

## TAWARRUQ-BASED CREDIT CARD FROM MALAYSIA PERSPECTIVE: AN UNCENSORED ANECDOTE

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**Abstract.** Islamic Credit Card (ICC) has performed superbly well year on year (YOY) in Malaysian market amid a meagre increment. Despite the overwhelming demand by the customers for the riba-free card, it is not without issues and difficulties. The conundrum of the underlying contract particularly tawarruq has precipitated a degree of setbacks which goes incompatible with the Islamic principles. This complication has caused the underlying contract to be in a quandary through which the ICC may succumb to the shariah non-compliance (SNC) issues and thus triggering unfavourable consequences. This study adopted a qualitative research design, employing a case study approach analysed through content analysis of policy documents, issuers' fine prints, scholarly articles, and books to gain a comprehensive understanding of tawarruq as the underlying contract. The tawarruq based ICC appears to be at odds with the shariah principles by which it necessitates an intervention by the regulator for the restructuring mechanism. Notwithstanding, this study has limitations concerning endorsement and approval from the regulator, shariah committees and shariah advisors for the comprehensive enunciation on the tawarruq application for the ICC. As such, for future studies, it is highly advisable to obtain direct interpretation of the tawarruq arrangement for the ICC from the experts with the aim of understanding the real framework of the ICC underlying contract.

**Keywords:** *Islamic credit card, Tawarruq, underlying contract, Islamic banking, Malaysia*

### Introduction

The meteoric rise of technology has catapulted the advancement of payments to which the traditional payment via cash has become nearly negligible. The soaring of online businesses or also known as e-commerce has changed the overall description toward traditional payment by which the payment is usually done through online which is known as electronic payment. Electronic payments have gained traction as a result of economic factors, widespread utilization of internet, robust telecommunication infrastructure, an array of smartphones which prompted to higher internet connection, and the government initiative of producing a cashless society, to name a few (Kemp, 2023; Widayat et al., 2020) Some of the well-known electronic payments are credit card, debit card, mobile wallet, cryptocurrency, mobile payment, e-wallet and wire transfer, to name a few. According to Chou et al. (2004), credit card is the most sought after for the electronic payment. Evidently data from the Bank Negara Malaysia (BNM) has revealed that credit card has accumulated RM20.1 billion worth of transactions via card-present and card-not-present up to Jan 2025 as opposed to e-money with RM19.5 billion (BNM, 2025). According to BNM (2022), e-money or known as electronic money refers to “any payment instrument or Islamic payment instrument, whether tangible or intangible that stores funds electronically in exchange of funds paid to the issuer or to be used as a means of making payment to any person other than the issuer”. Moreover, according to a survey by VISA, traditional payments have changed drastically to which more Malaysians are currently adapting to digital payments with 91% of consumers using card payments (FNM, 2024).

According to the GlobalData report, Malaysia's credit and charge card payment market is poised to be worth RM230.5 billion in 2024 which is a growth of 8.2% from the year prior (Asian Banking and Finance, 2024). By extension, the report has it that, credit and charge cards are now the most preferred card payment method in Malaysia, accounting for more than 60% of total card payments by value (Asian Banking and Finance, 2024). In addition, the frequency of payments via credit cards and charge cards stood at 77.3% in 2023 as opposed to 31.2% for debit cards, according to the report. As such, this has witnessed the sustainability and feasibility of the credit card facility amidst the burgeoning of other electronic payments of late.

Malaysia has implemented a dual banking leverage model (DBLM) in which Islamic banking units whose underlying principles devoid of prohibited element namely *riba* (usury), *gharar* (uncertainty) and *maysir* (gambling), operate parallelly with conventional banking units which is known as interest-bearing banks. Although Islamic banking made its debutant in the scene four decades ago, the demand for shariah financing for products and services has been encouraging as witnessed by 42% of domestic banking shariah financing in 2023 as opposed to 41% in 2022 as banks regardless of Islamic or conventional continued in cementing 'Islamic First' strategy (FitchRatings, 2024). According to RAM Rating's Co-Head of Financial Institution Ratings, Ms Sophia Lee, as a result of 'Islamic First' strategy coined by the BNM, Islamic financing has commendably contributed an average of 75% of the financing growth for the past five years (RAM Rating Services Berhad, 2024). Despite of the soaring momentum by way of shariah financing, Islamic credit card (ICC) market is considered tepid (Fozi, 2020) as opposed to the conventional credit card (CCC) which has made its entrance since 1970s (Loke, 2007). One of the core reasons is incompatible underlying contract which bear some resemblance to the interest-bearing credit card (Bathusha and Isa, 2025). Issues like *ta'widh* (compensation) and *gharamah* (penalty) (Zawawi and Hassan, 2023; Shamsuddin et al., 2022), *hilah* (stratagem) (Asni, 2022), cashback (Bathusha and Isa, 2024) and ingenuine transaction (Hasmad and Alosman, 2022; Kamil, 2020) have made the contract dubious and deemed under suspicion which may compromise shariah legitimacy.

Accordingly, *tawarruq*-based ICC requires reorientation to ensure legitimacy and alignment with shariah principles. This gap in both market practice and scholarly discussion highlights the need for a clear articulation of a robust underlying contract that aligns with shariah principles while maintaining competitiveness.

