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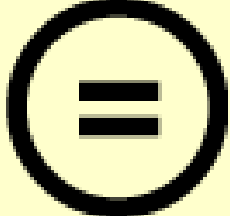
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ISLAMIC HIRE-PURCHASE
IN MALAYSIAN FINANCIAL INSTITUTIONS:
A Comparative Analytical Study

By:

NURDIANAWATI IRWANI ABDULLAH

A Doctoral Thesis submitted in partial fulfilment of the requirements for the award of
Doctor of Philosophy

Department of Economics,
Loughborough University
August 2005

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*In The Name of God,
The Most Compassionate, The Most Merciful*

Dedications:

To my beloved husband,

Asyraf Wajdi Dusuki

Our dearest son,

'Ammar

and

Our newborn daughter,

'Affaf

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May Allah bless you and grace all of you in due course in the Hereafter.

Nurdianawati Irwani Abdullah
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ABSTRACT

Islamic hire-purchase (*ijārah wa-iqtinā'*) is one of the latest innovative products of Islamic banks designed to meet the current demand and avoid certain risks in the financing of consumer durables and motor vehicles. No wonder, this transaction is not acknowledged in the classical jurisprudence, but contemporary scholars have developed its structure through a careful combination of *ijārah* and sale contracts. In Malaysia, this concept refers to *Al-Ijārah Thumma Al-Bay'* (AITAB) and it has grown in popularity and continuously expanded partly due to the heightened demand by customers. Since its first inception more than 10 years ago, AITAB has been governed by the Hire-Purchase Act 1967 (HPA), but HPA has received much criticism amongst the practitioners and *Sharī'ah* experts, who assert the insufficiency of HPA to govern the AITAB transaction when dealing with *Sharī'ah* issues. Consequently, *Mu'amalah* Hire-Purchase Bill has been proposed to the Malaysian government to overcome certain limitations of HPA.

This study aims to examine the Islamic hire-purchase operation and its regulatory framework in Malaysia. Thorough examination and analysis would help identifying potential strengths and weaknesses inherent in the HPA and how the proposed Bill could provide remedies to various impediments, and offer an alternative regulation to govern the Islamic hire-purchase transaction. To illuminate our understanding of the actual operation of Islamic hire-purchase, this study incorporates in-depth interviews together with a questionnaire survey. A total of 46 in-depth interviews have been conducted on Islamic bankers, *Sharī'ah* advisors, *Sharī'ah* scholars, economists, legal experts and government officers. This is further complemented by a country-wide questionnaire survey successfully obtained from 203 customers, aiming at eliciting their perceptions and expectations towards Islamic hire-purchase products. The combination of theoretical discussion on Islamic hire-purchase together with the empirical surveys using both qualitative and quantitative methodology have proved to yield a valuable insight into the revaluation of the Malaysian regulatory system of AITAB.

The findings of this study reveal the need to incorporate *Sharī'ah* principles into the existing Hire-Purchase Act 1967, instead of establishing an independent *Sharī'ah* law to govern the Islamic hire-purchase operation. It also reveals that customers of Islamic financial institutions in Malaysia have positive views of AITAB.

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ABBREVIATIONS

Abbreviations	Meaning
AG	: Attorney General
AITAB	: Al-Ijārah Thumma Al-Bay' (Islamic Hire-Purchase)
AMR	: Annual Malay Report
ANGKASA	: National Co-operative Organisation of Malaysia
BAFIA	: Banking and Financial Institutions Act
BBMB	: Bank Bumiputra Malaysia Berhad
BIMB	: Bank Islam Malaysia Berhad
BMMB	: Bank Muamalat Malaysia Berhad
BNM	: Bank Negara Malaysia
CELPAD	: Centre for Languages and Pre-Academic Development
CIMB	: Commerce International Merchant Bankers Limited
CLJ	: Current Law Journal
EON	: National Automobile Distributor
HPA	: Hire-Purchase Act 1967
IBD	: Islamic Banking Division
IBFIM	: Islamic Banking and Finance Institute of Malaysia
IBS	: Islamic Banking Scheme
IFSB	: Islamic Financial Services Board
IIUM	: International Islamic University Malaysia
JAKIM	: Jabatan Kemajuan Islam Malaysia (Islamic Development Department of Malaysia)
KPDN	: Kementerian Dalam Negeri dan Hal Ehwal Pengguna (Ministry of Domestic Trade and Consumerism)
LwOP	: Lease with an option to purchase
MARA	: Majlis Amanah Rakyat (National Trust Council)
MLJ	: Malayan Law Journal
RM	: Ringgit Malaysia (Malaysian currency)
Sdn. Bhd.	: Sendirian Berhad (Private Limited)
UiTM	: Technology University of MARA
UK	: United Kingdom
UKM	: National University of Malaysia
UM	: University of Malaya
UPM	: Putra University of Malaysia
UTM	: Technology University of Malaysia

TRANSLITERATION TABLE

Consonants. Arabic

Initial: unexpressed medial and final:

ء ' ʾ	د d	ض ḍ	ك k
ب b	ذ dh	ط ṭ	ل l
ت t	ر r	ظ ḏ	م m
ث th	ز z	ع ʿ	ن n
ج j	س s	غ gh	ه h
ح ḥ	ش sh	ف f	و w
خ kh	ص s	ق q	ي y

Vowels, diphthongs, etc.

Short:	ا a	إ i	أ u
Long:	آ ā	إِي ī	أُو ū
Diphthongs:	أَو aw		
	أَي ay		

INTRODUCTION

1.1 BACKGROUND OF RESEARCH

Islamic banking and finance has emerged as an important financial system with worldwide acceptance, as it offers a wide range of products and facilities to accommodate users' needs. The hallmark of Islamic banking is its prohibition of the interest rate (*ribā*) on money capital. This essentially implies that the fixing in advance of a positive return on a loan as a reward for waiting is not permitted by the *Sharī'ah*. Since this is strictly prohibited, Islamic banking has deliberately developed alternative financial instruments which are compatible with *Sharī'ah*. These alternative instruments include various contractual arrangements such as cost-plus (*murābahah*), profit-sharing (*mudhārabah*), leasing (*ijārah*), partnership (*mushārahah*), deferred payment sale (*bay' muajjal*), benevolent loan (*qarḍul hasan*) and many more. Hence, the operation of Islamic banking activities is necessarily governed by the *Sharī'ah* audit for the purpose of ensuring the legitimacy of financial services for the suppliers and users of Islamic banking operation.

In Malaysia, the first Islamic banking law was codified in 1983 by virtue of Islamic Banking Act 1983. A year later, the Takaful Act 1984 was passed by the government. The Interest-Free Banking Scheme was introduced in 1993, whereby a fully-fledged Islamic banking system operates on a parallel basis with a sophisticated conventional banking system. In this dual system, Islamic banking products are believed to be much more sophisticated and cover a wider range of services than products offered in a single Islamic system. The stiff competition with sophisticated and long-standing conventional instruments in the dual-banking system makes it imperative for the Islamic banking to be sufficiently innovative in order to satisfy the needs of sophisticated customers. Hence, more diversified and sophisticated financial products seem to be offered by the Islamic banking windows operating in the dual system to sustain its competitiveness and survivability. Yet, unless such innovative activities are clearly guided by the Islamic principles, the result might turn out to be in conflict with *Sharī'ah*.

One of the latest innovative approaches is the Islamic hire-purchase instrument, commonly known as *ijārah wa-iqtinā'*. In general, *ijārah wa-iqtinā'* resembles the conventional¹ hire-purchase contract, which combines leasing with purchase in a single contract. Under this contract, a tenant or customer pays lease rent simultaneously with sums towards the purchase of the property. Today, *ijārah wa-iqtinā'* turns out to be a popular mode of financing. Amongst the prominent Islamic banks which offer Islamic hire-purchase as a mode of financing are Islamic Development Bank, Bank Muámalat of Malaysia, Kuwait Finance House and commercial banks in Pakistan. Different countries use different terminology in referring to the concept of *ijārah wa-iqtinā'*, but the mechanism used is not much different from one another.

Malaysia is among the countries which undertake special efforts to distinguish the Islamic concept of *ijārah wa-iqtinā'* from its conventional counterpart. In Malaysia, *ijārah wa-iqtinā'* is commonly known as *al-ijārah thumma al-bay'*, which is abbreviated in the commercial practice as AITAB. It combines lease contract and sale contract in one trading document. Under the first contract, the hirer leases the goods from the owner at an agreed rental over a specified period. Upon expiry of the leasing or rental period, the hirer enters into a second contract to purchase the goods from the owner at an agreed price. Due to the popularity it gains from customers' demand, AITAB is currently limited to finance certain items such as motor vehicles.

1.2 STATEMENT OF PROBLEM

AITAB is currently implemented in the light of Hire-Purchase Act 1967 (hereinafter referred to as HPA), since there is no independent Islamic law governing the practice of hire-purchase in Malaysia. In general, HPA provides adequate rules for regulating basic procedures for affecting a hire-purchase contract. However, the legal effect and approach enunciated by HPA seems to be in conflict with the *Sharī'ah* principle of contract in some basic aspects. The clearest example can be seen in respect of an offer and acceptance (or *'aqd*) during the formation of the hire-purchase contract. HPA puts a condition that offer and acceptance must be exercised once and for all at the

¹ The term "conventional" is generally used to represent all non-Islamic mode of financing.

beginning of the transaction. But, *Sharī'ah* requires the parties to exercise two *ʿaqd* (offer and acceptance) at two different points of time, i.e. *ʿaqd* to lease at the first stage and then *ʿaqd* to purchase the property at the latter stage. Another issue relates to the extent of maintenance responsibility that should be borne by the parties. During the *ijārah* contract, the owner is required to bear basic and structural maintenance of the asset; while the hirer is made responsible to operational and routine maintenance since he constantly uses the asset. This is contrary to the established practice where the customer alone is usually required to maintain the asset. This practice contradicts the principle of maintenance responsibility in a lease (*ijārah*) contract which must be borne by the owner (finance company); not the hirer. There are several other issues pertaining to the practice of AITAB which need to be discussed thoroughly. Therefore, it is generally believed that the inadequacy of HPA can only be remedied by having a *Sharī'ah* regulation providing a complete set of rules to regulate the leasing (*ijārah*) and sale (*bay'*) at different stages of the transaction in the light of *Sharī'ah*.

Subsequently in the recent years, a new Islamic hire-purchase law has been proposed to the attention of the Malaysian government. The proposed law, *Mu'amalah* Hire-Purchase Bill is designed to overcome certain limitations in the HPA in dealing with *Sharī'ah* issues arising from the Islamic hire-purchase transaction. In order to evaluate the new law, a thorough examination of the HPA and the Bill is needed to find out their respective strengths, weaknesses and other features. The present situation of the Malaysian legal system and the possible impact of the proposed Islamic Bill will also be discussed. Legal analysis will further be supported by empirical evidence from intensive interviews and a country-wide questionnaire survey. It is hoped that, this study will give a clear picture of Islamic hire-purchase practice in the Malaysian financial institutions and propose a practicable *Sharī'ah* framework of AITAB.

1.3 RESEARCH HYPOTHESES

The primary interest of the study lies in identifying the weaknesses of the Hire-Purchase Act 1967 in governing an Islamic hire-purchase transaction, and the possibility of implementing an Islamic hire-purchase law to remedy the loopholes in

the existing law (HPA). Therefore, three research hypotheses are formulated and stated as follows:

- (a) The Hire-Purchase Act 1967 is inadequate to regulate an Islamic hire-purchase transaction.
- (b) The operation of Islamic hire-purchase transaction in Malaysia is lacking in a *Shari'ah*-based regulatory framework.
- (c) The Malaysian AITAB can be developed more closely along the *Shari'ah* injunction of a combined *ijarah* and sale contract if an Islamic hire-purchase law is successfully implemented.

These hypotheses are best addressed in term of well-defined objectives as they are now given below.

1.4 OBJECTIVE OF THE STUDY

The research aims to examine the current concept and application of Islamic hire-purchase transaction (AITAB) in Malaysia from legal, practical and social perspectives. The specific objectives of this study are:

- (a) To obtain a clear insight of AITAB practices from the financial service providers (financial institutions), users (customers) and experts in Islamic hire-purchase business in Malaysia.
- (b) To critically analyse the practices and implementation of AITAB in respect of procedural and legal issues.
- (c) To examine the extent of customers' awareness about AITAB facility provided by the financial institutions.
- (d) To inquire about the expectations of providers, users and experts as regards the financial service provided by AITAB.
- (e) To identify problems faced by the banks and customers in the provision of AITAB transaction.
- (f) To compare the nature and legal effect of AITAB with those of conventional hire purchase.
- (g) To show the inadequacy of the Malaysian Hire-Purchase Act 1967 as a mean to regulate a fully legitimate AITAB transaction.

- (h) To suggest a practical *Shari'ah* framework of AITAB transaction to be properly implemented in the Malaysian financial system.

1.5 SCOPE OF THE STUDY

The study will concentrate on the operation of AITAB in the Malaysian financial institutions and issues arising from its practice. Views from the providers and users of the facility about the actual practice of AITAB business are deliberately screened and analysed. Experts' opinions are considered in respect of procedural, legal and *Shari'ah* issues. As a basic background, the Hire-Purchase Act 1967 and *Mu'amalah* Hire-Purchase Bill are examined in order to comprehend the strength and limitation of each legal document. This focus should make it possible for this study to achieve its objectives.

1.6 SIGNIFICANCE OF THE STUDY

This study aims at providing reasonable solutions and suggestions to help the parties involved in the Islamic hire-purchase transaction, be it the contracting parties or legal practitioners who are dealing with issues and technicalities arising from this contract. It may serve as a material reference for structuring a comprehensive law governing Islamic hire-purchase in Malaysia.

1.7 A PREVIEW OF RESEARCH METHODOLOGY

Qualitative and quantitative approaches are adopted. Data collection has been conducted by semi-structured interviews and a questionnaire survey. The most significant data in this study can be obtained by interviewing the providers and experts in Islamic hire-purchase transaction. Interviewing techniques are used as a main instrument because of its capability of obtaining significant data and topics of interest to the study (Stone 1984; Kvale 1996). This data is further supported by questionnaires survey which aims to find out the perceptions of the Islamic hire-purchase users. As such, a balanced data is gained from each group of parties

involved in the transaction. A 'non-probability' sampling² method is employed in collecting the intended data. Data collected by way of interviews is transcribed and analysed manually (Stone and Harris 1984; Finch 1990; Kvale 1996; Gilchrist 1999; Gillham 2000; Silverman 2001). The quantitative data collected via questionnaire survey is analysed using the Statistical Package for Social Sciences (SPSS).

1.8 STRUCTURE OF THE THESIS

The thesis consists of nine chapters which are structured in two separate parts. Part 1 which consists of Chapter 2, 3 and 4 is mainly theoretical discussion, while Part 2 which comprises Chapter 5, 6, 7 and 8 represents the empirical part of the thesis.

Following this introductory part of Chapter 1, **Chapter 2** discusses the current operation of Islamic hire-purchase (AITAB) in Malaysia comprising its development in Malaysian financial system, mode of operation, list of financial institutions providing AITAB facility and a comparison of AITAB and conventional hire-purchase.

Chapter 3 presents a critical review of the literature in key areas of relevance to the present thesis. The chapter looks at the previous studies in respect of the basic concept of *ijārah* and sale; the legitimacy from the main sources of *Sharī'ah*; and the development and role of Islamic hire-purchase as a mode of financing.

Chapter 4 demonstrates the regulatory framework of AITAB business in Malaysia; the Hire-Purchase Act 1967 and the proposed *Mu'amalah* Hire-Purchase Bill. A comparative study of these two regulations is presented in the later part of the chapter.

Chapter 5 expounds the research methods and design adopted for this study. In particular, the chapter presents the research approach, selection of data-collection methods, design of research instruments, sampling strategies, testing the research instruments in pilot study, distribution of research instruments and mode of analyzing data.

² In 'non-probability' sampling, members are selected from the population in some non-random manner. These include convenience sampling, judgment sampling, quota sampling, and snowball sampling.

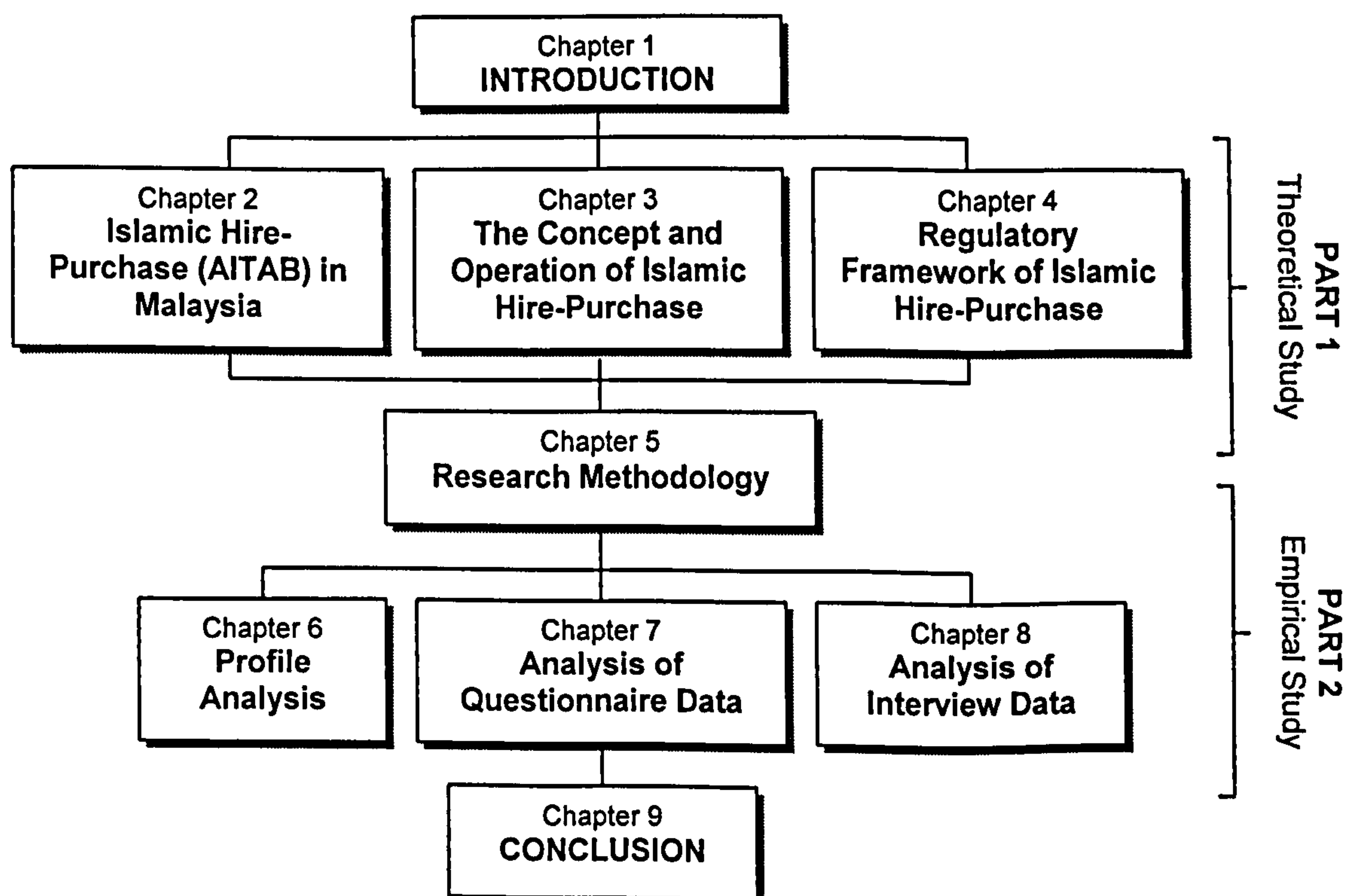
Chapter 6 provides profiles of the target population who have participated in the interviews and questionnaire surveys.

Chapter 7 presents the results of the quantitative analysis of the questionnaire survey which has been conducted among bank customers who have experienced AITAB facility.

Chapter 8 puts forward results of the qualitative analysis of the semi-structured interviews in respect of the implementation and legal framework of AITAB in the Malaysian financial institutions.

Chapter 9 summarises the main findings, makes recommendations and discusses the conclusion of the study. It also states some limitations of the research and points out areas which will be directly and indirectly affected by the outcome of this research.

FIGURE 1.1:
Structure of the Thesis



ISLAMIC HIRE-PURCHASE (AITAB) IN MALAYSIA

2.1 INTRODUCTION

This chapter aims to provide background information relating to the operation of Islamic hire-purchase (AITAB³) in the Malaysian financial institutions. It begins with a background and development of AITAB in the Malaysian financial system. Next, it proceeds to explain how AITAB works, who are involved in the transaction and some of its basic requirements. This is followed by a brief description of financial institutions that offer the AITAB facility. A comparison AITAB and conventional hire-purchase is presented in the subsequent section. Finally the summary of the chapter is presented in the last section.

2.2 BACKGROUND AND DEVELOPMENT OF AITAB

In Malaysia, Islamic banking was formally set up in 1983 by virtue of Islamic Banking Act 1983. The idea to establish an interest-free banking developed as early as in 1970s⁴; only ten years later it became a reality. Subsequently, the Interest-Free Banking Scheme was introduced in 1993, to accommodate a fully-fledged Islamic banking system on a parallel basis with a conventional banking system. In terms of products and services, there are more than 40 Islamic financial products and services that may be offered by the banks using various Islamic concepts such as profit-sharing (*Mudārabah*), partnership (*Mushārah*), cost plus (*Murābahah*), deferred payment sale (*Bay' Bithaman Ajil* or *Bay' Mu'ajjal*), leasing (*Ijārah*), benevolent loan (*Qarḍ-al Ḥasan*), manufacturing contract (*Istisnā'*) and leasing and subsequently purchase (*Ijārah Thumma Al-Bay'*).

During the first ten years of Islamic banking system in Malaysia (1983-1994), while *ijārah* facility has been introduced in the market, Islamic hire-purchase had not been

³ AITAB is an abbreviation of *Al-Ijārah Thumma Al-Bay'*.

⁴ The idea was explored by some *Sharī'ah* scholars, including Dr. Hailani in his B.A. thesis (1974); while Dr. Ali Baharum proposed certain solutions to housing problems in 1980s before the existence of Bank Islam. He proposed alternatives to interest-based products which are welfare-based, combined with cooperative elements, thus, suggested diminishing partnership (*mushārah mutanāqisah*) and Islamic hire-purchase (AITAB).

fully developed yet. Consequently, *ijārah* has been developed through scholar's effort and reasoning (*ijtihād*) into Islamic hire-purchase (*al-ijārah thumma al-bay'* or *al-ijārah al-muntahiyyah bittamlīk*) and has been accepted as a mode of financing. Islamic hire-purchase is known in Malaysia as *al-ijārah thumma al-bay'*(AITAB). Under AITAB mechanism, bank has an authority over the leased asset. If the customer defaulted, bank can take an action against him and repossess the asset. If the customer constantly pays and then satisfies all required payments, the bank will sell the asset to him at the end of the agreement. However, AITAB receives criticism which questions the validity of AITAB on two grounds:

- (a) purchase price of the leased asset is not a real price, taking into account the value of the asset, the market condition etc.
- (b) AITAB appears to be similar to a conditional sale, in which the owner has to sell the leased asset to the hirer, no matter what happens.

In this respect, Malaysian *Shari'ah* scholars argued that AITAB structure is based on sale and purchase concept made on mutual consent between owner and hirer. The main purpose of AITAB is to let the owner holds the title of asset until a full payment is made by the hirer. This is to protect the owner from risk of default. As an owner, he can use and dispose the asset as he wishes, thus, he can also promise to sell it to the hirer under certain circumstances.

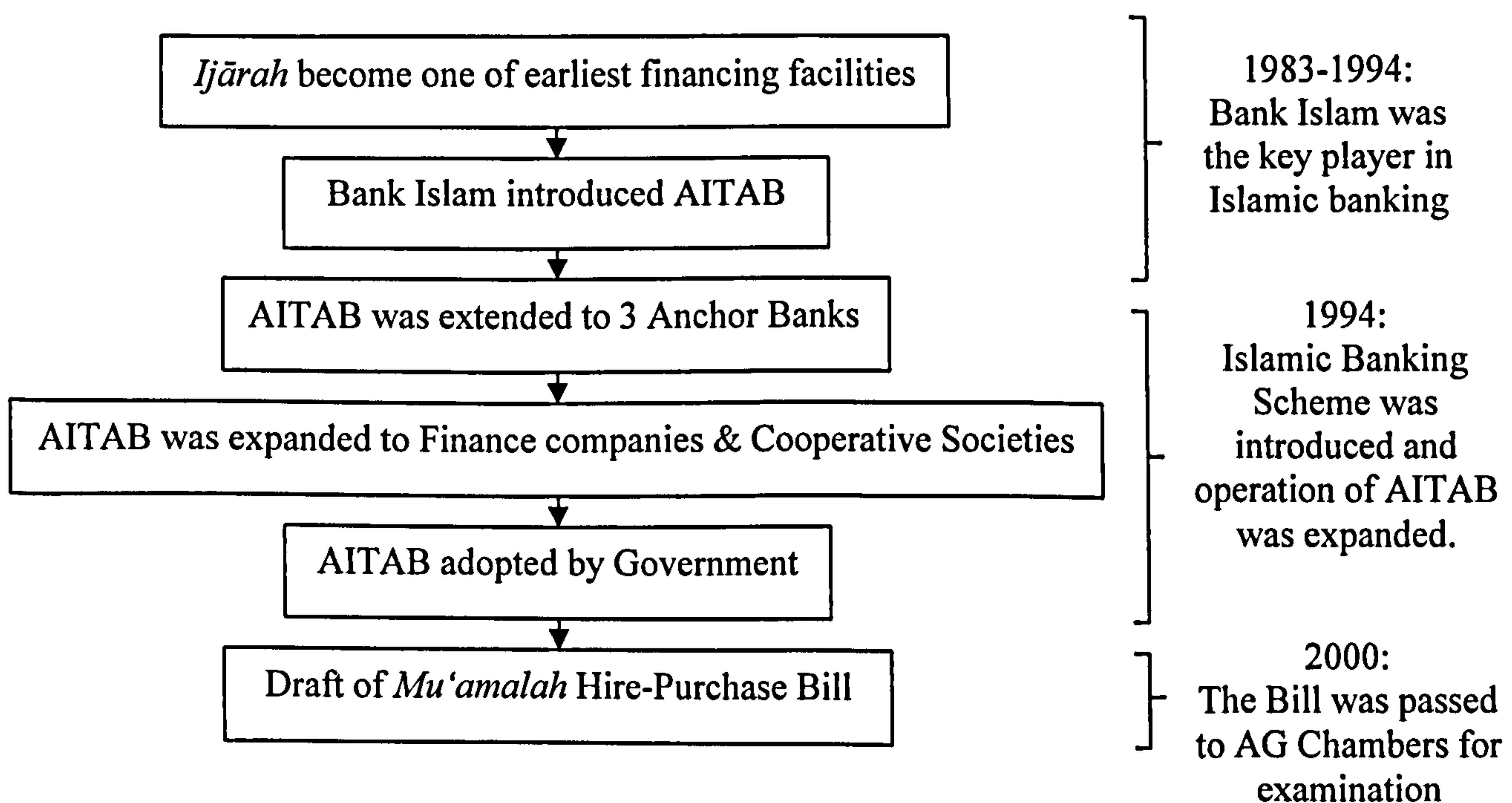
The operation of AITAB has undergone several phases. Bank Islam was the first bank that initiated AITAB facility. Its operation was then extended to conventional banks under Islamic Banking Scheme (IBS), which were pioneered by three anchor banks; Maybank, Bank Bumiputera Malaysia Berhad and Bank Rakyat. Consequently, Bank Islam set up a consultant to assist other banks and finance companies to operate IBS thus expanded AITAB operation to finance companies and cooperative societies. By this time, AITAB has been received very well to the extent that, the government adopted it in their dealings.

Hire-purchase business in Malaysia is a unique arrangement, in which it calls for involvement of few ministries. The most significant role is played by Ministry of Domestic Trade and Consumerism which has exclusive jurisdiction over hire-purchase businesses. Any substantial issue should be referred to the ministry. Finance

Ministry hold a power to grant license to finance company that wishes to offer AITAB. Since motor vehicles are the most demanded goods under AITAB financing, the transaction will certainly involve Ministry of Transportation which handles approval of vehicle's grant and license.

Despite having been successfully operated and accepted by the industry and government, AITAB is lacking in *Sharī'ah* regulatory framework that leads it to refer to conventional law. Due to this reason, Bank Islam refused to carry on operating AITAB and resorted to other *Sharī'ah* concept in their financing activities. Efforts have been taken to regulate a specific law for AITAB but the matter is still pending. Although the law has not been passed yet, the industry has implemented AITAB without any rejection, either by the Central Bank, *Sharī'ah* advisors and even the public at large.

FIGURE 2.1:
Development of AITAB

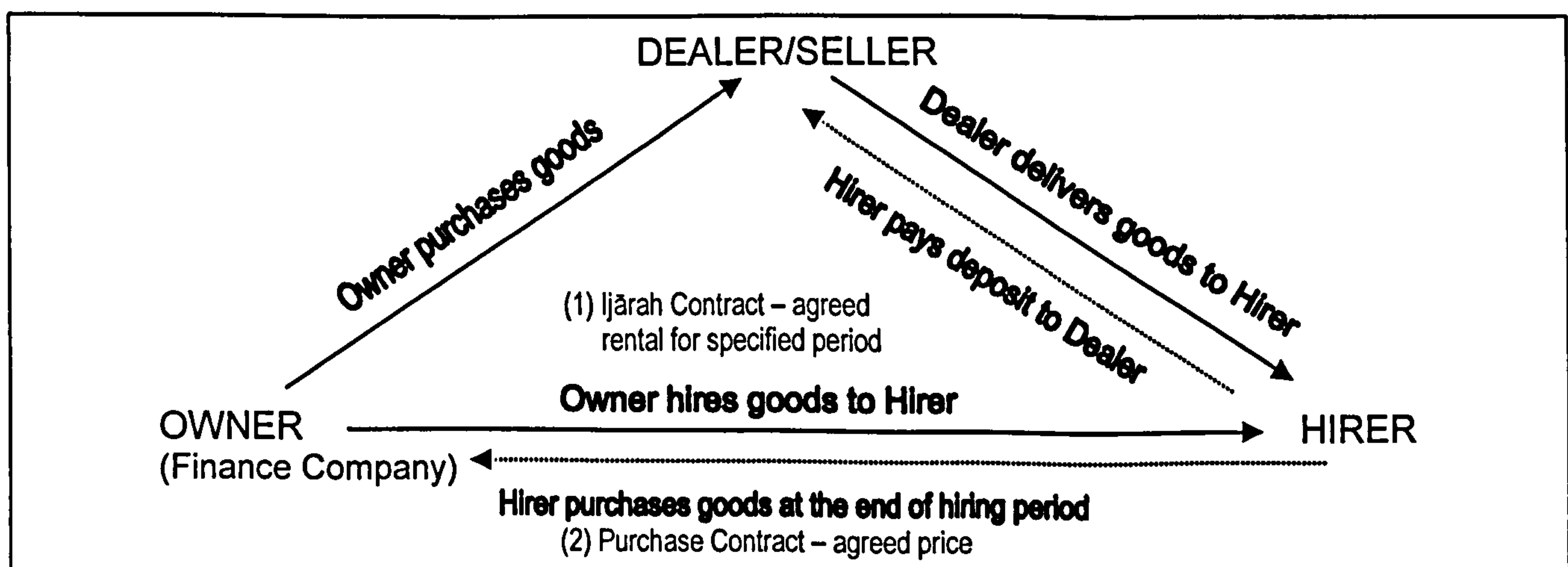


2.3 MODE OF OPERATION

AITAB combines lease contract and sale contract in one trading document. Under the first contract, hirer leases goods from owner at an agreed rental over a specified period. Upon expiry of the leasing or rental period, the hirer enters into a second contract to purchase the goods from the owner at an agreed price. Hence, AITAB involves three main parties: customer, financing company, and vendor. Using, for the sake of illustration, the common example of car financing, AITAB operates as follows:

- (a) Finance Company buys the vehicle from Vendor or car dealer, to the order of Customer.
- (b) Finance Company rents the vehicle to the Customer at a rate agreed upon for a specified period of time.
- (c) The Customer (hirer) agrees to pay for road tax and insurance coverage. He also will be responsible for its maintenance.
- (d) At the end of the period the Finance Company and the Customer will sign the sale and purchase agreement.

FIGURE 2.2:
Operation of AITAB



The monthly amount to be paid in this scheme is estimated using the following formula (2001):

$$\text{Total amount Payable} = \text{Financing amount} + (\text{Financing amount} \times \text{Profit rate} \times \text{Period})$$

(amount borrowed) (year)

$$\text{Monthly Instalment} = \frac{\text{Total Amount Payable}}{\text{Period (years)} \times 12}$$

The minimum period of financing is 1 year or 12 months, while the maximum period is up to 7 years. The determination of period is based on several factors, for instance, type of car (new or second-hand), age of the car, customer's profile, income exposure and market condition. The maximum margin of financing is up to 90% (certain banks provide 100% financing), but will be considered according to the above-mentioned factors.

AITAB facility is not limited to Muslim applicants as non-Muslims could also apply for the scheme and be treated equally. Rebate or *ibrā'* can be given for early settlement, according to a standard formula provided by the Hire-Purchase Act 1967. However, rebate is not given in cash. It merely reduces the balance outstanding. Currently, AITAB is limited to the financing of certain items such as motor vehicles, due to their popularity in the present customers' demand.

2.4 BANKS AND FINANCE COMPANIES PROVIDING AITAB FACILITY

There are currently 31 financial institutions in Malaysia offering Islamic banking services. They comprise 2 Islamic banks, 13 commercial banks, 3 finance companies, 4 merchant banks, 7 discount houses, 1 saving institution and 1 development finance institution. From these institutions, about 13 of them providing AITAB facility for individual and corporate customers. List of financial institutions offering AITAB are as follows:

2.4.1 Affin-ACF Finance Berhad

As a licensed finance company, Affin Finance's principal activities cover the acceptance of deposits from the public and the provision of loans including housing loans, bridging loans, term loans, share-margin financing, revolving credit facility,

hire-purchase, block discounting, industrial hire purchase and floor stocking facility. Affin Finance also provides Islamic financial products including saving account (*Al-Wadī'ah*), profit-sharing (*Al-Mudārabah*), and deferred payment sale (*Al-Bay' Bithaman Ājil*) facilities. In 1999, Affin Finance introduced Islamic hire-purchase in order to cater for consumer needs in vehicle financing. Initially, the proposed name for Islamic hire-purchase was *al-ijārah al-muntahiyyah bittamlīk*, but then one of the *Sharī'ah* advisors suggested it to be *al-ijārah thumma al-bay'* (AITAB). AITAB has been overwhelmingly accepted by the customers, that until May 2004, there were more than 12,000 AITAB accounts being held by Affin Finance. The mechanism of AITAB transaction as provided by Affin Finance is similar to that of other finance companies and banks. The dealer or seller sells the goods to the finance company, which becomes the owner of the goods. Upon settlement of the rentals, the purchase agreement will be executed automatically, thus, transferring the ownership of the vehicle from the finance company to the hirer. In respect of eligibility, application for AITAB car financing is open to Muslim and non-Muslim individual aged 18 years and above. Sole proprietor or partnership, and companies are also eligible to apply for this facility.

(1) Alliance Bank Berhad

Alliance Bank is the latest financial institution that offers AITAB facility. The bank had their AITAB facility launched on the 2nd August 2004. Its commercial name is Alliance Hire Purchase-i and is available to Muslims and non-Muslims alike. Besides vehicle financing, Alliance Bank employs this facility for financing port equipment as the bank has been the main financier of the West Port. The bank also offers financing for construction equipment.

(2) AmFinance Berhad

AmFinance is a subsidiary of AmBank Group which is a leading financial services provider in Malaysia, offering an extensive range of banking and financial services, including investment banking, commercial banking, retail financing, leasing, stock-broking, insurance, asset or fund management, futures and options trading, and offshore banking. AMFinance started to offer AITAB in 1993. The institution provides two forms of *Ijārah* financing, that are Islamic ARIF Hire-Purchase under

personal banking and *Al-Ijārah Thumma Al-Bay'* (AITAB) Industrial Hire-Purchase under enterprise banking (2003). Islamic ARIF Hire-Purchase (personal banking) is based on *Sharī'ah* principle of *Al-Ijārah Thumma Al-Bay'* (AITAB). AmFinance will purchase the vehicle of the customer's choice up to 90% (subject to applicant's qualification with reference to Bank Negara Malaysia's and AmFinance's financing guidelines) of the purchase price, and later hire the vehicle to the customer at the pre-agreed rental amount and hiring period. The customer will then enter into a purchase agreement with AmFinance and the ownership of the vehicle will be handed over to him when he has settled all rentals in full by the time the hiring period expires. The customer is guaranteed the following benefits; free processing, free hire-purchase consultation and enquiries, speedy processing and approval, attractive financing terms and conditions, friendly customer service and easy instalment payments at over 100 branches nationwide

Eligible customers range from individuals aged 18 years and above, sole proprietorships, partnerships, private limited and public listed companies and other commercial organisation can apply this facility. For the purpose of application, AMBank requires certain documents to be enclosed together with the application form. The most important documents are dealer's invoice and registration card. Other supporting documents are also necessary, including proof of identification, salary slips, supplier quotation, a copy of registration card, confirmation of employment etc. Eligible guarantor(s) may be required to support the applicant who does not meet the credit standard. The margin and period of financing are usually determined in consideration of the type of the car. This is illustrated as follows:

TABLE 2.1:

Margin and Period of Financing offered by AmFinance

Type Of Vehicle	Margin Of Finance*	Repayment Period
New passenger vehicle	Max 85% of supplier's invoice	Max 84 months
New commercial vehicle	Max 75% of supplier's invoice	Max 84 months
Used passenger vehicle	Max 70% of supplier's invoice	Max 60 months
Used commercial vehicle	Max 60% of supplier's invoice	Max 60 months
Reconditioned vehicle	Max 70% of supplier's invoice	Max 60 months

Sources: www.ambg.com.my

* Subject to applicant's qualification with reference to Bank Negara Malaysia and AmFinance's financing Guidelines

The second *ijārah* facility provided by the AmFinance is *Al-Ijārah Thumma Al-Bay'* (AITAB) Industrial Hire-Purchase. It is a financing arrangement of leasing or hire-purchase and subsequent purchase for industrial vehicles based on the *Shari'ah* concept of *Al-Ijārah Thumma Al-Bay'* (AITAB). This facility usually attracts the industries, thus all Malaysian-controlled companies and non-resident controlled companies (subject to Bank Negara Malaysia and the bank's approval) are eligible to apply for this facility. The margin of financing is up to 100% (subject to Bank Negara Malaysia and the bank's financing guidelines). The period of financing is to be agreed by customer and the bank on a case-to-case basis. AMBank will also require a security, which is usually the industrial vehicle or equipment. In addition, the registered companies must provide a guarantee of directors or shareholders, while holding companies is expected to furnish its corporate guarantee.

(3) Bank Muamalat

Bank Muamalat Malaysia Berhad started its operations on October 1, 1999 with combined assets and liabilities brought over from the Islamic banking windows of the then Bank Bumiputra Malaysia Berhad, Bank of Commerce (M) Berhad and BBMB Kewangan. As the second full-fledge Islamic bank being established in Malaysia after Bank Islam Malaysia Berhad, it is poised to play its role in providing Islamic banking products and services to Malaysians, irrespective of race or religious beliefs.

Since its establishment, Bank Muamalat has undergone drastic achievements (2003). Although it has a limited capital, variety of products has been successfully offered; one of them is AITAB. This facility provides customers with short to medium term financing by way of leasing and finally acquiring items such as plant and machinery, property, computers and information technology equipment, motor vehicles, heavy machinery and other fixed assets. In other aspect, this facility is also designed to meet working capital requirement for customers who already own the assets. In this case, the customer will first sell the asset to the Bank, which constitutes the financing amount, with the understanding that the Bank will lease it back to the customer. This is also known as Sale and Leaseback transaction. Potential customers are usually business organisations. Perhaps one of the attractive benefits of this facility is that it

provides a source of fund to meet working capital requirement, as in the case of Sale and Leaseback.

(4) Bank Pembangunan and Infrastruktur Malaysia Berhad

AITAB as offered by Bank Pembangunan (Development Bank) involves leasing and then purchasing an asset covering machinery, equipments and vehicles. Under this scheme, Bank Pembangunan purchases an asset according to specifications given by the customer for the purpose of leasing it out for an agreed rental payment within an agreed period of time. The assets will be sold to the customer at an agreed price when the leasing period has elapsed. Detail mechanisms of AITAB as operated by Bank Pembangunan are:

- (a) Bank authorises customer to find an asset supplier
- (b) The customer gets quotation in the bank's name
- (c) He submits application to the bank
- (d) Bank evaluates the application from management, technical, market and investment matter. For example, whether asset is clear from illegitimate elements, such as uncertainty (*gharār*), charge, prohibited unit trust, gambling, and liquors (like hotel or chalet business).
- (e) If the application involves a machine, bank's technical section will examine the machine whether it is fit for purpose
- (f) If the bank satisfies with the application and its purpose, Bank offers and gives quotation to the customer.
- (g) Assets are purchased and invoice is made in the bank's name
- (h) Collection is constantly monitored so that repayment comes from legal utilisation of the asset

Most customers come to Bank Pembangunan to purchase machinery using AITAB facility. They prefer to use AITAB because they do not need to provide capital since Bank Pembangunan usually provides 100% financing, depending on result of evaluation as stated above.

