to match the pricing and risk-reward profiles of the dominant conventional market products.
A similar scenario is found in Bahrain, which is the hub of Islamic finance in the
Middle East and the home to institutional and regulatory bodies including AAOIFI,
IIFM and the Islamic Rating Agency and the Liquidity Management Centre. After
almost three decades, the market share of Islamic banking assets is a meagre 10% of
the total banking assets. Even in the Islamic Republic of Pakistan the market share of
Islamic banks is less than 10% of the total banking market. In Indonesia, the largest
Muslim country in the world by population, the Islamic finance industry can barely
muster 2% of the market share.

How can the learned jurists reasonably expect the Islamic banks in these countries
with such low penetration to radically change the mindset and behaviour of the
regulators and consumers? How can they be expected to revolutionise the market by
replacing the debt-based system with a new system based on profit-and-loss sharing?
Such a radical shift advocated by the respected jurists would render Islamic financial
products less attractive compared to conventional products (mainly due to the higher
pricing of the profit-and loss-sharing products) and may eventually even erode the
current paltry market share of the Islamic finance industry.

The reality on the ground in these markets is that customers are attracted to Islamic
financial products due to the pricing parity with the conventional products, in addition
to Shari‘ah compliance. Without the pricing parity with conventional products, the
industry faces the grave danger that many of the existing Islamic finance consumers
would shift back to conventional products. It is undoubtedly clear that the foundation
of the Islamic finance industry in these countries is still weak and needs a lot more
support, particularly from a competitive pricing perspective. The sad reality is that the
Islamic finance industry must first focus on increasing its market share, even at the
expense of the ideal platform based on the profit-and-loss-sharing system, if it wants
to survive in the contemporary world.
What is Wrong with Islamic Finance?

Since Islamic finance is still a relatively new phenomenon, it has been struggling to find a foothold in the matured and well-entrenched conventional debt-driven and interest-bearing financial markets. The Islamic finance industry very quickly discovered that the only viable way to penetrate the well-entrenched conventional financial model is to “acclimatise” the classical Islamic finance contracts to be in line with the conditions of the conventional financial products. This acclimatisation was necessary, if not critical, to attract customers to migrate from the conventional to the Islamic model. The following illustration of a murābaḥah transaction will highlight the acclimatisation process and how this has also influenced the transformation of classical tawarruq into organised tawarruq.

As illustrated earlier, in a classical murābaḥah contract the financier will be the supplier of the goods. The main problem the critics have with the contemporary murābaḥah trade is that the financier is merely a credit intermediary, like a conventional bank. The financier neither supplies the goods nor procures the goods directly, unlike in the classical murābaḥah. The financier usually appoints the customer as its agent to procure the goods and sells them on the day of the purchase itself. In addition, the customer will always irrevocably undertake to the financier that he will buy the goods from the financier at the agreed price immediately upon the goods being acquired on behalf of the financier.

The role of pure credit intermediation, without taking any active role in the procurement of the goods or taking property risk, in contemporary Islamic finance practices has been the key bone of contention for the critics of Islamic finance. To prove their point some critics cite the fact that even in the US, the O.C.C., after reviewing the murābaḥah contract, has concluded that murābaḥah is “functionally equivalent” to a conventional loan. Hence, they oppose the acclimatisation process and the resulting contemporary murābaḥah, organised tawarruq and other Contemporary Contracts.

Although the *tawarruq* opponents also abhorred the role of pure credit intermediation and debt-oriented products, including contemporary *murābahah* and *ijārah*, they were more pragmatic in their approach. They clearly understood the need for a gradual transformation and that they should target the weakest link first, viz., organised *tawarruq*. The *tawarruq* opponents also did not ban classical *tawarruq*, and the following structures appear to be permitted by the Fiqh Academy ruling:

**Diagram 7: *Tawarruq* Liquidity Facility 4**

**Diagram 8: *Tawarruq* Credit Financing 4**
Analysing the policy reasoning behind the *tawarruq* ban, one cannot, however, discount the fact that the other Contemporary Contracts may be the next target if the industry fails to show any positive developments in moving towards the ideal Islamic finance platform.