### ***Review of literature***

The ICC has made its existence in Malaysia arguably in 1992 with the emergence of Ambank's Al-Tasliif credit card with bay al-inah (sale and buy back) as its underlying contract and was followed by Bank Islam Malaysia Berhad (BIMB) in 2002. According to the BNM (2019), an ICC is defined as "*a designated Islamic payment instrument with a line of credit or financing based on shariah principles granted by an issuer to a cardholder and where any amount of the credit or financing utilised by the cardholder has not been settled in full on or before a specified date, the unsettled amount may be subjected to a lesser rebate (ibra') by the issuer*". Currently there are two available underlying contracts for the ICC namely *tawarruq* (monetization) and *ujrah* (fee) (BNM, 2019). Prior to the commencing of *tawarruq* and *ujrah* for the ICC, it is worth noting that most of the Islamic banking's products and services used bay al-inah as the underlying contract including the ICC. Bay *al-inah* was peddled as a legitimate contract

based on Shafi'e school of thought to which the form was conspicuously unaligned with the view. As a result of heavily criticized by a vast majority of shariah scholars which implied such contract as *hilah* in circumventing *riba* to legalize the profit (Asni, 2022), the BNM has eventually introduced *tawarruq* contract in 2005 to replace such controversial contract which has been prohibited by the AAOIFI (Ibrahim and Mohd Sopian, 2023; Asni, 2022) despite five years behind since the introduction by the Kingdom of Saudi Arabia (KSA) in 2000.

### ***Tawarruq***

*Tawarruq* or also known as commodity *murabaha* is a form of transaction of which a person buys a commodity on a deferred basis and sell to a third party at spot value at a lower price (Sallahuddin and Ghani, 2023; Ayub, 2007). *Tawarruq* comprises of two sale and purchase contracts of which the first sale involves a commodity by a seller to a purchaser on a deferred basis (cost plus profit) and subsequently, the latter will appoint the former as an agent to sell the commodity to a third-party on a cash and spot basis lesser than the original amount to which the money will be credited into the latter's account (Yusof, n.d.).

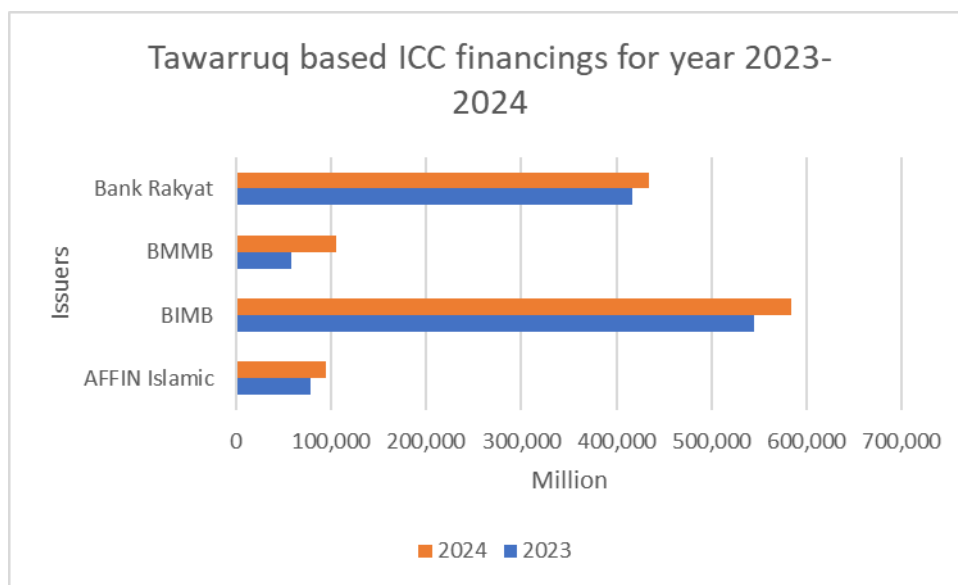
Linguistically, *tawarruq* is associated with the Arabic terms *warq*, *wariq*, and *waraqqa*, which denote silver money, dirhams, or silver metal (Aprianto and Nazilah, 2023). However, the term *tawarruq* and its alleged root derivations are not directly traceable within the Arabic language. Rather, it is argued that earlier scholars coined the expression to describe a contractual arrangement aimed at obtaining *al-wariq* (money) (Usmani, 2009). From a technical perspective, the term *tawarruq* is primarily found in the works of Imam Hanbal, particularly in *Sharh Muntaha al-Iradat*, also known as *daqa'id awla al-Nahyu li sharhi al-muntaha* (Mohamad and Ab Rahman, 2014). In contrast, the majority of jurists from the Hanafi, Maliki, and Shafie's schools have referred to similar practices using the terms *bay' al-inah* and *bay' al-ajal* (ISRA, 2015). The International Islamic Fiqh Academy (IIFA, 2009) defines *tawarruq* as a two-stage transaction: first, the buyer acquires an asset on credit from the original seller; second, the buyer resells the asset for cash to a third party. According to the BNM (2018), *tawarruq* is referred as "an arrangement that involves sale of an asset to the purchaser on a deferred basis and subsequent sale of the asset to a third party on a cash and spot basis".

### ***Tawarruq application in ICC***

Given the aforementioned, *tawarruq* refers to buying a commodity from one party on deferred basis and subsequently selling the commodity to a different party on a cash basis for the purpose of obtaining cash. As such, the primary motivation of consumers is to obtain cash for major purchases, particularly high-value items such as housing, vehicles, and land, which would otherwise be unattainable without borrowing. Interestingly, the underlying method is applied across all segment of financings including unsecured financings namely personal financing and credit card. According to the BNM (2019), there are two underlying contracts available for the ICC namely *tawarruq* (monetization) and *ujrah* (fee). Currently, there are four issuers namely AFFIN Islamic, BIMB, Bank Muamalat Malaysia Berhad (BMMB) and Bank Rakyat who have adapted *tawarruq* as an underlying contract for the ICC. These four issuers have a combine of RM 1,217,263 billion worth of ICC financings for the FY2024 to

which the financings have soared circa 11%. *Figure 1* depicts the *tawarruq* based ICC financings for the year 2023 and 2024.