(5) Bank Rakyat

Bank Rakyat started to offer AITAB facility (AITAB Car Hire-Purchase Financing-i) in October 2001. In May 2004 AITAB customers reached more than 10,000. Initially, Bank Rakyat provided financing for national cars only, but it widened its scope of financing in December 2003 to include non-national cars. Today, AITAB facility is offered at a flexible and affordable repayment scheme in purchasing all new national and non-national cars (excluding continental cars) available in the market. The bank provides financing up to 90% of the car value. In term of eligibility for application, Bank Rakyat gives preference to government employees and its subsidiaries that have been in service for a minimum of 6 months, with a minimum salary of RM1000. Employees of companies or co-operatives with a minimum of 2 years' service are also considered. Payment for AITAB financing will be made through salary deduction. The maximum repayment period is up to 10 years (Arshad 2003).

(6) EON Finance Berhad

EON Finance is one of the leading financial institutions offering AITAB. It launched AITAB facility in 1998 and until May 2004, the institution managed to gain profit from one billion AITAB volumes. EON Finance offers motor vehicle financing under AUTO AITAB. The scheme allows a customer to own a motor vehicle with fixed charges on his financing. It becomes an attractive facility because it offers a low fixed rate in the market, guarantees freedom from interest (*ribā*) element and fast approval (subject to complete documents and no records).

Customer can apply for financing a purchase of new cars, vans, four-wheel drive (4WD) and multi-purpose vehicle (MPV); or used vehicle but must not be more than 10 years. As the financing scheme is based on *Sharī'ah* principles, the monthly instalments are fixed. A customer will only pay the same amount of repayment every month until the end of the repayment period. The financing will be up to 90% (new vehicles) and 85% (used vehicles). The eligibility for applying this facility will be based on the assessment of satisfactory financial standing and monthly income (2003).

(7) Hong Leong Finance

Hong Leong Finance Berhad began to offer AITAB or known as Hong Leong Hire-Purchase Financing-i in 1997. By April 2004, its customer reached about 49,800. The scheme provides a total car financing package. It possesses the following features and benefits: speedy approval whereby the approval will be given a day upon submission of an application with all the necessary documents; highly competitive rental rate; rental payment can be easily conducted on-line through all of Hong Leong branches nationwide or Standing Instruction (SI) facility from current and savings account; insurance and road tax renewal services relief the hassle of customers having to go to Road Transport Department (JPJ) and this service is provided free of charge for customer's convenience. The margin and period of financing are determined according to the following aspects:

TABLE 2.2:

Margin and Period of Financing offered by Hong Leong Finance

Type of Vehicle/Age of Vehicle	Margin of Financing	Financing Duration
Passenger (cars), MPV & 4 X 4 vehicles		
New national vehicles	Up to 70%	Up to 60 months
New non-national vehicles	Up to 80%	Up to 84 months
1 to 5 years	Up to 80%	Up to 84 months
6 to 8 years	Up to 75%	Up to 72 months
9 to 10 years	Up to 70%	Up to 60 months
Van Vehicles (Van for all goods carrying vans with GVM/BDM up to 2540kg and passenger carrying vans private registered)		
New national vehicles	Up to 70%	Up to 60 months
New non-national vehicles	Up to 80%	Up to 84 months
1 to 5 years	Up to 80%	Up to 84 months
6 to 8 years	Up to 75%	Up to 72 months
4 X 4 Pick Up Vehicles		
New national vehicles	Up to 70%	Up to 60 months
New non-national vehicles	Up to 80%	Up to 84 months
1 to 5 years	Up to 80%	Up to 84 months
6 to 8 years	Up to 75%	Up to 72 months
Commercial Vehicles (Goods carrying vans above 2540kg up to 5000kg, pick-ups and lorries up to 5000kg)		
New	Up to 80%	Up to 60 months
1 to 3 years	Up to 70%	Up to 36 months

Sources: www.hlf.com.my

Eligibility of application covers Muslim and Non-Muslim. Applicant can be an individual aged 21 years old to 70 years old; sole proprietorship; partnership; or company. It is emphasised that the purpose of financing must be legal under the *Sharī'ah* principle.

(8) HSBC Bank (Malaysia) Berhad

HSBC started leasing-based (*Ijārah*) asset financing options in 2000. At first, HSBC offered leasing (*Ijārah*) in 1999; a year later, the bank introduced Islamic hire-purchase, or known as lease with an option to purchase (LwOP) (Sujak and Ang 2001). The facility is mainly provided for corporate customer to finance the non-Act goods⁵ such as machinery, plant and other capital assets for hiring with an option to purchase at the end of the hiring period. It covers the following terms and features: higher margin of financing; competitive pricing; option to purchase the goods at the end of the lease period at nominal value; early redemption is permitted without incurring high penalty cost and rebate; able to claim capital allowance on top of profit; and better utilization of funds. The bank determines how many percent of financing to be granted after taking into consideration of several factors, such as, whether the product is flexible and degree of risk arising from the transaction.

(9) Mayban Finance Berhad

Mayban Finance Berhad is one of the largest finance companies in Malaysia in terms of assets, loans and deposits. As a wholly-owned subsidiary of Maybank, the largest commercial bank in Malaysia, it operates 87 branches, 9 Service Centres and 9 Loan Management Centres nationwide. Mayban Finance started to offer competitive AITAB in 1994 when participating as pioneers in Islamic Banking Scheme. In April 2004, ten year after the launching of AITAB, its customer has reached 2.0 billion in total, where 90,000 of them are non-Muslims (Aziz 2003). The facility is to part-finance purchases of any type of brand new or second-hand motor vehicles such as saloon and four-wheel drive. Mayban also finance the purchase of equipment and machinery either for private or commercial purpose. Mayban Finance plans to be all-

⁵ Non-Act goods are goods which are not listed in the First Schedule of Hire-Purchase Act 1967. The goods include machinery, industrial equipment, plant and other capital asset.

out in AITAB operation because of benefits it has to offer, such as overdue interest of only 1% and Islamic default rate is only 2%.

(10) OCBC Bank (Malaysia) Berhad

OCBC Bank (Malaysia) Berhad is an institution that is wholly-owned by OCBC Singapore. The bank introduced Islamic industrial hire-purchase scheme, known as IHP-i in June 2002, in support of the Government's call to make Malaysia a regional Islamic financial centre (2002). The product is the third Islamic financial facility offered by OCBC apart from leasing-i (*Ijārah*) and Equipment Financing-i (*Bay' Bithaman Ājil*). Since its launching, Islamic hire-purchase has marked an encouraging progress in the business. At April 2004, there were about 121 million Islamic hire-purchase volumes from 277 applications. The bank aims to reach 300 million volumes in the future. Currently, the bank offers the facility to corporate customers such as manufacturers, printing companies, small and medium enterprises (SME) for financing industrial equipments, heavy machinery and many other non-Act goods. Financing could reach up to RM 200,000 per application. Conditions and eligibility of application are similar to those prescribed by other financial institutions. AITAB is also to be listed in Securities Commission Islamic index which exposes it to the secondary market.

(11) Public Finance Berhad

Public Finance commenced Islamic Banking operations on 21 August 1993 and was the first finance company to introduce Islamic Banking Scheme. The Islamic Banking products and services are currently available at all 68 branches nationwide. AITAB was introduced in 1996 but its volume started to increase in 2000 and over. In April 2004, there were about 4.5 billions of AITAB volumes (Piow 2003). Public Finance offers the following features and benefits of AITAB scheme: competitive rate of financing; high margin of financing of up to 85%; flexible tenure of financing of up to 7 years; fast approval; and InterServe banking services where AITAB application can be made at both Public Finance and Public Bank branches.

Public Finance requires several conditions relating to certain aspects to be fulfilled before applying for AITAB scheme. These include the following matters:

- (a) Eligible applicant can be individuals, sole-proprietorship or partnership, or companies. For individuals, he must be 18 years of age and above, and his monthly income must be of at least 3 times the monthly instalments.
- (b) Type of goods is motor vehicles, either for private or commercial use.
- (c) Profit margin of financing ranges from 5.90% to 10.0% p.a. flat depending on the type and age of vehicle and applicant's qualification.

The margin and period of financing are basically determined according to the age of the vehicle. They are illustrated as follows:

TABLE 2.3:

Margin and Period of Financing offered by Public Finance

Age Of Vehicle	Margin	Period
New	Up to 85%	Up to 84 months
1-5 years	Up to 80%	Up to 60 months
6-7 years	Up to 75%	Up to 48 months
8-10 years	Up to 70%	Up to 48 months

Source: www.publicfinance.com.my

Public Finance receives a good cooperation from some dealers who are supportive to Islamic banking. They will first suggest Islamic product to a customer unless he opts to use conventional facility. AITAB also brings benefits to the bank that its default non-performance loan (NPL) is less than 1%. This is due to religious element and consciousness, particularly among Muslim customers who usually pay on time and satisfy all debt due before performing pilgrimage (*Hajj*).

(12) Southern Finance Berhad

AITAB is known as ASFAR in Southern Finance (SFB). ASFAR provides financing of passenger vehicles and light commercial vehicles. Its mechanism is not very different from other institutions. The customer identifies the car or vehicle to be hired and applies for financing from SFB. SFB will purchase the vehicle identified and subsequently hire to the customer at an agreed monthly rental over a specified period. At the expiry of the hiring period, the customer will be given the option to purchase the vehicle under hire. Southern Finance provides certain guidelines to be adhered to covering the following: the goods can be either new or used vehicles; maximum margin of financing of up to 85%; up to 84 months repayment or 60 years of age

whichever is earlier; and fixed and competitive profit rate. All type of eligible customer can apply for ASFAR. It opens to Muslims and Non-Muslims, individuals aged 18 years and above, sole proprietorship, partnership, companies and other business enterprises (2003).

For the purpose of clearer illustration of financial institutions offering AITAB, Table 2.4 below lists down some points:

TABLE 2.4:
Malaysian Financial Institutions providing AITAB

Institution	Year	Product	Volume
Affin-ACF Finance Berhad	1999	AITAB	12,000 (May 2004)
Alliance Bank	2 August 2004	Alliance Hire Purchase-i	N.A.
AmFinance	1993	<ul style="list-style-type: none"> ▪ Islamic ARIF Hire-Purchase ▪ AITAB Industrial Hire-Purchase 	N.A.
Bank Muamalat	1 October 1999	AITAB	N.A.
Bank Pembangunan	N.A.	AITAB	N.A.
Bank Rakyat	October 2001	AITAB Car Hire Purchase Financing-i	10,000 customers (May 2004)
EON Finance	1998	Auto AITAB	1 billion
Hong Leong Finance	1997	Hong Leong Hire-Purchase Financing-i	49,800 customers (April 2004)
HSBC	2000	Lease with an option to purchase (lwOP)	N.A.
Mayban Finance	1994	AITAB	<ul style="list-style-type: none"> ▪ 90,000 non-Muslims ▪ 2.0 billion in total (April 2004)
OCBC	June 2002	Islamic Industrial Hire-Purchase (IHP-I)	At April 2004, 121 million (277 applications)
Public Finance	1996	AITAB	4.5 billions (April 2004)
Southern Finance	N.A.	AITAB	N.A.

From the above discussion, all financial institutions providing AITAB facility impose quite similar guidelines for purpose of application. Almost all financial institutions provide AITAB for vehicle financing, except Bank Pembangunan, HSBC and OCBC. Anchor banks like Mayfinance, AmFinance, Alliance Bank and Bank Muamalah offers AITAB for individual and corporate customers. Institutions like Affin Finance, Bank Rakyat, EON Finance, Hong Leong Finance, Public Finance and Southern Finance put sole concentration on vehicle financing due to increasing demands from the public and corporate customers.

2.5 A COMPARISON OF AITAB AND CONVENTIONAL HIRE-PURCHASE

AITAB is developed on the basis of *Sharī'ah* principles of *ijārah* and sale which must be adhered to by the parties involved in the transaction. Many Islamic finance practitioners found that certain *Sharī'ah* guidelines restrict the operation of AITAB and make it almost impossible to be implemented although the facility promises a very bright future in banking and finance sector. Realizing its potential, Islamic financial engineers have attempted to develop the facility in a way to make it more flexible, competitive and at the same time comply with minimum standards prescribed by *Sharī'ah*. Such development and modification, in fact, bring AITAB closer to the conventional practice.

In practice, AITAB and conventional hire-purchase are seen relatively identical in most aspects. For instance, both are governed by the same law, Hire-Purchase Act 1967 (HPA). The subject matter of both transactions includes all goods as specified in the First Schedule of HPA, comprising consumer goods and motor vehicles. Both apply to the same group of customers consisting of individual, sole proprietors, partnership and corporate companies. The same approach is taken in respect of management and maintenance responsibility whereby these matters are borne by the hirer as he is the regular user. The owner will bear cost of insurance for the first year of agreement; for the subsequent years, it will be at the hirer's expenses.

Other similarities include term charges, period of financing and early settlement. Term charges are calculated based on formula set in Hire-Purchase Act 1967 and according to prevailing market rate. The minimum period of financing is 12 months, while the maximum is up to 84 months. In matter of determining early settlement, the Hire-Purchase Act 1967 has specified the manners of exercising this right. However, the granting of rebate is the bank's right, thus, it is up to the bank to exercise its discretionary power in this matter.

Despite their close similarity, in some basic aspects they are comparatively different. To illustrate, conventional hire-purchase transaction is commonly perceived as an ordinary type of loan; AITAB on the other hand is regarded as a financing

instruments. The former results in a relationship of debtor and creditor between the owner (bank) and hirer (customer), whereas in the latter transaction, there is a sale and purchase executed between the bank as seller and customer as buyer. Conventional hire-purchase is a hiring of goods with an option to purchase at the end of the agreement. AITAB involves two transactions undertaken in sequence; *ijārah* (leasing) in the first phase and *bay'* (sale and purchase) in the second phase. The principles of each transaction must be observed in its respective stage. However in practice, these principles, particularly *ijārah* principles have been taken little consideration by the bankers, mostly because they are unwilling to hold a responsibility as the owner of the goods.

AITAB follows *Sharī'ah* principles as well as the spirit of Hire-Purchase Act 1967, while conventional hire-purchase follows only HPA. The source of fund in AITAB facility is derived from permissible (*ḥalāl*) funds only. It means that the fund should not come from *Sharī'ah*-prohibited activities such as gambling, prostitution, bar or club which sell liquor etc. This requirement has been observed by all financial institutions and monitored by the Central Bank. In contrast, there is no limitation of its sources of funds in conventional hire-purchase facility.

In respect of the agreement, conventional hire-purchase has a standard hire-purchase agreement based on Hire-Purchase Act 1967, which incorporate details of the transaction, conditions and warranties, parties' rights and obligations, offences and penalty. While AITAB agreement is also based on Hire-Purchase Act 1967, it has an additional agreement that is '*Aqd* letter'⁶ (acceptance letter) to denote an offer and acceptance of transactions; while a conventional hire-purchase does not have such agreement (2001). Local practices and some mutual arrangements made by the parties should be clearly specified in the agreement.

⁶ '*Aqd* letter is a supplementary document to the main Hire-Purchase Agreement. It contains the description of asset and undertakings by the finance company and customer in the following matters: (a) that the AITAB transaction will be bound by the Hire-Purchase Agreement and Schedule 2 of HPA, (b) that the asset on hire-purchase shall be used for purposes which do not contravene the *Sharī'ah*, (c) agree that Hire-Purchase Act 1967 shall be governed and is applicable to the transaction, (d) that other provisions in HPA 1967 which do not contradict the *Sharī'ah* will remain in effect for both parties.

TABLE 2.5:

Differences between AITAB and Conventional Hire-Purchase

	AITAB (ISLAMIC HIRE-PURCHASE)	CONVENTIONAL HIRE-PURCHASE
Definition/ Concept	<ul style="list-style-type: none"> ▪ 2 contract ('<i>aqd</i>) in sequence ▪ interest-free 	<ul style="list-style-type: none"> ▪ hire then option to purchase ▪ 1 contract; 2 '<i>aqd</i> in one
Eligible Customer	<ul style="list-style-type: none"> ▪ those who do not involve in immoral activities which against <i>Shari'ah</i> eg. Gambling, drug and prostitution. 	<ul style="list-style-type: none"> ▪ No such limitation as AITAB ▪ Individual and non-individual who have good credit rating
Type of Goods	<ul style="list-style-type: none"> ▪ similar to conventional hire-purchase ▪ non-Act goods; industrial goods 	<ul style="list-style-type: none"> ▪ refer to 1st Schedule of HPA ▪ non-Act goods
Profit Margin/ Term Charges	<ul style="list-style-type: none"> ▪ flat rate, similar to conventional ▪ lower margin for non-Act goods ▪ 3 - 4% ▪ rental based on profit ▪ <u>cost price + profit</u> no. of instalments 	<ul style="list-style-type: none"> ▪ Maximum 10% ▪ <u>cost x interest rate</u> Year ▪ based on interest
Period of Financing	<ul style="list-style-type: none"> ▪ same with conventional hire-purchase ▪ Maximum: 7 years, Minimum: 1year 	<ul style="list-style-type: none"> ▪ Maximum: 84 months, Minimum: 12 months
Calculation of Instalment	<ul style="list-style-type: none"> ▪ Fixed rate 	<ul style="list-style-type: none"> ▪ Fixed rate
Ownership	Asset purchased in the name of customer	Remains with owner (bank)- asset purchased in bank's name
Transfer of Ownership	<ul style="list-style-type: none"> ▪ bank gives release letter after full settlement ▪ a document evidencing the transfer 	<ul style="list-style-type: none"> ▪ After payment of the last instalment or upon early settlement ▪ gradual retirement
Maintenance Responsibility	<ul style="list-style-type: none"> ▪ similar to conventional hire-purchase ▪ hirer bears the responsibility 	<ul style="list-style-type: none"> ▪ Maintenance responsibility not put on Owner because it is not pure lease
Documentation	<ul style="list-style-type: none"> ▪ Follows standard hire-purchase but add '<i>Aqd</i> letter. ▪ 2nd Schedule, AITAB Agreement, AITAB Guarantee Agreement, AITAB Purchase Agreement, '<i>Aqd</i> Letter (if applicable), Release letter 	<ul style="list-style-type: none"> ▪ Hire-Purchase Act 1967 ▪ 2nd Schedule, HP Agreement, Guarantee Agreement, Release letter
Governing Law	<ul style="list-style-type: none"> ▪ Hire-Purchase Act 1967 ▪ <i>Shari'ah</i> law ▪ Guidelines from Bank Negara Malaysia 	<ul style="list-style-type: none"> ▪ Hire-Purchase Act 1967
Taxation	<ul style="list-style-type: none"> ▪ treated as leasing expenses ▪ Nominal RM10 ▪ In certain circumstances, Government exempted stamp duty for Islamic products 	<ul style="list-style-type: none"> ▪ RM10
Early Settlement (Rebate/ <i>Ibra'</i>)	<ul style="list-style-type: none"> ▪ rule 78 ▪ similar to conventional hire-purchase ▪ Bank's right, looking into current practice ▪ Bank's discretion, cannot declare, if so obliged to give 	<ul style="list-style-type: none"> ▪ Rule 78 ▪ 3 months notice ▪ Statutory calculation
Penalty for Late payment	<ul style="list-style-type: none"> ▪ 1% of outstanding amounts ▪ charged on principal, example: Instalment=\$300, next month, must pay \$600.30 (300+300+1%) ▪ binding by BNM circular ▪ treatment of penalty after maturity ▪ discretion of bank 	<ul style="list-style-type: none"> ▪ impose late charges ▪ 8% (Hire-Purchase Act 1967) ▪ If 2 successive defaults, instalment are calculated again and charged. Total amount will be different and exceed original amount in agreement
Insurance responsibility	<ul style="list-style-type: none"> ▪ Same to conventional in respect of responsibility to bear insurance cost ▪ Islamic insurance (<i>Takāful</i>) ▪ Comprehensive- not 3rd Party 	<ul style="list-style-type: none"> ▪ bank's responsibility during first year ▪ hirer's responsibility in subsequent years ▪ Third-party insurance

Purchase price of goods in conventional hire-purchase is determined by timing its cost price with prevailing interest rate. In contrast, purchase price in AITAB is calculated by adding the cost price with an agreed amount of profit based on *murābaḥah* principle. The profit is determined based on market value or certain benchmarks at the time of agreement. The profit element in AITAB is permissible, despite its similarity to an interest charge, provided it is a fixed charge relating to tangible asset (Lewis and Algaoud 2001). Instalments or periodic payments are computed by dividing the purchase price with period of agreement which is usually in months (12 months, or more).

In conventional hire-purchase, goods are purchased in the name of customer from dealer or vendor. This is not the case in AITAB where the ownership remains with the bank as an owner, thus, the goods are purchased in the name of the bank. The reason is that the foremost condition of leasing (*ijārah*) is an object cannot be leased out unless it is in possession of the owner.

Transfer of goods in AITAB can be made by selling it to the hirer or giving it as a gift at the end of *ijārah* period or when the lease agreement is terminated. Such a transfer must be evidenced in a separate document (2000). In contrast, there is no clear indication of how ownership is transferred to the hirer in conventional practice. The hirer usually regards he owns the goods absolutely when he settles the final payment without executing any document evidencing the transfer.

One of significant difference between AITAB and conventional facility is in respect of imposition of late penalty fee. Defaulters under conventional hire-purchase will be charged 8.0% per annum; while in AITAB scheme, the penalty for late charges is only 1%. Yet there are some institutions that do not charge their customers for default as one of their promotion strategies. In addition, the charged amount is very small, thus, they could not benefit much from it. Even if they impose the penalty, such sentence should confer a positive impact, not oppression to the customers.

Finally, AITAB requires its user to use Islamic *takāful* as an insurance coverage, while conventional user will necessarily subscribe to a comprehensive conventional third-party insurance policy.

Taxation issue is an interesting one to ponder although both Islamic and conventional facilities are imposed with the same amount of fees. In documentations of Islamic products, stamping charge will only be levied to the first or main agreement only. Other contracts will not be charged (Alias 2004). This means execution of AITAB agreements comprising the main agreement, *ijārah* agreement, sale and purchase agreement and *'aqd* letter will not incur more stamping costs than that of conventional facility.

From the above discussion, it is found that the ideas behind AITAB operation are close to those of conventional hire-purchase especially in procedural aspect. In fact, hire-purchase practices (conventional or Islamic) aim to protect the interest of the hirer, in particular, and other parties involved such as owner and guarantor, in general. Thus, it is no surprise to find that most principles in conventional hire-purchase are essentially acceptable in *Sharī'ah* (Collett 1995; Weist 2000). Although AITAB and conventional hire-purchase appeared to be quite similar in practice, AITAB should be clearly distinguished from the conventional one because both are of different principles in some aspects. In fact, there are number of conflicting features between the two, from *Sharī'ah* point of view as well as in practical aspects. Most important, AITAB practice requires the highest ethical standards including fair dealings, full disclosure and honest written contracts.

2.6 SUMMARY

This chapter presents development of Islamic hire-purchase (AITAB) in Malaysia, its mode of operation, lists of financial institutions offering AITAB facility and comparison of AITAB and conventional hire-purchase. Malaysia becomes the leading player in developing Islamic hire-purchase by launching Islamic banking scheme in 1994 which is participated by major commercial banks in Malaysia. The discussion reveals that AITAB facility is currently provided by 13 financial institutions which generally operate the facility using the standard mechanism as illustrated in the previous section. There are some institutions which adopt different modes of operation, such as sale and leaseback arrangement and granting an option to the customers. AITAB is widely applicable to finance motor vehicles, but some institutions extend its application to industrial and construction goods.

Although AITAB has been operating more than 10 years ago, it is criticized as failing to comply with *Sharī'ah* principles of hire-purchase. The need for a more *Sharī'ah*-compliant alternative has been expressed by the Muslim scholars. Accordingly, the Malaysian government has issued a *Sharī'ah* Bill in order to overcome the limitations in AITAB operation.

Therefore, it is vital to focus on understanding the *Sharī'ah* concepts and legitimacy of Islamic hire-purchase in order to assess the current practice of AITAB and the extent of its compliance to the *Sharī'ah* requirements. The next chapter will review relevant classical and contemporary works of *Sharī'ah* scholars in the area of Islamic hire-purchase covering its nature and legitimacy in the light of the main *Sharī'ah* sources and legal rulings of the Muslim jurists. By understanding the basic concepts and requirements of Islamic hire-purchase, it is hoped that the current model of AITAB can be further improved to make it closer to a *Sharī'ah*-compliant structure.

THE CONCEPT AND OPERATION OF ISLAMIC HIRE-PURCHASE

3.1 INTRODUCTION

The previous chapter has revealed that Islamic hire-purchase (AITAB) facility has been accepted by bank customers in Malaysia especially in financing of consumer products and motor vehicles. Realizing the facility's potential, the Malaysian financial institutions become very keen to promote the facility by providing the best service and most convenient financing arrangements to attract prospective customers to apply for the facility offered by respective financial institutions. The eagerness to offer the best and competitive AITAB services to the customers' convenience and satisfaction has resulted in a real concern about whether or not such facility really complies with the *Sharī'ah* requirements in its procedure and documentation. To determine the legitimacy of the current operation of AITAB, reference should be made to the *Sharī'ah* sources and juristic works in this area.

It is worth noting that most current works in the area of Islamic hire-purchase have concentrated on the experience of Malaysia, Saudi Arabia, Egypt and United Kingdom. Classical literature on Islamic hire-purchase is very scanty. Most studies refer to *ijārah* and sale transactions separately, but they hardly make headway to define Islamic hire-purchase as a special product. This chapter reviews relevant works in the area of study covering development of Islamic hire-purchase, its concept from *ijārah* and sale aspects, its legitimacy from the main sources of Islamic law based on leasing (*ijārah*) and sale contracts; and its development and role as a mode of financing.

3.2 DEVELOPMENT OF ISLAMIC HIRE-PURCHASE

The practice of hire-purchase dates back to England in 19th century in which it is commonly known as lease purchase (*al-bay' al-ijārī*) or lease ending with ownership (*al-ijārah al-tamlīkiyyah*) (Al-Zuhayli 2002). It became greatly appealing to consumers who wished to own a property but were unable to pay its cash price. Under

a hire-purchase scheme, a consumer is given the possession of the goods in consideration of an initial payment and a promise to make regular payments or instalments over certain period of time. During this period the consumer is granted a complete possession and enjoyment in the goods without having to bear any risk of ownership until he has completed paying all the instalments. It was hardly remarkable that hire-purchase became very popular as a method of acquiring property, particularly the consumer goods.

As such, the concept of hire-purchase was unsurprisingly unknown by the classical Muslim scholars as there was no authoritative written work or indication in reference to it. The Muslim scholars were inclined to discuss hire and purchase separately under different headings like 'The Book of Sale' (*Kitāb Al-Bay'*) and 'The Book of Letting' (*Kitāb Al-Ijārah*)⁷. Interestingly, these two headings were put in sequence in most Islamic jurisprudence (*fiqh*) books, probably because both contracts, being the most important contracts in commercial activities, are closely related. While classifying various types of contracts in the Islamic commercial activities, Bakar (2000) admits that the basic contract in many cases and situations are contract of exchange and contract of utilization of usufruct. The former is a contract of sale or *bay'* which implies the transfer of ownership of a property from one party to another; while the latter is a leasing contract or *ijārah* which affects the transfer of usufruct of a property from one to another. According to Bakar, both contracts of sale and hire constitute the main commercial activities because the remaining contracts are largely dependent on these two contracts (Bakar 2000).

It was only in 1980's when contemporary Muslim scholars started to widely highlight Islamic hire-purchase as one of the main instruments of Islamic banking. In fact, it has been well-recognised as a potential instrument in promoting the development of Islamic banking and finance, which took place mainly in that era. The potential of Islamic hire-purchase facility was mentioned by some early writings on the subject of Islamic banking and finance. For example, Component of Islamic Banking (Sadeque 1982), Money and Banking in Islam (Ziauddin Ahmed 1983), Interest-Free Banking

⁷ For example in *Bidāyatul Mujtahid* (Ibn Rusyd) and *Majallah Al-Aikam Al-'Adliyyah*, a Code of Islamic Civil Law.

in Pakistan (1983), Islamic Banking and Finance (Hassan 1985), Leasing: An Islamic Financial Instrument (Allawi 1986), The Experience of Islamic Banks in the Middle East (Al-Tamimi 1986), Principles of Islamic Banking Massraf Faysal Al-Islami and Islamic Banking Contract (Shirazi 1988). According to these works, the concept of lease and purchase appears to be well accepted in Islamic commercial transaction, because it is operated in the spirit of *Sharī'ah*, and does not violate the principles of Islamic commercial contract. Among well-known Islamic banks which were established during that period included, Albaraka Investment and Development Company, Jeddah (1982), Faysal Islamic Bank of Bahrain (1982), Bank Islam Malaysia Berhad (1983), Dar al Mal al Islami Trust, Geneva (1984) and Al Rajhi Banking and Investment Corporation (1988)[(Lewis and Algaoud 2001)].

Today, Islamic hire-purchase has been widely accepted and recognised worldwide. It is labelled with various names by different Islamic financial institutions in the world, for instance, 'lease ending with ownership' (Iqbal 1988), 'Islamic lease finance', 'lease-purchase financing' (Salleh 1986; Iqbal and Mirakhor 1987; Ahmed 2000) and 'Islamic finance lease'. In Arabic writings, it is variably described as *Ijārah Wa-Iqtinā'*⁸ (lease-purchase), *Al-Bay' al-Ta'jiri* (leasing culminating in ownership), *Al-Ijārah Al-Muntahiyah Bit-Tamlīk* (Lease ending with ownership) or *Al-Ijārah Thumma Al-Bay'* (Lease and then purchase)⁹. Among these terms, *Ijārah Wa-Iqtinā'* has been frequently used by many contemporary scholars of Islamic banking and finance in their academic writings and discussions. Whatever name is given, it is the Islamic alternative of conventional hire-purchase or financial lease as it is commonly known.

3.3 NATURE OF ISLAMIC HIRE-PURCHASE

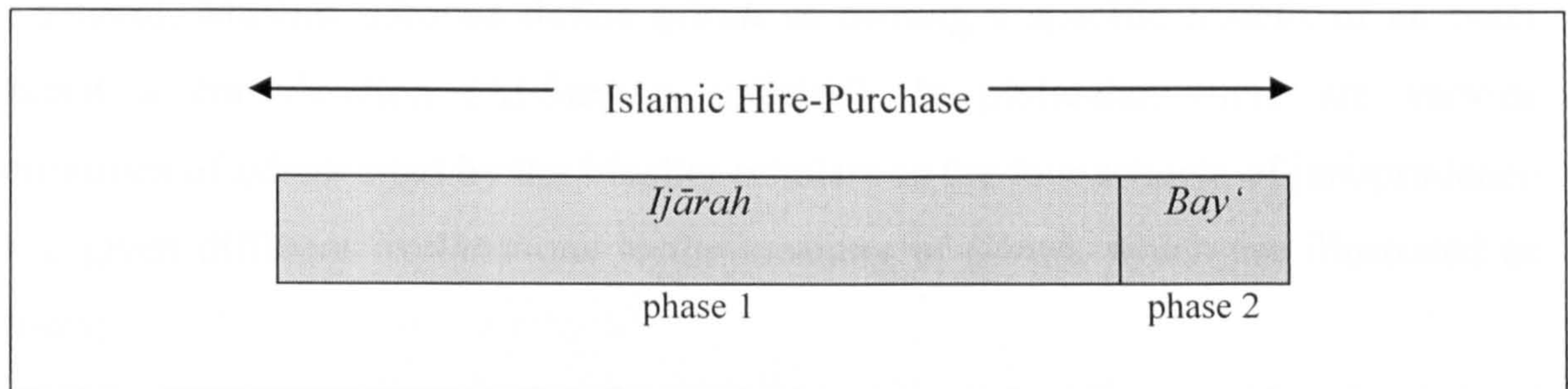
The notion of Islamic hire-purchase comprises two basic elements, i.e. lease and sale or purchase. Basically, it is a contract which bind an individual at two different stages; firstly leasing or *ijārah* stage, and secondly a stage in which the transfer of ownership

⁸ In the earlier writings on Islamic hire-purchase, the facility was labelled *ijārah wa iqtinā'* in Money and Banking in Islam Ziauddin Ahmed (1983).

⁹ In Malaysia, most finance and leasing companies adopt *Al-Ijārah Thumma Al-Bay'* or AITAB, while there are a few companies address the same instrument as *Al-Ijārah Al-Muntahiyah Bit-Tamlīk*.

of an asset is affected by way of sale¹⁰. Its mechanism is largely concerned with *ijārah*, thus the whole Islamic hire-purchase shall mainly be governed by principles of *ijārah*. The mechanism of Islamic hire-purchase is illustrated as follows:

FIGURE 3.1:
Mechanism of Islamic Hire-Purchase



In the next section, the concept of Islamic hire-purchase will be analysed from two angles, i.e. leasing or *ijārah* aspect, and sale or purchase aspects. The aspect of *ijārah* will be thoroughly discussed since *ijārah* represents the most important contract in the Islamic hire-purchase transaction. It will be followed by analysing relevant principles of *bay‘* or contract of sale, but this will be restricted to certain aspects because *bay‘* or sale is a very wide subject.

3.3.1 Definition of *Ijārah* (Leasing)

Leasing and hiring are used interchangeably in the literature (Bakar 2000), which in Arabic terminology denote *ijārah*. The term *ijārah* originates in the Arabic verb ‘*ajara*’ which denotes ‘rewarding’ or ‘recompensing’ (Sulaiman 1992). Literally, *ijārah* is derived from the noun ‘*al-ajr*’ which means compensation, reward, consideration, return or counter value (*al-‘iwad*) against the use of an object (Hassan 1992; Hammad, Al-Tiwajini et al. 1998). From a juristic (*fiqh*) definition, *ijārah* refers to a contract to utilize a lawful benefit against a consideration (Al-Zuhayli 2002). In *ijārah*, the right to use the object is transferred to the hirer, not its ownership. Hence, *ijārah* is a sale of usufruct not of a physical entity.

¹⁰ The ownership can also be transferred by way of simple gift (*hibah*) Rahman (2001).

Technically, *ijārah* is an agreement between two parties, one being the owner of the asset, who gives possession of the assets for the use of the other party, the hirer, on an agreed rental over a mutually agreed period (Uz-Zaman 1993). It is also defined as transferring the usufruct of a particular property to another person in exchange for a rent claimed from him (Usmani 2002).

In general, Muslim scholars define *ijārah* as owning a specific benefit of an asset against a consideration (Al-Sanhuri undated). In particular, there are various definitions of *ijārah* cited by the Muslim scholars as the four schools of jurisprudence have given different explanations to the meaning of *ijārah*, which are illustrated as follow:

- (a) The Maliki¹¹ School defines *ijārah* as a transfer of ownership of permitted usufruct for a known period in exchange for compensation (price) (Kharofa 1997; Al-Zuhayli 2003; Al-Jaziri undated; Al-Sanhuri undated).
- (b) The Hanbali¹² School has described *ijārah* as a contract where the subject matter is lawful and for defined use (*manfa'ah*); corporeal object (*'ayn*) is also lawful and determined; and for a specific period of time (*ibid*).
- (c) The Hanafis¹³ define *ijārah* as a contract intended to give ownership of a determined and legitimate usufruct (*manfa'ah*) of a rented corporeal object (*'ayn*) against a consideration (*ibid*).
- (d) The Shafi'is¹⁴ view *ijārah* as a contract where the subject matter is the determined, legitimate, assignable and lawful usufruct of an object against a fixed consideration (*ibid*).

The above definitions vary in their wordings but they are actually unanimous in the substantial meaning of *ijārah*. All four schools of jurisprudence are in agreement that *ijārah* is a contract for utilising the usufructs (*manfa'ah*) of a defined object against a determined consideration. According to Kharofa (1997), the scholars of jurisprudence

¹¹ This is the opinion of Al-Dardīr and Al-Qarāfī from the Maliki School

¹² This definition is given by 'Ibn Qudāmah, Al-Buhūtī and 'Ibn Qayyim Al-Jawziyyah from the Hanbali School

¹³ 'Ibn Al-Humām, Al-Kāsānī and 'Ibn 'Ābidīn from the Hanafi School provide this definition.

¹⁴ This is the definition provided by A-Khatīb Al-Shirbīnī from the Shafi'i School

schools have unanimously agreed that *ijārah* is a contract on using the benefits or services in return for compensation.¹⁵

Al-Sanhuri (undated) asserts that the above juristic definitions lead to three significant aspects of *ijārah* contract. **Firstly**, *ijārah* contract is well-understood as a contract to give the ownership of particular usufruct. In this instance, the hirer has a complete freedom to utilise the usufruct of an asset within an agreed period of time. **Secondly**, the definitions comprise three essential pillars of *ijārah* contract, namely, consent of the contracting parties, a specific asset to be leased out and rental payments. **Thirdly**, the usufruct which is the subject of *ijārah* contract must be identified and capable of being legally and reasonably utilised.

In the Islamic commercial context, *ijārah* refers to a contractual relationship between an owner of a property and a person who wishes to lease the property. Both parties will enter into a lease contract or is also referred to as a hire contract. For example, Al-Rajhi Bank (2001) defines *ijārah* as a process by which usufruct of a particular property is transferred to another person in exchange for a rent claimed from him (Al-RajhiBank 2001). In the context of Islamic banking, Salleh (1986) views it as a lease contract under which the bank or financial institution leases equipment or a building to one of its clients against a fixed charge. The bank will usually put the property up for rent every time the lease period terminates, so the property will not remain unutilised for a long period of time. The title of the property remains with the bank; hence it assumes the risk of recession and other risk associated with ownership.

From the above-given definitions, *ijārah* has been well understood as a contract in which the owner of a property transfers a legal right to use and derive profit from the property, to another person, for an agreed period, at an agreed consideration. In this instance, the owner is called a lessor (*mu'ajir*); the person who uses the property is known as a lessee or hirer (*musta'jir*); the subject matter is the usufruct of the property (*manfa'ah*); and the consideration refers to a rent (*ujrah*).

¹⁵ He has referred the definitions given by the four schools of jurisprudence (*madhāhib*) from Ibn Qudamah, *Al-Mughni*, vol. 5, p. 433.

3.3.2 Definition of Sale (*Bay'*)

Sale or *bay'* presents the main contract of exchange in Islamic commercial transaction. According to Schacht it forms the core of the Islamic law of obligations (Rahman 2001) due to its importance over other kinds of contracts. Sale involves an exchange of a commodity for another commodity (barter trading), or of a commodity for money (ordinary sale), or of money for money (*sarf*) (Bakar 2000).

Bay' is the gerund of the Arabic verb *bā'a* which means "to sell". Therefore, *bay'* being the gerund of *bā'a* literally means "sale" (Amin 1975; Ismail 1995). *Bay'* or sale is defined as an exchange of one item for another on mutual consent (Al-Zuhayli 2003). For the Hanafis, it means the exchange of an owned commodity (*māl*) for another in a specified manner. The Shafi'is define sale as the exchange of an owned commodity for another with the exchange of ownership, and taking possession by the new owner (Al-Zuhayli 2003; Al-Jaziri undated).

Bay' in practical sense denotes both sale and purchase. It is a contract which stipulates the reciprocal exchange of a given quantity of a commodity (*māl*) or service (*manfa'ah*) against a given quantity of a commodity or service (Hammad, Al-Tiwajini et al. 1998; Ismail 1998). The commodity or service in sale contract is deliverable either on the spot or deferred. It is also noted that the commodity includes any acceptable medium of exchange i.e. money.¹⁶

Bay' is also referred to as a contract of exchange between two properties on the basis of ownership of the price and commodity (Moustapha 2001). This means there is an exchange of property between the seller and buyer, whereby the seller's property (commodity) is transferred to the buyer, and conversely the buyer's property (in cash or in kind) is passed to the seller. Ibn Rushd further explains the nature of sale as an exchange of two properties. The exchange can be made between two corporeal properties or exchange of corporeal property for a corresponding liability or of a

¹⁶ In the practical sense, *bay'* is commonly understood as a contract whereby the seller agrees to transfer the goods to the buyer in return of a money consideration called price. This definition is closely similar to that provided in the Malaysian Sale of Goods Act 1957 which defines a contract of sale of goods as a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.

liability for another liability. Each of these three forms of exchange is delayed or immediate (Rushd 1996).

The *Majallah* in Article 105 defines *bai'* as change of property for property and it is either *mun'aqid* (by a concluded bargain) or *ghayr mun'aqid* (not by concluded bargain). Article 106 further states that *bay' mun'aqid* refers to a sale being concluded in proper legal formalities i.e. offer and acceptance to show mutual intention of the parties; while Article 107 clarifies *bay' ghayr mun'aqid* as unlawful sale (*bay' bātil*) (1880).

3.3.3 Definition of Islamic Hire-Purchase

Most literatures refer Islamic hire-purchase to *ijārah wa iqtinā'* or *al-ijārah al-muntahiyah bit-Tamlīk*. According to Wahbah al-Zuhayli, it refers to owning the benefit of certain assets for a specific period of time, by paying an agreed sums of rental, with an agreement that the owner will transfer the rented asset to the hirer at the end of the agreed period or during the period, provided all rental payments or instalments have been made in entirety. The transfer of ownership is affected by a new and independent contract, either by giving the asset as a gift, or selling it at an agreed price (Al-Zuhayli 2002). This definition is agreed by Elahi who refers to *ijārah wa iqtinā'* as a lease agreement combined with an obligation of the hirer to purchase the asset under lease during the lease term or at the termination of the lease (Elahi 2000).