*The Move to the Ideal*

When and how should we move from the current conforming stage to the ideal platform based on the profit-and-loss sharing system? The author believes that such a transition should be initiated when the Islamic finance market share in a particular market reaches a significant level. Perhaps a 2/3rd market share may be the appropriate level to be considered as significant given the enormous challenges to be faced in transforming the current debt-oriented financial platform into a profit-and-loss sharing financial system. Today, in countries like Saudi Arabia and Brunei, the market share of the Islamic finance industry is about to reach a significant level. Iran and Sudan have already established fully-Islamic banking systems in their economy. In these jurisdictions, it is incumbent upon the regulators, Shari‘ah scholars, Islamic banks and consumers to shift from the “conforming” stage to the “indigenous” stage. Or to put it in another way, it is the right time for these countries to migrate from Shari‘ah-compliant products (products that comply with Islamic jurisprudence) to Shari‘ah-based products (products that comply with Islamic jurisprudence as well as the noble objectives of Shari‘ah). These countries have the significant market share and the critical mass to progress with the migration as advocated by the learned jurists. These markets can introduce their own Islamic pricing benchmark, independent of the prevailing conventional benchmark. The new pricing benchmark can be based on the profit-and-loss-sharing mechanisms that can gradually replace the prevailing debt-based system.

Such a migration is probable in theory, but the blueprint for such a transition still needs to be carefully crafted so as to avoid any negative ramifications in the economy. The blueprint needs to address questions such as: How would the regulators supervise the economy based on this new system? Would they need to devise new monetary and
fiscal policies? Would the new system require new capital adequacy standards and guidelines for the Islamic banks? Would Islamic banks behave more like asset managers as opposed to credit intermediaries? How would consumers react to these new changes? How would these new changes impact the economy in the short, medium and long term?

All these questions need to be addressed carefully and in consultation with the Shari’ah scholars, economists, regulators, Islamic bankers and other relevant bodies.

**Need to Address Mafāsid**

As analysed above, the author firmly believes that it is virtually impossible to migrate to a profit-and-loss-sharing financial system without gradually acquiring significant market share. Moreover, hastily banning organised *tawarruq* or other Contemporary Contracts will not even remotely promote such migration. Further, the most sustainable, although not necessarily desirable, way to achieve the significant market share is to continue with the Shari’ah-compliant system that inevitably relies on stratagems like organised *tawarruq*. What is critical though is that the Islamic finance industry must always ensure that in its zeal to expand market share, it does not end up perpetrating *mafāsid* or mischief in society.

Clearly, classical *tawarruq* has been allowed by the jurists based on the social utility (*maslāhah*) of such transactions. For example, if A needed money to repair his roof and no one is prepared to give him a *qard hasan* despite his credit-worthiness, what is wrong if A buys a commodity on a *murābahah* basis and then sells it immediately in the market to get cash to repair his roof? There are innumerable scenarios like this where a person in need of money for a genuine need is unable to obtain *qard hasan*, and *tawarruq* may be the only option available to that person. It may well be argued that the *tawarruq* trade can equally be used for an illegal or profligate purpose. What will stop A from using the cash obtained from the sale of the commodity to spend on gambling or extravagant clothing? Will it not become a tool to promote illegal activities, wastefulness or debt in the society?
Unfortunately, there are no right answers to these questions. We face many similar conundrums in life. A knife, for example, can be used harmlessly to slice meat in the kitchen or harmfully to kill someone. Should knives then be banned because they may promote violence in the society? We face similar challenges in the area of insurance and takāful. Some prominent jurists have in fact disallowed vehicle insurance in the belief that an insured driver will be prompted to drive recklessly because the insurance cover protects him financially! This may be true in some cases, but if we analyse the maslahah of insurance or takāful to the society at large, it clearly outweighs the mafsadah, and, hence, takāful has been approved by a majority of jurists. One should, therefore, always weigh the masaliyah (benefits) of any subject matter, be it a knife or takāful, against the mafāsid that it may cause, and if the masaliyah outweighs the mafāsid or the mafāsid is containable, then it should be made permissible.

