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Legal Issues in Shari'ah-compliant Home Financing in Malaysia: A Case Study of a Bai Bithaman Ajil Contract

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Abstract

This chapter provides a case study on a Shari'ah-compliant home facility contract based on the Bai Bithaman Ajil (BBA) contract, generally used by Islamic banks in Malaysia. The study emphasises on the need to comply with the existing legal framework and execute relevant contracts in line with the Shari'ah resolutions of the Shari'ah Advisory Council of Bank Negara Malaysia without causing harm (ḍarar) to the customers or introducing uncertain elements or procedures (gharar) in the execution of the agreements. This chapter is based on doctrinal analysis of the relevant issues as well as a qualitative legal research through content analysis of relevant BBA agreements, case law as well as statutory provisions. The case study used in this chapter is completely anonymised. The study finds that the execution of BBA agreements in Malaysia leaves much to be desired. Even though the regulatory framework for Shari'ah-compliant home financing in Malaysia is robust, there are some legal and Shari'ah considerations which the stakeholders need to look into in order to project Malaysia as the main global hub of Islamic finance. This study demonstrates the need for proper Shari'ah auditing of the practical execution of BBA agreements to avoid an incorporated element of gharar at the time of execution of the agreements, which might ultimately lead to unforeseen reputation risks for the bank. Though there are several studies on the Shari'ah financing and accounting aspects of



Keywords

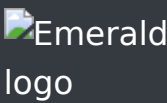
- Islamic banking
- Home financing
- Bai Bithaman Ājil
- Islamic law
- Malaysia

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