Ijārah wa iqtinā' also means an arrangement to be made by the owner in which he promises to gift the leased asset to the hirer at the end of *ijārah* period, subject to the hirer paying all periodic payments regularly (Sattar, Hasan et al. 2002). Al-Sanhuri further asserts that this arrangement comprises an *ijārah* contract which is then followed by contract of sale, thus, each contract is independent and not combined in one agreement (Al-Sanhuri undated).

In a commercial context, *ijārah wa iqtinā'* is a mode of financing adopted by Islamic banks and other financial institutions offering Islamic products. It is a contract under which the bank finances an asset such as equipment, building or other facilities for the

customer against an agreed rental together with an undertaking from the customer to make additional payments in an account which will eventually enable him to purchase the asset. The rental and the purchase price are fixed so that the bank gets back its principal sum along with some profit which is usually determined in advance (Al-Omar and Abdel-Haq 1996).

The AAOFII *Sharī'ah* Rules for Investment and Financing Instruments describes Islamic hire-purchase as a form of leasing contract which includes a promise by the lessor to transfer the ownership in the leased property to the lessee, either at the end of the term of *ijārah* period or by stages during the term of the contract. Article 11/2 rules that the transfer cannot be made by executing, along with the *ijārah*, a sale contract that will become effective on a future date, because this is not permissible by *Sharī'ah*.

3.4 LEGITIMACY OF ISLAMIC HIRE-PURCHASE

Islamic hire-purchase is a new product, thus, there is unsurprisingly lacking in direct authority of its legitimacy from the main sources. Reference shall then be made to the two components of Islamic hire-purchase; leasing (*ijārah*) and sale contract whose legality are outsourced from the Holy Book (*al-Qur'ān*), Prophet's Tradition (*Al-Ahādīth*) and consensus of scholars (*Ijmā'*). After that, the legitimacy of Islamic hire-purchase is discussed using deduction and analogy based on the three main sources, supported by resolutions made by Muslim scholars.

3.4.1 Legitimacy of *Ijārah*

Muslim jurists agreed that *ijārah* is a permissible contract in *Sharī'ah*. Their approvals are based on the Qur'ān, the *Ahādīth* and the consensus of Muslims. The Qur'anic proofs are derived from the following verses¹⁷:

- (a) The Qur'ān narrates a story of Prophet Moses and Prophet Khaidir where Moses asked Khaidir why he didn't ask for any payment for repairing an old and rundown wall.¹⁸

¹⁷ Abdullah Yusuf Ali, *The Holy Qur'ān; English Translation of the Meanings and Commentary*, King Fahd Holy Qur'ān Printing Complex (undated).

- (b) The Qur'ān tells a story of Prophet Moses who was hired by his father-in-law against a specified consideration for a certain period of time.¹⁹
- (c) The Qur'ān also mentions that wet nurses should be given their due for suckling babies.²⁰ This verse imposes an obligation onto a husband to pay his divorced wife when she agrees to breastfeed his child.

The above verses stress that it is legal and common to do something in consideration of a payment. According to al-Shāfi'ī, the above verses show clearly that the *ijārah* contract is lawful in any permissible transactions (Hassan 1992). Even the first and second verses indicate that the *ijārah* contract had been used in the time of Moses.

The proof from the Sunnah is derived from the *Ahādīth* of the Prophet:

- (a) "Give a worker his fee before his sweat dries up."²¹ In this *hadīth*, the order to pay wages (*'ajr*) is a clear indication of the validity of leasing or utilising the worker's labour for a period of time (Kharofa 1997; Al-Zuhayli 2003).
- (b) "He who hires a person should inform him of his fee."²² (Kharofa 1997; Al-Zuhayli 2003)
- (c) Ibn 'Abbas reported that the Prophet (ص) had cupping performed on him and he gave the cupper his fee²³ (Al-Zuhayli 2003).
- (d) It was reported that the Prophet (ص) and Abū Bakr hired 'Abd Allāh ibn Arqat²⁴ from *Banū al-Dayl* as their guide, on the road to Madinah, on the day of their migration from Makkah (Rushd 1996).

¹⁸ "So they went on until when they came to the people of a town, they asked them for food, but they refused to entertain them as guests. Then they found in it a wall which was on the point of falling, so he put it into a right state. (Musa) said: If you had pleased, you might certainly have taken a recompense for it(18:77).

¹⁹ "Said one of them: O my father! employ him, surely the best of those that you can employ is the strong man, the faithful one. He said: I desire to marry one of these two daughters of mine to you on condition that you should serve me for eight years; but if you complete ten, it will be of your own free will, and I do not wish to be hard to you; if Allah please, you will find me one of the good."(28:26-27)

²⁰ "If they suckle your (offspring), give them their due payment" (65:6).

²¹ hadith narrated by Abu Ya'la, Ibnu Majah, At-Tabrani and At-Tirmizi.

²² hadith narrated by 'Abd-ar-Razzaq and al-Baihaqi.

²³ hadith narrated by al-Bukhari, Mulim, Ahmad ibn Hanbal.

²⁴ At that time he was a non-Muslim Quraysh Rusyd (1990)

- (e) Sa'id ibn al-Mussayeb narrated that Sa'id said, "We used to hire land in return for plants on water canals; the Prophet (ﷺ) disallowed this and directed us to hire it for gold or silver." (Al-Zuhayli 2003)

The above-mentioned *Ahādīth* provide evidence for the legitimacy of *ijārah*. It has been practiced by the Prophet (ﷺ) himself and his companions. The Prophet (ﷺ) has also laid down some guidelines and manners of conducting *ijārah*.

It is also known that the Muslim jurists during the time of the companions of the Prophet (ﷺ) reached a consensus on the permissibility of *ijārah* (Al-Zuhayli 2003). The practice of *ijārah* has been allowed in the time of Prophet (ﷺ) and his companion, because there was a need for such transaction. *Ijārah* is an important contract like sale. If sale is permitted for purpose of acquiring a property, thus, *ijārah* is necessarily allowed for purpose of using a usufruct of the property (Sulaiman 1992).

A valid *ijārah* contract must be formed from required pillars and satisfy several conditions attached thereof. Majority of Muslim scholars have agreed on four essential pillars²⁵ for the formation of an *ijārah* contract (Sulaiman 1992; Rushd 1996; Al-Zuhayli 2003):

3.4.1.1 Two Contracting Parties

There must be at least two parties entering into an *ijārah* contract; a person giving a lease or owner; and a person accepting the lease or hirer. Both contracting parties should be fully qualified and possess legal capacity to execute the contract. They must be sane, adult and free, thus, a mentally-incapacitated person like a child and insane person cannot enter into an *ijārah* contract. Except when such transaction is conducted by a legal representative or *wali*, or guardian in case of a child (Muhammad 2001), then the contract will render valid. In addition, both contracting parties must voluntarily consent to enter into the *ijārah* contract without any coercion.

²⁵ However, the Hanafis affirms on one pillar only, i.e. offer and acceptance. Other essentials such as the contracting parties, subject matter and consideration are included in conditions of a valid *ijārah* contract, not its pillars.

When one of the parties executes the contract against his free will, then the contract will become voidable.²⁶ The owner must fulfil the following conditions:

- He must have full possession and legal ownership of the object before an *ijārah* contract is made effective.
- After the conclusion of the *ijārah* contract, he must give the possession of the leased object or property to the hirer, while he still holds the title of the property.
- He must deliver the property on time, i.e. on the date of commencement of *ijārah* together with all essential accessories which can be fully utilised by the hirer.
- It is the duty of the owner to maintain the leased property in order to retain its benefit which is to be used by the hirer.
- As an owner, he will bear all liabilities rising from the ownership. For example, in a case of renting a house all taxes concerning the house such as Council tax shall be borne by him.²⁷
- In the event of any damage occurs to the leased object due to the hirer's negligence, the owner shall have a right to claim compensation.
- The owner must respect the hirer's right for quite possession and enjoyment in the leased property.

For the hirer, he must abide the following conditions:

- The hirer shall act as a trustee of the owner in treating the leased property properly.
- He must take reasonable care of the leased property and cannot use it in a harmful way.
- If the hirer damages the property, he shall be responsible for the repair and putting the property in a good condition.
- In the event of negligence or misuse on part of the hirer, which may have damaged the leased object, he shall be liable to indemnify the owner.
- It is the hirer's duty to bear any cost of ordinary routine maintenance, such as in case of renting a car, he shall pay for the petrol and engine oil.

²⁶ This rule is based on surah al-Nisā' (4) verse 29 which means:

"O ye who believe! Eat not up your property among yourselves in vanities; But let there be amongst you traffic and trade by mutual good-will; ..."

²⁷ Al-Rajhi Bank (2001) asserts that the owner also bears most liabilities attached to the leased object such as damage to the object, cost of replacement of durable parts and other costs of basic maintenance. The owner can authorise the hirer to undertake all the above liabilities, but the costs must still be borne by the owner.

- Unless the contract stipulates otherwise, the hirer can only use the property according to the prescribed purposes.²⁸ Thus, if he rents a house he cannot turn it into a shop or school or what more a motor vehicle workshop.

3.4.1.2 Offer and Acceptance

Offer and acceptance or *ījāb* and *qabul* refer a situation where one party offers to give an object on lease and another party accepts such offer. The general rules of contract have laid down some guidelines for perfecting a valid offer and acceptance. Firstly, an offer and acceptance must be expressed clearly to show the party's intention. Such expressions may be indicated orally, or by writing, or signal etc. Secondly, a definite acceptance is made in response to a definite offer in the same session. Thirdly, acceptance must correspond exactly with an offer. For example, a person said, "I lease this house to you", the other party must pronounce his consent by saying, "I accept the leased house" or "I accept".

3.4.1.3 Subject Matter

A subject matter of an *ijārah* contract refers to a usufruct or *manfa'ah* derived from a specific object, thus, a usufruct will only exist when the object in which such usufruct is attached to, is in existence. For example, in case of renting a house, the house must physically exist, because the benefit of renting the house will not be obtained if there is no house in existence. The usufruct to be leased out must satisfy certain conditions, namely, it must be legitimate in *Sharī'ah*; it is known by both owner and hirer; it is a benefit that is capable to be handed over to the lessee; it has no defect which could make it incompetence to give intended benefit to the lessee; and its use is limited to certain agreed period (Al-Jazairi 1976; Libabidi 1993). The object in which the usufruct is attached to must be in the form of tangible asset or property. It must comply with certain conditions as follows:

- It must have a valuable use, thus, a thing having no usufruct at all cannot be leased (Usmani 2002).
- It must not be perishable for the whole period of lease (Sulaiman 1992).

²⁸ If no such purpose is specified in the contract, the hirer can use it in a reasonable and ordinary manner. If he intends to use it for an uncommon purpose, he must obtain the owner's express permission in advance.

- It must actually and legally attainable, thus, to lease something which cannot be delivered is not permitted (Al-Sanhuri undated).
- It should be precisely specific.
- It is necessary to make known the purpose for which it is rented.
- In commercial sectors, it is not permitted to lease a property to a company that will use it for Islamically illegal activities, such as to convert it into a gambling centre or bar.²⁹
- The period for using it must be fixed and agreed upon by both parties. Renewal terms must also be stated clearly and should not be left to the owner's discretion (Usmani 2002).

3.4.1.4 *Consideration*

Ijārah contract is executed between the contracting parties against a consideration which is known as rent. The conditions of rent are:

- The amount of rent must be specified in order to void deceit and dispute in the future³⁰ (Al-Jazairi 1976).
- There must be a clear term stating whether the rent will be flat for the whole period of the agreement, or it will be renewed depending on the prevailing market condition. In the later situation, the renewal terms must be stated as to when such action will be taken (i.e. annually or in every 6 months) and the percentage of the probable increase or decrease (e.g. 5%) (Usmani 2002).
- It should be certain and known to both parties (Al-Zuhayli 2003).
- The rent money has to be legal in *Sharī'ah*. Thus, it is not permissible to pay the rent with Islamically illegal things such as wine and pork (Kharofa 1997).
- The manner of paying the rent has to be agreed by both parties (Sulaiman 1992). It must be clearly specified whether the payment is to be made on daily, weekly or monthly basis.
- In addition, they must also agree on methods of paying the rent, either by cash, or cheque, or standing order through the bank account. If there is no such agreement, then the local custom that governs such transaction will be referred to³¹.

²⁹ However, according to Al-Rajhi Bank (2001), it is permissible to lease the property to those whose major activities are *halāl* or permissible even they involve some secondary prohibited activities.

³⁰ The Prophet (ﷺ) commanded, "He who hires a person should inform him of his wages"

- The rent shall fall due from the date of delivery of the leased object, not the date of signing the contract.
- The rent must be paid on an agreed time, failure to do so will amount to a default which will lead to a termination of *ijārah*.
- At the expiry of the lease agreement any new term cannot be pre-determined, but the parties can enter into a new agreement to this effect. This includes continuation of the lease, or sale of the leased asset to the lessee. So if the owner intends to sell the leased object after the lease period has expired, the price can only be fixed under the new agreement. Thus a pre-determined sale price is not permitted.³²

Among all conditions listed above, three principal conditions must be applied to the *ijārah* contract; firstly, the nature of the usufruct must be precisely defined; secondly, the consideration i.e. rental must be of fixed value; and thirdly, the hiring period must be precisely determined (Coulson 1984; Al-Sanhuri undated).

3.4.2 Legitimacy of Sale (*Bay'*)

Bay' or sale contract, when executed according to its rules is made legal and permitted by *Sharī'ah*. The legitimacy of *bay'* is evident by *Al-Qur'ān*³³ that clearly states its approval to *bay'* transaction in the verses below:

- (a) “Allah has allowed trading and forbidden usury” (2:275)

The above verse states without doubt that *bay'* or sale activities (trading) are permitted, but such activities will become prohibited if they contain any element of *ribā* (usury).

- (b) “O you who believe! do not devour your property among yourselves falsely, except that it be trading by your mutual consent;”(4:29)

According to the verse, it is permitted to obtain some profits from a sale transaction, provided it must be made by legal mean. This means the sale must

³¹ For example, in the case of renting a house, the local people usually pays in cash at the beginning of every month, so the parties of an *ijārah* contract may adopt such practices.

³² The rational is to avoid *gharār* or uncertainty in the transaction. The price must be fixed by taking into account certain factors, i.e. market price, condition of the property and mode of payment (cash or deferred).

³³ Abdullah Yusuf Ali, The Holy Qur'ān; English Translation of the Meanings and Commentary, King Fahd Holy Qur'ān Printing Complex

be carried out properly and any stipulation (e.g. provision of profit) to be attached to the sale contract must be mutually agreed upon by the parties.

- (c) *“if it be a transaction which ye carry out on the spot among yourselves, there is no blame on you if ye reduce it not to writing. But take witness whenever ye make a commercial contract; and let neither scribe nor witness suffer harm.”*(2:282)

This verse also evidently permits a sale transaction, and it lays down some guidelines for carrying out different types of sale. If it is a spot sale, the verse suggests to the parties to provide a witness, but if it is a deferred sale such transaction must be reduced to writing, i.e. written contract. The stated conditions aim to make the sale transaction convenient to the parties, and also to avoid any misunderstanding, fraud and dispute in the future.

The Prophet (ص) has given many rules and guidance on methods of conducting a legal and proper sale transaction. Moreover, the Prophet was sent to mankind while people traded among themselves, and he accepted the practice. There are numerous *Ahādīth* regulating the transaction, among them are:

- (a) The Prophet (ص) said, *“Sale must be by consent”*.³⁴ (Ashqar, Rakhiyyah et al. 1998; Al-Zuhayli 2002; Al-Jaziri undated)
- (b) In matter of attitude and behaviour in conducting sale transaction, the Prophet (ص) has given good news to those who are sincere and honest in their dealings by saying, *“A good and honest trader (or whoever involves in trade) will be positioned amongst the Prophets, the righteous people and the martyrs.”*³⁵ (Al-Zuhayli 2003; Al-Jaziri undated)
- (c) The Prophet (ص) also explained one of the important principles in sale transaction in a hadīth narrated by Hakīm bin Hazām, *“Don’t buy anything which you do not have.”*³⁶ (Amin 1975; Al-Zuhayli 2002)

Muslim jurists unanimously agree to approve a sale transaction provided all conditions are satisfied and the parties adhere to the terms of the sale contract. In addition, they firmly state that a lawful sale shall avoid elements of interest (*ribā*), uncertainty (*gharār*) and ignorance (*jahālah*) which may cause doubt in the

³⁴ reported by Ibn Mājah and Ibn Habbān

³⁵ from Abi Sa’id Al-Khudri (r.a.) and reported by At-Tirmizī and Al-Hākim

³⁶ reported by Abū Dāwud, At-Tirmizī and An-Nasāī

transaction, and eventually lead to dispute or mischief among the parties (Amin 1975). Al-Shāfi'ī asserted that the general rule for all sales is permissibility as long as they are concluded by consent of contracting parties, except what has been forbidden by the Qur'ān and the Prophet (ص) (Al-Zuhayli 2003).

From the given definition and legitimacy aspects of *bay'*, a sale contract shall consist of four pillars namely, the contracting parties, offer and acceptance, subject matter, and consideration. Each of these pillars is governed by certain conditions (Anas 1989; Rusyd 1990; Zarqa 1991).

3.4.2.1 Contracting Parties

Both seller and buyer must possess legal capacity to enter into a valid sale contract. They need to fulfil certain conditions, namely, they must be sane, and adult which means they have reached the age of majority, and they are free without oppression. These conditions are vital in order to prove that the parties are in mutual consent (*rido*) to the contract. The consent is expressed by *sighah* i.e. offer and acceptance.

3.4.2.2 Offer and Acceptance

The *Qur'ān* and *Ahādīth* rule that bilateral contracts can only take place by mutual and free consent of the parties. Thus, a combination of offer and acceptance is important to signify mutual consent of the contracting parties. Offer and acceptance must be bound by the conditions as follows (Al-Zuhayli 2003; Al-Sanhuri undated):

- The acceptance should correspond to the offer in respect of its content stating specific subject matter and consideration. For example, if a seller offer to sell a beg for £10, but the buyer agrees to buy it for £5, then the contract cannot be concluded because the acceptance does not correspond with the offer.
- Acceptance must be tendered while the offer is still subsisting. The time period is usually fixed by the offeror but if not it shall be made in a reasonable time depending on the local practice. If the acceptance is made afterwards, it will eventually turn into an offer, thus, will be subject to acceptance by the other party (who was initially the offeror).

- Offer and acceptance must not be subject to a particular condition, or time. For example, a seller says that he will sell something if his father has permitted to do so.
- Both offer and acceptance must be made in the same setting.
- The expressions must indicate the parties' consent to the sale transaction.

Offer and acceptance can be made orally or by word of mouth; by writing; by conduct, e.g. exchanging the commodities; by gesture or known sign of dumb; and by modern ways of communication like telephone, fax, email, teleconference etc. (Niazi 1991)

3.4.2.3 *Subject Matter*

As mentioned earlier, *bay'* is defined as an exchange of property or *māl*. It is obvious that the subject matter of sale must be something which satisfies the characteristic of property or *māl* (Rahman 2001). In *Sharī'ah*, there are three basic attributes of property, namely, it must have some value; it must be a thing which provides lawful benefits in *Sharī'ah*, thus, sale of liquor or casino building is prohibited by *Sharī'ah*; and it must be a lawful property of the seller. Contemporary scholars have also included future product and money as the subject matter of sale because they are capable of being owned legally, although they are not considered as "*māl*" (Moustapha 2001; Usmani 2002). The following conditions shall also apply to the subject matter of sale (Libabidi 1993; Al-Zuhayli 2003):

- The subject matter must be certain and identified by both parties.
- It must be known to the buyer.
- If it is sale by sample, the subject matter must be known by a description of its qualities.
- It must be in actual existence at the time of making the contract, except in *salam* sale,
- It should be deliverable either immediately or at agreed future date, except for contract of *istisnā'*.

3.4.2.4 Consideration

The basis of a sale contract involves a transfer of a subject matter against a consideration. The consideration may consist of any valuable things, like tangible or intangible property, money and also it may be something whose delivery is deferred to the future. However, a consideration is commonly understood in reference to a price of the subject matter which is in a monetary form (Moustapha 2001). Like subject matter of sale, consideration of sale must follow certain similar conditions as to make it a good consideration. Such conditions are (Zarqa 1991):

- It must be in existence at the time of contract. However, if the consideration is money this condition shall not apply, thus it can be on the spot or deferred to future agreed period.³⁷
- It must be a property having value and benefit which are permitted by *Shari'ah*.
- It must be legally owned by its owner.
- It shall be capable of being delivered at the time of contract, except in *bay' mu'ajjal*.
- Its quality and quantity must be made known to the parties.

The foregoing discussion presents basic concept and legitimacy of leasing (*ijārah*) and sale (*bay'*) contract in order to stimulate a general understanding in the subject of Islamic hire-purchase. Sale contract is one of two key elements in an Islamic hire-purchase transaction beside *ijārah* contract. The importance of sale (*bay'*) and leasing (*ijārah*) is inevitable in analysing the legality of Islamic hire-purchase as both are incorporated in the instrument under study at different phases; firstly *ijārah* and secondly sale contract. To ensure the validity of Islamic hire-purchase contract, the parties shall adhere to rules of *ijārah* for a certain period of time in the first stage, and then of sale in the later stage.

³⁷ This rule is provided in surah Al-Baqarah (2) verse 282, "O ye who believe! When ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing Let a scribe write down faithfully as between the parties:"

3.4.3 Legitimacy of Islamic Hire-Purchase

Islamic hire-purchase, like any other contract, has to fulfil all conditions of a valid contract stipulated by the *Sharī'ah*. The contract should be executed by mutual agreement, responsibilities and benefits of both parties should be clearly spelt out, the agreement should be for a known period and against a known price (Ahmad 1994). In particular, Islamic hire-purchase has to adhere to principle rules of *ijārah* and sale contract in respect of conditions imposed onto the contracting parties, offer and acceptance, subject matter of the contract and the consideration as discussed in the earlier sections. Based on these basic conditions, Islamic hire-purchase emphasizes its conformity to the *Sharī'ah* rules in terms of its characteristics and operation.

In determining the legitimacy of Islamic hire-purchase contract, Wahbah Al-Zuhayli has provided four general principles of allowing such contract (Al-Zuhayli 2002):

- (1) *Ijārah* and sale contracts being the basis of the Islamic hire-purchase contract do not operate at the same time; otherwise the whole transaction renders invalid because it signifies an existence of two contracts in one. The two contracts are independent of each other and operate in sequence, not simultaneously.
- (2) Based on *Sharī'ah* ruling that “*anything is permissible until there is a clear prohibition against it*”(Zuhrah 1958), there is no reason for disallowing Islamic hire-purchase contract. The rule gives a wide opportunity to involve in any contractual dealing provided it is not prohibited by the *Sharī'ah* due to its having element of *ribā* or *gharār* or the like; or violating the basic principles of the contract involved. According to Izzi Dien, *gharār* is deduced by examining various contracts which are prohibited because of exchanging that which is not measurable for that which is measurable. This prohibition is due to the potential for deception that could result from not knowing the quantity of one of the exchanged commodities. Once it is established that deception is the objective that prohibits the contract, then any similar contract would be prohibited (Dien 2004). Thus, Islamic hire-purchase contract is permitted provided that there is no element of deception

involving the contracting parties, 'aqd or subject matter of the contract which would render the contract prohibited.

- (3) There is a mutual agreement between the parties to Islamic hire-purchase contract that they shall enter into *ijārah* contract at the first stage, and at its expiry one party will obtain the ownership of the hired property.
- (4) The Malikis clearly approve the combination of *ijārah* and sale in one agreement, for example buying a cloth with a specific price with condition that the seller (tailor) will make or sew it for the buyer. This illustrates that the buyer hires the tailor to make him the cloth and then purchases it.

In particular, the legitimacy of Islamic hire-purchase contract has been resolved by a *fatwā* of Islamic *Fiqh* Academy (Jeddah) since 1985.³⁸ The Academy has allowed the combination of *ijārah* and sale provided the transaction involved the same subject matter (Academy 1985).³⁹ Thus, if a person rents a sedan car for certain period of time and then later decides to purchase a multi-purpose vehicle (MPV) from the same owner, he cannot conclude such transaction by Islamic hire-purchase contract because it does not involve the same subject matter of the contract. This *fatwā* is believed to be one of the earliest rulings on the legality of Islamic hire-purchase contract. As such, it provides a general ruling without explaining the mechanism in detail.

A rather different stand has been taken by Jordan Islamic Bank in determining the legitimacy of Islamic hire-purchase contract. The legal rulings (*fatāwā*) passed by the bank has approved the Islamic hire-purchase contract because it is not a combination of *ijārah* and sale contract. Instead, the party is granted an option to purchase the leased asset at a certain period of time. The *fatwā* rules that *ijārah* contract can accept option because it is a contract of exchange, like sale (*bay'*), but it concerns with exchanging the usufruct of an asset for a consideration. The period to exercise the option must be specified; if such right is not exercised, *ijārah* contract will continue operating until its agreed period has lapsed. All schools of jurisprudence (*madzāhib*), except the Shafi'is allowed an option in *ijārah* contract (Sulaiman 1992). Imam Abu

³⁸ The *fatwā* was passed in the Academy meeting held on 10-16 Rabi'ul Awwal 1406/28 December 1985.

³⁹ The Academy states an opinion expressed by Ibn Rushd who viewed that Muslim jurists are divided in the issue of combining the *ijārah* and sale contract. For instance, the Malikis has allowed the combination, while the Shafi'is disapproved it.

Hanifah approves the exercise of option within three days; while other Muslim jurists extend the period up to one month. According to Imam Ahmad, Abū Yusuf, Muhammad ibn al-ḥasan, Ibn al-Munzir, Ibn Abī Laili, Ishaq and Abu Thur, the period to exercise the option depends on the mutual agreement among the contracting parties. It can be a short or long period of time, but the agreed period must be clearly specified and known to the parties (Bank 1984). Hence, when the hirer exercises an option within the agreed period of time, the ownership of the leased asset is transferred to him and *ijārah* contract is automatically terminated at this point.

About four years after the above *fatwā* of Jordan Islamic Bank has been passed, the 44th International Convention of Islamic Jurisprudence⁴⁰ has approved a resolution that the Islamic hire-purchase can be in either of instalment sale with sufficient security or *ijārah* contract with an option granted to the lessee to be exercised after he has satisfied all *ijārah* instalments. In the later form of contract, the hirer has three options, namely, he can choose to continue the *ijārah* contract; or he has a right to bring the *ijārah* contract to an end and return the leased property to its owner; or alternatively, he can purchase the property with the prevailing market price after the expiration of *ijārah* period.

In addition to the above rulings, a *fatwā* passed by the International Association of Muslim Scholars⁴¹ has ruled that a valid Islamic hire-purchase should consist of *ijārah* contract and gift (*hibah*), which shall follow three conditions; firstly, the period of *ijārah* must be precisely specified and its rules must be observed during that period; secondly, the amount of periodic payment must be fixed; and thirdly, transfer of ownership from the owner to the lessee is made effective by way of *hibah* (gift) at the end of *ijārah* period (Delorenzo 2000).

In the subsequent years, Kuwait Finance House in its legal rulings affirms two significant rules to approve the operation of Islamic hire-purchase. Firstly, in the issue of a promise to sell the leased asset at the beginning of the Islamic hire-purchase contract; whether or not it is permissible for the hirer to agree from the very beginning

⁴⁰ The Convention was held in Kuwait on 10-15th December 1988.

⁴¹ It was passed in Kuwait on 7-11 March 1987.

to buy the asset from the owner at a particular time of *ijārah* period. In this respect, the *fatwā* approves the contract because it is actually concluded by a contract of sale which is independent from *ijārah* contract, not the promise (al-Kuwaiti 1990). **Secondly**, the validity of a sale by an unreal price which does not reflect the real market value of the asset. The *fatwā* allows a sale of a leased asset by a real or symbol price provided the price is agreed and known to the parties (al-Kuwaiti 1990).

In a *fatwā* regarding the validity of auto finance which is currently practiced on Islamic hire-purchase contract, Justice Muhammad Taqi Usmani has approved such finance. He emphasizes that the practice should be on the basis of leasing where at the end of the leasing period the owner would be at liberty either to repossess the asset or sell it to the lessee himself or to any other party. Usmani appears to be in agreement with the earlier *fatwā* that the price of the sale can be determined according to the asset's depreciated value or a nominal value or whatever price the parties may agree upon (Usmani undated).

Al-Sanhuri and Kahf, in support to the above *fatwā*, upholds the legitimacy of Islamic hire-purchase contract on the basis of its compliance to the *Sharī'ah* principles of *ijārah* and sale which are embodied in it. In fact, both contracts of *ijārah* and sale are not contradictory and they can go along together (Kahf 2003). However, Al-Sanhuri emphasizes that the parties must abide the rules of *ijārah* in the first stage of the contract. When the hirer decides to purchase the leased asset, a new contract stipulating principles of sale will be executed. As a result, the *ijārah* contract in the earlier stage is automatically terminated (Al-Sanhuri undated).

The above rulings generally have provided methods of operating a legitimate Islamic hire-purchase contract by three ways of transferring the ownership in the leased asset. Firstly, by means of a promise to sell for a token or other consideration, or by accelerating the payment of the remaining instalments, or by paying the market value of the leased goods. Secondly, by granting to the hirer an option to purchase the asset in a specified and agreed time. Thirdly, by way of a promise to give it as a gift without any consideration or contingent upon the payment of the remaining instalments. The first and the third methods are also provided by the AAOIFI

Sharī'ah Rules for Investment and Financing Instruments which rules that such transfers must be evidenced in a document separate from *ijārah* contract.

Figure 3.2 below illustrates three models of Islamic hire-purchase contract which are allowed by the above rulings.

FIGURE 3.2:
Models of Islamic Hire-Purchase Contract

Stages	<i>Al-Ijārah Wa Iqtinā'</i> (Lease and then acquisition)		
	LEASE → SALE	LEASE → OPTION	LEASE → HIBAH
<i>Ijārah</i> (leasing)	<ul style="list-style-type: none"> ▪ Hirer acts as trustee ▪ Hirer pays rentals ▪ Hirer has intention to purchase the asset 	<ul style="list-style-type: none"> ▪ Hirer acts as trustee ▪ Hirer pays rentals ▪ Decision to purchase has not been made yet 	<ul style="list-style-type: none"> ▪ Hirer acts as trustee ▪ Hirer pays rentals ▪ Hirer has intention to purchase the asset
<i>Iqtinā'</i> (Acquisition)	Asset is sold at an agreed price; nominal amount or market price	Hirer has 3 options: <ul style="list-style-type: none"> ▪ Continue to lease ▪ Terminate the lease ▪ Buy the asset at an agreed price 	Asset is given as <i>hibah</i> : <ul style="list-style-type: none"> ▪ Without any consideration, or; ▪ Upon payment of final instalment

In view of the above authorities, Islamic hire-purchase is a lawful contract which can be operated unless it involves in unlawful elements which are forbidden by the *Sharī'ah*. The contract must follow principles of *ijārah* until the transfer of ownership takes place, in which principles of sale (*bay'*), option (*khiyār*) and gift (*hibah*) must be adhered to at each stage. Under the terms of the hire-purchase contract, the hirer will benefit from the goods for a specified amount of rent to be paid in a fixed number of instalments over a certain period of time. In the area of financing today, it is common to have an understanding between the parties that the goods will become the property of the hirer at the end of the contract, hence, it seems that the first and third models are widely applied by many financial institutions. Accordingly, the next section will look into a practical aspect of Islamic hire-purchase contract when it is operated as a mode of financing in the current Islamic banking system.

3.5 ISLAMIC HIRE-PURCHASE AS A MODE OF FINANCING

The previous sections illustrate that *Sharī'ah* has laid down certain rules and principles for contractual and commercial dealings which include how to conduct hire-purchase transaction. Besides having to adhere to basic principles of contract such as, sufficient legal capacity of parties, offer and acceptance, consent and existence of subject matter; the parties must also observe the ethical aspect when conducting a transaction. Indeed, *Sharī'ah* puts strict guidelines to Islamic hire-purchase transaction in order to ensure complete adherence and compliance to principles of Islamic transaction (*Mu'amalah*).

When Islamic banking system was introduced in the past two decades, *ijārah* is identified as a potential financial product which promises a very bright future, and most important, it is a lawful transaction in *Sharī'ah*. Realizing its potential, Islamic financial engineers have attempted to develop the facility in a way to make it more flexible, competitive and at the same time comply with *Sharī'ah* principles of *ijārah* and sale. The facility is developed from *ijārah* which is not originally a mode of financing but some financial institutions have adopted leasing in interest-based financing which is known as financial lease. Due to increasing demand from customers, who want to own particular goods leasing or *ijārah* was developed into leasing ending with ownership or Islamic hire-purchase.

Today, Islamic hire-purchase is viewed as one of project financing and technical assistance. This facility can be used to finance many activities, which include those in trade and commerce, industry, agriculture and fisheries, housing and personal advances other than those for business purposes and housing. It is significant to note that this facility has been operated in several manners by different banks and regions. In fact, it has been one of the most popular modes of allocating funds by almost Islamic banks, not only in Malaysia, but also in Jordan, Sudan, Qatar and even Islamic Development Bank (IDB).

The emergence of Islamic hire-purchase as a preferred mode of financing for Islamic financial institutions is believed due to its transaction being an asset-backed and

relatively liquid (Hairetdinov 1998). Accordingly, Islamic hire-purchase financing is based upon value of the capital goods or equipment itself and is grounded in tangible property promoting a sense of security. It does not involve debt or interest-based lending (Fisher 1993). One of advantages of being an asset-backed transaction is that, if the asset is of high quality, the bank may not have to rely so much on the credit risk of the customer as on the asset itself. This allows a relatively weaker credit risk customer to obtain *ijārah* financing (Pervez 1990). The lease (*ijārah*) can also be securitized or transferred from one owner to another, or the asset can be sub-leased. It offers the possibility of a floating rate basis, whereas other modes of Islamic financing generally adopt a fixed rate basis (Wohabe 1997).

Other benefits of Islamic hire-purchase facility are tax incentives by which both owner and hirer are able to reduce their tax liability. Being an owner, he is entitled to certain tax benefits; while the hirer can treat rental payments as expense. In addition, Islamic hire-purchase is highly equitable and fully protects the equity rights of owner and hirer (Elahi 2000). For the owner, lease payment is a fair price for the use of asset; and investment deposit provides added comfort against early termination due to default. As for the hirer, he is guaranteed of becoming the owner of asset at the end of the contract.

In international context, the facility provides a good opportunity for an Islamic financial institution to work with leading international companies. For Islamic financial institutions, *ijārah* transactions provide less risk, ensure the security of the underlying assets due to retention of title by the owner and offer the prospects of an attractive rate of return (Fisher 1993). For the hirer or customer, the product is already well-known and understandable. Other advantages are avoidance of a huge initial capital outlay, and positive tax benefits in many countries (Uz-Zaman 1993).

Islamic hire-purchase facility can be utilised to finance a wide range of assets, either for individual or corporate customers. In the current operation, Islamic bank generally offers Islamic hire-purchase financing in addition to cost-plus sale (*murāba'ah*) and deferred payment sale (*Bay' bithaman ājil*) (Bakar 2000). It generally involves the purchase by the bank of a specific asset and then it leases to the customer for a long or intermediate plan on the basis of an agreement under which the bank receives, in

addition to payment of principal, a share in the nature of rental for the use of the goods. As soon purchase price of the asset and the rental is paid off within the lease period, the ownership automatically transfers to the customer as agreed upon in the contract (Hassan 1985; Ahmed 2000).

Salleh explains in more detail about the mechanism of Islamic hire-purchase financing whereby financial institution will rent a movable or immovable property to its client who will pay an agreed sum by instalment over an agreed period into savings account held with the same financial institution. These instalments are invested in *mulārabah* ventures for the client's account. Capital and profit will allow the client to offset the rental cost and to purchase the rented property. If he decides not to acquire the property, the remaining profit (after rental cost and expenses are deducted) is given to the client, and the property is taken back by the financial institution (Salleh 1986). The operation of hire-purchase as illustrated above adopts an option to acquire the property. The exercise of option in Islamic hire-purchase contract is approved provided it is exercised within a specified and agreed period of time (refer to *fatāwa* of Kuwait Finance House in the previous section). When a customer is granted an option, it signifies that there is no condition or obligation imposed on the customer to purchase the property, avoiding a pre-conditioned contract, which is forbidden by *Sharī'ah*. The customer has a complete choice either to purchase the property at the end of the lease period or return it to the bank.

Ahmad, Iqbal and Khan illustrate another form of Islamic hire-purchase operation whereby a bank finances the purchase of an asset under a joint ownership arrangement subject to provision of security or surety. The bank will receive repayment of principal and a share in the net rental value of these items in proportion to their outstanding share in total investment (Ahmad, Iqbal et al. 1983). Islamic hire-purchase financing is a relatively new type of long-term financing method. During its primary period, the customer pays an agreed amount of rentals that are sufficient to recover the capital and provide an element of profit. Primary period relates to

estimated useful life of the asset and the customer is normally responsible for all operating costs such as maintenance and insurance.⁴²

The *Shari'ah* principles of *ijarah* require the owner to bear both maintenance and insurance responsibilities, not the hirer. This issue has been long debated by the scholars⁴³ and practitioners who have conflicting grounds for their views.⁴⁴ To resolve this issue, Islamic Development Bank and Kuwait Finance House have ruled that the maintenance and repair responsibility should not be imposed on the hirer above the standards required for normal operation; while the insurance burden may be shared between the owner and hirer according to their mutual agreement (al-Kuwaiti 1985; Parker and Dawood 1995).

Islamic hire-purchase is growing in importance in the world of Islamic banking and finance, as it is operated by many financial institutions in various countries. In fact, it is one of the instruments most used in cooperation with international financial institutions, along with commodity financing (Al-Tamimi 1986). A study by Iqbal and Mirakhor reported about Islamic banking in Iran and Pakistan. In lease purchase transactions in Iran, the period cannot exceed the useful life of the property, which will be determined by Bank Markazi. Bank however cannot engage in transaction in which the useful life of the property is less than two years. Laws and Regulations governing Islamic banks in Islamic Republic of Iran are discussed. Part 10 of Regulations relating to the granting of banking facilities, governs the operation of hire purchase (Art. 57-65). Shirazi (1993) further explains that Islamic hire-purchase is used for medium and long term financing which may be used for the expansion of production facilities and housing. The production facilities include area of agricultural, industrial and mining. In case of housing facilities, hire-purchase may be used for low price housing units constructed directly by the bank (Shirazi 1993).

⁴² The customer has also option for a secondary period in which rentals are reduced to a nominal amount.

⁴³ The scholars include Abdul Wahab Ibrahim Abu Sulaiman, Justice Muhammad Taqi Usmani and Mahmud Sanusi (Malaysia).

⁴⁴ The scholars emphasize on the owner's responsibility in both respects in order to maintain the legitimacy of *ijarah* contract; while the practitioner view that such requirement should be modified in order to make Islamic hire-purchase facility more practical.

In Pakistan, the leased asset is entirely owned by the financier or in joint ownership with the client. The bank will receive the repayment of principal and rent or a share of profits earned on the assets. After the amount of the acquisition value and agreed rent is paid in full the ownership is passed on to the client (Iqbal and Mirakhor 1987). Islamic hire-purchase has been used extensively in financing of ships, aircraft, containers and other equipment and assets of substantial value (Afzal 2000). Ahmad (1994) further elaborates the operation of Islamic hire-purchase whereby a hire-purchase account is opened in the customer's name. The value of the asset as well as the amount of profit over cost payable by the customer to the bank is recorded as debits. The instalment payable by the customer has two distinct components: agreed rental and a part of amount of profit. The asset remains in the ownership of the bank and the ownership title is transferred upon receipt of full payment (Ahmad 1994).

In Malaysia, Islamic hire-purchase facility is widely applied to consumer goods and motor vehicles. There are numbers of financial institutions which offer the facility to finance industrial goods like equipment, machinery, building, transport and other durable article. The facility has been actively promoted by the banks in view of the low risk involved, high return on the investment and tax benefits derived (Kamil 1993).

A report by New Horizon (1993) reveals that Islamic Development Bank (IDB) and commercial Islamic banks such as London-based Al Rajhi Investment Corporation provide lease finance for Emirates Air, Thai Air and others for the purchase of aircraft and a number of tanking leasing arrangements for Gulf customers. In addition, Western banks such as Citibank (London), Kleinwort Benson and ANZ Grindlays admitted that leasing or *ijārah* is a major growth area, hence, they undertake to further develop their leasing activities in the future.

Furthermore, Al Barakah Investment Company uses *ijārah wa iqtinā'* to finance the purchase of large capital items such as property, industrial plants and heavy machinery. It involves direct leasing where investors in the scheme receive regular monthly payment, which represents an agreed rental. At expiry of leasing, the lessee purchases the equipment (Ahmed 1993). Dar Al-Māl Al-Islāmī (DMI) Group also offers Islamic hire-purchase to its clients. In the event of transferring ownership, the

client may elect to purchase the goods on any due date at the optional purchase price attributable to that due date by giving notice to the institution at least 3 days prior to such date. In this event, client naturally pays all taxes or similar government charges incident to the transfer of title to him (Ali 2000).

Khan and Wilson bring forward the operation of Islamic Development Bank (IDB) whereby lease finance being one of two main sources of medium term financing. Leasing provides finance for development projects, which are sufficiently remunerative to meet market criteria. At present, it is available for middle and high-income member countries (Khan and Wilson 1995). Wilson then brings up the practice of the Kuwait Finance House which engages in financing a purchase of car, and also the Jordan Islamic Bank financing the purchase of equipment by professionals such as dentists, but does not involve in consumer credit for household purchases. According to him, in small business finance, leasing or *ijārah* is the second most popular method of financing for many Islamic banks, but this has also become more significant for conventional banks. Conventional banks provide leasing through specialised subsidiaries but for Islamic banks, leasing is a mainstream activity and part of their core business. It is also stated that there is a little risk involved, as the goods or equipment being leased serves as collateral for the financing (Wilson 2000).