Likewise, if the mischief of tawarruq is containable, why should tawarruq be prohibited? All the four schools have allowed the classical tawarruq because there is no clear prohibition in the primary sources of Shari'ah. And, no one can dispute the fact that classical tawarruq and organised tawarruq, used properly, can satisfy a variety of social needs. The need to repair the roof is just one example. The tawarruq facility has been used to finance education fees, medical expenses, legal costs and a variety of other genuine needs. It has been proven in many instances that tawarruq is the only Islamic finance option available to customers and it has been used quite effectively. If organised tawarruq is prohibited, customers in these situations will unfortunately end up taking a conventional facility since other Islamic options are simply not feasible.

The tawarruq opponents, however, argue that organised tawarruq is not being used properly and has led to the spread of mafāsid in the society. Should we not then focus on how to contain the mischief created by the misuse of tawarruq rather than prohibit

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15 *Id.* at 19: “In my opinion, the answer to this question is that the designation of 'prohibition' at this preliminary stage may cause some practical problems in some cases, where there is a real need for tawarruq. However, it is compulsory that the Shari'ah oversight boards be strict in their oversight of these types of procedures from two aspects.”
tawarruq? Why should A be restrained from an organised tawarruq contract and be deprived of his need to repair his roof just because others have used organised tawarruq for an illegal or wasteful purpose? Should we, for example, ban knives just because assault rates have gone up? Or should we ban vehicle takāfīl because of an increase in reckless driving? A pragmatic approach will dictate that the primary focus of the industry should be on containing the mischief of tawarruq. If it is conclusively proven that there is no way that such mischief can be contained or restricted, only then should we consider prohibiting tawarruq. What has, unfortunately, happened is that all the faults of the Islamic finance industry, particularly the failure to move towards the ideal profit-and-loss-sharing model, have been blamed on tawarruq. Banning tawarruq then became almost an inevitable consequence.

The appropriate approach is to detach tawarruq from the overall failures of the Islamic finance industry and analyse the potential mafāsid that may result from the abuse of organised tawarruq. A prominent Islamic economist has set out the following mischief or mafāsid that may result from organised tawarruq:

1. It leads to the creation of debt whose volume is likely to go on increasing.
2. It results in exchange of money now for more money in the future, which is unfair in view of the risk and uncertainty involved.
3. It leads, through debt proliferation, to gambling-like speculation.
4. It leads, through debt finance, to greater instability in the economy.
5. In a debt-based economy, the money supply is linked to debt with a tendency towards inflationary expansion.
6. It results in inequity in the distribution of income and wealth.
7. It results, through debt finance, in inefficient allocation of resources.
8. It contributes, by consolidating debt financing, to raising anxiety levels and destruction of the environment.\(^\text{16}\)

Importantly, it can be argued that all the above mafāsid can also be perpetrated through the contemporary murābāḥah, ijārah and all Contemporary Contracts.

\(^{16}\) See Mohammad Nejatullah Siddiqi, Economics of Tawarruq (http://www islamicfinance ir/Articles/ Economics of Tawarruq.pdf)
Contemporary *murābahah* also creates debt and results in more money in future for the financier. Contemporary *murābahah* can also lead to gambling-like speculation and also create instability in the economy. Contemporary *iijārah* can also create inequity in wealth distribution and inefficient resource allocation. Contemporary *istiknā‘* can also raise anxiety levels and destroy the environment. So why should only *tawarruq* be prohibited? It may well be true that, compared to other Contemporary Contracts, the nature of the *tawarruq* contract has the potential to create greater abuse and spread of *mafāsid*, but none of the learned *tawarruq* opponents were able to provide any empirical evidence or studies to show that *tawarruq* has in fact spread more *mafāsid* than the other Contemporary Contracts. Neither have they established that, whilst the potential *mafāsid* from other Contemporary Contracts can be controlled, the potential *mafāsid* from *tawarruq* cannot be contained.

The author submits that the potential *mafāsid* from *tawarruq*, which apply equally to all other Contemporary Contracts, can be controlled or contained through responsible marketing strategies, judicious credit offering, adequate customer suitability and use of proceeds tests. Each of the four controls is elaborated on briefly below.