*Figure 1* denotes ICC financings of which all the issuers have seen a marked increase in 2024 where BIMB was the only issuer to reach RM500 million worth of financing to which the financing has grown by 7.4% YOY. Indisputably, as the first full-fledged Islamic bank in Malaysia, the bank managed to maintain its ICC portfolio amid a fiercely competitive industry wherein Islamic banks have to compete aggressively with the interest-bearing banks for the lucrative business segmentation. In the interim, Bank Rakyat which is a full-fledged Islamic bank under Development Financial Institutions was trailing behind with RM433,541 million worth of financing which is a meagre increase of 4% from the year prior. In addition, BMMB which is the third largest full-fledged Islamic experienced a profound 80% rise from the year prior as a result of aggressive marketing efforts, rising merchant network, targeted cross-selling and retention programme albeit new to the ICC segmentation which was first introduced in 2021 according to the annual report. In a contrary, Affin Islamic which operates under Islamic Banking Windows (IBWs) model experienced a 21% rise amidst its substantial CCC segmentation under its parent bank. It merits a mention that, despite experiencing a rise for their ICC financing, the ICC portfolio composed of less than 1% of total overall financings disbursed.



**Figure 1.** *Tawarruq*-based ICC financings.

Source: AFFIN Islamic Bank Berhad (2024); Bank Kerjasama Rakyat Malaysia Berhad (2024); BIMB (2024).

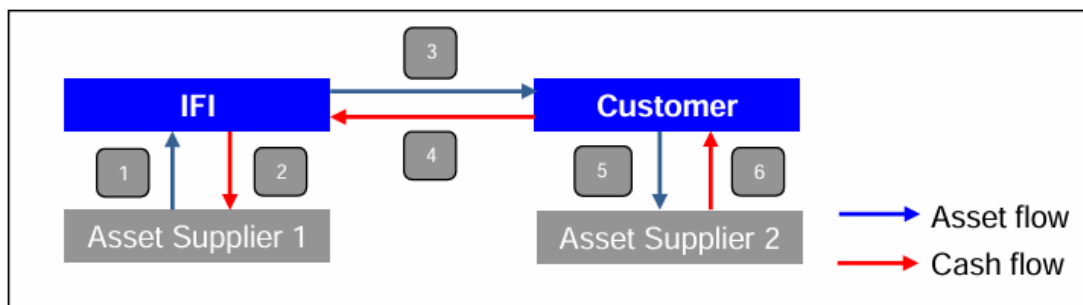
*Figure 2* exhibits the organized *tawarruq* generally apply by the IBs. The application of *tawarruq* in the ICC to be explained as follows: (1) A customer walks in to BIMB for an ICC application with a specified RM5000 facility limit; (2) Upon explaining the *tawarruq* concept and terms on the cost-plus profit payable on deferred basis, the total cost-plus profit is RM9500\* ; (3) Subsequently, the customer is required to purchase the underlying commodity such as crude palm oil (CPO), plastic resin, or any other commodity approved by the bank’s Shariah committee—at a selling price (commodity cost plus profit) equivalent to RM9,500 from the bank on a deferred payment basis, while also entering into a *wa’d mulzim* (binding promise) as a purchase undertaking; (4)

The customer irrevocably and unconditionally appoints BIMB as a restricted agent to execute the purchase of the specified commodity under a *murabaha* (mark-up cost) arrangement. The bank will acquire the commodity from a supplier through Bursa Suq al-Sila' (BSAS) or any other shariah-approved trading platform at the spot purchase price (commodity cost). The customer further agrees not to take physical delivery of the commodity and immediately appoints the bank as sole agent to resell the commodity to Bursa Malaysia Islamic Services Sdn. Bhd. (BMIS), in the case of BSAS transactions, at the same purchase price on a cash and spot basis. The proceeds from this sale will be credited into a *qard* account, which is a profit-free financing facility, and will serve as the financing provision for the Islamic credit card (ICC) facility limit or credit limit; (5) Once the ICC is approved, the customer will be granted a credit limit of RM5,000. A rebate will be provided if the card is not utilized or if the outstanding balance is fully settled by the due date.

\*Financing limit/ selling price calculation

$$\begin{aligned}
 &\text{Card financing limit (cost price/commodity price) + Card financing limit * 18\% * 5} \\
 &\text{years} \\
 &= 5000 + 5000 * 18\% * 5 \\
 &= 5000 + 4500 \\
 &= 9500
 \end{aligned}$$

The ceiling profit rate for Islamic credit cards (ICC) is set at 18% by Bank Negara Malaysia (BNM), representing the maximum permissible rate. The tenure is determined according to the standard practices of individual issuers, which may vary. It should be noted that the facility limit is not entirely at the issuer's discretion when an applicant specifies a preferred financing limit. Nonetheless, if the requested limit is declined due to the applicant's insufficient creditworthiness, the ICC application will be terminated. Conversely, if the applicant does not indicate a preferred facility limit, the issuer retains full discretion to assign one, which will correspond to the commodity purchase price.



**Figure 2.** Tawarruq arrangement for financing.  
 Source: BNM (2018).

### Profit rate

Profit rate in the realm of credit card is a legitimate amount which the issuers are allowed to charge following a non-payment or payment with a minimum quantum which are predetermined by the BNM. The profit must be imposed on retail and cash withdrawal transactions only and the issuer must render *ibra'* (rebate) for the unutilised portion of the total profit to the cardholders (BNM, 2019). Hence, should the credit card

not be utilised or a full payment has been made by the due date, rebate must be rendered on the unutilised portion of the credit card.

Three-tiered pricing structure which is known as profit wherein the cardholder pays the outstanding balances according to the tiers. The three tiered-pricing is formulated based on the cardholder's risk assessment profile. According to the BNM (2019), the cardholder's risk assessment shall be categorised based on the three-tiered pricing mechanism. Profit or fee rate for retail transactions shall be capped as follows: (1) Tier-I: Maximum of 1.25% per month, which is equivalent to 15% per annum of the total outstanding balance; (2) Tier-II: Maximum of 1.42% per month, which is equivalent to 17% per annum of the total outstanding balance; (3) Tier-III: Maximum of 1.5% per month, which is equivalent to 18% per annum of the total outstanding balance. The profit or fee rate for cash withdrawal transactions shall be capped at a maximum of 1.5% per month, which is equivalent to 18% per annum.