From the above discussion, it is observed that Islamic hire-purchase has spread rapidly as a financial tool throughout the Arab world, Europe and Asia countries such as, Pakistan, Bangladesh, Malaysia and India. The facility has been used to finance various types of assets including consumer goods, industrial assets, motor vehicles and even houses. The growth of Islamic hire-purchase facility is believed due to three main reasons. First, its acceptability and legality by the *Sharī'ah* (refer to the legitimacy of Islamic hire-purchase). Second, there is a huge demand for the facility in the market, many who welcome the 100 per cent financing which Islamic hire-purchase offers them. Third, as compared to other facilities, Islamic hire-purchase offers attractive returns with fairly moderate risks (Allawi 1986).

3.6 SUMMARY

The review of literature reveals that there has been no direct discussion of Islamic hire-purchase in the classical jurisprudence; instead, they mainly discuss rules of leasing (*ijārah*) and sale in separate headings. During the emergence of Islamic banking system in 1980s, there were few ideas of Islamic hire-purchase transaction being brought up by contemporary scholars; but they discuss the concept and operation of leasing (*ijārah*) in greater detail than Islamic hire-purchase which was still very much over-shadowed by the conventional practice. Islamic hire-purchase was only properly defined in the literatures during 1990s. There has been very little thorough discussion of issues arising from its operation, comparison to conventional hire-purchase and its role in conventional financial institutions. Theoretical and empirical works concerning its regulatory framework and perception of public and actual users towards Islamic hire-purchase facility are almost lacking.

Fortunately, some Islamic banks and prominent Muslim scholars provide important legal rulings on the practice of Islamic hire-purchase which throw light on the legitimacy of the facility. Therefore, it is important to ensure that the operation of Islamic hire-purchase continues to be *Sharī'ah*-compliant. For this purpose, a specific *Sharī'ah* regulation for Islamic hire-purchase is needed to control the transaction and prescribe the manners of its practitioners. In the Malaysian context, efforts have been undertaken by the Government to establish a proper *Sharī'ah* framework for Islamic hire-purchase in order to ensure the transaction and its practitioners adhere to the *Sharī'ah* principles. The next chapter will discuss the regulatory framework of Islamic hire-purchase in Malaysia comprising a conventional law as well as the proposed *Sharī'ah* regulation.

REGULATION OF ISLAMIC HIRE-PURCHASE (AITAB)

4.1 INTRODUCTION

The previous chapters has presented a literature review encompassing the operation of Islamic hire-purchase in Malaysia, the development of Islamic hire-purchase, concept of Islamic hire-purchase, legitimacy of Islamic hire-purchase, and Islamic hire-purchase as a mode of financing. The literature reveals that Islamic hire-purchase facility or AITAB is one of latest innovation of Islamic banking which calls for special rule to govern every aspect of the transaction and determine rights and liabilities of parties involve in it. These rules are compressed into Hire-Purchase Act 1967 (HPA) which firmly controls hire-purchase business and protect the parties involved in the transaction. However, HPA is not exhaustive in providing rules to matters relating most particularly to *Shari'ah* injunctions. For this reason, the Malaysian government has drafted a special regulation for Islamic hire-purchase transaction, known as *Mu'amalah* Hire-Purchase Bill.

This chapter aims to discuss two main regulations of Islamic hire-purchase in Malaysia; Hire-Purchase Act 1967 and *Mu'amalah* Hire-Purchase Bill. The chapter is divided into three major sections; first, description of the Malaysian legal system; second, examination of the Hire-Purchase Act 1967 as, currently, the main governing law for hire-purchase business in Malaysia; and third, analysis of the proposed *Mu'amalah* Hire-Purchase Bill. The final section summarises the chapter.

4.2 THE MALAYSIAN LEGAL SYTEM

Malaysian legal system is highly influenced by the English law due to a long period of British colonization⁴⁵ in the country. Before the coming of the British, Malay legal codes have been in presence with customary and Islamic law. These laws have a strong impact on the local laws due to the established customary and Islamic practices of local inhabitants. Since the attainment of independence in 1957, the Malaysian legal

⁴⁵ Malaysia had been under British rule for 171 years, starting from the year of 1726 until Independence Day on August 31, 1957.

system has gone through several restructuring and changes as to accommodate the interests of its citizens comprising various ethnic groups. In order to maintain the law and order in a newly independent country, various laws have been passed. Certainly, the main references were English law and laws enacted in other commonwealth countries like Australia and India. The drafters of the Malaysian laws, even though most of them were British or British-trained officers; they had put the interest and opinions of the local citizens into consideration (Hamzah and Bulan 2003).

4.2.1 Application of English Law

English law is applied in Malaysia by the virtue of section 3 and 5 of the Civil Law Act 1956, unless other provision has been or shall be made by any written law. Section 3 provides:

“Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall-

- (a) in West Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7th day of April 1956;
- (b) in Sabah, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on the 1st day of December 1951;
- (c) in Sarawak, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on the 12th day of December 1949, subject however to subsection (3)(ii):

Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.”

“Subject to the express provisions of this Act or any other written law in force in Malaysia or any part thereof, in the event of conflict or variance between the common law and the rules of equity with reference to the same matter, the rules of equity shall prevail.”

Section 5 of the same Act further provides:

“In all questions or issues which arise or which have to be decided in the States of West Malaysia other than Malacca and Penang with respect to the law of

partnerships, corporations, **banks and banking**, principals and agents, carriers by air, land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case at the date of the coming into force of this Act, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any written law.”

From the above provisions, it is clear that matters of banking, mercantile law and other related areas are to be governed by the English legal jurisprudence. However, this issue does not seem to be much of practical important as most mercantile matters are now contained in respective local legislations. The application of English law is still possible by virtue of the ‘saving’ provisions in the statutes. Such provisions are wide enough to permit the importation of English principles in certain circumstances, such an instance as the local law does not provide a sufficient explanation to a particular issue. If this continues to happen it may give an unnecessary impact especially to matters relating to Islamic banking. In fact, this has happened in one case decided by the Supreme Court of Malaysia.⁴⁶

4.2.2 Citation of Cases and Statutes

Legal writings are incomplete without citing relevant cases and statutes. Both authorities are mainly referred to in the text because statements of law are largely contained within them. Cases can be found in various law reports of which the Malayan Law Journal (MLJ) and Current Law Journal (CLJ) are the most extensive in the reporting of the Malaysian cases. A case is usually cited in support of a legal statement or argument. For example:

Low Ping Ming v. MBf Finance Bhd. [2000] 2 CLJ 307

This citation means that the name of the case is Low Ping Ming, the plaintiff, against MBf Finance Bhd., the defendant. This case is reported in the Current Law Journal of 2000, Volume 2 at page 307.

Statutes may be cited in three ways, but the most common one is by a short title, for example, ‘Hire-Purchase Act 1967’. It can also be cited by reference to the number

⁴⁶ *Tinta Press Sdn. Bhd. v. Bank Islam Malaysia Berhad* [1987] 2 MLJ 192.

given to the Act and the year in which it was passed, for instance, 'Act No. 212 of 1967' or '1967 Act' in reference to the Hire-Purchase Act 1967. In this research, Hire-Purchase Act 1967 will be constantly referred as HPA.

From the above discussion, it is admitted that the Malaysian legal system has been affected in many ways by the English law due to its historical background. Therefore, it is not surprisingly stated that in many areas including commercial sector which have no governing rule, the main reference is English law and other conventional regulations. However, application of English law will be limited if there is specific regulations governing a particular area.

4.3 HIRE-PURCHASE ACT 1967⁴⁷

The law on hire-purchase in Malaysia is contained in the Hire-Purchase Act (1967). HPA came into force on 11th April 1968 (Rosly 2004). Prior to HPA there was no specific legislation to control and regulate hire-purchase activities in Malaysia. Beside HPA, reference must also be made to the following regulations and orders passed under the HPA:

- (a) Hire-Purchase (Term Charges) Regulations 1968;
- (b) Hire-Purchase (Recovery of Possession and Maintenance of Records by Owners) Regulations 1976; and
- (c) Hire-Purchase Order 1980.

These laws have strengthened the hire-purchase and practice to protect transactions in consumer goods and specified items. Protection includes the imposition of sanctions such as fines and imprisonment and the establishment of an enforcement agency in the form of the office of the Controller of Hire-Purchase.

4.3.1 SCOPE AND CONTENT OF THE HIRE-PURCHASE ACT 1967

The Hire-Purchase Act 1967 does not cover all hire-purchase transactions. For those commercial transactions that are not covered by the Hire Purchase Act 1967, the common law and the Contract Act 1950 shall apply. The HPA regulates only hire-purchase agreements in respect of the goods specified in the First Schedule which can

⁴⁷ The latest amendment has come into force on 15 April 2005.

be amended by the Minister from time to time (Vohrah and Aun 2000). A discussion on list of goods will be provided later under the title 'Hire-Purchase Agreement'.

The HPA comprises 58 sections, and is divided into 9 parts in which the last one consists of interrelated regulations and schedules. Part 1 is a preliminary part that is followed by Part 2 underlining the formation and contents of hire-purchase agreements, and Part 2A providing option to the hirer. Then, HPA turns to regulate rules for protection of hirers and guarantors in Part 3. Part 4 and Part 5 govern exclusively matters relating to the hirers and guarantors respectively. Matters regarding insurance are dealt with in Part 6, while Part 7 being the longest one caters the general matters which are related to the earlier parts. Next, Part 8 explains the powers of enforcement involving the law enforcer such as the prosecution, controller and the Court. Finally, Part 9 provides Regulations and Schedules which are enforced under the HPA.

4.3.2 DEFINITION OF HIRE-PURCHASE AGREEMENT

The precise meaning of a hire-purchase agreement is expressly stipulated in the HPA. Hire-Purchase Act 1967 in section 2(1) provides the definition of a 'hire-purchase agreement', which includes;

“... a letting of goods with an option to purchase and an agreement for the purchase of the goods by instalments (whether the agreement describes the instalments as rent of hire or otherwise), but does not include any agreement-

- (a) whereby the property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods; or
- (b) under which the person by whom the goods are being hired or purchased is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement.”

From the above definition, two forms of hire-purchase transactions can be retrieved, namely 'a letting of goods with an option to purchase' and 'the purchase of goods by instalments'. The former is the usual form of hire-purchase transaction, while the latter suggests that the transaction should also cover an agreement for the purchase of goods by instalments, which is actually practiced nowadays.

The definition mentions two types of transactions that are excluded from the scope of HPA. First, where the title of the goods passes at the time of the agreement, this is called a credit sale, which is regulated by the Sale of Goods Act 1957⁴⁸. The second type of excluded transaction is one, which is carried out by a person who is involved in trade and business of selling goods. According to Vohrah and Aun (2000), the person concerned is widely known as a 'dealer' (Vohrah and Aun 2000). Thus, any transaction that is carried out by a dealer is also outside the scope of the HPA even though it may be in the nature of hire-purchase.

4.3.3 SUBJECT MATTER OF HIRE-PURCHASE

Subject matter of the hire-purchase contract must be in existence and certain when entering into the contract⁴⁹. If the contract is concluded without specifying clearly its subject matter, such a contract will render void *ab initio*⁵⁰. A subject matter of a hire-purchase contract refers to goods, asset or property which is to be let and then purchased by the hirer. The Hire-Purchase Act 1967 has listed down a number of goods which can be the subject matter of a hire-purchase agreement. Prior to an amendment in 1992, the Hire Purchase Act 1967 only dealt with the following goods (Buang 2001):

- (a) Radio sets, television sets, gramophone sets, tape recorders and any combination thereof;
- (b) Refrigerators and deep-freeze food preservers and any combination thereof;
- (c) Sewing machines other than those used for industrial purposes;
- (d) Washing machines;
- (e) Vacuum cleaners;
- (f) Air-conditioning units other than those used for industrial purposes;
- (g) Electric or gas cookers and ovens;
- (h) Video tapes/cassette recorders;
- (i) Typewriters;
- (j) Organs and pianos;

⁴⁸ Sale of Goods Act 1893 in case of English law.

⁴⁹ This requirement is in agreement with *Sharī'ah*.

⁵⁰ From Latin word which means void at the very beginning. A void contract has no legal force from the moment of its making (1994). It occurs due to several factors, namely breach the essentials of a contract, lack of capacity to contract, mistake and illegality.

- (k) Photostat machines/copiers;
- (l) Hi/fi systems.

Consequently, HPA was amended in 1992⁵¹, resulting in broadening the type of goods, which gives wider option to the consumer who is interested to enter into a hire-purchase transaction in respect of particular goods. These goods are listed in the First Schedule of HPA, which are as follows:

1. All consumer goods; and
2. Motor vehicles, namely
 - (a) Invalid carriages;
 - (b) Motor cycles;
 - (c) Motor cars including taxi cabs and hire cars;
 - (d) Goods vehicles (where the maximum permissible laden weight does not exceed 2540 kilograms);
 - (e) Busses, including stage buses.

The expression “consumer goods” provided in the new law covers a more extensive range of goods than those limited under the previous law. For instance, personal computer, mobile phones and ultra sound machines are left out under the old law, but now included in the recent amendment. Section 2(1) of HPA defines ‘consumer goods’ as goods purchased for personal, family or household purposes. Accordingly, goods that are normally regarded as consumer goods but purchased for business purpose are excluded from HPA. By virtue of section 2(1), goods also include any replacements or renewals by the hirer of any part or parts and any accessories added by the hirer during the period of hiring. The second type of goods is a motor vehicle, comprising invalid carriages, motor cycles, motor cars including taxi cabs and hire cars, goods vehicles and busses. These goods are usually used for transportation, either for personal or public use. There are few cases which raised up an issue of whether a particular heavy lifting machine, for instance a crane or forklift, can be regarded as a motor vehicle, and thus subject to the Hire-Purchase Act 1967. Accordingly, in *MBf Finance Bhd. v. Ting Kah Kuong & Anor.*⁵², the Court held that a

⁵¹ In force since June 1, 1992.

⁵² [1993] 3 MLJ 73

forklift was not a motor vehicle and therefore the agreement was not subject to the Hire-Purchase Act 1967.

The subject matter of the hire-purchase agreement must be *certain* and reasonably *identified*. The issue of certainty of subject matter of the agreement was put forward in the case of *Supreme Leasing Sdn. Bhd. v. Lee Gee & Ors*⁵³. In this case, the defendants entered into a written hire-purchase agreement with the plaintiff in respect of one unit tractor. The tractor was described as a Caterpillar 966C, year of manufacture 1980. The chassis number and the engine number of the tractor were not set down in the agreement. The defendants contended that there was no certainty of the subject matter since the serial number and the engine number of the tractor had not been stated in the agreement. The court held in dismissing the defendant's contention, that there is certainty of the subject matter of the agreement, that is a tractor of a particular make, of a particular cubic capacity, manufactured in a particular year and which was duly delivered.

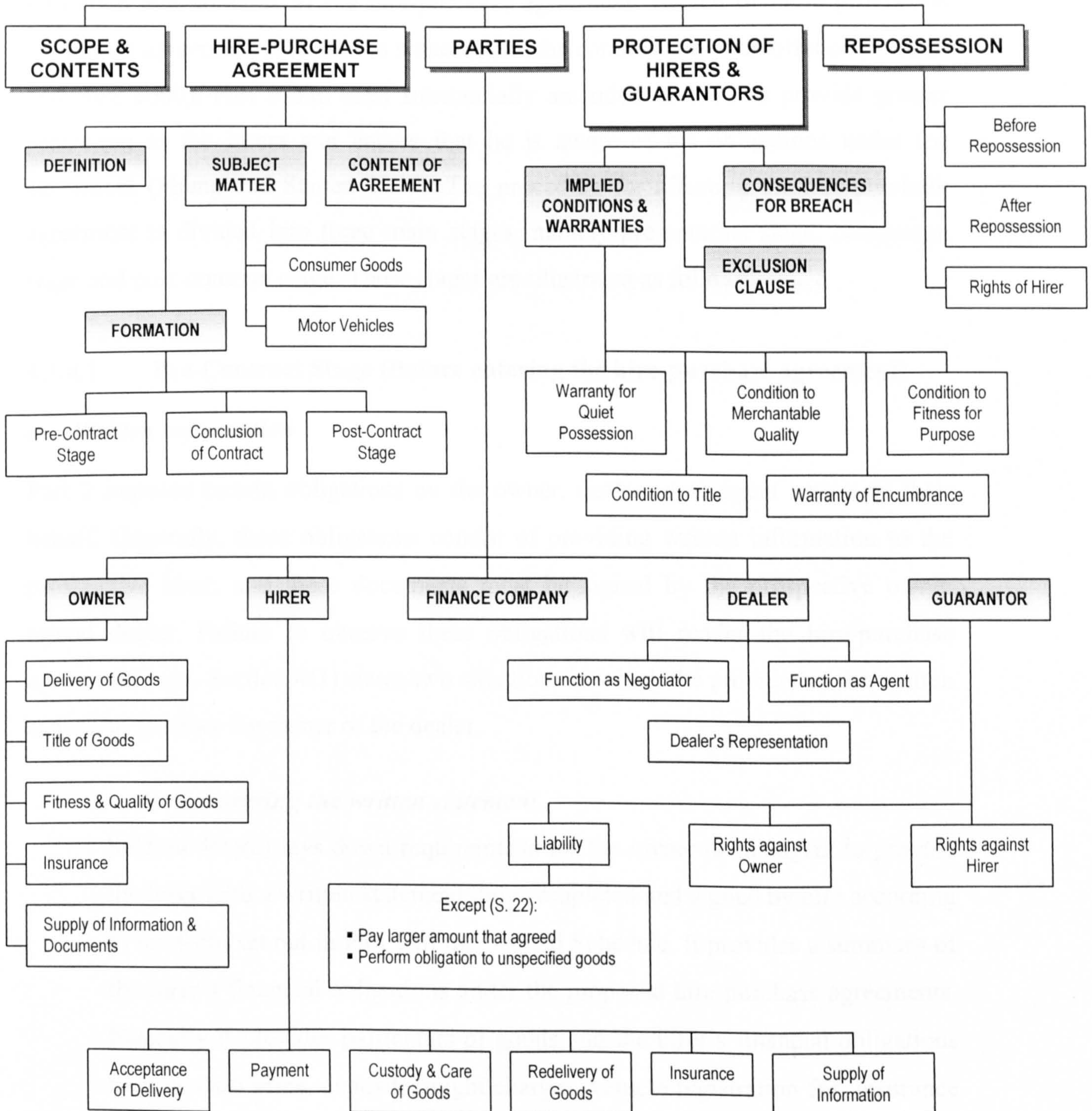
At the time the agreement is concluded, the subject matter must also be existed. If not, the agreement becomes void. In any event, there is a total failure of consideration, that the owner could not claim to recover, or retain any sums paid by the hirer in pursuance of the agreement (Guest 1966). The requirement that the goods must exist was observed to be of a paramount consideration in the case of *Hong Leong Leasing Sdn. Bhd. v. Tan Kim Cheong*⁵⁴. In this case, a hire-purchase agreement was signed by the plaintiff and defendant in respect of certain machines. Subsequently, the plaintiff issued a notice of repossession to the defendant upon default in payment on part of the defendant. The defendant argued that he was under no obligation to pay any of the instalments since no machines were ever delivered to him. He had informed the matter to plaintiff when the plaintiff demanded payment of instalments. The learned Judge observed that the agreement was unenforceable because the subject matter of the agreement was not in existence at the time the agreement was entered into, thus, amount to a failure of consideration. Once there is a total failure of consideration, the financier cannot claim any sum by way of instalments from the hirer.

⁵³ [1989] 1 MLJ 129

⁵⁴ [1994] 1 AMR 159

Before we go into a deeper discussion of Hire-Purchase Act 1967, the following Figure 4.1 is referred as a clear guide to understanding the law.

FIGURE 4.1:
Hire-Purchase Act 1967



4.3.4 FORMATION OF THE AGREEMENT

The formation of an agreement is the most vital stage of a transaction. Certain requirements must be fulfilled at different points of the formation of the agreement, or otherwise the agreement will have no effect due to the non-compliances. The Hire-Purchase Act 1967 in Part 2 provides some essential requirements relating to the formation and contents of the hire-purchase agreement. Breach of these provisions renders an agreement void, and to some extent, the commission of an offence (Vohrah and Aun 2000). Part 2 had been substantially amended in 1992 to provide greater protection to the hirers and ensure that he is aware of his obligations under the agreement (Pheng and Samen 1997). The procedure for affecting the hire-purchase agreement is divided into three main stages, namely pre-contract stage, conclusion stage and post-contract stage. These stages are illustrated as follows;

4.3.4.1 Pre-Contract Stage (Before entering the hire-purchase agreement)

a. Written information

Part 2 imposes certain obligations on the owner, dealer or an agent acting on their behalf. Generally, these obligations consist of providing written information to the prospective hirer, and these documents must be signed by the prospective owner or/and dealer. Failure to observe these obligations will render the hire-purchase agreement void. Section 4(1) states two situations in which the provider of the written statement is either the owner or the dealer.

i. Owner serving the written statement

Section 4(1)(a) lays down requirements for the owner or his agent to provide the hirer with a written statement duly completed and signed by him according to the form set out in Part 1 of the Second Schedule. It provides a summary of the hirer's financial obligations under the proposed hire-purchase agreements. Basically it provides particulars of goods and the hirer's financial obligations such as cash price, deposit, freight charges, vehicle registration fee, insurance and term charges.

ii. Dealer

Section 4(1)(b) imposes the same obligation on the dealer or his agent, with an additional obligation. After the service of the written statement to the prospective hirer, he must also serve another written statement signed by him and the prospective owner according to the form set out in Part 2 of the Second Schedule. This form is actually a statement of consent from the prospective owner that is usually the financier.

b. Service of written statement

Both written statements under Part 1 and Part 2 of the Second Schedule must be served personally on the hirer who must then acknowledge receipt of the documents.⁵⁵

A person served with the above statements is under no obligation to enter into any hire-purchase agreement. If he changes his mind at this stage, nothing will be imposed on him. No payment or other consideration will be required from him in respect of the preparation or service of such statements.⁵⁶ If he is required to make any payment, the person who imposed such requirement will be guilty of an offence.⁵⁷

c. Effect of Non-compliance

The requirements in section 4(1) must be complied, otherwise the hire-purchase agreement will become invalid. The owner who enters into a hire-purchase agreement and a dealer who carries out negotiations leading to a hire-purchase agreement without compliance of section 4(1) shall be guilty of an offence under the Act.⁵⁸ The effect of non-compliance with the above requirement was upheld in *Affin Credit (Malaysia) Sdn. Bhd. v. Yap Yuen Fui*⁵⁹. The court held that the hire-purchase agreement was void, as the condition imposed by section 4(1) of the Hire Purchase Act had not been complied with.

⁵⁵ Section 4(2)

⁵⁶ Section 4(3)

⁵⁷ Section 4(6)

⁵⁸ Section 4(5)

⁵⁹ [1984] 1 MLJ 169

4.3.4.2 Conclusion of the hire-purchase agreement

a. Written agreement

By virtue of section 4A, a hire-purchase agreement must be in writing.⁶⁰ If not, it shall be void.⁶¹ An agreement, which is not clear and legible, is deemed not to be in writing and rendered void. For instance, a hand-written agreement, which cannot be read or understood, is regarded not to be in writing, thus, void. If the agreement is printed, the print must be of a size not smaller than the type known as ten-point Times (Vohrah and Aun 2000). In addition, the owner who enters into a hire-purchase agreement that does not comply with the provision shall be guilty of an offence.⁶²

b. Signature of parties

Section 4B(1) requires a hire-purchase agreement to be signed by or on behalf of all parties to the agreement. However, before the hirer can be required by the owner or dealer to sign the agreement, the document must have been completed in all its particulars.⁶³ Thus, signing of blank forms is illegal⁶⁴, and the owner, dealer or their agents who contravenes any of the provisions is guilty of an offence.⁶⁵

c. Contents

Section 4C lists down all matters that must be included in a hire-purchase agreement. In addition, it must contain all the important information as stated in Part 1 of the Second Schedule.

d. Separate hire-purchase agreement for every item

When there are more than one item of goods being purchased, it must be a separate hire-purchase agreement for every item.⁶⁶ Any goods, which are essentially similar or complementary to each other and sold as a set, are regarded as an item.⁶⁷ A

⁶⁰ Section 4A(1)

⁶¹ Section 4A(2)

⁶² Section 4A(3)

⁶³ Section 4B(2)

⁶⁴ Section 4B(3)

⁶⁵ Section 4B(4)

⁶⁶ Section 4D(1)

⁶⁷ Section 4D(4)

contravention of this requirement renders the agreement void and the owner guilty of an offence.⁶⁸

e. Alteration to a hire-purchase agreement

There should be no addition or alteration to a hire-purchase agreement or written documents containing the terms and conditions of the agreement in relation to any of the matters set out in the pre-contractual statement served on the prospective hirer. Any such alteration or addition will have no effect unless the hirer has consented by signing or initialling the agreement in the margin opposite the change.⁶⁹

4.3.4.3 Post-Contract Stage (After the making of a hire-purchase agreement)

a. A copy of hire-purchase agreement

Section 5(1) requires the owner to serve on the hirer and the guarantors a copy of a hire-purchase agreement within fourteen days after it is made. Failure to comply with this requirement will render the hire-purchase agreement unenforceable by the owner.⁷⁰ The agreement is not void.

b. A copy of memorandum or note of the agreement

At any time before the final payment has been made under a hire-purchase agreement the owner must within fourteen days after receiving a written request from the hirer, supply to the hirer a copy of any memorandum or note of the agreement. For the purpose of service of document, a fee will be prescribed, but if no fee is prescribed, one free copy must be supplied. A fee will then be prescribed for the supply of second and subsequent copies.⁷¹

c. A copy of the insurance policy

If the total amount payable under the agreement includes payment for insurance, the owner must serve a copy of the insurance policy or a statement in writing setting out the terms, conditions and exclusions of the policy that affect the rights of the hirer.

⁶⁸ Section 4D(2) and (3)

⁶⁹ Section 39

⁷⁰ Section 5(1A)

⁷¹ Section 5(2)

This must be done within seven days of the receipt of such policy by the owner.⁷² However, the HPA does not provide any penalty in case the owner fails to comply with the requirement of section 5(3).

d. Deposit

Section 31(1) provides that an owner must first obtain from the prospective hirer a deposit in cash or in goods, or partly in cash and partly in goods, to a value of not less than one-tenth of the cash price of the goods. Section 31(2) further provides that this requirement does not apply to any agreement that is entered into solely for assigning or transferring rights and liabilities under an existing hire-purchase agreement from the hirer to another person. However, section 32(1) provides that certain payments are not regarded as deposits that are;

- (a) Cash payment made with money borrowed directly or indirectly from or through:
 - i. the owner (if the owner is not a banker);
 - ii. an agent or servant of the owner; or
 - iii. any person whose business or part of whose business it is, by agreement with the owner or his agent, to advance money to enable deposits to be paid in respect of hire-purchase agreements with the owner.
- (b) Where the deposit is in goods or partly in goods, and the amount allowed in respect of the goods is inflated, the amount given in excess of the true value is discounted for the purpose of determining the deposit paid.
- (c) Rent paid by the hirer to the owner for the goods before he enters into the hire-purchase agreement for the same goods is discounted.

According to Vohrah and Aun (2000), the above section 32(1) is intended to defeat the practice of over-valuing trade-in goods or similar schemes. Hence, as a deterrence, section 32(3) declares that “any person who knowingly enters into, or procures, arranges, or otherwise assists or participates in” in this kind of transaction is guilty of an offence. This also includes a hirer who knowingly participates in such a scheme.

⁷² Section 5(3)

4.3.5 CONTENTS OF THE AGREEMENT

The hire-purchase agreement must specify in detail some important particulars in order to avoid any dispute in the future. These particulars must be brought to the parties' knowledge and understanding. The Hire-Purchase Act 1967 stipulates those particulars, which will constitute the contents of a hire-purchase agreement. Section 4C requires every hire-purchase agreement to contain the following information;

- (a) a date on which the hiring starts;
- (b) the number of instalments to be paid by the hirer;
- (c) the amounts of each instalment, the person to whom and the place at which the payments are to be made;
- (d) the time for the payment of each of the instalments;
- (e) a description of the goods sufficient to identify them; and
- (f) the address where the goods are kept.

Where any part of the consideration is not cash, for instance, a trade-in as part consideration (Vohrah and Aun 2000), there must be a description of that part of the consideration.⁷³ In addition to the above information, the hire-purchase agreement must also furnish in a table the following information;

- (i) the cash price of the goods;
- (ii) the deposit showing separately the amount paid in cash and the amount provided by consideration other than cash;
- (iii) delivery or freight charges, if any;
- (iv) vehicle registration fees, if applicable;
- (v) insurance;
- (vi) the total amount referred to the above less the deposit;
- (vii) term charges;
- (viii) the annual percentage rate for term charges (calculated in accordance with the formula set out in the Seventh Schedule);
- (ix) the total amount in items 6 and 7 above (the balance originally payable under the agreement); and
- (x) the total amount payable.

⁷³ Section 4C(1)(b)

Section 4C(1)(d) states that the agreement must not contain any particulars, which are inconsistent in any material way from the particulars contained in the pre-contractual written statements served on the prospective hirer. The effects of non-compliance are mentioned in section 4C(2) and (3).

4.3.6 PARTIES TO HIRE-PURCHASE AGREEMENT

Hire-purchase agreement basically involves the owner of the goods and a hirer, and then it has expanded greatly due to its popularity. It is used not only for consumer goods but also extends to commercial and industrial financing. As its use became broader, it involved additional parties beside the owner and hirer; that are, dealer, guarantor and finance companies. Each party has certain rights and liabilities, which are provided by the statute and the common law principles.

4.3.6.1 Owner

The owner as the name implies is a person having a legal title to the goods. He holds the document of title and is fully responsible for safeguarding the goods. He may not be in possession of the goods, which he owns, because the goods may be in the custody of another entrusted person. The duties of the owner are illustrated as follows:

a. Delivery of the Goods

The goods to be let on hire must be delivered to the hirer, and the contract of hiring will only commence when the hirer has accepted delivery. If the owner does not or fail to deliver the goods according to the agreement, the hirer can claim damages⁷⁴ for breach of contract. The time and place of delivery are normally fixed in the contract; thus, the owner must deliver the goods accordingly. If the time is not specified in the contract, the delivery must take place within a reasonable time (Goode 1970). The expenses of making delivery must be borne by the owner, and the expenses of collecting the goods from the place of delivery must be borne by the hirer, unless otherwise stipulated in the agreement (Guest 1966).

⁷⁴A sum of money paid in compensation for loss or injury. The hirer will be entitled to recover back any sums paid by way of deposit or part payment, and to sue for any loss suffered due to the non-availability of the goods agreed to be let on hire.

b. Title of the Goods

The owner must ensure that he has a good title to the goods, which he wants to let on hire. This implies that the owner is capable of conferring a good title to the hirer, both at the time when the hiring commences and at the time when the hirer wants to exercise his option to purchase (Vohrah and Aun 2000). If the owner's title is defective at either of these times, the hirer is entitled to repudiate the contract and recover all sums paid (Guest 1966).

c. Fitness and Quality of the Goods

Section 7(3) of the Hire Purchase Act 1967 implies a condition that the goods must be fit for the hirer's purpose. However, the owner can avoid liability by inserting an exemption clause in the agreement, stating that the owner will not be responsible for any fault or loss connected to the goods supplied. It is strictly emphasized that in this situation, the owner must prove that the exemption clause was brought to the hirer's notice before agreement was made and its effect made clear to him (Thornely and Ziegel 1965). Section 7(2) of HPA provides that a condition of merchantable quality is implied in hire purchase agreement, unless the hirer has examined the goods or a sample whereby any defect would be reasonably detected. The condition of merchantable quality can be excluded in two cases (Vohrah and Aun 2000);

- (a) where the hirer has examined the goods or a sample, as regards defects which the examination ought to have revealed; or
- (b) if the goods are second-hand goods and the agreement contains a statement to the effect that:
 - i. the goods are second-hand; and
 - ii. all conditions and warranties as to quality are expressly negative, and the owner proves that the hirer has acknowledged in writing that the statement was brought to his notice.

In both cases, the owner must prove that the defect and the clauses have been notified to the hirer before the agreement is made and the effect of the clause is clear to him (Guest 1966).

*d. Insurance of the Goods*⁷⁵

In matters of insurance coverage of the goods, the owner is under no duty to insure the goods let on hire unless the agreement so provides (Goode 1970). The obligation is usually borne by the hirer according to the terms in hire-purchase agreement. However, in relation to hiring a motor vehicle, the owner cannot permit other person to use a vehicle, which is not covered by an insurance policy. If he does so, he has committed a criminal offence, which renders him liable for penalties, and also damages if there is an injury caused by the negligence of the driver of the vehicle. For this reason, a clause is inserted into hire-purchase agreement for hiring of motor vehicles, that such vehicle must be covered by third-party insurance before being used by the hirer (Guest 1966). All amounts payable in respect of insurance form part of the hire-purchase price⁷⁶. The hirer is under a duty to insure the vehicle for the second and all subsequent years. Upon his failure to do so, he shall be guilty of an offence under HPA (Pheng and Samen 1997).

e. Supply of Information and Documents

It is important for the owner to supply necessary information and documents to the hirer, such as a copy of agreement and details of the transaction. In certain circumstances, it is obligatory for the owner to supply the hirer with a copy of the hire-purchase document before it is to be converted into a bonding agreement as a result of signature by the parties. Then the hirer must be supplied with a second copy, that is, a copy of a complete and binding agreement (Goode 1970).

4.3.6.2 Hirer

The hirer is a person who is making use of the goods which he hires from the owner, and utilizes the goods for his purposes. The goods are in his possession, thus, he is fully responsible for the safekeeping and well being of the goods. In other word, he is entrusted by the owner to safeguard the goods, and at the same time he can fully benefit from the goods accordingly. There are some rules and guidelines that emphasize on duties of the hirer. They are outlined as follow;

⁷⁵ Refer to duty of hirer to insure the goods at page 78.

⁷⁶ Section 26(7) of Hire Purchase Act 1967

a. Acceptance of Delivery

The hirer must accept delivery of the goods, which he has agreed to hire. When he has taken delivery of such goods, the hiring contract deems to commence at this point of time, and the owner shall have a right to demand for the rent or instalment agreed. If the hirer does not take delivery within a reasonable time, he will be liable to the owner for any loss due to his failure to take delivery, and also for any charge for the care and custody of the goods (Goode 1970). However, if the hirer repudiates the contract, the owner cannot take action for the hirer's refusal to take delivery. In case where the hirer refuses to accept the goods, the owner is not entitled to claim for payment since the hiring does not commence until delivery. His proper remedy is to claim for damages for failure to accept delivery (Guest 1966).

b. Payment

It is the duty of the hirer to pay the agreed sums in the manner and at the times specified in the agreement (Goode 1970). The payments normally consist of an initial payment upon entering the hire-purchase agreement and the hire-purchase instalments. An initial payment is usually made before or upon signing the hire-purchase agreement. Sometimes it is commonly known as 'deposit' or 'advance payment'. The hirer must understand its purpose and effect if he seeks to withdraw or terminate the agreement (Guest 1966). The hirer must pay the instalments according to the manners stated in the agreement. The agreement should clearly spell out the amount, period and mode of payment. In the absence of any specific provision on matters relating to payment, it should be resorted to the general rules of law on this subject⁷⁷. Upon default by the hirer of two successive payments or the last payment, the owner may exercise his right to repossess the goods, subject to condition imposed in the Hire-Purchase Act 1967⁷⁸ (Vohrah and Aun 2000).

The duty to pay rental or instalments cannot be avoided even if the goods are destroyed. In *Ka Yin Credit & Leasing Sdn. Bhd. V. Pang Kim Cha & Bros Development Sdn. Bhd.*⁷⁹ (Buang 2001), the bulldozer which the defendant took on

⁷⁷ For example, Hire Purchase Act 1965

⁷⁸ Section 16 of the Malaysian Hire Purchase Act 1967.

⁷⁹ [1989] 2 MLJ 61

hire-purchase was destroyed by fire. The defendant refused to pay any further instalments until their claim against insurers was resolved. The plaintiff insisted on the payment of instalments. When the defendant still refused to pay, the plaintiff terminated the agreement and sued for the full balance due. It was observed that the loss, destruction of or damage to the goods hired did not in any way discharge the hirer's liability to pay all sums due under hire-purchase agreement.

c. Custody and Care of the Goods

The hirer is under a duty to use the goods for the purpose for which they are hired and take reasonable care of the goods. He must observe the special requirements of the hire-purchase agreement concerning the repair and custody of the said goods (Goode 1970). If the agreement is silent in the matter, the hirer is under no obligation to carry out repairs to the goods, except if he is responsible for any damage that occurred to the goods. However, most hire-purchase agreements impose an obligation upon the hirer to keep the goods in good order and condition (Guest 1966). Goods must be stored in appropriate place specified in the hire-purchase agreement. If the hirer removes the goods, or they are lost, or taken from his possession, he must inform the owner in writing (Vohrah and Aun 2000). If he fails to do so within fourteen days of the removal he is guilty of an offence⁸⁰.

d. Redelivery of the Goods

When the hiring has terminated and the hirer does not wish to exercise an option to purchase the goods, he is under a duty to redeliver the goods to the owner (Goode 1970). If the goods perish during the hiring without negligence on part of the hirer, he will be excused from redelivering the goods, unless the agreement imposes upon him an absolute responsibility for any risk for the goods. In practice, the hirer is obliged by the terms of hire-purchase agreement to indemnify the owner against the loss or destruction of the goods whether this is due to his fault or not (Guest 1966).

e. Insurance of the Goods

It has been mentioned above that the hirer, generally, is not required to insure the goods let on hire unless there is an express stipulation to this effect in the agreement.

⁸⁰ Section 37 of the Hire-Purchase Act 1967.

However, most hire-purchase contracts, particularly those involving motor vehicles, will impose a duty of insuring the goods (Goode 1970). For instance in case of motor vehicles, it is unlawful to use a motor vehicle without a valid insurance policy. This requirement must be strictly adhered to, and it can be carried out in either of these ways, namely;

- i. the hirer takes insurance policy with a named insurance company or with a company approved by the owner (Guest 1966); or
- ii. the owner will insure the goods and renew the insurance himself, and then recover the cost thereof from the hirer; or
- iii. the owner effects a policy by taking a third-party insurance, and the hirer will be required to renew the policy (Vohrah and Aun 2000);

If the hirer fails to carry out this duty, he will be liable to the owner for breach of contract. If on the hirer's default, the owner elects to insure or renew the insurance, he can recover from the hirer any sums that are treated as damages for breach of contract (Guest 1966).

f. Supply of Information

Section 24(1) of Hire-Purchase Act 1967 requires the hirer, on receipt of a written request by the owner, to inform the owner the whereabouts of the goods and its condition. If the goods are not in his possession, he must notify the owner to whom the goods have been delivered or the circumstances under which he has lost possession of the goods (Buang 2001). Failure to respond in writing, within 14 days of receiving such written request, will amount to an offence and the hirer shall be guilty of such an offence. Undoubtedly, the owner owes some responsibilities towards the hirer. On the other side, the hirer is also obliged to perform certain duties in carrying out his responsibilities under the agreement. The rights and duties of the hirer are primarily specified in the statutory laws, thus the position seems to be more certain. In contrast, the rights and duties of the owner, though so provided by the respective laws, they are well-specified by decided cases and by the terms of the agreement. Nowadays, an owner's function is commercially expanded to provide the required goods in a form of financing to the hirer.

4.3.6.3 Finance Companies

The finance companies, as their name implies, are in business to provide money, but in the field of hire-purchase their role is highly unusual. Instead of simply lending money upon a mortgage of the goods, they actually buy the goods from the dealer and then let them out on hire-purchase to the customer⁸¹ (Lowe 1972). Finance companies do not involve directly in trading, thus, they normally appoint their own dealers who are selected with great care. The contract of hire-purchase is negotiated by the dealer as an intermediary between a finance company as the owner and the customer as the hirer. A sale normally takes place by the dealer to the finance company, while a hire-purchase agreement is eventually executed by the finance company and the hirer.

4.3.6.4 Dealer

In practice, the dealer plays a vital role in conducting hire-purchase transactions. He is commonly perceived by the laymen as a person who sells particular goods and arranges every matter relating to the transaction; from providing the goods, delivery, accepting the deposit and many other important tasks. In fact, he does not only sell the goods to the buyer, but more importantly *introduces the buyer to the finance company*, resulting in a formation of hire-purchase agreement. The buyer will then become a hirer and the finance company becomes the owner. It is important to note that in this type of transaction, the dealer is not a party to the hire-purchase agreement, though he plays a significant role in the formation or conclusion of the agreement. He is the one who attracts and deals directly with the customer at a preliminary stage, while the finance company does not come in view yet. Thus, the dealer is usually seen as a negotiator and sometimes an agent (although he might be one) of the finance company.

