ASSOCIATION of SHARIAH ADVISORS in ISLAMIC FINANCE

MEDIA STATEMENT

For Immediate Release

'Mirage' in Islamic Finance or a 'Golden Crown'?

KUALA LUMPUR. Sunday, 30 May 2021: With reference to the recent article written by the ex-Deputy Governor of Bank Negara Malaysia ("BNM"), Dr Sukudhew (Sukhdave) Singh, which was published on LinkedIn May 22nd, 2021, concerning his exposé on his personal discovery of mirage in interest-free Islamic finance, of which we would like to make the following observations:

1 The peculiarity of the exposé. The vastly experienced and highly qualified ex-Deputy Governor wonders the effect and efficiency of window dressing 'interest' under various disguise in Islamic Finance. His concerns are germane. What seems peculiar is the level of prudence and respect for the principles of confidentiality to which he must have subscribed earlier vis-à-vis the content of his exposé. Presenting to the public with such discovery now, could have been done tactfully in a more suitable private forum particularly after leaving such a distinguished and esteemed position, as it raises concern on the real motive and purpose behind such an outburst.

2 The basic notion of 'interest'. 'Interest' itself is a mirage which economist could neither give a satisfactory answer as to how it is computed, nor can they provide a logical explanation as to the basis of fixing the percentage of interest at certain figure. What Islam had prohibited is *Riba'*. *Riba'* includes an additional amount paid or received on top of a principal amount solely due to an agreement based on a time period.

3 As for the amount given or received for deposits and perceived as 'interest', that cannot be considered simply as *Riba'*, for the reason that deposits are not loans, rather, deposits are invested in profit-generating activities by the financial institutions. Thus, it cannot be perceived as 'interest' or its disguise. The inability to distinguish this basic difference is alarming and the act of publishing it is considered even more direful.

4 The amount charged and calculated as service charges in any financing transaction, surely the payment of service cannot be equated to 'interest' as the consideration for such payment is consideration for the services rendered.

5 The Shariah-structuring process to convert conventional financial products to be Shariah compliant, in some perspective, could be seen as perpetuating the 'interest' element even if the underlying principles would show otherwise. Be that as it may, the proponents of Islamic finance are fully aware of this undesirable practice and have been

clamouring for Shariah-based products – compliant both in form and substance. It is obvious that Islamic finance, being a 20th century new comer commanding a mere 1% of global financial assets, has a lot to catch up with an 18th century blazing star holding the remaining 99%. That is the prevailing international order. This does not mean that the element of 'interest' is permitted to run in the vein of the converted Shariah products and services.

6 'Interest' is unfairly earned in conventional lending and borrowing on the back of 'risk transfer' which outrightly transfers all risk to the borrower, whilst the lender unjustifiably makes money out of money. Islamic finance on the other hand upholds the principle of 'risk and rewards' embedded in trading and partnership activities justifying 'profit' for the deserving contracting parties. Islamic finance also does not condone the use of money as the subject matter of trade like in a loan transaction unless it is on spot basis and of equal quantity. Rather, money should be used as a store of value and medium of exchange.

7 It is this international order that is wrecking the world with 'interest'. Against this well-entrenched, well-developed and sophisticated financial system, Islamic finance has commenced its arduous journey of finding a better alternative, beginning with a complementary role by embracing much of the forms and no doubt in many an instance, the substance as well of the existing system. It is a David-Goliath situation which for David will certainly take some time to evolve and take shape.

8 Weighing and judging between form and substance, the Shariah authorities whether in Malaysia or globally, have exercised their latitude selectively and carefully depending on the nature and complexity attached to the individual product and service. Attempts to have Shariah-based products, both in form and substance, have been slow due to factors that do not favour such transition, despite the good intention and relentless resolve.

9 Assets used in financing need not necessarily be profitable nor commercial in nature but they must have intrinsic value to stand as assets for consideration as collaterals. The eligibility of assets depends on the due diligence exercised by the financial institutions at the time of transaction. Islamic financing is viewed as a trade activity and not a loan activity. As such banks too are susceptible to risk-appetite when they take these assets as collateral for financing.

10 When it comes to sukuk and bond, there certainly are fundamental differences. Oversimplifying the fundamental differences to conclude that "*a Sukuk must be seen as a conventional bond given an Islamic dressing"* and that "*the role of assets in Sukuks is more about appearances and form rather than substance*" is an unfair statement to Islamic finance as it disregards the very fundamental element of distinction. In sukuk the investors become co-owners of the underlying assets but the ownership of bond indicates only a loan repayment.

11 Credit card is allowed on the basis of *maslahah* on the understanding that the facility provided is fully settled within the time frame allowed. In case the customer exceeds the time limit then he shall pay for the extension of the service rendered and not interest.

12 The learned writer's concerns and criticisms of Islamic finance being mere retrofitting, as claimed, is not aimed at pandering to religious beliefs, rather it is the result of serious deliberations to move away from interest-based financial system that has enslaved humanity for more than three centuries.

13 Certainly, for a start Islamic finance has replicated many of the conventional products and services, for want of a better alternative. But then just as the golden crown is made from the dusty gold sands, Islamic finance too will become that golden crown, despite it sharing and tracing its origin to many of these conventional products and services.

14 What has been done in Islamic financial institutions thus far is a careful attempt not to disrupt the existing order of things till a proper and full spectrum of the financial system is developed and secured, while gradually and consciously removing the symptoms of interest from it by explaining away and interpreting its rationale; by discarding the optical illusion of realism of interest that obscures the reality of interest.

15 In our humble opinion, it is this lack of clarity that leads the learned ex-Deputy Governor to conclude the mirage of interest-free Islamic finance as a deception since its inception. Whilst simplification may allow us to see the forest from the trees, oversimplification blurs such variance. Readjusting the Islamic finance lense to have a clearer eyesight could well lead to an enlightened insight.

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