It is important to highlight that the three-tiered pricing mechanism applies exclusively to retail transactions and not to cash withdrawals, which are capped at 18% per annum without a grace period (BNM, 2019). This structure closely mirrors the conventional interest-bearing banks' credit card charges (CCC), which are *riba*-based and incorporate compounding elements (Abd Razak, 2014). Furthermore, the three-tiered pricing range of 15% to 18% represents the highest profit margin for credit card financing (Muneeza et al., 2019). Nevertheless, BNM has stipulated that issuers may impose less stringent requirements for cardholders assessed under Tier-1 and Tier-2 profit structures, allowing them to reduce profit rates below the default levels based on risk assessments (BNM, 2019). In practice, however, most issuers comply with the regulation without lowering profit rates, with the exception of BSN, BIMB, and Bank Rakyat. Notably, BSN offers a preferential rate of 8.88% per annum for specific customer segments, such as the 'Teacher's Card' and 'G-Card' for eligible government officers, provided that minimum payments are made promptly for 12 consecutive months. Additionally, BSN extends a reduced rate of 9.95% per annum to Universiti Utara Malaysia (UUM) staff and alumni under similar conditions. These examples demonstrate that banks are indeed capable of lowering such burdensome rates without strictly adhering to the three-tiered pricing mechanism established by the Council. As Rosly (2010) observes, the foundational principles of Islamic banking differ significantly from those of interest-bearing banks, with the former oriented towards advancing social objectives, in contrast to the latter's emphasis on profit maximization.

### ***Debt***

As credit becomes rampant by virtue of mushrooming of access, the consumers' expenditures' pattern has shifted parallelly. The meteoric rise of living costs as a result of inflation combined with the desirous of having a specific standard of living in particular urban folks, have resulted many to be intertwined with credit for maintaining their lifestyles as well as supporting their essential and discretionary spending. The word 'debt' has an unpleasant connotation of obligation. The obligation is subsisted until such debt is eventually detached from the debtor where the eventual outcome has precipitated freedom for both mentally and physically. The attachment of debt has become a commonality for a society living in this era wherein demand (debtor) and supply (creditor) have grown parallelly to fit the desire for necessities namely house, car and educational requirement, to name a few. The requirement for the basic needs aforesaid has culminated households to be engulfed with debt financing for which the

accessibility is available at one's fingertips. Truth be told, the debt in Malaysia has risen exponentially to RM1.53 trillion in 2023 from RM1.45 the year prior wherein housing loans accounted for circa 61%, followed by auto loans which accounted for 13.2% and personal loans of circa 13%, non-residential property loans, credit cards and others which accounted for 13.2%, 3% and 1.2% respectively (BNM, 2023).

Despite of the staggering number of household debt, credit card which accounted for a meagre 3% of the total debt is the most accessible facility of financing that can be consumed for services as well as to purchase goods or merchandises without having to resort to cash. Moreover, according to the economist Juliah Goh from the UOB Global Economic and Market Research, from the macroeconomic perspective, economic factors have propelled the consumption of the credit card in which inflation in part has eroded disposable income that apparently has induced the dependency on the plastic card to survive. The senior economist has also asserted that a report from the Credit Counselling and Debt management Agency (AKPK) which allegedly alluded credit card facility to overspending and eventually in the long run would culminate in bankruptcy particularly cardholders with poor financial management. Accordingly, a staggering 53,000 youth aged below 30 are being tied with an astronomical debt of RM1.9 billion in cumulative debt as of March 2024. Some of the primary causes were attributed to high cost of living and poor financial planning which have engendered them to seek for the assistance through the debt management plan (DMP) under AKPK by way of restructuring credit facilities. Surprisingly, credit card debts which accounted for 47% was the highest restructured credit facilities for the DMP and followed by personal loans which accounted for 40%. Hence, credit card facility has able to induced adverse consequences against the cardholders should the former not meticulously and intelligently utilized particularly by the latter whose financial management is utterly subpar.

Debt is acceptable in Islam if it does not perpetuate harmful effects to both debtor and creditor. Although fundamentally debt is permissible, it must be categorically evaded following its nature of eternalizing deplorable conditions upon debtors. The debtor is generally described as a prisoner as what being mentioned by the Prophet Muhammad (saw) *"Your companion is being detained by his debt"* (reported by Abu Dawood). In another hadith, the Prophet (saw) said *"The soul of the believer is held hostage by his debt in his grave until it is paid off"* (reported by Tirmizi, 1078). Hence, the notion of debt and credit card are undetachable, given the fact that the latter's functionality could propel consumers into a spending spree.

### ***Ta'widh and Gharamah***

As financing transactions have become a commonality in today's era, the continuation and the harmonization of the transactions must be fully protected. Indisputably, Islamic banking modus operandi works similarly with the mainstream banks particularly in providing financing/loan which typifies their core business. In the financing transactions sphere, both financier and consumer play a pivotal role in their obligations in which the former is obligated in providing financing according to the stipulated terms in the contract and the latter is obligated to furnish the financing amount within the stipulated period (Lahsasna, 2014). Failing to accommodate to the terms by the latter will result in the suspension on the financial activity of the former and eventually will lead to a greater disaster to the society (Lahsasna, 2014). Therefore, the Shariah Advisory Council (SAC) of the BNM, has taken a precautionary mechanism

in safeguarding the continuation of the IBs by implementing *ta'widh* and *gharamah*. The allowability for the imposition of *ta'widh* and *gharamah* as a deterrent mechanism by Islamic banks (IBs) is based on the *ijtihad* by the Shariah Advisory Council (SAC) of the BNM for the sake of *maslaha* (public interest) (Norazlina et al., 2019). *Ta'widh* according to the BNM definition is “*The amount that may be compensated to the Islamic Banks based on the actual loss incurred due to default*” (BNM, 2010).