**Responsible Marketing**

Today, *tawarruq* is a highly profitable business for the Islamic finance industry. The profit rates for *tawarruq* can range from 6% to 14% p.a. The flat profit rate payable by the customer is invariably calculated on a non-reducing balance. The customer often ends up paying an effective profit rate based on APR of 12% to 28%! Naturally, the industry players are all keen to promote this form of financing to reap the huge profit margins. Regrettably, most financiers only highlight the lower flat rate to entice customers rather than educating customers on the high APR that he will end up paying if he takes the *tawarruq* facility. Some financiers have adopted marketing tactics that offend the spirit of Islam. For example, some run aggressive marketing campaigns that offer lower *tawarruq* profit rates during Ramadhan to incentivise customers to spend more than they can afford through *tawarruq*! Such campaigns ignore the virtue of Ramadhan as a month of giving to the poor and needy and not of
spending on extravagance and lavishness. This form of irresponsible marketing, which sadly is also applied in other Contemporary Contracts, will only create mafsadah in the society and has to be discontinued. The Sharī’ah supervisors must play an active role in ensuring that the financiers truly represent the financing costs to the customers and avoid marketing strategies that are contrary to the spirit of Islam.

**Judicious Credit Offering**

In their zeal to promote their business, the financiers often adopt the conventional credit tools and strategies to attract the customers. Some of them promote the “buy-now and pay-later” culture and use tawarruq and other Contemporary Contracts as a means to help customers realise immediately their dream holidays or luxury lifestyles, which are often beyond their means. The marketing angle is often focused on the immediate gratification of the customer’s needs regardless of whether the needs are reasonable or rational. The financiers often lure in the customers through tempting marketing slogans like: “Can’t afford to go on a holiday to Europe? We are glad to offer you a tawarruq facility—no security needed” or “Why wait for tomorrow when you can live the life of your dreams today with our tawarruq facility?” These slogans promote a secular perspective quite alien to Islamic values and norms. Other campaigns literally target anyone on the street and push the tawarruq solution as an attractive and a “must-have” product. Some even promise to approve the facility in literally 60 minutes. And if they take longer than 60 minutes, the customer will get it at a discounted profit rate! Some even actively campaign to create the need to borrow by highlighting the various luxuries that the customers can spend the tawarruq cash on. These types of irresponsible marketing tactics have led to the unwarranted surge in tawarruq and other Islamic credit financing in recent years and more and more customers are now in debt.

Islam clearly advocates its followers to live within their means, and debt should be a last resort. The Islamic financiers of today, however, have fallen into the trap of promoting a secular perspective of “buy-now and pay-later” through debt as a first
resort. Such practices, if left unhindered, will lead to severe financial disasters like the current subprime crisis that we continue to face in the conventional financial markets. This form of debt culture will also perpetuate mafāsid in the society and clearly has to be controlled. The financiers should educate the customers on the potential downside of debt and highlight that the Shari’ah allows debt only as a last resort and when there is a genuine need. The Shari’ah supervisors must make certain that financiers clearly carry out their credit education responsibilities.

*Lack of Customer Suitability Test*

Some financiers have recently marketed *tawarruq* and even *ijārah* as solutions for ‘Umrah and Ḥajj trips. The critics question whether a Muslim should incur a debt to perform ‘Umrah or Ḥajj. The general guidance provided by the Shari’ah is that if one owns adequate assets that can fully settle the debt, he can assume a debt for a genuine reason provided there is no *ribā* involved. For example, if A, a salaried employee who has an unencumbered house worth, say $100,000, wants $10,000 to perform Ḥajj, is it not permissible under Shari’ah for A to take a *tawarruq* facility to obtain the cash required? A could have obviously sold his house to obtain the cash, but why should A be forced to sell the house when he can obtain a Shari’ah-compliant facility? When A returns from Ḥajj, he can settle the *tawarruq* facility from his monthly salary. Given that he has adequate assets to repay his debt, A should be permitted under Shari’ah to take the *tawarruq* facility. Let’s for argument’s sake say that A died during Ḥajj or lost his job upon return from Ḥajj and defaults on his *tawarruq* obligation. In such an event, the financier will be able to realise his debt from the sale of A’s house.