It is therefore important to examine the role played by the dealer in order to determine the extent of liability in respect of representation made to the customer. This is necessary especially in the event of fault, in order to ascertain the party who will be made responsible. If the dealer acts as an agent of the finance company, the latter will

⁸¹ If this hire-purchase operation is truly carried out in practice, then it complies with *Sharī'ah*.

also be jointly liable for any claim made by the customer. This issue will be elaborated further in the following discussion.

a. Functions of Dealer

The dealer conducts negotiation of the transaction with the customer. It is necessary for him to state to the hirer in writing the cash price of the goods and deliver the copy of agreement and other relevant documents to the hirer. He also takes deposit from the hirer. Then he sends all documents relating to purchase of the goods to the finance company. If the finance company approves the transaction, the company will buy the goods from the dealer and then let them on hire to the hirer.

b. Dealer as Agent

It is very difficult to ascertain to what extent the dealer functions as an agent of the finance company. In reality, the finance company needs a dealer's service to negotiate many transactions on its behalf, thus, it must carefully choose the dealer to carry out this important task. The finance company usually enters into a standing agreement with the dealer and provides him with its documents and forms. These documents, after being completed by the customer will be sent back to the finance company. The dealer's acts on behalf of the finance company cannot be simply regarded as an agent of the company, in the sense that the company will be made jointly liable for his acts as a result. The dealer could have acted purely as an intermediary or medium of communication between the hirer and finance company. As such, this function would not necessarily indicate that the dealer's act would create obligations binding on the company.

c. Representation by the Dealer

Most prospective hirers agree to enter into a hire-purchase agreement relying on the representations made by the dealer in relation to the quality and fitness of the goods to be let on hire. It is important to note that there is no direct contractual relationship between the hirer and the dealer. After the end of negotiation process which takes place between the dealer and hirer, the dealer sells the goods to the finance company and then the company lets the goods to the hirer. If there is any defect in the goods, the dealer may argue that he should not be made responsible since the contract is not made with him but with the finance company. On the other side, the finance company

will not simply take such responsibility which results from the dealer's misrepresentations. Hire-Purchase Act 1967 seems to be crystal clear in deciding the extent of the owner and dealer's liabilities for misrepresentation. Where there is misrepresentation by the dealer, owner or his agents in the negotiations leading to the hire-purchase agreement, the hirer is conferred a statutory right to claim against the owner and the person making the representation (Vohrah and Aun 2000). Section 8 of the Hire-Purchase Act 1967 considers that a representation, warranty or statement made by a dealer or its agent as if it was made by an agent of the owner. By section 8(1) of HPA, the hirer is conferred the following rights:

- i. as against the owner, the right to rescind the agreement even if the fraudulent representation, warranty or statement was made by an agent of the owner; and
- ii. as against the person or agent who made the representation, warranty or statement, the hirer has the right of action in damages, as if the hirer had purchased the goods from that person.

By virtue of section 8(2) of HPA, the above-mentioned rights are protected from any terms of the agreement purporting to exclude, limit or modify those rights. The provision declares that such terms of the agreement shall be void. Then section 8(3) specifies a right to be indemnified for an innocent owner who suffers damages as a result of the conduct of the dealer or its agent. He is entitled to be indemnified by the person who made the representation, warranty or statement, or the agent of such person. It is importantly noted that section 36 of HPA treats an act of making false statement or representation in an agreement or offer in writing, by a dealer, agent or person acting on behalf of an owner, will amount to a serious offence. If convicted, he shall be liable to a fine not exceeding RM3000⁸² or to imprisonment for a term not exceeding six months or to both.

The above discussion on the issue of agency and its liability has raised a very decisive question whether or not a dealer can be regarded as an agent of the finance company. Although some cases viewed that a dealer is made an agent of the owner for certain purposes with limited role, but there are a number of cases indicating that a dealer is the agent of the finance company for most purposes, thus, makes representations on

⁸² Ringgit Malaysia- RM3000 is about £500.

behalf of the company. It would normally seem that a dealer is an agent of the finance company in relation to the formation or conclusion of a hire-purchase agreement. Thus, the finance company cannot just exempt itself from any liability in respect of the dealer's actions. The Hire-Purchase Act 1967 makes a clear-cut indication that a representation, warranty or statement made by a dealer or its agent will have a legal effect as if it was made by the owner's agent. Therefore, a dealer or the owner cannot simply escape from any liability in the event of wrongful and fraudulent representation made by the dealer, but will be jointly answerable to that misconduct.

4.3.6.5 Guarantor

A guarantor is a person who guarantees to the owner that the hirer would perform his obligations and undertakes to repay the hirer's debt to the owner should the hirer fail to pay the debt by the due date (Pheng and Samen 1997). A finance company normally requires the hirer to provide another person(s) to guarantee that he will duly perform his obligations. A guarantor can usually be a friend or relative of the hirer, or a director of the hiring or buying company. The obligation to provide one or more guarantors to the owner arises only if the owner requires the hirer to do so (Buang 2001)⁸³. The owner usually imposes this requirement if he thinks the hirer does not have sufficient resources to meet the monthly repayments. There is no definition of guarantor in Hire-Purchase Act 1967, but a 'contract of guarantee' is defined in the interpretation section as;

“...a contract made at the request, expressed or implied, of the hirer to guarantee the performance of the hirer's obligations under the hire-purchase agreement, but does not include the dealer or a person engaged at the time of giving of the guarantee in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement, and the expression “guarantor” shall be construed accordingly.”

From the above interpretation, in a legal term, a guarantor is a person who is requested by the hirer to guarantee to the owner the performance of his obligations

⁸³ Section 20A of Hire-Purchase Act 1967.

under the hire-purchase agreement. The provision clearly excludes dealers or person engaging in the selling of goods of the same nature or description ⁸⁴

a. Liability of Guarantor

Basically, the guarantor will not be liable unless the other party's loss is caused by the act in respect of which he has agreed to act as guarantor. His liability to the owner does not commence until after the hirer has made default (Goode 1970), and continues even after the owner has repossessed the goods from the hirer (Pheng and Samen 1997)⁸⁵. Hence, in proceedings against the guarantor, the owner must properly prove the hirer's default. Section 22 of HPA limits the guarantor's liability in performing his obligation under the agreement. He shall not be bound:

- 1) to pay to the owner an aggregate sum which is larger than the balance originally payable under the agreement; or
- 2) to perform an obligation in respect of goods other than the goods comprised in the hire-purchase agreement,

If there are such terms included in the agreement, that agreement shall be void unless the agreement is executed by the guarantor in the presence of a Magistrate, a Commissioner for Oaths or a Notary Public.

b. Guarantor's Rights against Owner

The guarantor has the following rights against the owner;

- (1) Section 23 provides that within seven days of the making of the hire-purchase agreement or guarantee, whichever is the later; the owner must supply the guarantor with a copy of;
 - i. the hire-purchase agreement; and
 - ii. a note or memorandum of the contract of guarantee signed by the guarantor or by his duly authorized agent.

⁸⁴ See case of *Hong Leong Finance v. Tamilcheleven s/o Palinesamy & Anor* [1996] 1 MLJ 351. The primary issue in this case was whether the dealer should be held responsible as guarantor. The Judge held that a dealer cannot be made responsible as a guarantor for the simple reason that it contravenes the 1967 Act. Thus, other person than the dealer who is not engaged in the trade or business should have undertaken this responsibility.

⁸⁵ Section 21(2) of HPA.

If the owner fails to do this, he cannot enforce the contract of guarantee or any security, but the court has the usual power to grant relief.

- (2) The guarantor has the right to secure his discharge from the guarantee by paying to the owner the amount due to him by the hirer⁸⁶, and then entitled to the right of subrogation (Macleod 1971).
- (3) After making such payment, he is entitled to sue the hirer in the name of the owner for any breach of the hirer's obligations, provided that he provides the owner with a suitable indemnity for costs⁸⁷;
- (4) He can exercise any set-off or counterclaim against the owner that would have been available to the hirer⁸⁸ (Goode 1970); and
- (5) He may insist that the owner transfers to himself all the securities taken by the owner to secure the hirer's performance⁸⁹.

c. Guarantor's Rights against Hirer

Unless there is an express agreement between the guarantor and the hirer, the guarantor's rights against the hirer may arise in the following ways;

- 1) The guarantor is entitled to be indemnified by the hirer against any claim made by the owner on the guarantee⁹⁰;
- 2) An express or implied right of indemnity in respect of sums paid out in discharge his obligations as a guarantor (Macleod 1971);
- 3) The guarantor may compel the hirer to pay the instalments in respect of the hire-purchase agreement as and when they fall due.⁹¹ He may apply to a Magistrate for an order to that effect (Vohrah and Aun 2000); and
- 4) The guarantor is entitled to a right of subrogation when he pays the owner. This means the owner must assign to him all his rights against the hirer, including any securities taken by the owner in respect of the hire's obligation under the hire-purchase agreement (Goode 1970).

⁸⁶ Section 23(1) of HPA

⁸⁷ Section 23(2)(a) of HPA

⁸⁸ Refer also to section 23(3) of the HPA

⁸⁹ Section 23(2)(b) of HPA.

⁹⁰ For example, a guarantor is required by the owner to pay overdue instalment on behalf of the hirer. If he makes such payment, he is entitled to claim the same amount from the hirer.

⁹¹ Refer section 24(2) of HPA

Having given his assurance for the hirer's complete performance in a hire-purchase transaction, a guarantor's vital role is undeniable. Therefore, his rights and liabilities must be properly safeguarded against any mistreatment either by the owner or the hirer.

4.3.7 PROTECTION OF HIRERS AND GUARANTORS

The obligations and responsibilities of the owner to the hirer are comprised mainly in the express or implied terms of the hire-purchase agreement. However, express terms imposing contractual duties on the owner are rare since the owner is responsible for the form of the agreement (Diamond 1971). Hence, in the absence of these express terms, we must look for implied terms. For this purpose, Hire-Purchase Act 1967 implies a number of conditions and warranties, and restricts the power of exclusion in certain instances. Thus, the owner cannot easily avoid any statutory liability by relying on the exclusion clauses in the agreement. In this part, the subject on protection of the hirer as well as guarantor(s) will be discussed under two main headings; in respect of protection provided by implied terms and restriction on the exclusion clauses.

4.3.7.1 Implied Conditions and Warranties

Implied terms are classified into conditions and warranties. This classification is important to be understood especially when considering the hirer's remedies for the owner's breach of contract. If the owner is in breach of warranty, the hirer is entitled to claim damages from the owner without affecting the agreement at all. On the other hand, if the owner is in breach of condition, the hirer may claim damages and if he wishes, repudiate the contract. Section 7 of the Hire Purchase Act 1967 provides for the conditions and warranties to be implied in every hire-purchase agreement and severely restricts the power of exclusion. These implied conditions and warranties cannot be excluded or modified except in relation to second hand goods in respect of merchantable quality and fitness for purpose (Vohrah and Aun 2000) , but with strict conditions to be observed. Those implied terms as specified in HPA are as follows:

- 1) A warranty for quiet possession;
- 2) A condition that the owner holds the title of the goods;
- 3) A warranty as to encumbrance;

- 4) A condition as to merchantable quality; and
- 5) A condition as to fitness for purpose.

a. Warranty as to quiet possession

Section 7(1)(a) of HPA implies a warranty that the hirer shall have and enjoy quiet possession of the goods. When the owner gives possession of the goods to the hirer, he must leave the hirer in peaceful possession and in privacy throughout the period of the hire-purchase transaction. If the owner interferes with the hirer's enjoyment of possession, this warranty is broken, and he shall be liable for damages if the hirer initiates any claim against him. Therefore, if the owner wants to inspect the goods or need to do something which will unavoidably cause an interference with the goods, he must first get the hirer's permission and consent, and do so during the time agreed by the hirer. However, the owner is not liable for wrongful acts of interference committed by a stranger who is not authorised by him (Goode 1970).

b. Condition as to title

There is an implied condition in a hire-purchase agreement that the owner does own the goods. When the owner owns the goods, he shall have a right to sell the goods. Section 7(1)(b) of HPA requires the owner to have a good title in the goods, which are to be let out to the hirer, because the ultimate objective of a hire-purchase transaction is to acquire a title of the goods at the end of the hiring period. The phrase 'at the time when the property is to pass' in section 7(1)(b) of HPA means at the time when the hirer decides to pay all sums due under a hire-purchase agreement (Pheng and Samen 1997). In other word, when the hirer is about to exercise an option to purchase the goods and satisfies all payments needed.

c. Warranty as to be free from encumbrance

The warranty as to encumbrance⁹² is also implied that the goods shall be free from any charge in favour of any third party at the time when the property is to pass. Therefore, before the title of the goods is transferred to the hirer, the owner must ensure that the said goods are free from any charge such as a lien or mortgage, as this encumbrance will affect the hirer's absolute ownership and enjoyment of the goods.

⁹² Section 7(1)(c) of HPA.

d. Condition as to merchantable quality

Section 7(2) of the Hire-Purchase Act 1967 provides that there is an implied condition that the goods shall be of merchantable quality, except in the following circumstances:

- (a) where the hirer has examined the goods or a sample, as regards defects which the examination ought to have revealed: or
- (b) if the goods are second-hand goods and the agreement contains a statement to the effect that –
 - (i) the goods are second-hand; and
 - (ii) all conditions and warranties as to quality are expressly negated, and the owner proves that the hirer has acknowledged in writing that the statement was brought to his notice.

Other than the two exceptions provided by the above section 7(2)(a) and (b), in every hire-purchase agreement, there shall be an implied condition that the goods are of merchantable quality. However, this implied condition may be excluded where the hirer has examined the goods or a sample, and the examination ought to have revealed the defects. In the case of second-hand goods, this implied condition may be excluded if the agreement contains a statement mentioning that the goods are second-hand and all conditions and warranties as to quality are negated. Provided that the owner must prove that the hirer has acknowledged in writing that the statement was brought to his notice.

e. Condition as to fitness for purpose

Section 7(3) of the Hire-Purchase Act 1967 requires that the goods must be reasonably fit for the purpose as stated by the hirer either expressly or by implication. Whether the goods are reasonably fit must be tested in relation to the purpose for which they are supplied, and must depend on the degree of precision with which that purpose is specified (Macleod 1971). However, this condition shall not be implied for second-hand goods provided the agreement mentions that:

- (a) the goods are second-hand; and
- (b) all conditions and warranties of fitness and suitability are expressly negated, and the owner proves that the hirer has acknowledged in writing that the statement was brought to his notice.

The exceptions to this implied condition appear to be similar to that of merchantable quality. It must be noted that such exceptions will only operate if it is proved that the hirer has acknowledged the above provisions and is aware of their effect before the agreement was made.

4.3.7.2 Consequences for breach of Implied Condition and Warranty

A breach of condition goes to the root of the agreement (Pheng and Samen 1997) and affects its very foundation. Hence, a hirer may rescind the contract and will be entitled to recover the amount already paid him. In *Public Finance Bhd. v. Ehwan Bin Saring*⁹³, the High Court observed that the owner had to have a good title when he entered into the hire-purchase agreement, and not when the final payment was made. Thus, the hirer was entitled to recover the amount already paid by him. On the other hand, a breach of warranty does not give rise to a right to rescind the hire-purchase agreement but to a claim for damages. In *Lau Hee Teah v. Hargill Engineering Sdn. Bhd. & Anor*⁹⁴, the court held that such a breach would only enable the hirer to claim damages against the owner, but not to rescind the contract.

4.3.7.3 Exclusion⁹⁵ Clauses

The owner usually takes the benefit of an exclusion clause to free him from any liability for unforeseen damages to the goods. Coote (1964) emphasizes that an exclusion clause provides merely a shield to a claim for damages and that it does not in itself affect the obligations undertaken by the owner. As regard to implied terms, while they may be independently implied of actual intention of the parties, they cannot be in conflict with the express terms in the contract. Thus, exclusion of implied terms may have direct effect upon primary rights by preventing their ever coming into existence (Coote 1964). There is a need to control the use of exclusion clause in the agreement particularly when there is an intention for avoiding the primary and core responsibility in the contract. It is also aims to eliminate the hindrance for the hirer from claiming damages for any loss arising from use of the goods supplied by the owner.

⁹³ [1996] 1 MLJ 331

⁹⁴ [1980] 1 MLJ 145

⁹⁵ Sometimes referred to as "Exception or Exemption Clauses".

Now we shall look into each implied term, whether it can be excluded.

- (1) *Condition as to title* – this condition cannot be excluded because it is a basic requirement for transferring a title in the goods. Failure to pass title under a contract amounts to a total failure of consideration, resulting to a void contract (Hudson 1957).⁹⁶
- (2) *Condition as to fitness for purpose* – it can be excluded but the owner must comply with certain requirements (MacLeod 1971), that are:
 - a. insert a clear exclusion clause to this effect in the agreement;
 - b. inform the hirer of this exclusion; and
 - c. make sure that the hirer understands the effect of this clause.
- (3) *Condition as to merchantable quality* – section 7(2) provides that this condition may be excluded in two situations:
 - a. where the hirer has examined the goods or sample as regards defects which the examination ought to have revealed; and
 - b. if the goods are let as second-hand goods, and the agreement contains a statement to that effect.

In addition, condition of merchantable quality may also be excluded if the goods are let subject to defects specified in the agreement (Borrie 1969). The agreement must contain a provision that this condition is excluded, and it is proved that such provision has been brought to the hirer's notice and its effect made clear to him before the agreement is made. Therefore, it could be clearly comprehended that the imposition of the above implied terms aims to compliment a hire-purchase agreement which may ordinarily be silent in providing such protections. These terms cannot be easily excluded except in relation to second hand goods in respect of merchantable quality and the condition regarding fitness for purpose. Even so, there are stringent conditions to be observed. We might as well find that these implied conditions and warranties are generally similar to those provided in section 14 to 16 of the Malaysian Sale of Goods Act 1957. Hence, this law is worth referred to in respect of this subject.

⁹⁶ In the other articles published 4 years later, the writer viewed that it was possible to exclude the term implied by the subsection, but it must be precisely put a limit to this freedom (Hudson 1961)

4.3.8 REPOSSESSION

The hirer must ensure that he pays the monthly instalments regularly, or he will face a consequence of repossession. Repossession occurs when the hirer has defaulted in the payment of instalments. This is the right of the owner, which enables him to take back the goods from the hirer provided that he must follow certain conditions as provided by the law. The Hire-Purchase Act 1967 provides rights and obligations of the hirer and owner in the event of repossession of the goods in section 16 to 20. In support to these rules, reference must also be made to the Hire-Purchase (Recovery of Possession and Maintenance of Records by Owners) Regulations 1976. These matters are neatly explained in two situations; before and after the repossession takes place.

4.3.8.1 Before Repossession

Section 16(1) of HPA provides that, before the owner wishes to exercise his right of repossession, he must ensure that the following conditions have been fulfilled:

- 1) The hirer has defaulted in payment of instalments, provided:
 - (a) there had been two successive defaults of payment or a default in payment of the instalment;
 - (b) where a hirer is deceased, there had been four successive defaults of payments;⁹⁷
- 2) A written notice of intention to re-possess as in the form set out in the Fourth Schedule has been served on the hirer, and the period fixed by the notice (not less than 21 days) has expired; and
- 3) A second notice is served to the hirer after 14 days of the service of the Fourth Schedule notice, reminding him to act promptly or the owner will repossess the goods immediately after the period as stipulated in the Fourth Schedule notice has expired⁹⁸.

These notices shall be delivered by the owner personally or through post to the last known address of the hirer. However, section 16(2) states that the owner need not

⁹⁷ Section 16(1A)

⁹⁸ This condition is commonly practiced though not specified by the HPA. Its aims as a second reminder to the hirer of the owner's intention to repossess if he still fails to exercise his obligation under the hire-purchase agreement (Malaysia 2003).

comply with the above conditions as set out by section 16(1), if there are reasonable grounds for believing that the goods will be removed or concealed by the hirer contrary to the provisions of the agreement. In this situation, it is the owner who must prove those grounds for believing that the hirer will do such acts.

As for the hirer, upon receiving the Fourth Schedule notice, he must act accordingly; in fact he has two choices:

- 1) He needs to pay all due payments as stated in the Fourth Schedule notice within 21 days of the service of the notice, thus the goods will not be repossessed; or
- 2) He can return the goods to the owner within 21 days of the Fourth Schedule notice. In this situation, he is still obliged to pay a due sum after deducting the value of the goods at that particular time.

If the hirer returns the goods within twenty-one days after the service of the notice as set out in the Fourth Schedule, he shall not liable to pay (section 16A);

- (a) the cost of repossession;
- (b) the cost incidental to taking possession; and
- (c) the cost of storage.

However, if the hirer does not exercise either of these obligations, the repossession will take place at any time after the lapse of 21 days as stated in the Fourth Schedule notice.

4.3.8.2 After Repossession

In the event of repossession of the goods, the owner still has to perform several duties that are;

- 1) On repossession the owner must deliver to the hirer personally a document acknowledging receipt of the goods. If the hirer is not present at that time, such document of receipt must be sent to him immediately after the owner takes possession of the goods.⁹⁹
- 2) The owner also has to set out in the above document a short description of the goods, the date, time and place of repossession.¹⁰⁰

⁹⁹ Section 16(4)

¹⁰⁰ Section 16(5)

- 3) Within 21 days after repossession took place, the owner has to serve on the hirer and every guarantor of the hirer a written notice as in the form set out in the Fifth Schedule Section 16(3).
- 4) Failure to do so, his rights under the agreement will cease and determine unless the hirer exercises his right to recover the goods.¹⁰¹
- 5) The owner must not sell or dispose the goods without the written consent of the hirer until the expiry of twenty-one days after the service of the notice as set out in the Fifth Schedule.¹⁰² If he contravenes this rule, he shall be guilty of an offence under HPA.¹⁰³

It is important to note that the service of the Fifth Schedule notice does not indicate that an absolute repossession has taken place, but to give a second warning and chance to the hirer to perform his obligations under the agreement. The purpose of the above notice is to ensure that the hirer is aware of his rights and be given ample notice to enable him to prevent the repossession by settling his obligations (Pheng and Samen 1997). After the event of repossession, the hirer still has certain rights and responsibilities as expounded by the HPA.

4.3.8.3 Rights of Hirer on Repossession

Section 18 confers on the hirer certain rights when goods are repossessed, which include as follows:

- 1) Within 21 days after the service of a notice in the Fifth Schedule, section 18(1)(a) provides that the hirer may by giving to the owner a written notice requiring the owner to—
 - a. re-deliver to the hirer the goods that have been repossessed; or
 - b. sell the goods to any person introduced by the hirer who is prepared to buy for cash at a price not less than the estimated value of the goods set out in the notice.
- 2) Where the hirer has sent a notice to the owner as in section 18(1)(a), within twenty-one day after giving such notice he can regain possession of the goods by performing the following acts:

¹⁰¹ Section 16(6)

¹⁰² Section 17(1)

¹⁰³ Section 17(2)

- (a) pays or tenders to the owner any amount due under the hire-purchase agreement in respect of the period of hiring up to the date of payment or tender;
 - (b) remedies any breach of the agreement; and
 - (c) pays to the owner the reasonable costs and expenses incurred in taking possession of the goods and redelivering them to the hirer.
- 3) Alternatively, according to section 18(1)(b), the hirer may also claim a refund from the owner if the value¹⁰⁴ of the goods exceeds the net amount payable¹⁰⁵ (Buang 2001).
 - 4) After repossession, where the owner intends to sell the goods by public auction, he must notify the hirer of such public auction not less than fourteen days from the date of the auction.¹⁰⁶
 - 5) If the sale is not made through public auction, the owner must give the hirer an option to purchase the goods at the price which he intends to sell if the price is less than the owner's estimate of the value of the goods repossessed.¹⁰⁷
 - 6) Section 18(5)(a) requires the hirer to act fast in order to recover the amounts he entitles to. He must within 21 days of receiving the notice under the Fifth Schedule, give to the owner a written notice;
 - a. setting out the amount which he claimed under this section; and
 - b. signed by him or his advocate or agent.
 - 7) After sending the notice to the owner, the hirer must commence an action in court not later than three months after the notice had been sent to the owner.¹⁰⁸
 - 8) At any time before the commencement of the above proceedings, the owner can make an offer in writing to the hirer any amount in satisfaction of the hirer's

¹⁰⁴ Section 18(3)(b) explains the meaning of the "value of the goods" as

- (a) the best price that could be reasonably obtained by the owner at the time of taking repossession of the goods; or
- (b) if the hirer has introduced a person who has bought the goods for cash, the amount paid by that person, less than the following costs:
 - (i) the reasonable costs incurred by the owner in taking possession of the goods;
 - (ii) cost of storage, repair or maintenance; and
 - (iii) reasonable expenses incurred in selling the goods.

¹⁰⁵ Section 18(3)(a) defines the "net amount payable" as the total amount payable less the statutory rebates for term charges and insurance as the owner taking possession of the goods.

¹⁰⁶ Section 18(4)(a)

¹⁰⁷ Section 18(4)(b)

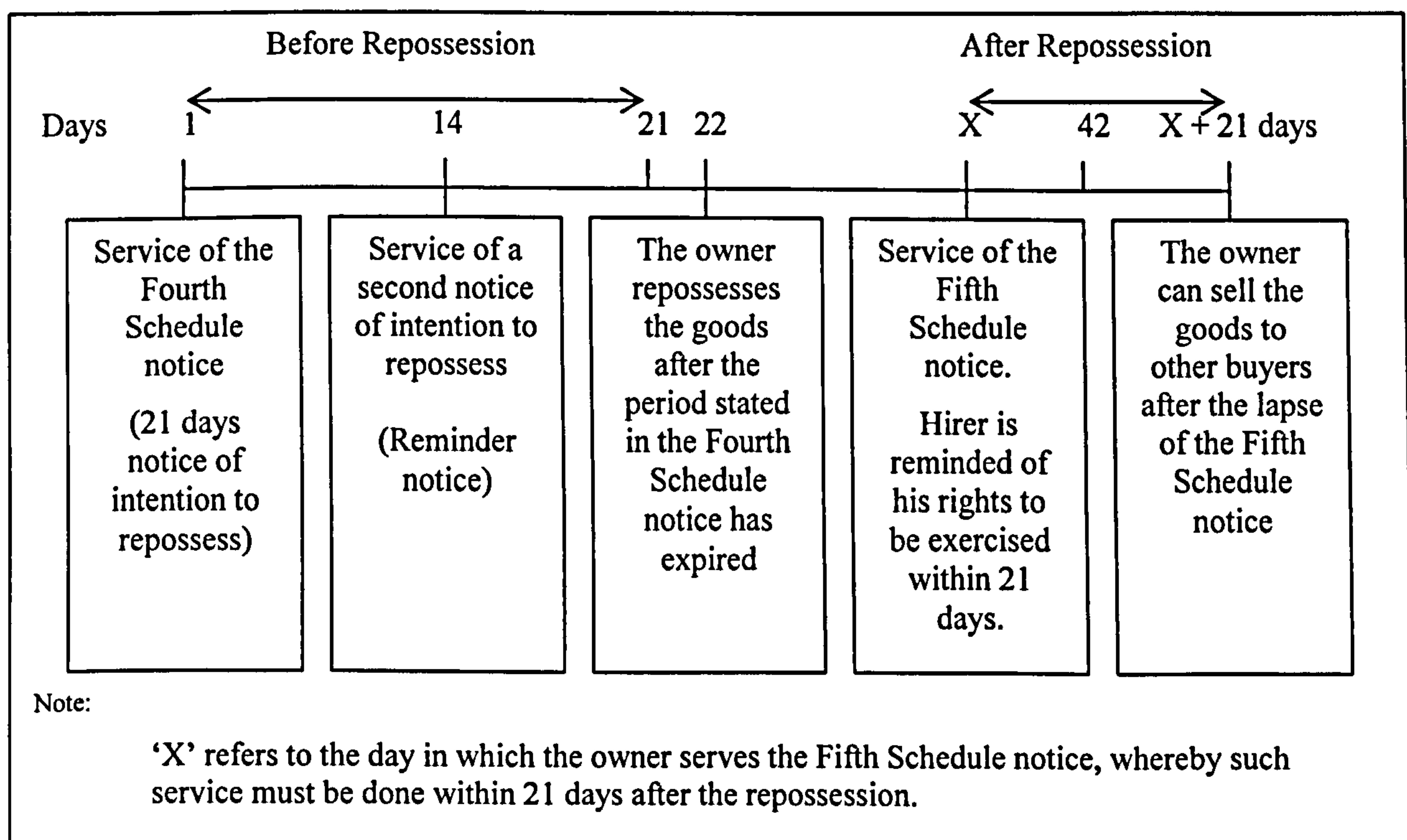
¹⁰⁸ Section 18(5)(b)

claim. If the hirer accepts it, the dispute ends, but if he rejects the owner is entitled to pay the amount into court.¹⁰⁹

If the hirer performs the above duties, the owner must return the goods to the hirer. Their relationship reverts to the original position, as if the breach had not occurred and the owner had not repossessed the goods.¹¹⁰

For the purpose of better understanding in this subject, a general procedure of repossession is illustrated in the diagram below:

FIGURE 4.2:
Procedure of Repossession



From the foregoing discussion, it is clear that the rule of repossession as enunciated by Hire-Purchase Act 1967 upholds the aims of HPA to protect the hirer's right. The law gives several reminders and enough time for the hirer to fulfil his obligation; upon expiration of the given period only then repossession takes place. Having examined Hire-Purchase Act 1967 in considerable detail, the next section will look into the proposed *Mu'amalah* Hire-Purchase Bill as an alternative law for Islamic hire-purchase transaction in Malaysia.

¹⁰⁹ Section 18(6)

¹¹⁰ Section 19

4.4 MU'AMALAT HIRE-PURCHASE BILL

Presently, there is no specific law regulating Islamic hire-purchase transaction. Instead, all hire-purchase transactions are governed by Hire-Purchase Act 1967. The latest development in Malaysia has witnessed an effort taken by Bank Negara and other government entities, including Attorney General Chambers, Ministry of Domestic Trade and Consumerism, Finance Ministry and Department of Islamic Development (JAKIM) to come with a special regulation on Islamic hire-purchase transaction. The Malaysian government has indicated its intention to table in Parliament a new Islamic Hire-Purchase Bill in the near future (Alias 2004). The Bill is known as *Mu'amalah* Hire-Purchase Bill. The proposed Bill suggests some important matters, such as expanding scope of assets to be acquired by Islamic hire-purchase, defining the agreements and manners of entering them, ascertaining rights and liabilities of the contracting parties, jurisdiction of courts and many more.

4.4.1 Development of *Mu'amalah* Hire-Purchase Bill

The *Mu'amalah* Hire-Purchase Bill was initially drafted by some members of *Shari'ah* Council of Bank Islam Malaysia Berhad (BIMB) that consisted of Dr Abdullah, Dr Sabri, Prof Ahmad Ibrahim (deceased), Dr Osman Sahab and Mustafa Hamat. It was then passed to the Management of BIMB for amendment. In 1991, the drafted Bill was submitted to the Ministry of Domestic Trade and Consumerism (KPDN) and Central Bank of Malaysia for thorough examination. Before presenting the Bill in the Parliament, it has to refer to Attorney General Chambers. Only in 2000, the Bill was passed to Attorney General Chambers and then was examined by the *Shari'ah* experts in Islamic Division of Prime Minister Department. In principle, the government is in support of the Bill, but are not certain of ways to implement it and its drafting style; whether to come with a separate and new law (Islamic Hire-Purchase Law) or incorporate Islamic hire-purchase principles into Hire-Purchase Act 1967. In other word, HPA needs to be amended to meet certain *Shari'ah* requirements.

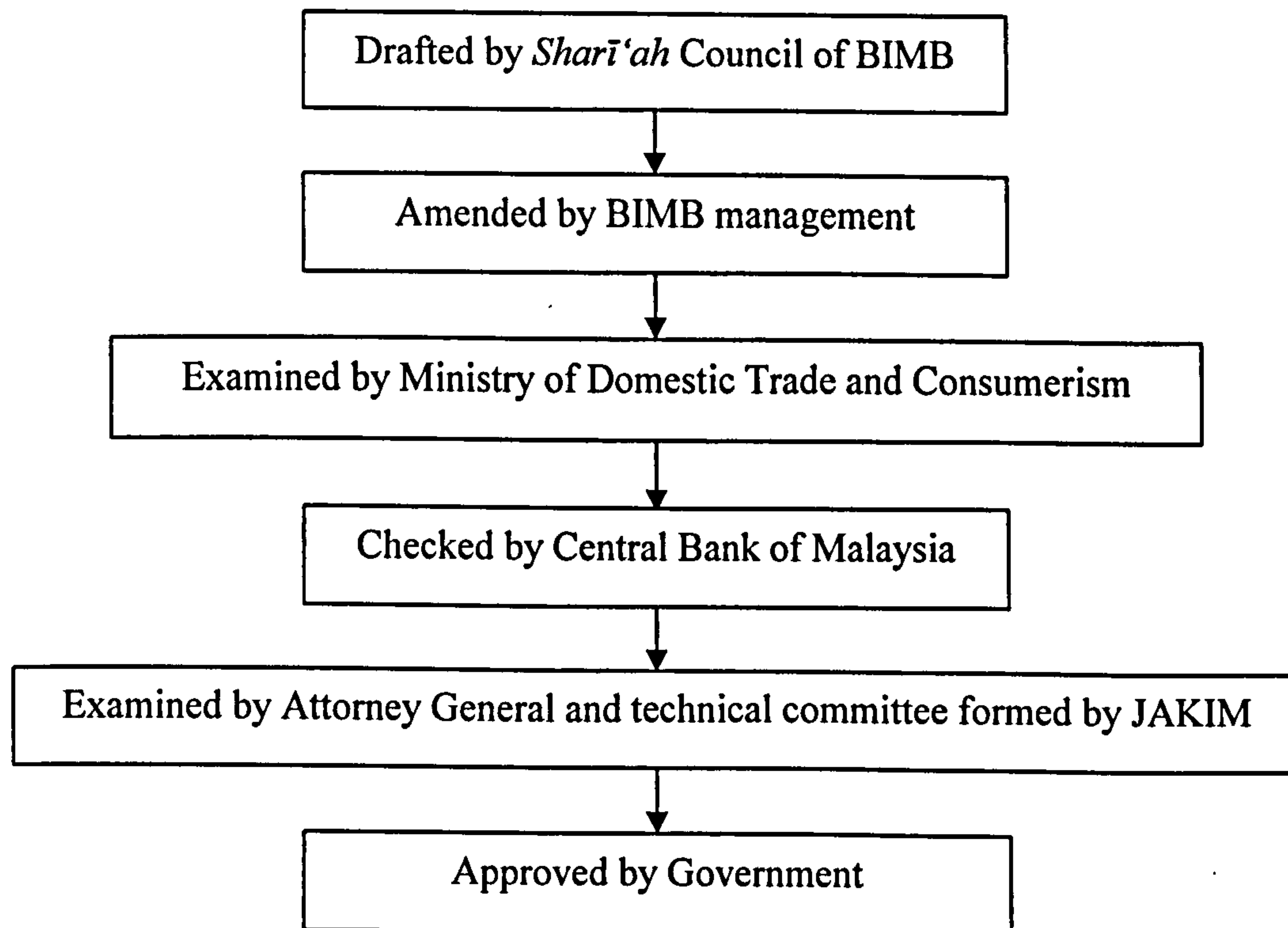
A special committee is formed to look back into the above issue. The committee comprises members of *Shari'ah* Advisory Council, representatives from Central Bank, Ministry of Domestic Trade, Islamic Development Department of Malaysia

(JAKIM), Attorney General Chambers and Association of Hire-Purchase of Malaysia. Their tasks cover analysing thoroughly provisions of the Bill, adding some rules that deem necessary and amending provisions which are clearly contradicted to *Shari'ah* principles. The Bill needs to be substantive and exhaustive so that it would be in a proper position to call for *Shari'ah*-based institutional involvement. In this case, the Bill will give power to *Shari'ah* Court to try hire-purchase cases which involve various *Shari'ah* issues.

In short, the Bill has undergone the following process as depicted by Figure 4.3:

FIGURE 4.3:

Development of *Mu'amalah* Hire-Purchase Bill



4.4.2 Content of the *Shari'ah* Bill

The Bill is mainly drafted by reference to Hire-Purchase Act 1967. It is therefore, not surprising to find that most of its provisions are identical to HPA. The researcher will not discuss the Bill in detail because most of its provisions which are similar to HPA such as implied terms and warranties, rights and responsibility of owners, hirers, guarantors and dealers and repossession have been discussed in the previous sections.

The Bill is divided into 9 parts:

Part 1 is a preliminary section outlining the short title and application of the Bill, interpretation of certain key words in the Bill and provisions for appointment of officers as controller of Islamic hire-purchase transaction.

Part 2 consists of provisions for the formation, contents of Islamic hire-purchase agreements and requirements relating to the agreements.

Part 3 provides for protection of hirers and guarantors which comprise implied conditions and warranties in hire-purchase agreement and liability of the owner and person acting on his behalf for misrepresentation.

Part 4 prescribes rights and liabilities of hirers during hire-purchase transaction and repossession.

Part 5 outlines matters relating to guarantors, comprising provisions as to guarantors, exemption of liability in certain cases, guarantor's rights against owner and hirer and their limitation from seizure.

Part 6 stipulates requirement for insurance or *takāful* for goods in Islamic hire-purchase agreement, powers of court and contents of insurance or *takāful* contract.

Part 7 sets down power of enforcement in Islamic hire-purchase agreement in respect of power of investigation, proof of identification, inspection with warrant, inspection and seizure without warrant, warrant admissible notwithstanding defects, list of seized goods, information by accused person admissible in evidence, prosecution, compounding and protection of officers.

Part 8 provides matters relating to offences comprising false statement by dealers in proposals, hirer to state the location of goods, fraudulent sale or disposal of goods by hirer, obstruction of officers, disclosure of confidential information and penalty.

Part 9 states general provisions in respect of profit margin, deposits, power of court to reopen certain Islamic hire-purchase transactions, avoidance of certain provisions, provisions relating to securities collateral to Islamic hire-purchase agreements, certain alterations of agreement, second-hand goods, power of court to extend time and order delivery of goods unlawfully detained, service of notice, proof of service, size and type required in certain documents, liability of responsible officers of company and liability of principal for acts of agents.

In addition to the above main provisions, the Bill is supported by six schedules. These schedules are to be read in reference to certain provisions of the Bill.

First Schedule lists down goods comprising house of not more than RM250,000.00, consumer goods, motor vehicles and machinery. The schedule must be referred to section 2(1) of the Bill.

Second Schedule states definition of Arabic words or phrases used in the Bill, for example, '*aqd, bay' al-Murābahah, ibrā'*, *Mu'amalat* and *takāful*. The schedule is based on section 2 (4) of the Bill.

Third Schedule which is to be read with section 11(1) provides summary of hirer's financial obligation under Islamic hire-purchase agreement.

Fourth Schedule provides a notice to be given to the hirer under section 12(1)(b).

Fifth Schedule states a notice of intention to re-possess as prescribed by section 24(1)(a).

Sixth Schedule sets down notice to hirers under section 24(2) of the Bill.

These schedules contain supplementary matters including list of goods covered by the Bill, statement of financial obligation, explanation to Arabic terms and notices to be served during hire-purchase transaction. By having been equipped with specific provisions and schedules, the Bill aims to provide substantial rules to govern the operation of Islamic hire-purchase transaction. The next section will compare and contrast the Bill with HPA and it will also look into those conflicting features between the two regulations.

4.5 COMPARISON OF MU'AMALAH HIRE-PURCHASE BILL AND HIRE-PURCHASE ACT 1967

As discussed in the previous chapter, Hire-Purchase Act (1967) is the main governing rule for hire-purchase transactions in Malaysia; while *Mu'amalah* Hire-Purchase Bill (2002) is a drafted regulation aiming to govern the operation of Islamic hire-purchase transaction, but it has not been passed yet. Although *Mu'amalah* Hire-Purchase Bill is drafted based on Hire-Purchase Act 1967, there are some differences in certain aspects. These conflicting characteristics can be found in the following parts:

4.5.1 Preliminary (Part 1)

- 1) In interpretation section (section 2), the Bill adopts different definitions of certain important terms, such as:
 - (a) In contrast to HPA which defines "hire-purchase agreement" all-in-one, the Bill takes slightly different approach. Firstly, it defines "*Mu'amalah* hire-purchase" as leasing out a particular goods from owner to hirer with an agreement to transfer ownership of the leased goods to the hirer at the end of leasing period or at any earlier period based on conditions prescribed by *mu'amalah* hire-purchase agreement which is mutually agreed upon by both parties; and the transfer must be completed by any of ways stated in the agreement. Secondly, "agreement" is described as based on meaning given by the Act which means an agreement of *mu'amalah* hire-purchase that is made under provisions of this Act.
 - (b) The Bill terms "prescribed" as prescribed by this Act or other laws made under the Act; while in HPA, it means prescribed by the Minister under this Act.
 - (c) Different definition is used by the Bill to describe "statutory rebate in relation to profit margin" (HPA uses "term charges"). The Bill defines it as a rebate obtained by deducting amount of overall profit during leasing period with profit aggregate for the shortened period.

(d) In the Bill, “*Takāful*” (insurance) means *takāful*¹¹¹ as defined in the Takaful Act 1984 [Act 312]. On the other hand, HPA provides definition for “third-party insurance” which means any insurance in relation to liability in respect of death or bodily injury caused by or arising out of the use of a motor vehicle being insurance required by law.

- 2) Some definitions are identical to that of Hire-Purchase Act 1967, such as “action”, “contract of guarantee”, “goods”, “hirers”, “Minister”, “owner” and “statutory rebate in relation to insurance (*takāful*)”. There are some definitions that are ignored by the Bill like, “cash”, “consumer goods”, “dealer”, “hire-purchase price”, and “vehicle registration fees”.
- 3) The Bill inserts additional provisions in the interpretation sections to support the definitions provided in section 2, which are as follows:
 - Section 2(2) states all words or phrases used in the Bill and are not defined in it but are defined in Interpretation Act 1948 and 1967; such definitions must not contradict to *Sharī‘ah* principles.
 - Section 2(3) rules that matters relating to *Sharī‘ah* shall be referred to *Sharī‘ah* High Court.
 - Section 2(4) provides reference can be made to Arabic text for words or phrases which contradict to that of defined in the Second Schedule.
- 4) The Bill confers a power to appoint a Controller of *Mu‘amalah* hire-purchase to the Royal Highness (*Yang di-Pertuan Agong*), while appointment of Deputy Controllers, Assistant Controllers and other officers are made by the Minister. In HPA, power to appoint all officers is conferred to the Minister only.