Khair (2015) asserted that in general fees imposed by the IBs composed of four different forms at a very minimum namely *ta'widh*, *nafaqah* (expenses), *gharamah* (penalty) and *ujrah*. The BNM has in the credit card-I policy document (PD) mentioned on the legality of the *ta'widh* without mandating on the imposition of the latter by the IBs. The PD highlights “*An issuer may impose a late payment charge for payment...*”. In addition to that, in para 14.10 “*An issuer shall also consider the difficulties faced by a cardholder and give extension for payment or reduce the charge for late payment where relevant*”. Hence, it is proven that the *ta'widh* is not a compulsory charge against the cardholder should the latter's payment be settled after the due date following the optional nature of the former made by the Council. Moreover, the *ta'widh* may also be waived should the cardholder encounter a genuine difficulty in paying the due based on the recommendation made by the Council. Nonetheless, as a mitigating mechanism to protect the functionality of the banks as in this case IBs, and to evade the cardholders from neglecting their commitments, the imposition of *ta'widh* must be within the realm of the BNM's framework. The BNM (2019) has explicitly asserted in the PD that “*The late payment charge shall only be applicable to retail transactions and cash withdrawal transactions. The late payment charge shall be the lower of 1% of the outstanding balance or RM100. If an issuer intends to set a minimum late payment charge, it shall not exceed RM10. The issuer shall place the excess charge in a gharamah account if the charge imposed is more than the actual cost borne*”. By extension, the issuers are only permitted to impose the amount of *ta'widh* as a compensation for actual loss and not based on other factors as it may tantamount to *riba*. The BNM (2010) has explicitly made a resolution with regard to *ta'widh* which stipulates “*The amount of ta'widh received may be recognised as income by the seller/financier/creditor on the basis that it is imposed as compensation for actual loss incurred by the seller/financier/creditor*”.

In essence, late payment charges in an ICC consist of two components namely *ta'widh* and *gharamah* (BNM, 2019). Given the aforementioned, the BNM has allowed the issuers to impose *gharamah* if the charges have surpassed the compensation for the actual cost. However, none of the issuers have executed *gharamah* by virtue of late payment according to their respective financial statements. Further, the BNM has highlighted that the imposition of *gharamah* must not be recognised as an income and it must be channelled to specified charitable organizations (BNM, 2010). The permissibility of *ta'widh* imposition on defaulted customer is hinged upon prophetic traditions in which the Prophet (saw) said “*Delay by a rich person (in payment of debt) is a tyranny*” (reported by Bukhari).

### ***Risk and liability***

The core thrust of Islamic banking has always been the interdiction of *riba* (usury) albeit the application of *bay'* (sale) in Islamic banking is equally imperative (Rosly, 2010). Fundamentally, the Islamic theory of profit is grounded in the principle of *iwad* (equivalent countervalue), which encompasses three essential elements: *ghurm* (risk), *kasb* (effort), and *dhaman* (liability) (Azrak and Hazaa, 2021). Accordingly, any gain

derived from a sale must be intrinsically linked to *‘iwad*; otherwise, it becomes analogous to *riba*. In capitalist theory, capital and entrepreneurship are treated as distinct factors of production, with capital tied to interest and the entrepreneur entitled to profit (Usmani, 2002). In contrast, Islam does not separate these two factors but unifies them, granting entitlement to a proportionate share of actual profit since the capital provider assumes the risk of loss when supplying funds to a commercial venture (Usmani, 2002). Thus, capital inherently carries an entrepreneurial dimension, sharing in potential losses while simultaneously bearing risk alongside the entrepreneur’s effort. This aligns with the Shariah maxims *al-kharaj bil al-dhaman* (gain is accompanied by liability for loss) and *al-ghunm bil al-ghurm* (gain is the result of risk-taking). As Ishak (2023) as well as Abdul Razak and Saupi (2017) explain, *al-ghunm bil al-ghurm* signifies that the owner of an asset must bear all losses and costs associated with ownership, as these entitle him to the benefits derived from it. By extension, any increase without *‘iwad* constitutes *riba* (Rosly, 2010). Therefore, attempts to separate ownership from risk, and thereby from real economic activity, are inconsistent with shariah principles and may result in a *riba*-based transaction.

## Materials and Methods

This study has employed qualitative research approach wherein case study has been designed for the research to investigate the phenomena. In qualitative content analysis (QCA), data are categorized using categories that are developed through intense reading. Hsieh and Shannon (2005) defined QCA as “*a research method for the subjective interpretation of the content of text data...*”. QCA is used to analyse multifaceted types of data which has been transfigured into written text (Zhang and Wildemuth, 2009). According to Patton (2015), when data are obtained from existing texts, the selection of content must be justified in relation to the researcher’s objectives. In this regard, this study employed relational analysis which falls under the orbit of content analysis as according to Robinson (2011), it examines the relationships among concepts, themes or categories in a text into a rational combination. The categories or concepts were combined for exploring the relationships with the aim of obtaining a meaningful and cogent representation of the phenomena under investigation. Based on the literature reviews aforesaid, the following categories appeared as core features for the relational analysis purpose.

*Table 1* exhibits the categories used for the relational analysis by examining the relationships among concepts. Each category would then be cross-examined to further understand the relationships for the extensive comprehension of the Tawarruq application in the ICC. Data used in this study is based on secondary data in which consist of BNM policy documents and fine prints.

**Table 1.** Relational analysis.

No.	Category	Source
1	Tawarruq	BNM Policy Document
2	Debt	BNM Policy Document
3	Ta’widh	BNM Policy Document
4	Hilah	BNM Policy Document
5	Risk and Liability	Issuers’ fine prints
6	Cashback	Issuers’ fine prints, BNM policy Document

## Results and Discussion

### *Issue of ta'widh and gharamah*

Given the aforesaid, *ta'widh* must be imposed as a compensation for the actual cost incurred by the issuers against defaulted cardholders and not as an opportunity cost as it may amount to *riba*. Nevertheless, the inflicting of *ta'widh* for the Islamic financial products and services has induced an immense disgruntlement by both classical and contemporary jurists (Abd Razak, 2014; Laldin et al., 2012). The imposition of *ta'widh* is labelled as a bogus income for the banks as it does not perpetuate a genuine risk encountered by the latter but merely a form of *hilah* in circumventing *riba* which is being practiced by the interest-bearing banks (Muneeza et al., 2019). Moreover, Asni (2022) and Muneeza et al. (2019) have argued that the *ta'widh* which is inflicted in the name of punishment, ostensibly a *hilah* from negating *riba*.