The critics may argue that it is preferable for A to save for a few years and use his savings to perform Ḥajj instead of resorting to debt which may end up in A losing his house. It is certainly advisable for the customer to save first and spend later, and it should be the responsibility of every Islamic financier to also offer a savings solution tailored to the customer’s needs when the customer approaches it for a *tawarruq* financing. The Islamic financier needs to offer, say, a Ḥajj-regular-savings plan in parallel to the Ḥaji- *tawarruq* finance. The customer needs to be educated on the
benefits of taking the Ḥajj savings plan and the burdens of the Ḥajj-tawarruq plan. It is then up to the customer to make an informed choice between the Ḥajj-savings plan and tawarruq financing. If the customer chooses the latter and has adequate assets or capacity to repay the debt, the tawarruq financing is clearly not contrary to Shari‘ah. Unfortunately, though, most if not all Islamic financiers have failed to discharge their responsibility to offer a savings solution as a possible alternative to tawarruq financing. Due to the high profitability of tawarruq and other credit financing, Islamic financiers have ended up pushing the credit products as “must-have” products without offering any other real savings alternatives to the customers.

Use of Proceeds Hazard

The opponents also argue that unlike a murābaḥah, ijārah or istiṣnā‘ transaction where the use of proceeds is clearly identified and linked to the purchase or construction of goods, the customer in a tawarruq facility has an unfettered freedom to spend the proceeds of tawarruq for good or evil causes. It is common for the financier to provide in the agreement that the customer must not use the tawarruq proceeds for any purpose that is contrary to the Shari‘ah, but in reality they do not monitor compliance with this provision. Similar issues are faced in ijārah transactions where the customer sells an asset to the financier and then leases the asset back from the financier. The financier will usually stipulate that the customer must not use the sale proceeds for any purposes that are contrary to Shari‘ah, but does not monitor compliance with this provision. One of the possible solutions to this issue is to compel the customer to show proof of how the proceeds were spent. If the customer fails to show proof or if it is proven subsequently that the proceeds were used for non-Shari‘ah-compliant purposes, this will be tantamount to default and the tawarruq facility can be accelerated. This may significantly reduce or even eliminate the use of proceeds hazard. However, effectively monitoring the use of proceeds may pose various challenges similar to those faced in other compliance areas like “Know Your Customer” and anti-money laundering. But, hopefully, such challenges can be minimised through proper controls and systems.
Tawarruq Stunting the Growth of Other Products

Another criticism levelled at tawarruq is that the spread of tawarruq has curtailed the growth of other products, like ijārah or mushārakah, in some markets. However, a deeper analysis of the situation discloses that the tawarruq trades grew mainly because the other alternatives were simply not feasible. In many Muslim countries for example, the property laws are not well developed, and in many instances financiers end up taking huge risks when dealing with properties. The contract of ijārah, for instance, will require the financiers to own the properties, and this creates a lot of legal hurdles. Hence, in some markets the financiers and customers will end up doing a tawarruq trade to facilitate home financing. In some markets, the law allows a conventional bank to give a home loan and take a mortgage over the native land, like Arab land or Malay reserve land. An Islamic bank however, has to own the land in order to offer an ijārah facility, and the local laws do not allow such ownership of native land unless all the shareholders of the Islamic bank are natives. Most Islamic banks however are publicly listed and they have non-native shareholders. Hence, they are barred from such ownership and prevented from offering ijārah or mushārakah solutions. The critics will recommend that the law be changed, but these things take a long time, and in the interim what should the Islamic banks do? Should they recommend that the customers opt for a conventional loan or offer them a tawarruq solution? Some of the critics have, in fact, recommended that a conventional loan is preferable. The Islamic finance industry, however, has taken a stand to offer the tawarruq solution, and the majority of customers have also chosen the tawarruq option.

In another instance, a corporation won a licence to run a cellular phone business and needed very large financing within a very short period. The shareholders of the corporation wanted only an Islamic facility. The financiers offered a simple murābahah solution: the financiers would buy the licence from the regulator and would then sell it immediately to the corporation at cost plus profit payable on deferred terms. The regulator rejected this proposal, stating that the law only provided for the sale of the licence to the corporation and not to the financiers! The financiers
then offered an alternative structure whereby the corporation would act as an agent of the financiers to buy the licence directly from the regulator and the financiers (as principal) would immediately sell the licence to the customer upon issuance on a murābahah basis. Again, this alternative was rejected, with the same reason cited. A third alternative was proposed whereby the corporation would set up a special purpose company (“SPC”) and would hold the shares of the SPC as an undisclosed agent of the financiers. The SPC would then buy the licence, and the financiers (as principal) would sell the shares in the SPC to the corporation on a murābahah basis. This alternative, too, was rejected. The financiers then offered a tawarruq facility, and it was approved! Now, what more could the financiers do other than suggest a conventional loan? And, importantly, this incident did not occur in a western state oblivious to Islamic finance requirements; it happened in Saudi Arabia! The critics must be conscious of the challenges and hurdles currently faced by the Islamic finance industry before offering their sweeping remarks. Yes, the laws do need to be changed, and the industry is working towards that, but these things do not happen overnight. Until then, the tawarruq option sometimes ends up as the only viable solution, and this situation is likely to continue for some time.