¹¹¹ Section 2 of the Takaful Act (1984) defines “*takāful*” as means a scheme based on brotherhood, solidarity and mutual assistance which provides for mutual financial aid and assistance to the participants in case of need whereby the participants mutually agree to contribute for that purpose.

4.5.2 Formation and Contents of Agreements (Part 2)

This part comprises the most significant sections which distinguish the Bill from Hire-Purchase Act 1967.

- 1) In contrast to HPA, the Bill specifies some concepts of *mu'amalah* hire-purchase contract before stating requirements relating to hire-purchase agreement. These concepts cover the following points:
 - **Concept of *Mu'amalah* hire and purchase** should consist of two different and separate agreement which is made based on provisions of the Act (section 4).
 - ***Mu'amalah* contract ('*aqd*)** must be made separate; a contract of leasing and contract of sale and purchase for the same goods (section 5).
 - **Absolute ownership** of goods is gained by the owner before leasing the goods out to hirer (section 6).
 - **Ownership rights** of the goods remain with the owner until contract of sale and purchase is executed between the owner and hirer (section 7).
 - **Cancellation of leasing contract** must be mutually made except if there is any defect to the goods or the owner violates the agreement, then hirer is entitled to cancel the agreement. The owner will have the same right if the hirer fails to pay instalments as prescribed in the agreement (section 8 and section 10).
 - **Death does not affect the contract** because the deceased's relatives will be responsible for continuance of contract, except if he gives prior notice to cancellation the contract in the event of his death (section 9).
- 2) Section 11 of the Bill covers all requirements relating to hire-purchase agreements as provided in section 4, 4A, 4B and 4C of HPA; but it is silent in requiring a separate hire-purchase agreement for every items of goods as provided in section 4D of HPA.
- 3) Section 12(1) requires copy of documents to be served on hirer within twenty-one (21) days after the making of *mu'amalah* hire-purchase agreement. This requirement is slightly different from HPA which imposes a duty on the owner to serve such documents on hirers and guarantors within fourteen (14) days after conclusion of hire-purchase agreement. The same length of period is given by

section 12(2) to the owner to supply to the hirer a copy of memorandum or note of agreement.

- 4) Section 13 states the consequence of unwritten agreement or non-compliance to section 11 and section 12(1) which makes a *mu'amalah* hire-purchase agreement becomes *voidable* and unenforceable by the owner. However, HPA is silent in this matter.

4.5.3 Protection of Hirers and Guarantors (Part 3)

Almost all provisions in this part are based on Hire-Purchase Act 1967, except the Bill inserts additional provision into section 14(1). The provision requires *mu'amalah* hire-purchase agreement to include owner's promise to sell the goods to hirer according to the provisions of the agreement if the hirer wishes to purchase the goods in the same period of time.

4.5.4 Hirers (Part 4)

Part 4 is divided into 2 general subdivisions. In both parts, the Bill appears to take different approaches from that of HPA in some aspects which are outlined as follows:

1) *Statutory rights of hirer*

- (a) Section 16 (3) provides a special rule of rebate (*ibrā'*) which is upon the owner's discretion to exercise it. If he does, he will exempt the hirer from paying the remaining amount and transfer the ownership to him. In this situation, the owner's right to recover the goods and enforce any contract of guarantee will not be affected even if the he fails to supply documents and information to the hirer as prescribed by section 16(1). On the other hand, HPA disapproves the owner from enforcing the agreement against the hirer, recovering the goods and enforcing any contract of guarantee in the event of failure to supply required documents to the hirer.
- (b) The Bill provides that if the owner continuously fail to exercise the above duty for a period of three months, he shall be liable to a fine not exceeding three thousand ringgit (RM 3,000). The HPA imposes less degree of requirement in respect of period to exercise the duty to only one month and a fine not exceeding only one thousand ringgit (RM 1,000).

(c) In respect of hirer's right to determine hiring, HPA specifies in more detail such rights and entitlement of hirer or owner to an amount recoverable as a debt due. The Bill only specifies in general terms this entitlement without explaining its mechanism and situations.

(d) In contrary to HPA, the Bill is silent in two provisions as follow:

- Owner's refusal to give consent to the assignment of rights under hire-purchase agreement as per section 12(5) HPA.
- Some other situations in which the hirer can exercise rights for early completion of agreement as stated in section 14(3) HPA.

2) *Repossession*

In the matter of repossession, the Bill appears to describe the event and procedure of repossession in clearer and more arranged way as compared to HPA¹¹². However, the Bill is still lacking in providing certain rules, such as:

- (a) Hirer's exemption from paying cost of repossession if he returns goods within the prescribed period, as provided in section 16A of HPA.
- (b) Some of the hirer's other rights and immunities when good repossessed, including right to require the owner to sell the goods to any person recommended by the hirer and right to recover certain amount from the owner as stated in section 18(1) and (2) of HPA.
- (c) Power of hirer to regain possession of goods in certain circumstances as per section 19 of HPA.
- (d) Manners of selling the repossessed goods by the owner through public auction or otherwise than the auction.

4.5.5 Insurance or Takāful (Part 6)

In the provision of insurance (*takāful*), the Bill employs same rules as derived from HPA in respect of powers of court in relation to insurance contracts associated with

¹¹² The Bill describes repossession by, firstly, stating situations where the goods can be repossessed; secondly, specifying procedure of repossession; thirdly, mentioning effects of repossession; fourthly, outlining rights of hirers during repossession; fifthly, listing rights of owner; and finally providing power of court to vary judgement or orders when goods are repossessed. Unlike the Bill, HPA begins with explaining type of notices to be given to hirer during repossession process; then exempting the hirer from paying cost of repossession if he returns the goods. The next provision authorises the owner to retain the repossessed goods for 21 days, and it is followed by provisions spelling out hirer's rights and immunities when the goods are repossessed. After that HPA specifies certain circumstances in which the hirer is empowered to regain possession of the goods; and finally, states the power of court to vary the judgement.

hire-purchase agreements, contents of insurance contracts and application of provisions in this part. With reference to basic concept and application of insurance (*takāful*), the Bill makes certain modification to the rules. The Bill clearly imposes *takāful* responsibility onto hirer without any interference from the owner¹¹³. On the other hand, HPA requires the owner to take insurance coverage in the name of hirer for the goods throughout the duration of agreement, except in case of motor vehicle which requires him to take insurance for the first year only¹¹⁴. However, the Bill is silent in issue of renewal of insurance or *takāful*.

4.5.6 Power of Enforcement (Part 7)

This part is also substantially modified from Part 8 of HPA in which some new provisions are inserted in this part of the Bill. These provisions express rules for proof of identification, inspection with warrant, inspection and seizure without warrant and list of seized goods. Yet, provisions of HPA are still adopted by the Bill such as provisions referring to power of investigation, warrant admissible notwithstanding defects, information by accused person admissible in evidence, prosecution, compounding and protection of officers.

4.5.7 Offences (Part 8)

Matters relating to offences as provided in Part 8 are based on some provisions in Part 7 and Part 8 of HPA. Part 8 of the Bill rules out offences comprising false statement by dealers in proposals, hirer to state the location of goods, fraudulent sale or disposal of goods by hirer, obstruction of officers, disclosure of confidential information and penalty. In the provision of disclosure of confidential information, the Bill provides certain exception for its disclosure which includes:

- (1) the disclosure appears to be reasonable according to the Act;
- (2) for the purpose of legal proceeding;
- (3) for the purpose of investigation made under the Act;
- (4) for government consultant or any officers who are approved in writing by the Minister to receive such information; or

¹¹³ Section 34(1), (2), (3) and (4) of *Mu'amalah* Hire-Purchase Bill

¹¹⁴ Section 26(1) of Hire-Purchase Act 1967

- (5) For the purpose of analysis by the Government of the operation of this Act.

4.5.8 General (Part 9)

Almost all provisions in Part 9 of the Bill are referred to Part 8 and Part 9 of HPA except in respect of profit margin and deposit which are changed to be in compliance to *Sharī'ah*. Other provisions spell out power of court to reopen certain Islamic hire-purchase transactions, avoidance of certain provisions, provisions relating to securities collateral to Islamic hire-purchase agreements, certain alterations of agreement, second-hand goods, power of court to extend time and order delivery of goods unlawfully detained, service of notice, proof of service, size and type required in certain documents, liability of responsible officers of company, liability of principal for acts of agents and regulations.

4.5.9 List of Goods (First Schedule)

As mentioned earlier, HPA applies to consumer goods and motor vehicles only. Other than these goods are known as 'non-Act goods' which are not covered by the HPA. In addition to the two types of goods, the Bill widens its application to include houses of not more than RM 250,000 and machineries.

4.5.10 Term Charges and Annual Percentage Rate

HPA provides the formula of calculating the term charges and annual percentage rate in the Sixth and Seventh Schedule respectively. This formula is used to determine the total amount payable and instalment payment under a hire-purchase agreement. In contrast, the Bill does not provide such formula since both types of payments are calculated on the basis of *bay' al-murābahah*. However, the Bill does not specify clearly how *bay' al-murābahah* works in determining the purchase price and instalment payments.

From the above comparison, the Bill does adopt substantial provisions of Hire-Purchase Act 1967 which are not contradicted to *Sharī'ah* principles. Yet, the Bill takes different approaches in almost all provisions to make them more *Sharī'ah*-compliant.

To illustrate clearer the comparison of *Mu'amalah* Hire-Purchase Bill and Hire-Purchase Act 1967, Table 4.1 below is referred to.

TABLE 4.1:
Comparison of *Mu'amalah* Hire-Purchase Bill and Hire-Purchase Act 1967

ITEM	MU'AMALAH HIRE-PURCHASE BILL	HIRE-PURCHASE ACT 1967
(1) Interpretation	<ul style="list-style-type: none"> • Defines "Islamic (<i>Mu'amalah</i>) hire-purchase" and "agreement" separately. • "prescribed" means prescribed by this Act or other laws made under the Act. • "statutory rebate in relation to profit margin" • "<i>Takāful</i>" 	<ul style="list-style-type: none"> • Defines "hire-purchase agreement" all-in-one • "prescribed" means prescribed by the Minister under this Act. • "statutory rebate in relation to term charges" • "third-party insurance"
(2) Appointment of Officers	<ul style="list-style-type: none"> • The Royal Highness (<i>Yang di-Pertuan Agong</i>) appoints a Controller of <i>Mu'amalah</i> hire-purchase • The Minister appoints Deputy Controllers, Assistant Controllers and other officers. 	<ul style="list-style-type: none"> • The Minister has a power to appoint all officers.
(3) Concepts of Islamic (<i>mu'amalah</i>) hire-purchase contract	<ul style="list-style-type: none"> (a) 2 different and separate agreements. (b) Contract of leasing and contract of sale and purchase must be made separately. (c) Owner's absolute ownership of goods. (d) Ownership rights held by owner until sale and purchase is executed. (e) Cancellation of leasing contract must be mutually with some exceptions. (f) Death does not affect the contract. 	<ul style="list-style-type: none"> • Not applicable
(4) Requirements relating to hire-purchase agreements	<ul style="list-style-type: none"> • copy of documents to be served on hirer within 21 days after agreement. • consequence of unwritten agreement or non-compliance makes agreement <i>voidable</i> and unenforceable. 	<ul style="list-style-type: none"> • service of documents on hirers and guarantors within 14 days after conclusion agreement. • Not mention effect of non-compliance.
(5) Protection of hirers and guarantors	<ul style="list-style-type: none"> • additional provision to include owner's promise to sell the goods to hirer if the hirer wishes to purchase the goods in the same period of time. 	<ul style="list-style-type: none"> • No additional provision.
(6) Statutory rights of hirer	<ul style="list-style-type: none"> • provides a special rule of <i>ibrā'</i>. Not affect owner's right to recover the goods and enforce contract of guarantee if he fails to supply documents and information. • Penalty for failure to supply document is a fine not exceeding RM 3,000. • only specifies in general terms of hirer's right to determine hiring without explaining its mechanism and situations. • the Bill is silent in the two provisions. 	<ul style="list-style-type: none"> • owner from cannot enforce the agreement, recover the goods and enforce contract of guarantee if fails to supply documents to hirer. • Impose a penalty of only RM 1,000. • specifies in more detail of such rights and entitlement of hirer or owner to an amount recoverable as a debt due. • Other provisions: <ul style="list-style-type: none"> (a) Owner's refusal to give consent to assignment of rights (b) other situations where hirer can exercise rights for early completion of agreement

ITEM	MU'AMALAH HIRE-PURCHASE BILL	HIRE-PURCHASE ACT 1967
(7) Insurance/ <i>takāful</i>	<ul style="list-style-type: none"> imposes <i>takāful</i> responsibility onto hirer without any interference from the owner the Bill is silent in issue of renewal of insurance/<i>takāful</i>. 	<ul style="list-style-type: none"> requires owner to insure the goods throughout the duration of agreement, except for motor vehicle which requires insurance for the first year only provides renewal of insurance
(8) Repossession	<ul style="list-style-type: none"> describe the clearer procedure of repossession in more arranged way fails to provide: <ol style="list-style-type: none"> Hirer's exemption from paying cost of repossession if he returns goods within the prescribed period hirer's other rights and immunities when good repossessed hirer to regain possession of goods in certain circumstances Manners of selling the repossessed goods by the owner 	<ul style="list-style-type: none"> provisions are mixed up provides complete rules and rights of hirers during repossession
(9) Power of enforcement	<ul style="list-style-type: none"> new provisions express rules for proof of identification, inspection with warrant, inspection and seizure without warrant and list of seized goods. 	<ul style="list-style-type: none"> Part 8
(10) Offences	<ul style="list-style-type: none"> Provides matters relating to offences in one part provides exceptions for disclosure of confidential information 	<ul style="list-style-type: none"> offences are provided in Part 7 and 8
(11) General	<ul style="list-style-type: none"> Provisions for profit margin and deposit are modified to be in compliance to <i>Sharī'ah</i>. 	<ul style="list-style-type: none"> Part 7 Provisions for term charges and minimum deposit
(12) List of Goods	<ul style="list-style-type: none"> Wider application than HPA Include houses of not more than RM 250,000 and machineries 	<ul style="list-style-type: none"> Applies to consumer goods and motor vehicles
(13) Calculation of profit/term charges	<ul style="list-style-type: none"> Based on <i>bay' al-murābahah</i> 	<ul style="list-style-type: none"> Provides the formula in Sixth and Seventh Schedule

At the first glance from above discussion, the Bill appears to be modelled around the Hire-Purchase Act 1967 since its contents, arrangement of provisions and schedules are comparatively similar to those in HPA. But a thorough examination reveals some conflicting features and rules underlying certain provisions of both regulations.

4.6 SUMMARY

This chapter describes background information of two major regulations of Islamic hire-purchase transaction in Malaysia. In the beginning section, the Malaysian legal system is briefly explained in order to grasp an understanding of the legal situation in the country before presenting the two regulations under study. The chapter proceeds with thorough examination of Hire-Purchase Act 1967 which reveals its content, rules prescribing rights and responsibilities of parties involved in the transaction, repossession, enforcement and other general matters. However, HPA appears to be insufficient in providing substantive rules prescribing basic concept of Islamic hire-purchase contract. This loophole may open to application of English law to Islamic hire-purchase transaction. *Mu'amalah* Hire-Purchase Bill is initiated to remedy the inadequacy of Hire-Purchase Act 1967. The Bill is modelled from the HPA with some modifications to make it consistent to the *Sharī'ah* requirements. A comparison between the Hire-Purchase Act 1967 and *Mu'amalah* Hire-Purchase Bill discloses the Bill's distinctive features in certain parts and provisions, for example, specific definition of 'hire-purchase agreement', explanation to concept of Islamic hire-purchase contract, clear procedure of repossession and provisions of offences. There are some rules in which the Islamic Bill is silent to them, including rights of hirers during repossession, renewal of insurance and imposing insurance responsibility onto owner during the first year of contract.

It is important to note that, the chapter serves as an introduction to the regulations. A more thorough examination of HPA and the Bill in respect of their strengths, weaknesses and other features will be discussed in Chapter 8 when analysing interview data. The next chapter will discuss methodology and design of this research and then followed by data analysis chapters.

RESEARCH METHODOLOGY

5.1 INTRODUCTION

Research methodology is a crucial aspect of any research work, and is vital for the success of research. The choice of an inappropriate method can give serious implications to a research, however good the objectives of the study might be. This chapter will focus on the design of the research methods used in the study, which, in addition to a plan of data collection and analysis, serves as a vital guidance from the beginning to the completion of the study. Oppenheim (1992) depicted the importance of research design as follows:

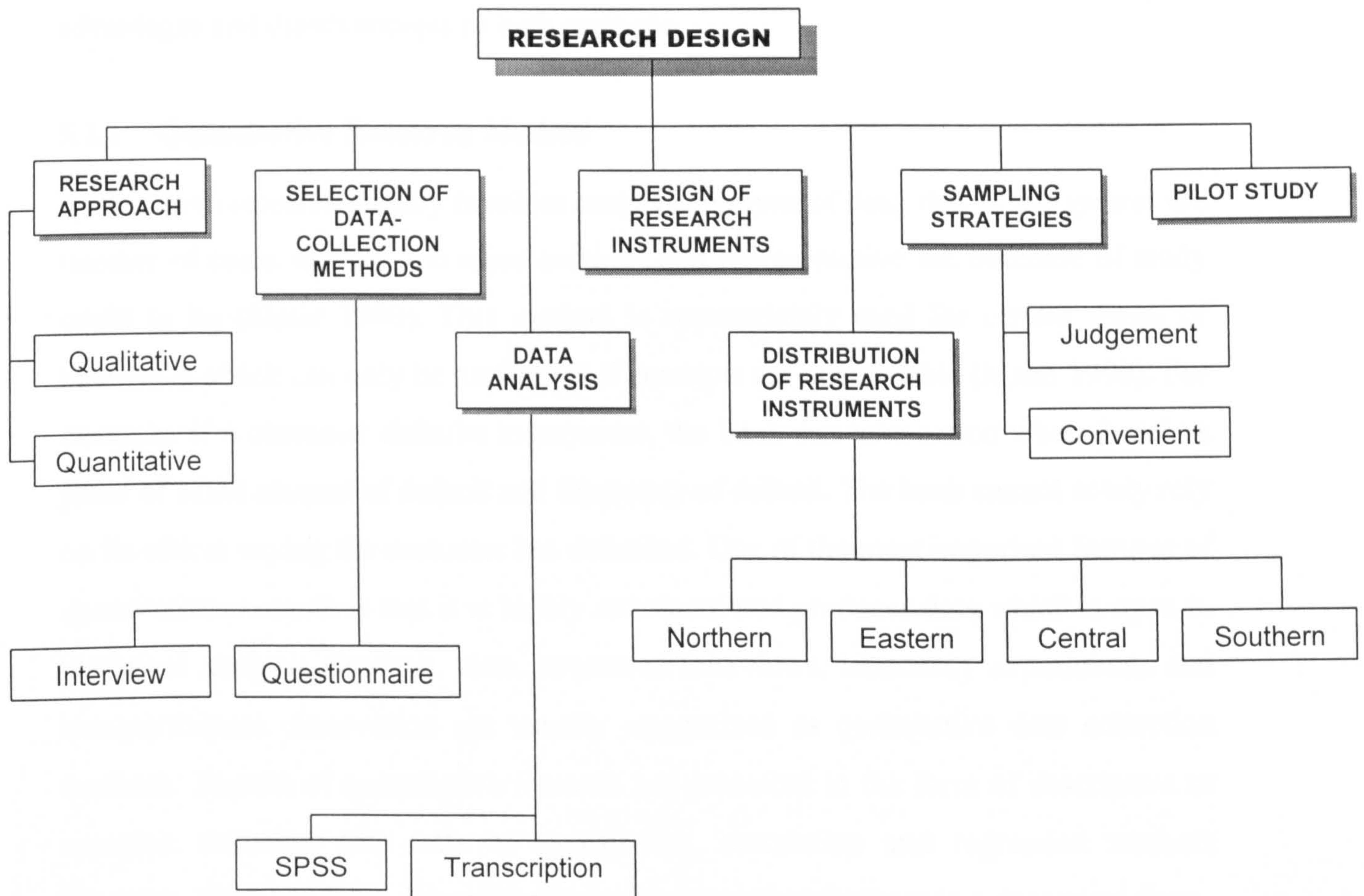
“It is the research design which must hold all the parts and phases of the enquiry together. The design must aim at precision, logic tightness and efficient use of resources. A poorly designed survey will fail to provide accurate answers to the questions under investigation; it will have too many loopholes in the conclusions; it will permit little generalization; and it will produce much irrelevant information, thereby wasting case material and resources.” (Oppenheim 1992).

The research design of this study will cover the following matters;

- (a) Research approach: whether to adopt a quantitative and qualitative method or a combination of both (Stone and Harris 1984).
- (b) Selection of data-collection methods which involve specifying research setting, sources of research data and choice of appropriate research instruments.
- (c) Design of research instruments which include method of designing the contents and ways of administering the instruments
- (d) Sampling strategies for selecting the respondents
- (e) Testing the research instruments in pilot study
- (f) Distribution of research instruments
- (g) Mode of analyzing data and interpreting the research finding

The outline of research design adopted by this study is illustrated by Figure 5.1 below:

FIGURE 5.1:
Outline of Research Design



Before considering alternative research design strategies, more fundamentally choice of research method must be made between a quantitative method and a qualitative one.

5.2 QUANTITATIVE AND QUALITATIVE METHODS

Essentially, research can be quantitative, concerned with measurement and analysis of relationships between variables; or qualitative, examining the context of a process and meanings in an exploratory way. The decision whether to use quantitative or qualitative method depends on the given context of this research as there are advantages and disadvantages in both methods.

5.2.1 Quantitative Research Method

Quantitative research usually involves massive amounts of data; that is, the greater the number of cases studied, the more accurate and representative the outcome of study ought to be (Slater 1990). This method is appropriately used for certain forms of behaviour which can only be performed if concepts are quantifiable (Mann 1990). For example, if a customer defaults in payment, the bank can take action when there's a proof of exact amount of default and frequency of default. The bank cannot solely rely on its officer saying the customer has defaulted. One of the most important features of quantitative research is that it is highly structured and produces data which is open to statistical analysis. Surveys, tests, structured interviews, laboratory experiments and non-participant observation are usually categorized as quantitative data collection methods. Results of quantitative research are presented in the form of descriptive or complex statistics, like tests of significance, correlation and regression analysis (Scanlon 2000). In short, it is concerned with presenting findings in a numerical form.

5.2.2 Qualitative Research Method

Qualitative research provides descriptive reports of individuals' perceptions, attitudes, belief, views, interpretations of events and things, as well as their behaviour (Bryman and Burgess 1999). All social research and much that is designed as scientific research, has qualitative aspects and subjective elements (Slater 1990). The great strength of qualitative research is the validity of the data obtained, for example, a data from a sufficient and detailed interview will result in true, correct, complete and convincing reports of individual's views and experiences (Hakim 2000). The normal, meticulous, statistical rules of sampling may not be applicable to selecting respondents. But sampling principles still apply as guidelines in social inquiries. The

main weakness of qualitative research is that due to cost, time constraints and interviewer fatigue, a sample of larger proportions cannot be attained. These compelling limitations restrict the effort of the researcher to a small numbers of respondents who may not be true representative of the population. Frequently, the researcher cannot count or test the findings obtained at the conclusion of a qualitative research. There are four major qualitative methods used by researchers; observation, unstructured interviews, analyzing texts and documents, and recording and transcribing (Silverman 2001). Most people think of qualitative research mainly in terms of in-depth interviews and group discussions. However, Mary Goodyear points out that:

“Qualitative research is a many-splendoured thing and certain problems and clients will respond to one type of approach, whilst other problems and other clients need to be offered something else. There is no one correct way to do qualitative research. It all depends on your problem.” (Slater 1990)

5.2.3 A Comparison of Research Methods

Qualitative method offers the researcher an opportunity to probe and follow different lines of inquiry because they are generally more flexible than quantitative technique (Elliott 2000). In contrast, quantitative research offers techniques to collect more pieces of specific data in a short space of time and it also gives greater precision. Further comparative aspects between quantitative and qualitative methods are outlined in the following table.

TABLE 5.1:

A Comparison of Quantitative and Qualitative Research

Items	Quantitative Research	Qualitative Research
(1) Objective	To quantify the data and generalize the results from the sample to the population of interest	To gain a qualitative understanding of the underlying reasons and motivations
(2) Sample	Large number of representative cases	Small number of non-representative cases
(3) Relation between researcher and the subject	Distance	Close
(4) Data Collection	Structured	Semi-structured
(5) Nature of data	Hard, reliable	Rich, in-dept
(6) Data Analysis	Statistical	Non-statistical
(7) Outcome	Recommend as final course of action	Develop an initial understanding

Sources: adapted from Bryman and Burgess (1999)

Thus, the main difference between the two approaches is that, qualitative researchers prefer narratives and accounts of the way they have interpreted the world, whereas quantitative researchers use mathematical models and statistical tables to relate the research in impersonal terms (Denzin and Lincoln 2000). To conclude, if the researcher wants to measure how often something happens, and describe its occurrence in strictly controlled terms, the quantitative research will best provide him with appropriate research instruments. On the other hand, qualitative research offers a different dimension when the researcher is interested in the detailed structure and nature of what and why something is happening. It is concerned with the nature of the phenomenon under study rather than its incidence in statistical terms, completely the subjective experience by respondents. It seeks the essence or quality of the researcher's experience.

5.3 SELECTION OF DATA-COLLECTION METHODS

Data can be collected in a variety of ways, in different settings, and from different sources. This study is concerned with the operation of Islamic hire-purchase (AITAB) in financial institutions and its legal framework in Malaysia. Being a setting of this research, Malaysia has to be the source of empirical data. Data-collection works are designed to achieve the following objectives:

- (a) To examine the concept and application of AITAB and conventional hire-purchase as actually practiced in Malaysia today.
- (b) To obtain a clear insight of the AITAB and conventional hire-purchase practices from the providers' and users' perspectives.
- (c) To examine the extent of customers' awareness and expectations as regards the financial service provided by AITAB.
- (d) To identify problems faced by the providers and users of AITAB transaction.
- (e) To inquire the experts' opinions about the implementation of AITAB and conventional hire-purchase as practiced today.

Based on the above purposes, primary data will be needed about views, opinions, experiences, and reactions of people involved in the operation of hire-purchase. By

employing certain methods of collecting data, sufficient data has been obtained for the purpose of this research.

5.3.1 Selection of Research Instruments

The most suitable method must be carefully selected to ensure that the needed data are obtained. Choosing a method involves different considerations which have to be cross-weighed and balanced. In particular, the method chosen needs to meet the following requirements (Stone and Harris 1984):

- (a) It must be suitable for studying the problems
- (b) It must be within the available resources
- (c) It must be within the competence of the researcher who will be using it
- (d) It must produce the kind of data needed

After weighing the suitability of various research methods, and due to the in-depth coverage of this study, it has been observed that the most appropriate methods for the study are **semi-structured interviews** and **questionnaires**. Thus, the qualitative method is the main research techniques adopted by the study and it is supplemented by quantitative methods. The selection is justified by the following reasons:

- (1) The most vital data are mainly obtained from people involved in AITAB practices either as providers or experts in AITAB. It involves some details and complex information which are suitably collected by interviewing the respondents.
- (2) To understand the basic concept of Islamic hire-purchase in theory and practice, there has been a need to refer to extensive texts and documents, for example banks' report, courts report etc.
- (3) Duration of data collection in Malaysia has been limited to 3 months only; hence, the researcher has to prioritise types of data needed. The most wanted ones are opinions and experiences of provider and expert in AITAB, while reactions from people using the facility are collected by administering questionnaires.
- (4) The researcher is more competent to adopt qualitative research compare to quantitative one for having a legal and *Sharī'ah* background.

In addition, using interview and questionnaires leads to the collection of most extensive data on each respective respondent. The methods have met the requirements set by Stone and Harris (1984) as referred previously.

5.3.2 Semi-Structured Interview

Interview is often claimed to be the best method of gathering intensive qualitative information. It can be defined as a direct verbal contact between the researcher and the sampling population. Interview is classified into three main types according to the structural nature of questions (Saunders, Lewis et al. 2000):

- (a) Structured interviews
- (b) Semi-structured interviews
- (c) Unstructured interviews

An interview may be performed by face-to-face meeting, telephone conversation and computer-assisted interview; or sent through the email (Sekaran 2003). Each of these styles can serve a specific research target. The choice of interview styles depends on the researcher's extent of understanding the research problems.

For this study, **semi-structured face-to-face interview** has been selected as the main method of collecting extensive data about the operation of AITAB in Malaysia and issues arising thereof. Using this method, the researcher aims to reach providers and experts in AITAB in order to find out about its actual operation in Islamic banks and conventional banks offering Islamic products. Face-to-face interview has been carried out using an interview guide technique, in which a checklist of topics is prepared and notified to the respondents in advance before the actual interview sessions took place. The researcher is free to ask questions on these topics in a way which seems appropriate to the situation.

The advantages of face-to-face personal interview using 'interview guide' technique are as follow (Kvale 1996; Gillham 2000; Sekaran 2003):

- (a) It secures independent responses of the interviewees, which is a highly valued quality in field data collection.
- (b) The topics of interest to the researcher are mostly covered

- (c) Definite responses from specific and identified persons in a specific subject are obtained
- (d) Respondents are well-prepared and able to respond according to their best knowledge and experience
- (e) Respondents are able to respond in their natural language
- (f) The researcher is able to form questions on topics and ask them in any order which seems to arise naturally from the context.
- (g) The researcher can clarify ambiguous questions to the respondents.
- (h) Flexibility in using any type of question and changing the sequence of the questions.
- (i) The researcher is able to observe the respondents' bodily responses to certain questions which may appear to be sensitive or difficult to be explained by them.

Instead of group interviews, this study conducts personal interviews involving 46 respondents who are categorized in six different groups. The approach is preferred to group interviews for the following reasons:

- (i) In personal interviews, respondents are able to express themselves more freely and do not have to fit their ideas into someone else's categories.
- (ii) Individuals may feel less able to communicate in a group than they would on a one-to-one basis, especially if there are status differences (Stone 1984).
- (iii) It can be difficult to control the impact of key individuals in the group who may control and bias the discussion.
- (iv) Recording is difficult, especially if several people start to speak at the same time.

The overall advantage of interview over other forms of data collection is summed up by Chen and Hernon (1982):

“Personal interviews, allowing a high response rate, direct interaction between surveyor and surveyed, question clarification, and the elaboration of data through minimization of unclear answers, is conceptually the superior form of study technique.” (Chen and Hernon 1982)

There is one basic disadvantage of the interviewing method; it is time-consuming and costly, especially when geographical limitations are encountered. The researcher has spent a lot of time and money in travelling around Malaysia to interview the bankers and experts. The journey started from the central (Kuala Lumpur) to the eastern region; and then went on to the southern region before moving back to the central region. The travelling was continued to the northern area, and finally returned to the central part of Malaysia. In addition, managing interview schedules and back-up plans to suit the availability of all interviewees has been a real challenge to the researcher in terms of time and trip-management.

5.3.3 Questionnaires

A questionnaire is a pre-formulated set of written questions to which respondents record their answers, usually within closely defined alternatives (Sekaran 2003). Questionnaires can be administered personally or mailed to the respondents. Each of these has its advantages and disadvantages. This study has adopted personally administered questionnaires for the following reasons:

- (a) The researcher can collect all completed responses within a short period of time.
- (b) Any doubt raised by the respondents regarding the questions could be clarified on the spot.
- (c) The researcher could explain the topic and motivate the respondents to give their honest answers.
- (d) Administering questionnaires to individuals simultaneously is less expensive and less time-consuming, for instance customers in a bank's premise.

In this research, personally-administered questionnaires are distributed at a particular place, for example at an Islamic bank, where respondents are most likely present and willing to participate in the survey. All respondents are randomly selected from the public who have actually used or are about to use AITAB facility. This method guarantees an immediate response, thus it receives a high response rate. One of the advantages of this method, it allows explanation to any ambiguous questions, thus reducing number of non-responsive and unused questionnaires.

Having decided on the most appropriate research methods for data collection, the next step is to develop the research instruments; interview questions and survey questionnaires.

5.4 DESIGN OF RESEARCH INSTRUMENTS

The research instruments used in this study are semi-structured interview and personally administered questionnaire. This part will discuss how interview and questionnaire are designed for data collection, and the quality and reliability of data.

5.4.1 Design And Content Of Interview Questions

Interview questions are primarily developed from literature reviews, but discussion with experts and feedbacks from pilot study were also valuable sources of question setting. The design of the questions is constantly guided by the objectives of this research. Interview questions are prepared in two languages; English and Malay language. In respect of contents of interview question, the following considerations have been taken when constructing the questions (Moser and Kalton 1985; Tull and Hawkins 1993):

- (a) *Was the question necessary?* Only the questions which are related to the information required are included in the sets of question.
- (b) *How many questions were required to gain information?* In most cases there is one main question to gain the information, but multiple responses were required. For example, questions 5 aims to know the adequacy of Hire-Purchase Act 1967 and it also seeks to inquire the strengths and weaknesses.
- (c) *Were respondents capable of answering the questions?* Respondents are chosen on the basis of their knowledge, expertise and experience in the subject area. They are given the questions in advance and explanations are made before hand.

This study has referred to the above guidelines and the research objectives in designing the contents of interview questions. In addition, interviewees' profiles are required such as, their full name, positions, institutions they belong to, specialization,

information about their experience in the present institution and position. The interview questions are particularly stated to be very specific and detailed. Only experts and persons who really involved in the operation of Islamic hire-purchase would be capable to answer them. Detail discussion of constructing the questions are presented in Chapter 8.

5.4.2 DEVELOPING A QUESTIONNAIRE

The second survey instrument adopted in this study is a questionnaire designed for respondents who has actually experienced Islamic hire-purchase (AITAB). The questionnaire has been carefully designed so that the relevant respondents would be able to fill it even without the aid of the researcher. Developing the questionnaire has been a huge task in this study due to lack of previous questionnaires about Islamic hire-purchase, particularly that's related to its legal framework. The researcher has only managed to review previous questionnaires about perception of Islamic banks' customers to the banks' operations in general (Haron, Ahmad et al. 1994; Gerrard and Cunningham 1997; Naser, Jamal et al. 1999; Rosly and Seman 2003). The researcher has to look into various textbooks on quantitative research and designing a questionnaire. Referring to Hind (2000), the following key questions have been the researcher's basic guidance (Hinds 2000):

- ◆ To whom is the questionnaire directed?
- ◆ Are you sure the instrument will be received and acted on by that person?
- ◆ How will you structure your questions?
- ◆ How will you process the returns?
- ◆ How will you analyse the responses?
- ◆ How can you design your questionnaire to enhance your response rate?

The planning and preparation of the questionnaire have included actual construction of questionnaire, arrangements for piloting, distribution and return. Time-line and back-up plan for delays are also determined.

5.4.2.1 Design of Questionnaire

When designing a questionnaire certain guidelines have been followed:

Firstly, determining the question structure which would best generate valid data and devising clear wording, accurate and non-biased expressions (Dillman, 2000). The questionnaire is developed as a closed-ended type in a multiple choice format. For the researcher, data from close-ended questions would be relatively easier to process and analyse so that the researcher could benefit from the standard format of the answers for statistical tests.

Secondly, observing the wording of questions. Dillman (2000) and Hinds (2000) outline several guiding principles in stating suitable wording.

- ◆ The wording of a single question should be as simple as possible, of not more than 20 words.
- ◆ No hidden assumptions in the questions
- ◆ Avoid double-barrelled questions; such as putting two questions in a single sentence.
- ◆ Avoid questions using negatives. The question must use positive form of sentence, thus question like, "*Don't you prefer Islamic hire-purchase to conventional hire-purchase?*" is not appropriate to be addressed in the questionnaire.
- ◆ Avoid potentially irritating or sensitive questions because this will discourage the respondents from completing the questionnaire.
- ◆ Questions must be clear and unambiguous in order to avoid confusion among the respondents.

The above guidelines have been strictly followed by the researcher. Wording of questions was constantly revised and checked. Some questions were rephrased to make it more straightforward and clearer. Some are even omitted due to their less importance.

Thirdly, considerable attention has been given to the appearance design and layout of the questionnaire so that the presentation of questionnaire would appeal to the respondents allowing them plenty of space for responses. Dillman (2000) stresses the

need to present an attractive, well-organised questionnaire that looks easy to complete:

- ◆ No questions are permitted on the front or back pages.
- ◆ Questions should be appropriately grouped into several sections.
- ◆ Personal information should be placed at the end of the questionnaire.
- ◆ Clear directions should be given on how to answer.
- ◆ The front and back pages should be carefully designed.
- ◆ The questionnaire should not be more than 12 pages.

The questionnaires in this survey adopt the above rules. The front cover states the survey topic, presents the statement of confidentiality and the researcher's contact details. The second page outlines the general instruction. The questionnaires are grouped into five sections, the last one being questions on personal information. Total page is only seven pages for English questionnaire and nine pages for Malay language questionnaire including front cover and instructions.

Fourthly, piloting is particularly important to ensure respondents understand the questions and help to reveal any problematic areas in the following aspects:

- ◆ Whether all the questions are understood.
- ◆ Whether questions are interpreted similarly by all respondents.
- ◆ Whether the questions create a positive impression, one that motivates people to answer it.
- ◆ Whether there is any aspect of the question suggesting bias on part of the researcher.
- ◆ To find out the length of time needed by respondents to complete the questionnaire.

Pilot study had been carried out for the above-mentioned purposes. Detail discussion of pilot study is put forward in section 5.6.

5.4.2.2 Content of Questionnaire

As shown in Appendix C, the front cover of the questionnaire states the survey topic, a statement of confidentiality and the researcher's contact details. The second page contains general instructions and information. The respondent was assured of his anonymity and confidentiality of the responses. The subsequent pages are the

substances of the questionnaire which are grouped into five sections. All questions are provided with multiple choice answers; in which the respondent can put his own answer in the '*others*' answer space.

Section 1 comprises questions regarding the respondent's opinions of AITAB, in terms of how the respondent was introduced to the facility and the bank or finance company which he has signed up for Islamic hire-purchase (AITAB). The section also seeks to know the respondent's level of satisfaction with the procedure of Islamic AITAB and the reasons of their answers.

Section 2 is devoted to elicit respondents' opinion about conventional hire purchase. The questions are designed to seek the opinion of respondents who have used conventional hire-purchase before. Respondents, who have no such experience, are directed to section 4.

Section 3 comprises question which asks about the facility which gives the respondent more benefit given that he had experienced both facilities. If the respondent prefers AITAB to conventional facility, he is then required to indicate the reasons in the following question. If not, he needs to complete the subsequent question.

Section 4 aims to extract the respondent's overall view of AITAB facility. The final question asks the respondent's preference in the future if he is given a choice to use Islamic hire-purchase or conventional hire purchase.

Finally, **section 5** requires respondent's personal information relating to gender, age, marital status, occupation, and educational background.

At the end of questionnaire, a space is provided for the respondent to give any additional information or comments relating to the operation of Islamic hire-purchase. If the respondent wants a summary of result from this study, a space for his email address is provided as well.

5.4.2.3 Translation to Malay Language

The prepared questionnaires have been translated into Malay language which is the main language used in Malaysia. Translated set is prepared to cater for certain types of respondent who are not well-versed in English. The translation work is quite difficult for certain questions. It often results in longer questions when translated into Malay language. To assist in the translation work, a “reverse translation method” was used (Casley and Lury 1981). This is done by translating back the translated version of the questionnaire into English. When the translation does not match the original language, more attempts are made until the best translation is attained. The final version was referred to an English teacher in Centre for Languages and Pre-Academic Development (CELPAD), International Islamic University Malaysia.

5.4.3 RELIABILITY AND VALIDITY

In all research strategies, there is a need to develop procedures which produce results that are both reliable and valid. Hinds (2000) defines reliability as consistency of a measure, for example, the likelihood of the same results being obtained if the procedures were repeated. Validity tells us whether the question really measures what it is supposed to measure, for example. A clock is supposed to measure “true time” and to do so continuously. In this research, efforts have been taken to make sure the instruments are valid and reliable. These have been carefully monitored during pilot study. As pointed out by Silverman (2001);

“pre-testing can act as a preventive measure against inconsistencies and ambiguities” (Silverman 2001).

Therefore, research instruments which have been developed should be tested in order to justify their reliability and validity for collecting the most accurate data. Before discussing how the instruments were tested, sampling designs must be first considered.

5.5 SAMPLING

The criteria for selecting a sample in a research are usually statistical ones, that is, they are based upon well-established and formal statistical grounds for selecting people, documents, organisations or whatever from the population. This approach of sampling and selection is not usually employed by qualitative researchers who typically argue that such criteria are inappropriate (Bryman and Burgess 1999). It is necessary to stress here that this study primarily adopts qualitative instruments, i.e. interview, supported by quantitative instrument, i.e. questionnaire, as a supplementary method. Hence, systematic and proper sampling designs should be used to support the validity of the study. The discussion in the following part will be mainly guided by Sekaran (2003) as a basic reference in the subject.