As the compensation for the actual cost are legitimately endorsed by the Council, Zawawi and Hassan (2023), Abd Razak (2015), Rosly (2010) as well as Noor and Azli (2009), contended on the calculation of the actual cost as to how do the issuers dictate the cost, does it base on opportunity cost or any other means? The actual cost incurred must be in a fixed amount and proportional to the actual damage. Notwithstanding, should the *ta'widh* be imposed following delayed in payment by virtue of operational cost, it is considered a benefit to the loan and would amount to *riba*, (Shamsuddin et al., 2022; Abd Razak, 2015; Khir, 2015). This is harmonised with the Prophetic narration which stipulated “*Every loan which attracts benefits is riba*” (reported by Al-Baihaqi). Although the narration of the hadith is deemed vague, its meaning was endorsed by scholars (Dusuki and Abozaid, 2008). Ergo, with the imposition of the *ta'widh* without actually enunciated the actual cost, would amount to oppression in transaction.

According to Al-Zayla'i, an eminent yesteryear scholar, a creditor may initiate an action against a debtor in court should the latter delay the payment intentionally despite his capability in doing so (Lahsasna, 2014). The BNM has explicitly stipulated in the PD “*An issuer shall consider the difficulties faced by a cardholder and give extension for payment or reduce the charge for late payment where relevant*” (BNM, 2019) which is based on the Quranic verse (2:280) “*If it is difficult for someone to repay a debt, postpone it until a time of ease. And if you waive it as an act of charity, it will be better for you, if only you knew*”. As such, should the debtors encounter genuine difficulties which may disrupt the payments process, the financiers must consider in waiving the *ta'widh* (Kunhibava, 2016).

According to Zawawi and Hassan (2023), there was a plethora of issues related to *ta'widh* which has been brought to the Court for adjudication to which the *ta'widh* had been capped until the winding up order is made, inconsistency with the BNM guidelines and error in computing *ta'widh*, to name a few. Although these issues were not directly tied to the ICC, such imposition could trigger a calamity to the customers at large. In regard to the *ta'widh* imposition for the ICC, it is interesting to note that, the BMB and BSN have the lowest rate, ranging from RM5 minimum to a maximum of RM50 for the former and RM10 minimum to a maximum of RM75 for the latter. These amounts are way below than the guideline made by the BNM in which the rate shall be the lower of 1% of the outstanding balance to a maximum of RM100 (BNM, 2019).

Furthermore, the condition of applying *ta'widh* is uncompromising through which it must be genuinely applied for the avoidance of *riba* (Hatta and Samah, 2015). According to Khir (2015), the IBs must not recognised the cost of fund or opportunity

cost as an actual cost for the *ta'widh* imposition as it may tantamount to *riba*. Besides, the BNM has highlighted in the credit card-I policy document on the difficulties encountered by the debtors by giving payment extension or reducing the charge (BNM, 2019). As such, the issuer is not allowed to impose the *ta'widh* charge before initiating an inquiry on the debtor's ability and this has led to the debtors being categorised as *mu'sir* (insolvent debtor) and *musir* (solvent debtor). According to Kunhibava (2016), the IBs have failed to recognized the insolvent debtor's predicament by imposing *ta'widh* and this has led the former to acquire unjustifiable fees. The Holy Quran (2:280) has mentioned on a postponement of a debt by a creditor to an insolvent debtor in which it says "If it is difficult for someone to repay a debt, postpone it until a time of ease. And if you waive it as an act of charity, it will be better for you, if only you knew".

Despite the allowability of imposing *ta'widh* which is solely based on the actual cost, the calculation remains opaque as there is no standard for the computation and the banks were not explicitly highlighted in their financial statements for which it may end up becomes *gharar* and similar to *riba*. Surprisingly, the BIMB has made almost RM1.3 million in FY2023 for the *ta'widh* imposition and by the same token, Bank Rakyat has made a whopping RM6.7 million in 2023 as opposed to RM6.5 million in 2022 which is a 3% increased YoY (Bank Kerjasama Rakyat Malaysia Berhad, 2024; BIMB, 2024). Apparently, with this substantial amount, one would argue that the banks would forego their favourable pay-off under the auspices of the actual cost. Imagine that the astronomical *ta'widh* fee gained by the issuers if rightfully executed could benefit the society in particular Muslims with the mandate of social responsibility.

Unlike *ta'widh* which has been predetermined by the BNM, the *gharamah* imposition remains opaque as the calculation for the latter lies on the issuers (Muneeza et al., 2019). Nevertheless, a caveat has been expounded by the Council in which the imposition of *gharamah* must be channelled to the charity bodies without endorsing it as banks' income. According to Muneeza et al. (2019), the imposition of *gharamah* has enabled the issuers to fork out extra allocations for the purpose of channelling the money and would induce an intricate mechanism for such development as well as waste of resources. As such, none of the issuers have imposed *gharamah* against defaulted cardholders. However, Muneeza et al. (2019) argued that the *ta'widh* and *gharamah* imposition without identifying the real issues may lead to *shariah* issue.