**The Way Forward**

One of the main causes contributing to tawarruq abuses is the current limited role played by the Sharī‘ah boards of Islamic financial institutions. The Sharī‘ah boards’ role often ends with the approval of the tawarruq structure and documentation and the periodic review of the operational aspects of the tawarruq contracts. The boards hardly play any role in defining the scope of marketing and credit offering, or the customer-suitability or use-of-proceeds standards. The financiers have been given a free hand to define all of these and practice them as they deem fit. These practices have to stop immediately. The opponents and proponents of tawarruq should focus their energy on educating financiers on the terms of responsible marketing, the scope of credit offering, and the customer-suitability or use-of-proceeds standards, and on providing measures to ensure their full compliance. This approach is more tenable
than an outright ban of tawarruq. Like the knife or takāfūl, the tawarruq product can be also be abused, but it does not necessarily mean that society must ban tawarruq.

The proponents of Islamic finance are convinced that the Islamic finance industry took the right step when it acclimatised the classical contracts to fit the needs of modern times. Organised tawarruq is one such acclimatised product. Without such an acclimatisation process, the industry simply would not have survived. It would not have achieved even the small market share that it now has. This acclimatisation process probably needs to go on for a few more years, if not a few decades, until the industry achieves a significant market share. When the industry has a stronger foothold in the domestic financial markets, it can then successfully influence the shift in the customers’ mindset and behaviour.\textsuperscript{17} What is obvious is that the Islamic financiers cannot be solely responsible for such a change. It will need a lot of input and guidance from Shari‘ah scholars, academics and other professionals.

We do not have to wait until the industry achieves the significant market share position to work on the alternative solutions. The Islamic financiers, Shari‘ah scholars, the academics and other professionals supporting the Islamic finance industry can start the work immediately. The solutions should promote a gradual migration from the existing acclimatised Islamic finance products to quasi-equity solutions and then to the equity-based model.\textsuperscript{18} The solutions should take into account the challenges that the Islamic finance industry is facing due to its current negligible market share and the prevailing conventional mindset among the customers. The solutions must also provide the practical means to produce the necessary gradual change in the mindset and behaviour of the customers. The solutions must also consider the impediments posed by the legal, regulatory, tax, accounting and debt-driven infrastructures and provide practical ways to gradually change them. The

\textsuperscript{17} How such change will take place and what channels are needed to be deployed to effect such change is beyond the scope of this paper.

\textsuperscript{18} The details of the migration process from a debt-based to the quasi-equity-based model is beyond the scope of this paper. It has to be noted that any proposal to leap from the current debt-based model directly to the equity-based model is clearly not sustainable due to the prevailing hurdles and market conditions.
solutions must be well-researched, ideally using the empirical method, and substantiated by market data and analytics.

The Islamic finance industry has long been inundated with various proposals based on sloppy research. It is about time the critics fully appreciate the real systemic problems on the ground before they write their proposals. They should conduct proper research and provide feasible solutions rather than just rebuking the contemporary products and practices. They must remember that banning organised *tawarruq* will not necessarily change the way Islamic finance is being run today; in fact, it may result in a decline or stunt the growth in market share. However, if *tawarruq* is allowed with the proper guidelines and compliance process, it will certainly help to stimulate further growth in the Islamic finance industry. Importantly, the *tawarruq* guidelines and compliance process can be universally adopted for all other Islamic finance solutions to ensure that their *maṣāliḥ* outweigh the *mafāsid*. By hastily banning *tawarruq* without addressing the ways to effectively control *mafāsid*, we may have inadvertently thrown out the baby with the bath water.