5.5.1 Sampling Design

There are two major types of sampling designs; probability and non-probability sampling. Probability sampling designs are used when the representativeness of the sample is of special importance for purposes of wider generalizability. When time or other factors other than 'generalizability' become critical, non-probability sampling is adopted (Sekaran 2003). For this study the criterion used in sampling is non-probability sampling. The reasons for this selection are as follow:

- (d) The most important and relevant data can only be obtained from specialized interviewees, and using any of the probability sampling design would not offer opportunities to gain the specialized information.
- (e) Some supplementary data need to be obtained quickly, and are not worth of using the probability sampling design which would cause the researcher spending much time and effort.
- (f) Other critical reasons are limited time and attitude of the respondents which make the data collection time-consuming.¹¹⁵

After evaluating each non-probability sampling design, the researcher believes that the most appropriate sampling designs for this study are judgement sampling and

¹¹⁵ This point will be further highlighted when discussing some limitations encountered during data collection in the concluding chapter.

convenient sampling. Judgement sampling is used where gathering “informed specialized inputs” on the topic area researched is vital. Though not a probability design, judgement sampling still calls for special efforts to locate and gain access to the individuals who do have the requisite information (Sekaran 2003). Thus, although it is restricted in generalizability, it may sometimes be the best sampling design choice, especially when there is a limited population that can supply the information needed. For this study, judgement sampling is best suited for collecting data from providers and experts in AITAB who possess specialized expertise in the area.

Convenient sampling is not generalizable at all and is not appropriate for “scientific” research (Sekaran 2003). It may however, be used at times to get some “quick” information. Of all sampling designs, it is the least reliable in term of generalizability, but sometimes it may be the only viable alternative when quick and timely information is needed. Therefore, convenient sampling is adopted to collect data from users¹¹⁶ of AITAB whose perceptions and reactions are needed to supplement those primary data from providers and experts in AITAB.

5.5.2 Sample Size and Composition

Data collection involves all individuals and institutions that are engaged in the operation of AITAB, namely providers, users and experts.

- (a) **Provider of AITAB** represents banks and finance companies which provide AITAB facility to their customers. Out of 33 institutions offering Islamic banking services, there are 13 financial institutions which are identified to offer the facility. There’s no need to draw a sample from this type of population since all are important informants to the research. The researcher has approached all the institutions, except Southern Finance¹¹⁷, and interviewed their representative officers; eight of them are managers of Islamic Banking Division and the remaining are senior officers who are directly in charged of AITAB operation. The followings are lists of financial institutions involved in the study:

¹¹⁶ The selection of individuals using AITAB is done randomly, thus, it has an element of probability sampling.

¹¹⁷ This is due to the researcher’s time constraint.

TABLE 5.2:

Lists of Financial Institutions involved in the Study

INSTITUTIONS	OWNERSHIP	INTERVIEWEE
Affin Finance	Local	Manager
Alliance Bank	Local	Senior Officer
AmFinance	Local	Manager
Bank Pembangunan	Local	Senior Officer
Bank Rakyat	Local	Manager
Bank Muamalat	Local (Islamic bank)	Senior Officer
EON Finance	Local	Manager
Hong Leong Finance	Local	Manager
HSBC	Foreign	Senior Officer
Maybank Finance	Local	Manager
OCBC	Foreign	Manager
Public Finance	Local	Manager

- (b) **AITAB users** are customers of bank or finance companies who have experience of AITAB facility, including those who are still engaged in the transaction. Because of time, money and work force factors, convenient sampling is used in this context. It involves choosing and questioning people in the street or markets, selected banks and educational institutions. A total of 450 questionnaires have been distributed because the ultimate target is to obtain 200 responses. At the end, this study manages to obtain 203 questionnaires.
- (c) **Experts in AITAB** are individuals who are known in their own capacity or representing particular institutions, for their expertise in the area of Islamic economics, banking and finance, *Sharī'ah* and law. They consist of *Sharī'ah* advisors, *Sharī'ah* scholars, economists, legal experts and government officers. A total of 34 experts in various fields were interviewed. The details are illustrated as follows:

TABLE 5.3:

List of Expert Groups involved in Interview

EXPERT GROUPS	NO.
<i>Sharī'ah</i> Advisors of Banks	9
<i>Sharī'ah</i> Scholars	8
Economists	8
Legal Experts	6
Government's Officials	3
TOTAL	34

It is observed that the involvement of the above groups of population will assist in providing variety of data and balanced information pertaining to their knowledge, experiences and problems. Since members of each group possess distinguished speciality and perform different functions, their representation is expected to bring in variety of contributions. Identifying target population and a sample of the population will make the distribution of research instruments more systematic and certain. But these research instruments need to be tested in a pilot study for the purpose of making them more valid and reliable.

5.6 PILOT STUDY

A pilot study has been conducted in Malaysia from 24th December 2003 till 21st January 2004. The task includes testing the questionnaires and interview questions, reaching out potential respondents and preparing the ground work for the empirical study which was then conducted in 1st May 2004 till 31st July 2004.

5.6.1 Objectives of Pilot Study

The importance of a pilot study as a testing ground for an empirical work is undeniable. Thus, the objectives of the pilot study are as follows:

- (a) To test the viability of the questionnaires;
- (b) To identify the potential respondents and interviewees and establish contacts;
- (c) To understand the Malaysian respondents, in terms of their attitudes, perceptions and opinions towards the like survey.
- (d) To analyse the feedbacks and responses obtained from the study.
- (e) To review the questionnaires and list of questions to be used in the interview based on their practicality and suitability to the Malaysian respondents.

In accordance to the above objectives, the study has been carried out in several ways. The mode of conducting the pilot study is illustrated in the next heading.

5.6.2 Modus Operandi

As mentioned earlier, the pilot study undertakes three main tasks; testing the questionnaires and interview questions, reaching out potential respondents and preparing the ground work for the empirical study.

Firstly, pre-testing the questionnaires and interview questions. The test is hoped to reveal unanticipated problems with question wording, instructions, presentation etc. It could also see if the respondents understand the questions and give useful answers.

Secondly, an attempt to identify potential respondents was made with cooperation from officers of the financial institutions. In addition, potential interviewees have also been identified for the purpose of the study.

Thirdly, preparation for the empirical work included applying for the research grant. Other activities included identifying prospective copier for printing the questionnaires, selecting research assistants, searching some articles and books, particularly *Shariāh* references, meeting people from banking sector, academicians and *Shariāh* scholars in the area of Islamic banking.

5.6.3 Pre-Testing Interview Questions

To test the interview questions, six individuals who will not be in the main study, have been selected comprising a banker, *Shari'ah* advisor, *Shari'ah* scholar, economist, lawyer and a draftsman from the Attorney General Office. They have been interviewed before finalizing any check list or schedule to be used during empirical works later on. This pre-tested interview gives some idea of the length of the interview, whether the approach chosen really gives the expected data, and whether certain questions need to be improved (Stone and Harris 1984). The testing of interview questions has resulted in the following decision:

- (a) The wordings of the questions are simplified to make it more understandable by the interviewees.
- (b) Some unnecessary and sensitive questions are omitted, such as question seeking confidential information from the bank officers.
- (c) Widening the scope of questions relating to *Mu'amalah* Hire-Purchase Bill in order to gather more information about it from the interviewees.

In addition, the length of an interview is estimated to be around 45 minutes to an hour. This result is important for structuring a well-planned interview to be conducted during the empirical works.

5.6.4 Target Group in the Administration of Pre-tested Questionnaires

The questionnaires have been tested with a small number of identified respondents from different background and expertise. They are:

- (a) Senior executives from the Central Bank of Malaysia and officers of Bank Islam Malaysia Berhad.
- (b) Members of the *Shari'ah* Advisory Board of Islamic banks.
- (c) *Shari'ah* Scholars having expertise in Islamic jurisprudence, *Shari'ah* and *Mu'amalat*.
- (d) Economists
- (e) Legal practitioners comprising legal assistants (solicitor) and assistant parliamentary draftsmen from the Attorney General's Chambers of Malaysia.
- (f) Government officer
- (g) Academicians from the law school of the International Islamic University Malaysia. They have the expertise in both civil and *Shari'ah* laws.
- (h) Corporate.
- (i) General public

About 20 questionnaires have been randomly distributed to the above respondents. Fortunately, with strong cooperation from most respondents, the researcher has managed to obtain 17 questionnaires and informal feedbacks from them. The responses are impressively useful for improving the questionnaires in particular. In addition, the respondents' opinions on other related matters are also noted as valuable and practical guidelines for the research in general.

5.6.5 Results of Testing the Questionnaires

From the total of 20 questionnaires, about 17 have been obtained from the respondents. The questionnaires have been fairly distributed among the identified respondents. The most important result is the respondents' overall conclusion of the questionnaire. Most of them view that the questionnaires need to be substantially

changed to accommodate the Malaysian general public; only 10% of them thought that the questionnaire is generally fine with some minor corrections in rephrasing the questions and grammars. 15% of them know nothing about AITAB, thus, are unable to complete the questionnaire. However, they have provided valuable opinions and inputs towards better understanding in the attitude of Malaysian general public. The general response is summarised in the following table:

TABLE 5.4
Number of Responses from Pilot Study

Respondent	Response No.	Percentage (%)
Bankers	2	10
<i>Sharī'ah</i> Advisory member	2	10
<i>Sharī'ah</i> Scholars	2	10
Economist	1	5
Solicitor	2	10
Draftsmen of AG's Chambers	2	10
Government Officials	1	5
Academician	2	10
Corporate	1	5
Public	2	10
Non-respondents	3	15
TOTAL	20	100

The respondents' overall views are three-folds:

- (1) If the questionnaire is to be substantially kept as it is, the only suitable target group is the experts in AITAB, who may also include the bank officers, *Sharī'ah* scholars and Islamic economists.
- (2) If the main objective of the study is to know the perception of various respondents, ranging from those having knowledge in AITAB or not; and those using the facility or not, then the questionnaire must be reconstructed in such a way on to accommodate all different types of respondents. Thus, it must be very simple, straight-forward, avoidance from complexities and technicalities.
- (3) If the very objective of this study is to know directly and clearly the perception of the respondent, then the survey should concentrate on a particular identified group, i.e. bank customer signing up for AITAB, whether individual or institutions.

The researcher has come to know that most customers using AITAB through car financing scheme as provided by Islamic banks or other banks which offer Islamic banking scheme. In fact, they are unaware that they are using the AITAB facility. Of all banks providing Islamic car financing scheme based on Islamic hire-purchase concept, only Bank Islam adopts *Bay' Bithaman Ajil* (deferred payment sale) concept in their car financing scheme.

Therefore, the attitude and perception of the Malaysian public must be taken into serious account as a part of considerations for the preparation of the empirical study later on. In general, Malaysian public are perceived to have a negative perception towards questionnaire or the like, thus they are usually not cooperative with the survey because they can't see the benefit they will gain from the survey. Furthermore, reading is not the Malaysian's regular habit. Thus, they will not read or complete a lengthy questionnaire. They are not critical-thinking in matters which they think do not benefit them.

The researcher has opined that there is a need to make some changes to the questionnaire so that it would become more practical, suitable to the targeted respondents, and capable of achieving the objectives of the study.

5.6.6 Alterations to Questionnaire

Based on the responses obtained from the study, there is a need to make several modifications to the questionnaires. The alterations affect such aspects as:

Topic of Questionnaire has been changed to cover those who have applied for car financing scheme from 13 selected banks offering Islamic banking scheme, except Bank Islam. In fact, the topic had been changed for 5 times.

Presentation of the questionnaire is made more attractive and friendly to the respondents. This is done by making clear arrangement and position of each question and the questionnaires are printed using colourful papers.

Simple questions. Some questions are rephrased in order to make them simpler and easier for the respondent to understand.

Clear Instructions. Some instructions are too general, thus, need to be specified. Some other instructions are, in fact not needed at all, thus are omitted.

Order of Answer. The answers are put in a more suitable order and flow so that reader will find it easier to understand and decide their answers.

Additional Answer. In some questions, certain relevant answers will be added.

Additional Question. There are a few questions which need to be divided into two or more questions in order to make it easier to understand and gain response from the reader.

Unneeded Question. There are many questions which can be omitted for their less practical function in carrying the survey objective.

5.6.7 Conclusion of the Pilot Study

During a month period of the pilot study, the researcher has gained lots of information and experience as useful equipments to make a more proper plan for the empirical work which is then carried out in the following three months.

Firstly, the researcher has established some useful contacts and networks for the purpose of conducting the survey. These include bankers and experts in AITAB. The researcher has found out 13 banks and finance companies offering Islamic hire-purchase excluding Bank Islam.

Secondly, the researcher starts to understand the potential respondent's state of mind, attitude and perception, and also the way to treat various types of respondent. The action taken is to change the topic of questionnaire and some question wordings in order to ensure the respondents understand the context of the questionnaires.

Thirdly, the researcher has found that the most effective method of administering questionnaires and obtaining the feedbacks is by face-to-face survey. Although this method is time-consuming and very tiring, the researcher is confident, with cooperation from the networking contacts and assistance from two or three research assistants, a high response rate will be obtained.

Fourthly, during pre-testing interview questions, the researcher has discovered that personal interview is more effective in obtaining crucial data significant to this study, as compared to group interview. Personal interview, although is time-consuming and relatively costly, guarantees an independent views from individuals of different groups targeted by this study.

5.7 DISTRIBUTION OF RESEARCH INSTRUMENTS

Empirical work has been carried out in Malaysia from 1st May 2004 till 31st July 2004. Intensive preparation and planning for the works have been carried out since pilot study. These include making a detailed planner, reviewing the interview questions and questionnaire, contacting interviewees, seeking bank's approval to use their premises for administering questionnaire, getting support letters and identifying printing facilities. A detailed planner is drawn up as a basic guidance of data-collection works. It comprises appointments with all interviewees and plans for administering questionnaires. Most interviewees have been contacted ahead of the time when the researcher is still in the UK. There are only 3 out of 13 financial institutions giving approval to use their premises for purpose of administering the questionnaires. This situation led the researcher to search for other alternatives:

- (a) The researcher needs to travel to every region to administer the questionnaires in the approved branches.
- (b) One of the banks is registered under cooperative society regulations. It provides special Islamic financing scheme to government servants who are mostly academic and non-academic staffs. Thus, school teachers, university lecturers and non-academic staffs become the researcher's next aim in this empirical work.
- (c) Other target is people in driving schools, either driving instructors or pupils. They are presumed to have signed up for car financing due to having a driving license.

The researcher has to travel to each region to meet the interviewees and at the same time taking the opportunity to distribute the questionnaires. This has led the researcher to stay for one week in every region, except the Central region which is the researcher's base.

5.7.1 Administering Interviews

The researcher has interviewed 46 respondents on individual basis comprising 12 bank officers and 34 experts in AITAB from different background expertise. Most interviewees are reached in the central region, i.e. Kuala Lumpur and Selangor because of the following reasons:

- (a) all headquarters of financial institutions are located in this region

- (b) Kuala Lumpur is the centre of Islamic banking and finance business and research, thus nearly all experts in the area can be found here.
- (c) About 41.3% of interviewees are attached to academic institutions as professors, or administrative staffs or visiting academic associates. Most leading universities and academic institutions are located in the central region.

They are illustrated as follow:

TABLE 5.5:
List of Interviewees

RESPONDENT GROUPS	NO
▪ Bank Officers	12
▪ <i>Sharī'ah</i> Advisors	9
▪ <i>Sharī'ah</i> Scholars	8
▪ Economists	8
▪ Legal Experts	6
▪ Government Officers	3
TOTAL	46

Overall, good responses have been received from the interviews. Useful and valuable comments, suggestions and recommendations were obtained. Every interview has taken approximately 45-60 minutes. The conversation during face-to-face interview is recorded on a cassette tape and audio thumb recorder.

5.7.2 Administering Questionnaires

A total of 450 questionnaires have been distributed to individuals having experience of AITAB facility in four states (Pulau Pinang, Kelantan, Kuala Lumpur and Johor) representing four regions in Peninsular of Malaysia. Certain groups of people are targeted due to their high probability of using AITAB. Then respondents in the groups are selected based on convenient sampling. They comprise:

- (a) people in the bank premises who either are dealing with their financial affairs or just accompanying their friends or family
- (b) people in the street and residential area
- (c) school teachers and support staffs from secondary and primary schools.
- (d) university academic and administrative staffs,
- (e) people at selected driving schools.

In the course of administering questionnaires, the respondents were asked the following questions:

- ◆ whether they have ever signed up for Islamic car financing scheme?
- ◆ Whether they applied to any of 13 identified banks and finance companies?

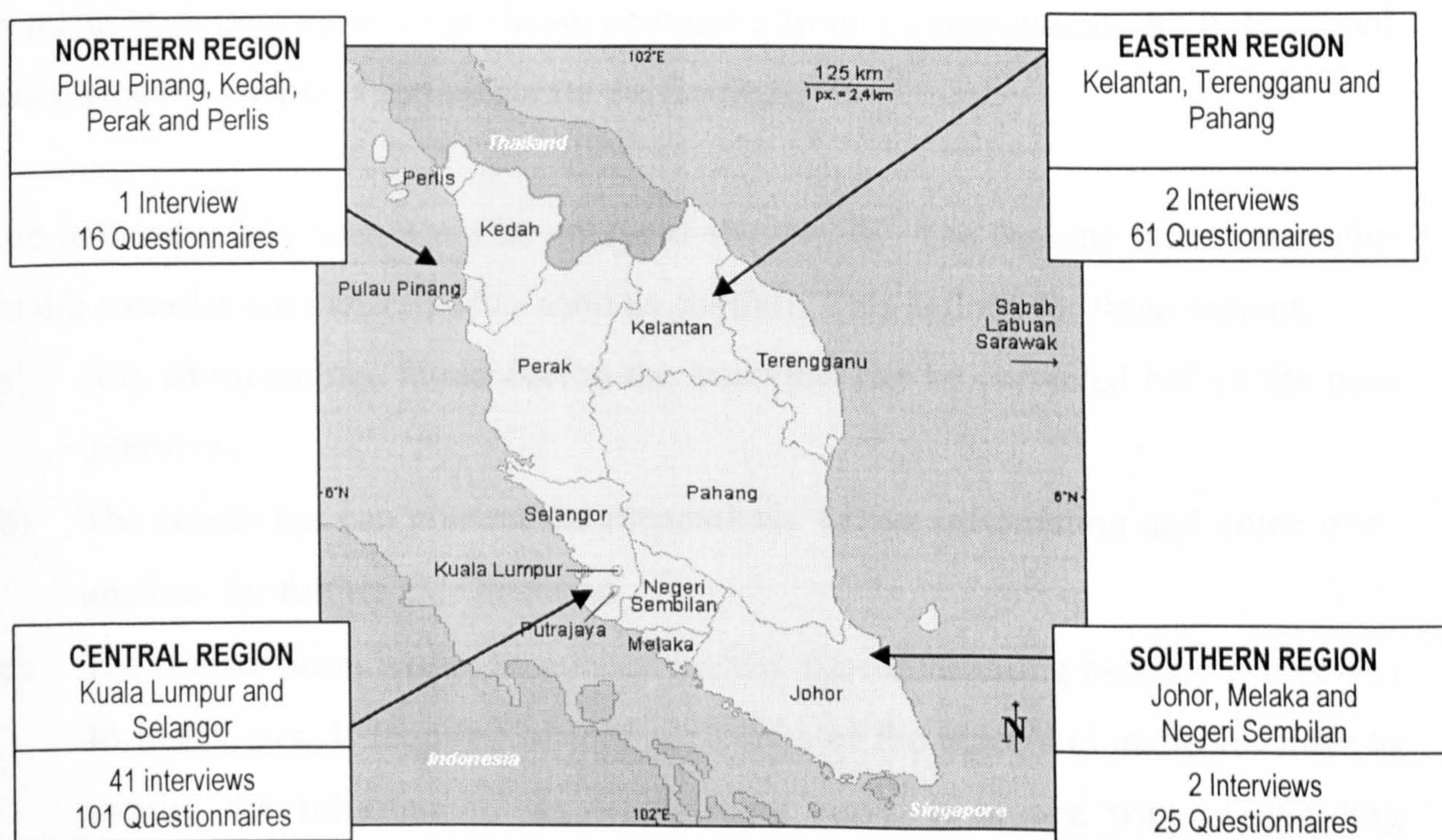
If they do, researcher then appeals to them to answer the questionnaire by explaining briefly the objectives of the survey and contribution they would give by participating in the survey. Finally, the researcher has managed to get 203 responses which is incredibly surprising results. The tables below illustrate the distribution of questionnaires in regional basis:

TABLE 5.6:
Distribution of Questionnaires (Regional)

Respondents	Northern	Central	Southern	Eastern	Total
People in selected banks	20	60	20	30	130
People in street/residential area	10	50	10	30	100
Primary/Secondary School teachers and support staffs	10	30	10	50	100
University Lecturers and administrative staffs	10	60	20	10	100
Driving Schools	2	7	2	9	20
TOTAL	55	210	65	130	450

To summarise, the distribution and collection of research instruments are illustrated as follow:

FIGURE 5.2:
Collection of Research Instruments in Malaysia



From the above figure, research instruments were distributed in four different regions in Malaysia. In total, this study managed to conduct 46 interviews and obtain 203 questionnaires from these regions.

5.8 DATA ANALYSIS TECHNIQUES

Two types of data are generated from the empirical research; qualitative data from interviews and quantitative data from the questionnaires. Data gathered from the questionnaires are analysed using the Statistical Package for the Social Sciences (SPSS). Analysis of questionnaires involves the following tasks:

- (a) Coding the variables in the questionnaires,
- (b) Setting the variable in the SPSS
- (c) Inserting the code number of the variable into the SPSS,
- (d) Cleaning data by checking its frequency and comparing between different related questions.
- (e) Expanding the “*others*” answers by adding variables to certain questions.
- (f) Describing data using univariate and bivariate distributions with frequency tables, pie diagrams and bar charts.

In addition, important and significant comments from the respondents are noted down and included to support and elaborate the findings.

The interview data cannot not be analysed statistically. The cassette tapes and audio thumb recorder are transcribed as soon as possible. This is done for three reasons:

- (a) Any shortcomings found during the interview can be corrected before the next interview.
- (b) The researcher can contact the respondents whose information and voice were unclear, for further clarifications.
- (c) The transcription works have been heavily time-consuming because it involves 46 interviews. It required several playbacks of the tapes and audio recorder to acquire the information. By transcribing early, it is one way of avoiding backlog.

In analysing interview data, the researcher attempts firstly, to identify the common themes in the transcribed interviews. This task is not a big problem since the interviews are based on a standardized format. Next, a frequency count is undertaken simply to note the same or closely related answers. Significant comments and recommendations were noted down to support the research.

5.9 SUMMARY

This chapter describes the research design and methods used to gather empirical data for the study. During the first stage, a selection of research methods is made whereby this study adopts both qualitative and quantitative research method. In the next stage, type of research instruments is considered. This study chooses interview and questionnaires as instruments to collect empirical data. These instruments are developed, tested in pilot study and then distributed among the target groups. The decision to choose both qualitative and quantitative methods for this study appears to have been justified as it is observed that the interviews and questionnaires have given a full picture of the study. Moreover, the responses received from the respondents have been most satisfying. This chapter also explains briefly the data analysis techniques for both qualitative and quantitative data. The results of the analysis will be presented in the subsequent chapters. The next chapter will present the outcome of profile analysis comprising individuals who have participated in the interviews and those who are involved in the questionnaire surveys.

PROFILE ANALYSIS

6.1 INTRODUCTION

This chapter describes the population under study which covers people who are involved in the operation of Islamic hire-purchase (AITAB) in Malaysia. The description task is a method of analysis which has been used in many studies, prior to other statistical analysis (Haron, Ahmad et al. 1994; Otiye 1997; Elliott 2000; Hashim 2000; Durrani 2001), and commonly known as profile analysis.

The aim of this chapter is to provide a background of characteristic and profiles of the population under study. An understanding of their background helps giving a clear insight into their expected perceptions and authoritativeness of their opinions in issues relating to AITAB practices. Since the study is the first of its kind to investigate thoroughly the implementation of Islamic hire-purchase (AITAB) from conceptual and practical aspects, more attention is needed to such profile analysis. The chapter starts with presenting profile of population who have participated in the interviews, and then followed by those who are involved in the questionnaire surveys.

6.2 PROFILE OF INTERVIEWEES

6.2.1 Classification of Interviewees by Groups

In-dept interviews have been carried out to get first-hand information pertaining to AITAB operation in Malaysia. This technique is believed to be the best method to obtain reliable data and to acquire the needed information. There are 46 individuals involved in the interview. List of the interviewees is shown in Table 6.1 below. The interviewees comprise experts and practitioners in AITAB from different fields and backgrounds. More than a quarter of them are bank's officers (26%) who consist of 12 individuals, while *Sharī'ah* advisors cover 9 individuals (20%). Economists and *Sharī'ah* scholars are equally represented by 8 individuals (17%) respectively. Legal opinions are obtained from 6 legal experts (13%), and the remaining 7% stands for 3 government officers.

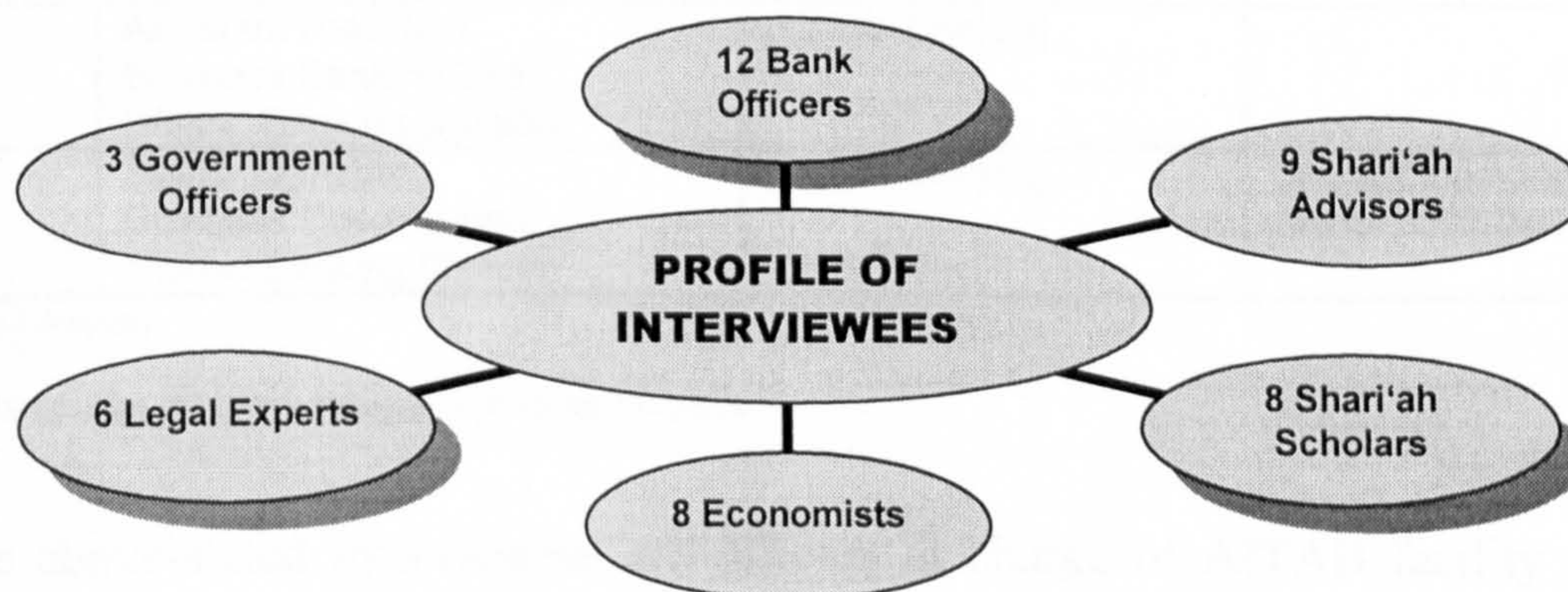
TABLE 6.1:
Distribution of Interviewees by Groups

Interviewees	Frequency	Percentage
Bank officers	12	26.1
<i>Shari'ah</i> Advisors	9	19.6
<i>Shari'ah</i> Scholars	8	17.4
Economists	8	17.4
Legal Experts	6	13.0
Government Officers	3	6.5
Total	46	100.0

The above interviewees act as key informants to the researcher. Key informants are individuals who possess special knowledge, status, or communication skills, who are willing to share their knowledge and skills with the researcher and who have access to perspectives or observations denied to the researcher (Gilchrist 1999). For example, bank officers have become researcher's key informants because they possess a kind of knowledge and access to information which otherwise could not have been accessed due to bank's confidentiality.

For a clear overview of interviewees' profile, the following figure illustrates their general characteristics.

FIGURE 6.1:
Overview of Interviewees' Profile



6.2.2 Profile of Bank Officers

About 12 officers, representing 12 financial institutions which offer AITAB facility, have participated in the interview. They are selected on the basis of their positions, specialization and experience in managing AITAB transaction on part of their institutions. The following table lists down their positions, specialization and other involvement (if any).

TABLE 6.2:
Details of Bank Officers

Interviewee	Position	Specialization	Other Involvement
F1	Head, Islamic Banking Division	Asset Financing	Council members of AIBIM 2000-2002
B2	Deputy General Manager Islamic Banking Division	Non-Muslim customer of Islamic Banking	-
F3	General Manager, Hire-Purchase Department	Hire-purchase product	Vice President, Association of Hire Purchase Companies Malaysia
B4	Executive Officer Hire-Purchase (AITAB) Section, Consumer Banking	AITAB (Islamic hire-purchase)	-
B5	Head, Islamic Banking Division	Islamic Banking	Council members of AIBIM
B6	Executive Officer, Hire-Purchase Department	Credit & Processing	-
F7	Manager, Islamic Banking Division	Financing	-
F8	Manager, Islamic Banking Division	Consumer Financing	Council members of AIBIM 2002-2004
B9	Manager, Amanah Finance	Product Development and Management	-
F10	Assistant Vice President and Head of Islamic Banking Division	Islamic Banking	Council members of AIBIM 2002-2004
B11	Assistant President, Business Banking Unit, Islamic Banking Division	Islamic Banking	-
F12	Senior Manager, Business Development Islamic Banking Division	Islamic Banking	Council members of AIBIM 2002-2004

F: Finance Company

B: Bank

AIBIM: Association of Islamic Banking Institutions Malaysia

All the above-stated interviewees are officers in charge of AITAB facility in their institutions. During interview, they have been fully cooperative in supplying the researcher with needed information and documents in relation to the product. They have emphasized the confidentiality aspect, thus, the exact conversations, documents and other confidential information, which would appear to directly relate to those particular institutions, will not be disclosed.

6.2.3 Profile of *Sharī'ah* Advisors

Sharī'ah advisor is a member of *Sharī'ah* Advisory Board (SAB) of financial institutions that participate in the Islamic banking scheme. SAB is established to monitor a respective institution in case it violates any *Sharī'ah* principles in its operations. 44% of the *Sharī'ah* advisors involved in the interview are members of National *Sharī'ah* Advisory Council (NSAC) of the Central Bank of Malaysia. They are also *Sharī'ah* advisors to some other banks in Malaysia¹¹⁸.

TABLE 6.3:
Details of *Sharī'ah* Advisors

Interviewees	Formal Position	Specialization	Institutions Advised
A1	Deputy Rector Student Affairs International Islamic University Malaysia	Islamic Jurisprudence, Islamic Banking and Finance, <i>Sharī'ah</i> , Islamic Medical Law	Central Bank of Malaysia, Securities Commission, Dow Jones
A2	Very Distinguished Academic Fellow Ahmad Ibrahim Kulliyah Of Laws International Islamic University Malaysia	<i>Sharī'ah</i> , <i>Mu'amalah</i>	Central Bank of Malaysia, Islamic Development Bank
A3	Vice President ANGKASA (National Co-operative Organisation of Malaysia)	Islamic Law, Islamic Banking and Finance	Bank Muamalat
A4	Department of Private Law, Ahmad Ibrahim Kulliyah Of Laws International Islamic University Malaysia	Company & Securities, Islamic Law of Transaction, Islamic Banking and Finance	Bank Muamalat
A5	Head, Islamic Law Department	Islamic Transaction, Islamic Banking and Finance	Bank Muamalat, Amanahraya Berhad
A6	Distinguished Lecturer in Law	Islamic Law	Bank Muamalat, Securities Commission, Bank Rakyat, MARA & ANGKASA
A7	Head of <i>Sharie</i> * Judge Department of <i>Sharī'ah</i> Judiciary Malaysia	<i>Sharī'ah</i> , Islamic Banking and Finance	Central Bank of Malaysia, Securities Commission, Bank Islam Malaysia Berhad
A8	Director IKIM (Institute of Islamic Understanding Malaysia)	Islamic Law, Islamic Banking and Finance	Central Bank of Malaysia
A9	Department of <i>Sharī'ah</i> , National University of Malaysia	<i>Mu'amalah</i>	Affin Finance

MARA: National Trust Council

* *Sharie* is an adjective of *Shari'ah*

¹¹⁸ Central Bank of Malaysia (BNM) has recently passes a directive to all financial institutions that, they shall not appoint any *Sharī'ah* advisor who is attached to BNM. They can appoint up to 3 advisors from a list distributed by BNM. The first advisor must be a *Sharī'ah* expert, secondly a legal expert, and thirdly a person of either the two earlier expertises or an economist.

All *Sharī'ah* advisors possess wide knowledge in Islamic jurisprudence and *Sharī'ah* and they hold formal educational qualification in the area. They have provided important information in respect of basic rules of *ijārah* and sale, and the implementation of Islamic hire-purchase as a mode of financing from *Sharī'ah* point of view. Some *Sharī'ah* advisors have also additional qualifications and knowledge in economics, finance and law, thus, they are capable of giving comprehensive information from different angles and making comparative analysis among different areas, e.g. Islamic and conventional law, *Sharī'ah* and economy etc. This kind of information is very valuable to this study to help to understand the operation of Islamic hire-purchase from *Sharī'ah* and practical point of view.

6.2.4 Profile of *Sharī'ah* Scholars

The *Sharī'ah* scholars selected for the study are those who are well-known for their knowledge and contributions in the area of *Fiqh* (Islamic Jurisprudence), *Mu'amalah* (Islamic Transaction) and *Sharī'ah* (Islamic law). Some of earlier-mentioned *Sharī'ah* advisors are also included in this category, but they are more renowned for their formal advisory positions.

Sharī'ah scholars are identified by their writings (journals, newspapers, books, magazines etc.) or direct involvement in *Sharī'ah*-based institutions. For instance, S4 is a member of National Technical Committee who drafts the *Mu'amalah* Hire-Purchase Bill. His information would be very significant to the study. It appears that some *Sharī'ah* scholars are involved in advisory positions which are only discovered during the interview.

During the interview, a number of information and *Sharī'ah* issues pertaining to Islamic hire-purchase have been thoroughly discussed. The researcher managed to gather significant information from different perspectives in the area of *Sharī'ah*. In contrast to *Sharī'ah* advisors, information obtained from the *Sharī'ah* scholars concentrate more on *Sharī'ah* issues; while *Sharī'ah* advisors, besides discussing important legal and *Sharī'ah* issues, they contribute knowledge based on their experience as advisors of leading financial institutions in Malaysia.

TABLE 6.4:
Details of *Shari'ah* Scholars

Interviewees	Formal Position	Specialization	Other Involvement
S1	Associate Professor, Islamic Law Department IIUM	Islamic Jurisprudence, Islamic Transaction	-
S2	Director, International Institute for Muslim Unity	Professor in Islamic Jurisprudence, Islamic Economics	Council of International <i>Fiqh</i> Academy, OIC Assembly of Muslim Jurists in America Board of Trustees AAOIFI, Bahrain
S3	Assistant Professor, Islamic Law Department IIUM	Islamic Law, Islamic Transaction	Advisor to <i>Waqf</i> institution
S4	Associate Professor, Department of <i>Shari'ah</i> , UKM	Islamic Law, Islamic Economics, Islamic Jurisprudence	National Technical Committee, <i>Sharie</i> Lawyer
S5	Assistant Professor, Faculty of Economics and Management Sciences, IIUM	Islamic Jurisprudence, Islamic Law, Islamic Economics	<i>Shari'ah</i> Advisor EON Finance, CIMB, Southern Bank
S6	Assistant Professor, Faculty of Economics and Management Sciences, IIUM	<i>Fiqh, Usul Fiqh, Siyasa</i> <i>Shariyyah</i>	<i>Shari'ah</i> Advisor CIMB, Hijrah Unit Trust
S7	Head, <i>Shari'ah</i> and Economy Department, UM	Islamic Law, Islamic Economics	<i>Shari'ah</i> Advisor, Al- <i>Hidayah</i> Investment Bank (Labuan) Ltd and IBFIM
S8	Associate Professor, Centre for Islamic Studies and Social Development, UTM	Islamic Jurisprudence, Islamic Banking	<i>Shari'ah</i> Advisor Cooperative Society

IIUM: International Islamic University Malaysia
 UKM: National University of Malaysia
 UM: University of Malaya
 UTM: Technology University of Malaysia
 IBFIM: Islamic Banking and Finance Institute of Malaysia
 CIMB: Commerce International Merchant Bankers Limited
 EON: National Automobile Distributor

6.2.5 Comparative Profile Analysis of *Shari'ah* Advisors and *Shari'ah* Scholars

At the outset it must be emphasized that *Shari'ah* advisor is also a *Shari'ah* scholar and there is no difference in their basic qualification and expertise. All of them are specialized in Islamic law (*Shari'ah*), Islamic Transaction (*Mu'amalah*) and Islamic Jurisprudence (*Fiqh*); while there are a few of them having special qualifications in securities, medical law and economics. But the distinction between them is only made for the convenience of comparison between the two groups who reflect different attitude when their opinions are analysed and presented as in Chapter 8.

This section discusses a profile analysis of *Sharī'ah* advisors and *Sharī'ah* scholars for the purpose of assessing their similarities and differences in respect of their expertise and involvement in AITAB business. Comparative analysis also looks into their opinions and stands in certain issues addressed during the interviews, whether or not such opinions have been independently given or limited by their respective formal positions or other involvements.

Given the above description of profiles, almost all *Sharī'ah* scholars and 67% *Sharī'ah* advisors hold official positions as senior academicians, besides having been appointed as *Sharī'ah* advisors for financial institutions and non-profit organisations. About 44% of the interviewed *Sharī'ah* advisors are members of the National *Sharī'ah* Advisory Council of the Central Bank of Malaysia. The *Sharī'ah* scholars are also involved in the advisory works; 38% of them are responsible to certain financial institutions¹¹⁹ and 50% are attached to some non-profit organisations.

Apart from the above facts, the *Sharī'ah* advisors and *Sharī'ah* scholars are segregated into two distinct groups by taking into account the extent of their involvement in AITAB operation and their different observation of the transaction. Hence, the segregation is deemed necessary for the interest of this study due to the following facts which are generally listed as follow:

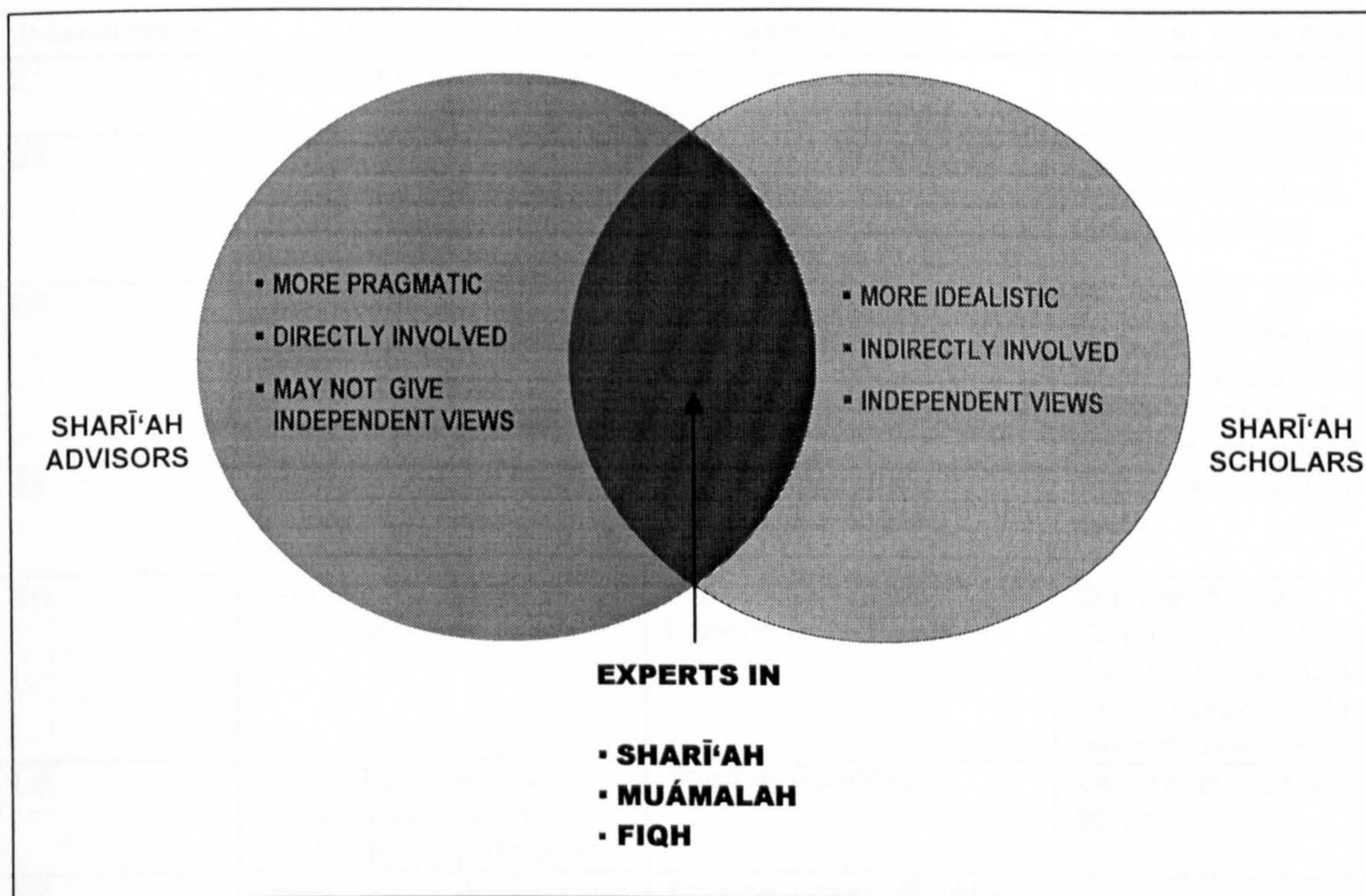
- (a) *Sharī'ah* advisors are directly exposed to issues and regulatory framework of AITAB operation; while *Sharī'ah* scholars appear to be indirectly involved by giving their independent opinions regarding the operation. Indeed, their experiences and involvements in AITAB operation, either directly or indirectly have actually reflected the differences in their opinions of the transaction.
- (b) Like the bankers who involve directly in the operation, *Sharī'ah* advisors tend to be more accepting to the facility, thus, are constantly looking for the most pragmatic ways of developing it to be a flexible and competitive product within the limit prescribed by the *Sharī'ah*. In contrast, *Sharī'ah* scholars are critical in issues relating to conceptual nature of the facility, whether it is *Sharī'ah* compatible or not.