### **Issue of hilah**

The BNM's tawarruq PD does not indicate a restriction on the permissibility of the contract particularly for the financial products as opposed to the AAOIFI of which the latter in the tawarruq guideline has mentioned expressly on the prohibition of *tawarruq munazzam* in the face of liquidity shortage perceived to be one of the significant risks that may hinder business operations and eventually resulted in customer's losses. As such, IBs have erred in assuming that commodity *murabaha* can be applied in all type of transactions and financings. The underlying contract is unsuitable and inappropriate to be used for unsecured financing i.e., credit card and personal financing as it does not create an economic venture that moves parallelly with the *maqasid* (Kamil, 2020).

The application of *hilah* in shariah law, made a real hullabaloo among the classical scholars during the early days of Islam. Fast forward, *hilah* has developed into a severe criticism particularly in Islamic banking and critics opined thru *hilah*, the foundation of Islamic banking has been compromised to allow all available legal means which similar to mainstream financial system. Abozaid (2016) argued that *hilah* is the centerpiece of

the *tawarruq* execution as IBs' motivation is not aimed at the underlying contract per se but profiting excessively from the sale activity. Although a vast majority of scholars disregarded the objective of the seeker for the liquidity to be binding by the *shariah* law as they believed the objective or the intention is less paramount to the transaction and more towards the permissibility of the contract, *hilah* in the *tawarruq*-based credit card particularly, is worth condemning as the customers' supreme aim is to have a *shariah*-compliant ICC not a commodity which can be translated into a cash to form the ICC (Hasmad and Alosman, 2022). In addition, the supreme objective of the bank is to create a debt obligation against the cardholder and the use of the commodity for the purpose of transaction legality is deemed *hilah*. Furthermore, both parties are not keen in having the commodity, let alone to inspect and to genuinely trade inter se. This is arguably *hilah* to interest-based loan provided by the IBs to its customers. The inclusion of a third-party element regardless of the organized *tawarruq* application by the IBs, is merely a stratagem to prevent the commodity from being concluded by two parties which equivalent to *bay' al-inah* and thus, severely undermining *shariah* injunction. The *tawarruq* contract is usurping Divine terminologies to conceal interest-based transaction and thus, contravening the sustainability of Islamic banking *maqasid*. Truth be told, *hilah* was never practiced during the Holy Prophet Muhammad (saw) era and his companions as it believed to have manipulated the injunction by the Divine law for personal objectives. Moreover, Maliki and Hanbali school of fiqh, have repudiated *hilah* application and in a contrary, Hanafi scholars have allowed it on an extreme condition for fear of *shariah* abuses. The reasons given by the critics of *hilah* were generally based on the violation of *maqasid al-shariah* and the ramification would spark a mockery of the Divine objective for the laws.

Critics underscored the skewness of Islamic financial products and services toward the expression of the contract rather than the substance and thus *tawarruq* organized by IBs is perceived to be based on *hilah* in its application to camouflage by *riba*. Accordingly, *tawarruq* application realistically stimulates both party intentions of having different agenda for which trading acts as a *hilah*. In the ICC parameter, both parties have neither interested on commodity nor trading but monetary intention. The customer wants cash for the purchasing motivation and the bank heedfully wants profit for the debt instrument motivation. Given the aforesaid, *tawarruq* has undue limitation in financial instruments and inappropriate for the unsecured financing in particular ICC as it does not fit the purposes. The BNM (2022) has stated that the Islamic banking industry is currently taking a concerted effort to deviate the underlying contract from highly reliant on *tawarruq* arrangement to other contracts for which the alternative contracts have seen a significant CAGR of 6.2% for the past three years. It is however, produces a similar parameter in substituting mainstream banks rather than providing alternatives and by relying overwhelmingly on debt-based products will possibly limit the progressiveness of the IBs' products and suffocates its growth.

### ***Issue of prearrangement***

In Islamic scholarship, the maxims of *al-ghunm bi al-ghurm* (gain is a result of risk taking) and *al-kharaj bi-al-dhaman* (gain comes with a liability for loss) are the two fundamentals for the allowability or endorsement of the profits by the Islamic banking. The element of prearrangement is indeed attached in the *tawarruq* based ICC through which the risk is inalienably detached with the establishment of BSAS. According to Kamil (2020), the BSAS has been organised to alleviate *tawarruq* trading without

attaching to any risks through which safeguarding is utterly prearranged for the contracting parties. According to Bursa Malaysia (2023), commodities trading using BSAS system has two options, either to take delivery of the commodity purchased or to resell the commodity to BMIS. Apparently, the mechanism has been established to guard the parties from catapulting into unfavourable risks which could imperil the transactions. Kamil (2020) argued that transactions through commodity broker exchanges (CBEs) in particular BSAS have no merit for the risk association which is mandated by the *shariah*. Truth be told, trading or transaction in the sphere of Islamic banking must be enmeshed with the element of *i'wad* (equivalent countervalue) of which it entails three main components such as *dhaman* (liability), *kasb* (work and effort) and *ghurm* (risk) (Rosly, 2010). Generally, there is no attachment of risk for the *tawarruq* arrangement nor transaction via the CBEs. According to the BNM (2022), the commodity *murabaha* trading through the CBEs particularly the BSAS, has no attachment to any sort of risks be it supply risk or price risk. According to the council, the BSAS has the capacity to offer a multitude of commodities without worrying on the shortages. Besides, the BSAS is able to offer a stable commodity price without leaning toward exorbitant price volatility as the price is locked intra-day (BNM, 2022).

Kahf and Habbani (2016) argued that the IBs in general do not embrace risks except for the credit risk (counterparty risk) as all the risks have been transferred to the customers. Therefore, the element of risk is surreptitiously hidden with the prearrangement mechanism made for the *tawarruq* arrangement be it as an underlying contract or through the CBEs which is part of the organised *tawarruq* strategy.

### ***Issue of cashback***

In view of cashback services, which have become a key selling proposition for issuers, ICCs have proven to be more attractive and marketable compared to general ICCs with plain vanilla offerings. The cashback cards have become a demanding facility for which all the issuers have cashback related service for their respective ICCs either as a pureplay cashback card or as an embedded service. The cashback service is given to a cardholder as a result of utilization of selected products or services at any participating merchants with a special discount or rebate. Several issuers have introduced a monthly cap on cashback utilization, creating confusion for cardholders and potentially giving rise to elements of *gharar* (Susilawati and Hartawan, 2023).

In relation to the cashback service by AFFIN DUO-I *tawarruq*-based ICC, the method of cashback calculation is quite intricate as conditional calculation is applied. AFFIN Islamic cashback promotion is hinged upon previous balances of two tiers which fall into two categorizations namely above RM3000 and below RM3000 (AFFIN Islamic Bank Berhad, 2023). According to the fine print, cardholders are entitled to a 3% cashback, subject to conditions tied to their previous outstanding balance. If the carry-forward minimum balance is RM3,000 or below, the maximum cashback is capped at RM30. Conversely, if the balance exceeds RM3,000, the cardholder becomes eligible for a maximum cashback of RM50. The cashback benefit, however, is restricted to specific transactions, namely e-commerce/online purchases, e-wallet reloads, and auto-billing payments. Exemptions apply to fee and charge waivers (such as annual fees and late payment charges), merchant-issued credit refunds, and reversals of unauthorized transactions, as these are excluded from the calculation of the total carry-forward balance. Ultimately, while the cashback calculation is based on the aforementioned matrix, the essential determinant remains the existence of outstanding

balances. Seemingly, the extend of cashback in this regard is attached to the outstanding balances of the ICC. If there was no any outstanding balance which carried forward from the previous month then the cashback is not given despite the cardholder has fulfilled the current month outstanding balance with regard to the selected consumption. In this regard, the issue arises with the unexpected condition stipulated in return for an undue benefit for the cardholder if the cardholder has an outstanding balance.

Truth be told, the cashback service is given to the cardholders based on *hibah* (gift). The practice of *hibah* in Malaysia's landscape encompasses of two methods of which one is largely used for the IBs products and services as a supporting contract. This particular *hibah* which is a modern concept of *hibah* is endorsed by the SAC of the BNM. The BNM (2016) in the *hibah* PD has mentioned on the *hibah*, identifying it as a *tabarru'* (benevolent) contract of which it is an "unilateral transfer of ownership of a *hibah* asset from the donor to the recipient without any consideration". *Hibah* is also given upon a certain condition or event in the future (BNM, 2016). Nevertheless, the source of *hibah* must be properly addressed as to avert *gharar*. The *hibah* PD has explicitly mentioned on the arrangement of *hibah* with *wakalah* (agency) contract of which the source of *hibah* must not derived from the *wakalah* fund either capital or profit payable to the recipient. Despite the prohibition by the BNM is concerning *wakalah* contract, it is also applicable to the *hibah* being granted using sources derived from the customers which is similar to the restriction made by the BNM for the *wakalah* contract. According to Bathusha and Isa (2024), the cashback service given to the cardholders upon fulfilling certain conditions is derived from the interchange fees as a result of the cardholders' consumption. Evidently, the money is not singly derived from the shareholders' fund for the eligibility of the *hibah*. Hassan and Zaizi (2020) stated that the practice by IBs in granting *hibah* is deemed as an incentive to motivate customers using their products and services. They have also asserted that the practice of granting *hibah* must be unilaterally and discretionary and not benefiting the IBs.

In addition to that, the practice by the AFFIN Islamic in stipulating a condition for the cashback service based on the outstanding balance is purely incentivise and prompting the cardholders into excessive debts. Consequently, the cardholders have to endure with lasting debts for them to survive with the cashback where the amount given is just a paltry as opposed to the lasting dire consequences.

## Conclusion

The cardinal matter of Islamic banking rests on the foundation of transparency, justice, ethical, equitably, fair contracts and above all Divine injunctions. Conversely, the interest-bearing banks' foundational rest on interest taking which translated into maximizing profits. The ICC if not meticulously preserved, may catapult the vulnerable income groups cardholders into dire consequences. The ICC must be fundamentally harmonised with the shariah principles for which the elements of corruption and non-ethical conducts must be fully eradicated. Given the aforesaid, the *tawarruq* ICC is indeed at odds with the shariah laws despite endorsed by the Council. Therefore, the *tawarruq*-based ICC needs to be thoroughly developed with the *shariah* principles as a legitimate foundation instead of imitating the mainstream banking framework. The *shariah* legal maxim of "*al-umur bi-maqasidhiha*" (matters are determined according to intention) should become the utmost priority for the ICC in designing and structuring the product based on the shariah teachings.

This study will contribute profoundly toward the current practice of the *tawarruq*-based ICC execution in Malaysia. Currently, the underlying contract does not underpin the real structure of the ICC following rigorous imitation and benchmarking of the CCC mechanism. As such, a concrete review should be conducted by stakeholders in particular the SAC of the BNM including shariah committees and shariah advisors for the clarity and transparency of the underlying contract of the ICC. Besides, the cardholders must be ensured that the ICC is varied from the CCC's operational in regard to the profit, late payment, subject matter, trading and numerous services, among others. As such, this study offers some inputs and views that will assist cardholders and potential cardholders in understanding the real execution of the *tawarruq*-based ICC by the IBs.

This study has proven that a litany of issues has hinged upon the *tawarruq* ICC in which the inconsistency is barely perceptible and thus rendering the *tawarruq* ICC to be deviated from the original objective. As such, the *tawarruq* ICC's operationality is indeed similar to the CCC to which the foundational is being built upon shareholder supremacy model where the existence of the companies is to serve the shareholders without balancing the interests of other stakeholders. Notwithstanding, there is a limitation with regard to the endorsement and acknowledgment by the SAC of the BNM, *shariah* committees and shariah advisors for the *tawarruq* ICC inputs and views. Hence, future researchers may look into this parameter for the explicit comprehension of the *tawarruq* issues embedded in the ICC.

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### Conflict of interest

The author confirms that there is no conflict of interest involved with any parties in this research study.

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