¹¹⁹ 67% of these financial institutions do not provide AITAB facility.

- (c) In respect of regulatory framework of AITAB operation, *Sharī'ah* advisors are actually working on the law, while most *Sharī'ah* scholars are not involved in such task. Interestingly, this explains the fact that the *Sharī'ah* advisors attempt to justify what they are doing which often does not reflect their independent opinion in certain issues¹²⁰. The *Sharī'ah* scholars on the other hand, appear to have more 'freedom of expression' to some issues which invoke *Sharī'ah* consideration.

The above analysis has reflected that both groups of *Sharī'ah* advisors and *Sharī'ah* scholars are inevitably separated due to their extent of involvements and observation to AITAB operation. Detail analyses are presented in Chapter 8 which assesses their opinions in various issues relating to the operation and regulatory framework of AITAB in Malaysia.

FIGURE 6.2:
Relation of *Sharī'ah* advisors and *Sharī'ah* scholars



¹²⁰ Their observations to particular issues are presented in Chapter 8.

6.2.6 Profile of Economists

Economists are those having expertise in economics, finance and banking. 50% of them have involved in Islamic banking from the very beginning, exploring this area while serving in the first Islamic bank, i.e. Bank Islam Malaysia Berhad (BIMB) in 1983. When Islamic banking and finance began to expand, which have led to establishment of many Islamic institutions and subsidiaries, these experts moved or were transferred to these newly-established organizations. Their knowledge and experience as pioneers in the area of Islamic banking are very valuable, indeed.

From Table 6.5 below, 3 are lecturers in Islamic economics and banking; 2 of them are professors in economics. 2 experts with more than 20 years experience in Islamic banking, serve in a researched-based Islamic institution. Another 2 are still in banking industries, while one expert involves in securities business.

TABLE 6.5:
Details of Economists

Interviewees	Formal Position	Specialization	Other Involvement
E1	Professor in Economics	Islamic Economics, Banking and Finance	Federation of Malaysian Unit Trust Managers
E2	Professor, School of Finance and Banking, Northern University of Malaysia	Economics, Finance and Banking	Islamic Banking and Finance Institute of Malaysia (IBFIM)
E3	CEO Islamic Banking and Finance Institute Malaysia (IBFIM)	Islamic Transaction, <i>Sharī'ah</i> , Economics	Chairman, MDC (Market Product Development Committee) and IIFM (International Islamic Finance Market)
E4	Internal Research Fellow for Centre of <i>Fiqh Mu'amalat</i> IBFIM	Islamic Transaction, <i>Sharī'ah</i> , Economics	Had served BIMB for 20 years
E5	Executive Director BIMB Securities	Economics, Islamic Banking and Finance	<i>Sharī'ah</i> Advisor, Central Bank of Malaysia, Securities Commission, Labuan Offshore Financial Services Authority
E6	Islamic Banking and <i>Takāful</i> Department, Central Bank of Malaysia	<i>Sharī'ah</i> Specialist	Lecturer in Islamic Law for 20 yrs
E7	Head, Islamic Banking and Finance Programme, Faculty of Business Management, UiTM	Finance, Islamic Banking	-
E8	Senior Manager, Bank Islam Malaysia Berhad (BIMB)	Economics, Banking	-

UiTM: Technology University of MARA

Most economists are known for their writings and involvement in conferences as presenters. But their most important contribution in the area of Islamic banking is by providing basic and important references in form of books, articles and other reading materials.

6.2.7 Profile of Legal Experts

The selected legal experts comprise 6 legal practitioners from different institutions. Half of them are practicing lawyers; one *Sharie* lawyer, one *Sharie* judge and a legal advisor (in-house lawyer). All of them have handled hire-purchase cases before, while some have experienced in presenting AITAB case, but there have been very few decided cases in the area. Thus, they are deemed to have deep knowledge in hire-purchase law in Malaysia.

TABLE 6.6:
Details of Legal Experts

Interviewee	Position	Specialization	Other Involvement
L1	Associate Professor in Law, IIUM	Islamic Banking and Finance	Lawyer
L2	Professor in Business Law Universiti Putra Malaysia	Business Law	Director of Legal Affairs, Legal Advisor to UPM
L3	Associate Professor in Islamic Law, UM	Islamic Contract, Succession, <i>Zakat</i> , Islamic Law	<i>Sharī'ah</i> lawyer of Federal Territory <i>Sharī'ah</i> Advisor
L4	Head of <i>Sharie</i> Judge <i>Sharī'ah</i> Court, State of Kelantan	Islamic Law, Islamic Transaction	Technical committee
L5	Project Manager IFSB Corporate Governance	Islamic Banking & Finance, Corporate	Practicing Lawyer
L6	Partner, Zul Rafique & Partners	Islamic banking, corporate	-

IIUM: International Islamic University Malaysia

UM: University of Malaya

UPM: Putra University of Malaysia

IFSB: Islamic Financial Services Board

Some legal experts provided very useful information to the researcher in perceiving a wider dimension of law, without limiting to a particular law only. Hence, to understand issues arising from the practice of AITAB, the concept of conventional hire-purchase must be understood first. They pointed out that to identify prevailing issues in hire-purchase, there is a need to go beyond hire-purchase law and understand the Malaysian legal systems as a whole and other laws involved. The possibility of having an Islamic hire-purchase law has also been discussed.

6.2.8 Profile of Government Officers

This part discusses profile of government officers who directly involve in conventional and Islamic hire-purchase. They comprise officers of three government institutions responsible for controlling hire-purchase business in Malaysia. The Central Bank supervises hire-purchase transactions operated by the Malaysian financial institutions. The first interviewee serves in Islamic Banking Department which is authorised to approve any Islamic product proposed by the financial institutions. The second government officer is attached to Islamic Development Division of the Prime Minister Department. This government institution governs Islamic affairs in the country including matters relating to Islamic law. The third interviewee is an officer of Ministry of Domestic Trade and Consumerism which is in charged of controlling hire-purchase business subject to Hire-Purchase Act 1967.

TABLE 6.7:
Details of Government Officers

Interviewee	Position	Specialization
G1	Bank Negara Malaysia (Central Bank of Malaysia)	Business and Economics
G2	JAKIM (Islamic Development Division), Prime Minister Department	<i>Shari'ah</i>
G3	KPDN HEP (Ministry of Domestic Trade and Consumerism)	Law

Views from these government officers are of primary importance as they represent three important bodies which have official jurisdiction over matters relating to hire-purchase transaction. Incidentally, these officers are members of a committee set up to examine the newly-proposed *Mu'amalah* Hire-Purchase Bill. Their information is very useful to help to know the current status and development of the Bill. The researcher has inquired about the government's inclination and policy regarding the possibility of passing the Bill. This point will be thoroughly discussed in Chapter 8.

6.2.9 Classification of Interviewees by Working Experience

All interviewees involved in this research are known to have wide knowledge in Islamic hire-purchase practices in Malaysia, based on their qualifications, involvements and experience in the area. Their period of holding certain positions and serving at particular institutions is an important basis to determine their working experiences. The selection of interviewees involved in this study is made in line with

Schatzman and Strauss' assertion that their positions, seniority in the organization, or their power of making vital decisions in the organizations are some selective considerations to obtain most authoritative data for this research (Schatzman and Strauss 1999). Table 6.8 below gives a general impression to the interviewees' experience in their present **institutions**.

TABLE 6.8:

Distribution of Interviewees by Years in the Present *Institutions*

Interviewees		Years in the Present Institution				Total
		Less 1 year	1-5 years	6-10 years	More 10 yrs	
Bank's Officers	N	0	1	3	8	12
	%	.0	8.3	25.0	66.7	100.0
Sharī'ah Advisors	N	0	0	3	6	9
	%	.0	.0	33.3	66.7	100.0
Sharī'ah Scholars	N	0	0	1	7	8
	%	.0	.0	12.5	87.5	100.0
Economists	N	0	3	0	5	8
	%	.0	37.5	.0	62.5	100.0
Legal Experts	N	0	0	1	5	6
	%	.0	.0	16.7	83.3	100.0
Government Officers	N	0	1	2	0	3
	%	.0	33.3	66.7	.0	100.0
Total	N	0	5	10	31	46
	%	.0	10.9	21.7	67.4	100.0

From the above table, it is shown that 89% of interviewees are those with experience more than 6 years in the present institutions. This shows that most of interview data are obtained from people with sufficient knowledge in AITAB facility since its introduction more than 10 years ago. About 11% have been working in the present institution for a period ranging from 1 to 5 years. Most of them are *Sharī'ah* scholars who are known to have a wide experience and expertise in their area. None of interviewees have less than 1 year working experience was interviewed. This result proves that all selected interviewees are individuals who are capable of furnishing important data to this study based on their experience in the institutions that they currently serve. Table 6.9 below presents different range of periods in which the respondents have been in their present **positions**.

TABLE 6.9:
Distribution of Interviewees by Years in the Present Positions

Interviewees		Years in the Present Position				Total
		Less 1 year	1-5 years	6-10 years	More 10 yrs	
Bank's Officers	N	2	6	1	3	12
	%	16.7	50.0	8.3	25.0	100.0
Sharī'ah Advisors	N	1	3	3	2	9
	%	11.1	33.3	33.3	22.2	100.0
Sharī'ah Scholars	N	0	5	2	1	8
	%	.0	62.5	25.0	12.5	100.0
Economists	N	0	4	2	2	8
	%	.0	50.0	25.0	25.0	100.0
Legal Experts	N	0	2	4	0	6
	%	.0	33.3	66.7	.0	100.0
Government Officers	N	0	3	0	0	3
	%	.0	100.0	.0	.0	100.0
Total	N	3	23	12	8	46
	%	6.5	50.0	26.1	17.4	100.0

Table 6.9 illustrates that 50% of respondents have been in their present position for a period ranging from 1 to 5 years. 26% of them have been in the current position for 5 to 10 years. About 17% interviewees have been serving in the same designation for more than 10 years, while only 7% of them being in present position for less than 1 year. Details of their positions and working experience have been discussed in the previous sections.

Further analysis of the interviewees' working experience and period of service in the present position, Table 6.10 below is referred.

TABLE: 6.10
Cross Tabulation of Years in the Present Position by Years in the Present Institutions

Years in the Present Institutions		Years in the Present Position				Total
		Less than 1 yr	1-5 years	6-10 years	Above 10 yrs	
1-5 years	N	1	4	0	0	5
	%	2.2	8.7	.0	.0	10.9
6-10 years	N	1	6	3	0	10
	%	2.2	13.0	6.5	.0	2.7
More than 10 years	N	1	13	9	8	31
	%	2.2	28.3	19.6	17.4	67.4
Total	N	3	23	12	8	46
	%	6.5	50.0	26.1	17.4	100.0

The above table shows that among all the interviewees, 37% of them have been serving the present institutions for the period of more than 10 years and hold the present positions for more than 6 years. These individuals are usually regarded as the most senior staffs in their institutions, and are believed to possess valuable experience and knowledge significant to their respective institutions. They are significantly regarded as key informants to this study. A comparatively high percentage (67%) of interviewees possess more than 10 years working experience in their current institutions as compared to those of having less such experience. Most other interviewees have been in the current institutions for a period ranging from 6 to 10 years. This result affirms the interviewees' competency to provide relevant and valid data to the study.

Table 6.11 below more specifically present a cross tabulation analysis of the interviewees' experience in the present institutions and positions in their respective groups. 38% of the interviewees having more than 10 years experience in their current positions and institutions are bank officers who are mainly managers or heads of Islamic Banking Division in particular financial institutions. This means these officers have been involved in the area of Islamic banking for more than 10 years which cover the introduction period of Islamic banking scheme in 1994. In fact, they have contributed valuable information pertaining to background and development of Islamic hire-purchase in Malaysia to this study.

Among all interviewees, government officers appear to have a relatively shorter period of service. In respect of working experience, they have been serving for their current institutions for a period ranging from 1 to 10 years. None has more than 10 years of such experience. They are also considered as new officers because they have been in the present position for 1 to 5 years only. This is a common experience for any government servant who is transferred to different government bodies for several times. An officer may have more than 10 years of working experience as government servant, but will probably have less than 5 years working in a particular institutions or positions.

TABLE 6.11:
Cross tabulation of Interviewees' Experience in Present Positions by
Years in the Present Institutions

Years in the Present Institutions			Years in the Present Position				Total
			Less than 1 year	1-5 years	6-10 years	More than 10 years	
Bank Officers	1-5 years	N	1	0	0	0	1
		%	100.0%	.0%	.0%	.0%	100.0%
	6-10 years	N	0	2	1	0	3
		%	.0%	66.7%	33.3%	.0%	100.0%
	More than 10 years	N	1	4	0	3	8
		%	12.5%	50.0%	.0%	37.5%	100.0%
Total	N	2	6	1	3	12	
%	16.7%	50.0%	8.3%	25.0%	100.0%		
Sharī'ah Advisor	6-10 years	N	1	1	1	0	3
		%	33.3%	33.3%	33.3%	.0%	100.0%
	More than 10 years	N	0	2	2	2	6
		%	.0%	33.3%	33.3%	33.3%	100.0%
	Total	N	1	3	3	2	9
	%	11.1%	33.3%	33.3%	22.2%	100.0%	
Sharī'ah Scholars	1-5 years	N	0	1	0	0	1
		%	.0	100.0%	.0%	.0%	100.0%
	More than 10 years	N	0	4	2	1	7
		%	.0	57.1%	28.6%	14.3%	100.0%
	Total	N	0	5	2	1	8
	%	.0	62.5%	25.0%	12.5%	100.0%	
Economists	6-10 years	N	0	3	0	0	3
		%	.0	100.0%	.0%	.0%	100.0%
	More than 10 years	N	0	1	2	2	5
		%	.0	20.0%	40.0%	40.0%	100.0%
	Total	N	0	4	2	2	8
	%	.0	50.0%	25.0%	25.0%	100.0%	
Legal Experts	6-10 years	N	0	0	1	0	1
		%	.0	.0%	100.0%	.0	100.0%
	More than 10 years	N	0	2	3	0	5
		%	.0	40.0%	60.0%	.0	100.0%
	Total	N	0	2	4	0	6
	%	.0	33.3%	66.7%	.0	100.0%	
Government Officers	1-5 years	N	0	1	0	0	1
		%	.0	100.0%	.0	.0	100.0%
	6-10 years	N	0	2	0	0	2
		%	.0	100.0%	.0	.0	100.0%
	Total	N	0	3	0	0	3
	%	.0	100.0%	.0	.0	100.0%	

The above profile analysis reflects that all interviewees are rightly selected to provide information relevant to the study on the basis of their knowledge and experience in Islamic hire-purchase business.

6.3 PROFILE OF QUESTIONNAIRE RESPONDENTS

A total of 450 questionnaires were distributed to individuals who have used AITAB facility. Out of this total, 249 or 55% questionnaires were returned. From the returned questionnaires, 203 or 45% were usable for analysis. This suggests a satisfactory response rate from the respondents. The unusable questionnaires were so classified due to several factors. Some respondents returned incomplete or blank questionnaires; while there are a few who completed the questionnaires but it appeared that their information was irrelevant to this research¹²¹. Table 6.12 depicts the response rate of different type of respondents.

TABLE 6.12:
Distribution of Response Rate from Five Respondent Groups

Respondents	No. Issued	No. Of Return	No. Of Usable	% Usable
People in selected banks	130	83	70	53.8
People in street or residential area	100	31	18	18
Primary or Secondary School teachers and support staffs	100	79	70	70
University Lecturers and non-academic staffs	100	45	41	41
Driving Schools	20	11	4	20
TOTAL	450	249	203	45.1

From the table, it is observed that school teachers and support staffs have given the highest response of 70% to the questionnaires. The obvious reason is that, they are entitled to special government scheme of owning a private car, which is jointly provided by the Government and a bank¹²². Interestingly, the bank adopts Islamic concepts in all its financing facilities, including car financing which is based on Islamic hire-purchase concept. The second highest response rate is obtained from those people interviewed in some selected banks (54%). Most of them were either waiting for their turn, or simply accompanied their friends or relatives to the bank. University academic and non-academic staffs contributed 41% responses, a relatively half of school teachers and support staffs as mentioned earlier. Almost all university

¹²¹ For example, a respondent claiming that he has applied Islamic car financing which he thought is based on Islamic hire-purchase concept. However, the financial institution which gave him such financing, in fact, adopts concept of *bay' bithaman ājil* (deferred payment sale) in their car financing facility. This is a case of Bank Islam Malaysia Berhad (BIMB).

¹²² This is based on interview with the bank officers and some of school teachers. Detail information can be found in <http://www.bankrakyat.com.my/index.php?ch=6&pg=26&ac=11&lang=en>.

staffs use a staff scheme when applying for car financing. However, certain scheme provided by some universities does not adopt a financing which is based on Islamic hire-purchase concept, for instance, conventional hire-purchase financing and BIMB's car financing¹²³.

Apart from the above respondents, questionnaires were also distributed in market place, shopping complex and town streets. Response rate is relatively low (18%), which is not surprising due to the fact that most people in the street are in hurry and less cooperative to the like research. Finally, only 20% response is obtained from instructors and managers of driving schools and this is the lowest response rate gained by the research. From the researcher's observation, their tiring working environment which constantly expose them to hot and wet weather makes them less cooperative to the survey. Having to deal with various attitudes of driving students is another factor which mostly occupies the instructors' time. Although the responses from these two groups are small in number, they significantly give a valuable insight to perceive the respondents' understanding and opinions regarding the operation of AITAB.

6.3.1 Classification of Respondents by Regions

Table 6.13 depicts a distribution of respondents by four regions. As mentioned in the previous chapter, these samples are taken from four states representing four main regions of Peninsular Malaysia. This approach is intended to ensure good quality and wide representation of sample study. It is observed from the table that almost 50% of the total respondent who completed the questionnaire, are from the central region. Northern region marks the lowest response rate (8%) with only 16 questionnaires being returned. Respondents in eastern and southern regions returned 61 questionnaires (30%) and 25 questionnaires (12%) respectively. Different response rates in the four regions are caused by several factors, namely, accessibility to banks' premises, public cooperation and attitude towards this research, public awareness of Islamic products, time and financial factors. For instance, most respondents in the northern region are quite cooperative and friendly, but they are unaware of Islamic based-financing. Thus, they were unable to complete the questionnaires. On the other hand, Islamic awareness amongst the eastern respondents is very high; unfortunately

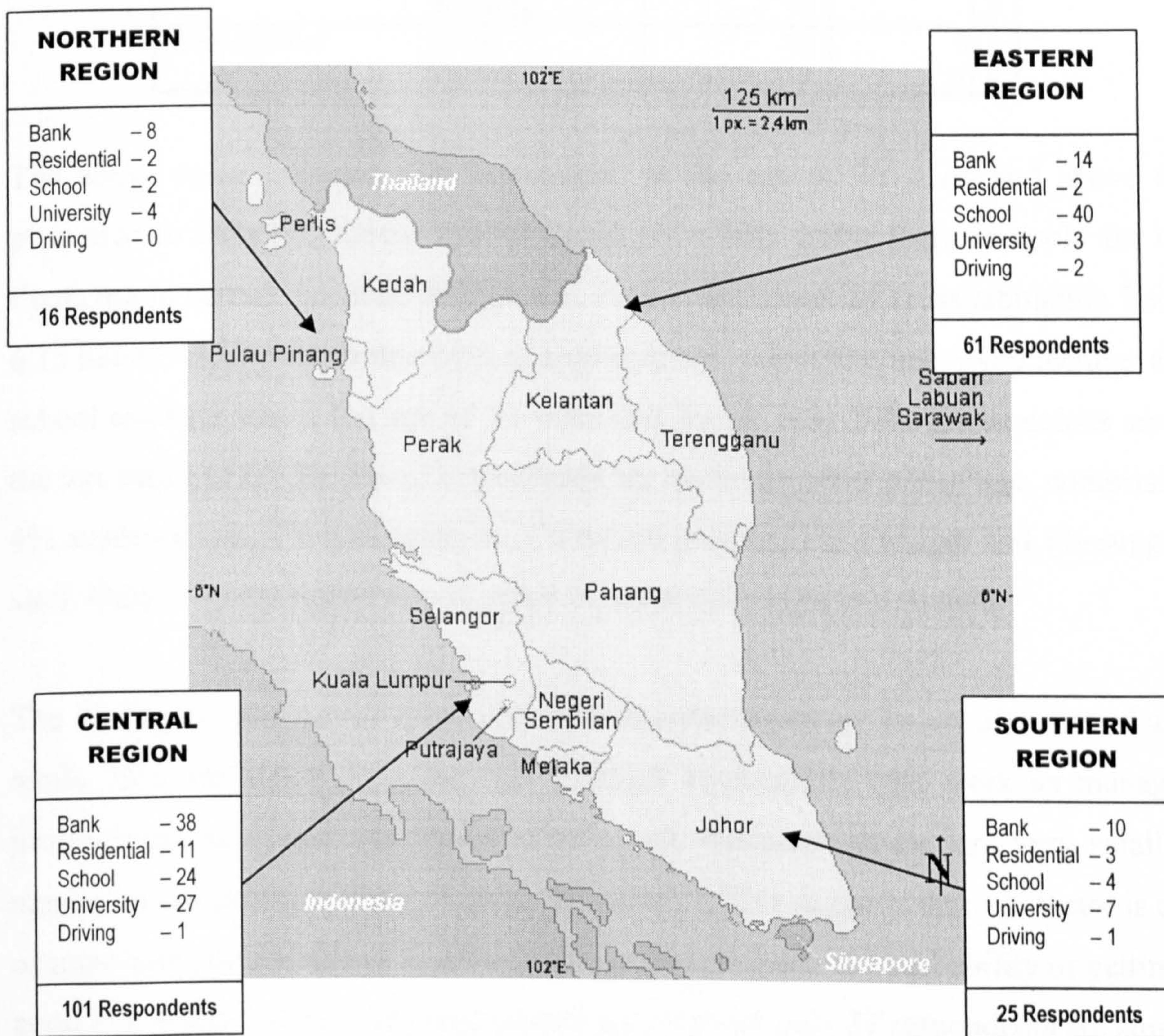
¹²³ BIMB's car financing uses concept of *Bay' bithaman ājil* (deferred payment sale).

most of them are sceptical towards this research, thus refusing to participate in the survey.

TABLE 6.13:
Distribution of Respondents' Response Rate based on Regions

Respondent Group	Northern		Central		Southern		Eastern		Total	
	N	%	N	%	N	%	N	%	N	%
People in selected banks	8	11.4	38	54.3	10	14.3	14	20	70	100
People in street/residential area	2	11.1	11	61.1	3	16.7	2	11.1	18	100
Primary/Secondary School teachers and support staffs	2	2.9	24	34.3	4	5.7	40	57.1	70	100
University Lecturers and non-academic staffs	4	9.8	27	65.8	7	17.1	3	7.3	41	100
Driving Schools	0	0	1	25	1	25	2	50	4	100
Total	16	7.9	101	49.8	25	12.3	61	30.0	203	100

FIGURE 6.3:
Overview of Respondents in Four Regions



6.3.2 Classification of Respondents by Gender, Age and Marital Status

General characteristics of respondents are shown in Table 6.14 below. The respondents are predominantly male (51%); of 203 respondents, 49 % are female. Nearly half of the respondents (43%) are between the age group of 31-40, and almost one-third of them were above 41 years old. About 26% respondents are between 20-30 years old, while those under 20 years of age are relatively few (1%).

TABLE 6.14:

Distribution of Respondents by Gender, Age and Marital Status

		Frequency	Percent (%)
Gender	Male	104	51.2
	Female	99	48.8
Age Group	Below 20	1	0.5
	20-30	53	26.1
	31-40	88	43.3
	41-50	46	22.7
	Above 50	15	7.4
Marital Status	Single	37	18.2
	Married	166	81.8

The above result suggests that respondents at the age of 30 years and above are presumed to have permanent and well-paid job which entitle them to apply for car financing in certain financial institutions. This is confirmed by cross tabulation Table 6.15 below which depicts that 80% of academicians, consisting university lecturer and school teachers, are at the age of 30 years and above; only 20% academicians are at the age range of 21-30. 7% of respondents are above 50 years old of age, comprising 4% academicians, 1% businessmen, 1% retired persons, 1% manager and 1% support staff. Only 1% respondent who is under 20 years old and he is a student.

The findings of the survey show that 27% of respondents are below 30 years of age, while 73% are above 31 years old. Younger respondents who work as manager, professional, academic and non-academic staff, businessman etc. are very small in number as compared to those of older respondents. This suggests that age factor is one of important considerations to determine one's experience and probability of getting a good job. Almost 82% of the respondents are married; only 37 respondents are single. This will probably show that vehicles which are suitable for family, like sedan car,

multi-purpose vehicle (MPV) and four-wheel drive will be mostly attractive to the respondents in this study.

TABLE 6.15:
Cross tabulation of Respondents' Age by Occupation

Respondent's occupation		Age of the respondent					Total
		Below 20	20-30	31-40	41-50	Above 50	
Manager	N	0	4	6	3	1	14
	%	.0%	28.6%	42.9%	21.4%	7.1%	100.0%
Professionals	N	0	7	28	5	0	40
	%	.0%	17.5%	70.0%	12.5%	.0%	100.0%
Academician	N	0	17	35	26	9	87
	%	.0%	19.5%	40.2%	29.9%	10.3%	100.0%
Housewife	N	0	1	0	0	0	1
	%	.0%	100.0%	.0%	.0%	.0%	100.0%
Student	N	1	2	0	0	0	3
	%	33.3%	66.7%	.0%	.0%	.0%	100.0%
Businessman/ Trader	N	0	5	0	1	2	8
	%	.0%	62.5%	.0%	12.5%	25.0%	100.0%
Clerical/ Support staff	N	0	6	11	6	1	24
	%	.0%	25.0%	45.8%	25.0%	4.2%	100.0%
Unemployed	N	0	1	4	2	0	7
	%	.0%	14.3%	57.1%	28.6%	.0%	100.0%
Retired	N	0	0	0	0	2	2
	%	.0%	.0%	.0%	.0%	100.0%	100.0%
Others	N	0	10	4	3	0	17
	%	.0%	58.8%	23.5%	17.6%	.0%	100.0%
Total	N	1	53	88	46	15	203
	%	.5%	26.1%	43.3%	22.7%	7.4%	100.0%

6.3.3 Classification of Respondents by Level of Education and Occupation

Results in Table 6.16 show that majority of respondents are well educated, with more than 20% holding college diploma, matriculation or A-level certificates and about 67% holding at least a bachelor degree. This result reflects respondents' good level of education, which impliedly proves their maturity and openness when participating in the survey. Table 6.16 below also depicts the respondents' occupation, in which more than 42% are academician, covering school teachers and university lecturers. Almost 20% of the professional group respond very well to the questionnaires, which include lawyers, engineers, accountants, doctors and architects. 12% of clerical and support staff from selected schools and universities complete the given questionnaires. Responses from housewife, retired persons, students and unemployed are relatively

low, totalling only 6% of overall responses. Their limited entitlement to apply for financing is one of the reasons, due to not having a proper job and fixed salary.

TABLE 6.16:
Distribution of Respondents by Level of Education and Occupation

		Frequency	Percent (%)
Level of Education	Primary School/UPSR	1	.5
	Secondary School/PMR/SPM	25	12.3
	Diploma/Matriculation/STPM	42	20.7
	First University Degree	102	50.2
	Professional qualification	17	8.4
	Masters	12	5.9
	Ph.D	4	2.0
Occupation	Manager	14	6.9
	Professionals	40	19.7
	Academician	87	42.9
	Housewife	1	.5
	Student	3	1.5
	Businessman/Trader	8	3.9
	Clerical/Support staff	24	11.8
	Unemployed	7	3.4
	Retired	2	1.0
	Others	17	8.4

A cross-tabulation of respondents' level of education and occupation below will show that persons with excellent educational qualification usually have well-paid jobs. This shows the importance of paper qualification to secure a good working position. According to Table 6.17 below:

- (a) More than half of respondents (50%) are degree holders. 68% are qualified academicians, 60% are professionals, and 57% are managers. Only 4% degree holder work as a support staff.
- (b) 16% respondents are postgraduate degree holders, who include 38% professionals, 14% academicians and 21% managers.
- (c) From 13% holders of primary and secondary school certificates, 54% work as support staffs, 3% are school teachers, and 35% served in other areas.

The findings indicate that two-third of the respondents are highly educated and work in various government and non-government sectors. The remaining one-third, having lower educational qualification, serve mainly as support staffs and school teachers. These results imply the quality of respondents who appear to be capable enough to participate in this study and provide reliable responses.

TABLE 6.17:

Cross tabulation of Respondent's Educational Background by Occupation

Respondent's occupation		Educational Background							Total
		Primary School/ UPSR	Secondary School/ PMR/SPM	Diploma/ Matriculation / STPM	First University Degree	Professional qualification	Masters	Ph.D	
Manager	N	0	0	3	8	2	1	0	14
	%	.0%	.0%	21.4%	57.1%	14.3%	7.1%	.0%	100.0%
Professionals	N	0	0	1	24	12	3	0	40
	%	.0%	.0%	2.5%	60.0%	30.0%	7.5%	.0%	100.0%
Academician	N	0	3	13	59	0	8	4	87
	%	.0%	3.4%	14.9%	67.8%	.0%	9.2%	4.6%	100.0%
Housewife	N	0	1	0	0	0	0	0	1
	%	.0%	100.0%	.0%	.0%	.0%	.0%	.0%	100.0%
Student	N	0	1	0	2	0	0	0	3
	%	.0%	33.3%	.0%	66.7%	.0%	.0%	.0%	100.0%
Businessman/ Trader	N	0	1	4	2	1	0	0	8
	%	.0%	12.5%	50.0%	25.0%	12.5%	.0%	.0%	100.0%
Clerical/ Support staff	N	1	12	10	1	0	0	0	24
	%	4.2%	50.0%	41.7%	4.2%	.0%	.0%	.0%	100.0%
Unemployed	N	0	1	3	3	0	0	0	7
	%	.0%	14.3%	42.9%	42.9%	.0%	.0%	.0%	100.0%
Retired	N	0	0	1	0	1	0	0	2
	%	.0%	.0%	50.0%	.0%	50.0%	.0%	.0%	100.0%
Others	N	0	6	7	3	1	0	0	17
	%	.0%	35.3%	41.2%	17.6%	5.9%	.0%	.0%	100.0%
Total	N	1	25	42	102	17	12	4	203
	%	.5%	12.3%	20.7%	50.2%	8.4%	5.9%	2.0%	100.0%

6.4 SUMMARY

This chapter describes background of population under study comprising individuals who participate in the interviews and respondents to questionnaire survey. About 46 interviewees involved in this study, representing six different groups; bank officers, *Sharī'ah* advisors, *Sharī'ah* scholars, economists, legal experts and government officers. Their profiles in respect of their positions, working experience, area of expertise and other involvements are analysed in order to prove that they are significant and competent informants to this study. In addition, profiles of 203 questionnaires respondents are examined in respect of their age, status, gender, level of education, occupation and experience for the purpose of ensuring their responses are valid and reliable. It is hoped that, by understanding the interviewees' and respondents' background, important findings which are to be discussed in the subsequent analysis chapters will be more appreciated and understood.

CUSTOMERS' PERCEPTION OF ISLAMIC HIRE-PURCHASE (AITAB) IN MALAYSIA: ANALYSIS OF QUESTIONNAIRE DATA

7.1 INTRODUCTION

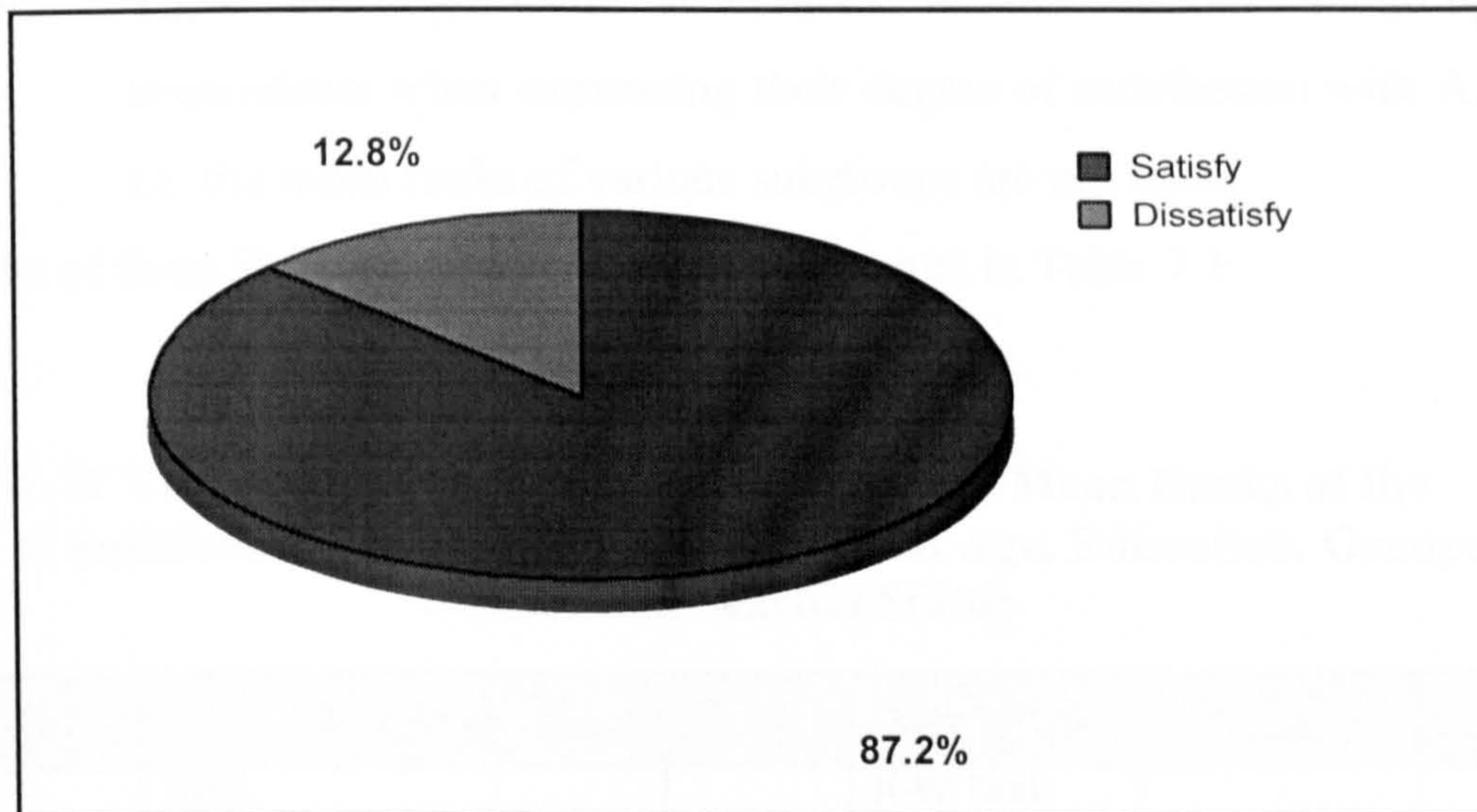
A questionnaire survey has been carried out to elicit the perception of customers towards the operation of Islamic hire-purchase (hereafter AITAB) in Malaysia. In general, from a total of 450 questionnaires distributed, 203 were returned, thereby yielding a good response rate of about 45%. The chapter presents the analysis of questionnaire data designed to survey the extent of customers' awareness, their perception and level of satisfaction towards AITAB. This chapter is divided into four parts. The first part presents the result of analyses on the extent of respondents' satisfaction with AITAB. The second part explores the perception of customers who have experienced conventional hire-purchase. The third part provides a comparative analysis of customers' perception towards both conventional and AITAB. Finally, the general view about AITAB is also elicited from the respondents and the results are reported in the final part of the chapter. The statistical methods employed in this chapter range from frequency distribution, descriptive statistics, pie charts to non-parametric analysis using Kruskal-Wallis and Mann-Whitney U-Test.

7.2 CUSTOMERS' SATISFACTION WITH ISLAMIC HIRE-PURCHASE (AITAB) FACILITY

This section aims to explore the extent of customers' satisfaction with AITAB offered by financial institutions in Malaysia. Indeed, as one of the most important players in service industry, banking is no longer regarded as a business dealing with money transactions alone, but also as a business that is ineluctably in need for winning over customers and retaining the old ones. As for Islamic financial institutions, customers' satisfaction towards their products is very crucial mainly because of the fact that they have to compete with the long-established conventional banks especially in the Malaysian dual-banking system. Accordingly, the respondents were asked to express

their degree of satisfaction towards AITAB facility. The findings are reported in Figure 7.1.

FIGURE 7.1:
Customers' Satisfaction with AITAB



As depicted in Figure 7.1 above, a large majority of respondents (87%) are satisfied with AITAB facility offered by various Islamic financial institutions. Only a small percentage (13%) expresses their dissatisfaction with the facility. To further examine the relationship between the degree of satisfaction and other demographic factors related to the respondents (age, gender, level of education, marital status and occupation), chi-square, χ^2 and Z-score, z values were computed.

7.2.1 Comparative Analysis across Different Respondents' Characteristics

The Kruskal-Wallis test (K-W Test) and Mann-Whitney test (U-Test) are conducted in the comparative analysis. The K-W Test and U-Test are used to assess any significant difference in the responses, given the different groups involved in this survey. This non-parametric test is appropriate when measurement of the variables under investigation is in ordinal scale.¹²⁴ The null hypothesis to be tested reads:

¹²⁴ Unlike the parametric test (such as F-Test or T-Test) which requires data to be measured on interval levels and that samples are drawn from normal distribution populations, non-parametric test do not require the shape of the underlying distribution to be specified even though samples need to be selected at random. In other words, non-parametric test requires a less strict assumption about underlying population and the type of data to be analysed. Although it is not as powerful as a parametric test, increasing the sample size can increase its power to that approaching its parametric equivalents. For detailed discussion, refer to (Kachigan 1986; Siegel and Castellan 1988; Kerr, Hall et al. 2002; Norusis 2004).

Ho: There are no significant differences in the various subgroups of respondents when expressing their degree of satisfaction with AITAB, i.e. the mean ranks of various subgroups (age, marital status, gender, education level and occupation) are equals.

H₁: There are significant differences in the various subgroups of respondents when expressing their degree of satisfaction with AITAB, i.e. the mean ranks of various subgroups are not equal.

The results of these K-W Test and U-Test are presented in Table 7.1.

TABLE 7.1:

K-W Test and U-Test Results Comparing the Mean Ranks of the Degree of Satisfaction towards AITAB in terms of Age, Education, Occupation, Gender and Marital Status

Variable	Subgroup	N	Mean Rank	z, χ^2	Asymp. Sig. (p)	
Degree of Satisfaction with AITAB	AGE:		K-W Test:	$\chi^2 = 3.019$	0.555	
	Below 20	1	$k_1 = 89.00$			
	20-30	53	$k_2 = 96.66$			
	31-40	88	$k_3 = 106.30$			
	41-50	46	$k_4 = 100.03$			
	Above 50	15	$k_5 = 102.53$			
		EDUCATION:		K-W Test:	$\chi^2 = 3.463$	0.484
	Secondary or lower	29	$k_6 = 96.00$			
	Diploma/A-Level	58	$k_7 = 99.50$			
	Bachelor (first degree)	93	$k_8 = 103.19$			
	Professional Qualification	7	$k_9 = 103.50$			
	Master or PhD	16	$k_{10} = 114.38$			
		OCCUPATION:		K-W Test:	$\chi^2 = 3.463$	0.484
	Manager	14	$k_{12} = 118.00$			
	Professionals	40	$k_{13} = 96.61$			
	Academician	87	$k_{14} = 104.17$			
	Housewife	1	$k_{15} = 89.00$			
	Student	3	$k_{16} = 89.00$			
	Businessman/Trader	8	$k_{17} = 114.38$			
	Clerical/Support staff	24	$k_{18} = 93.23$			
	Unemployed	7	$k_{19} = 118.00$			
Retired	2	$k_{20} = 89.00$				
Others	17	$k_{21} = 94.97$				
	GENDER		U-Test:	$z = -0.285$	0.776	
Male	104	$u_1 = 102.66$				
Female	99	$u_2 = 101.30$				
	MARITAL STATUS		U-Test:	$z = -0.944$	0.345	
Single	37	$u_3 = 97.23$				
Married	166	$u_4 = 103.06$				

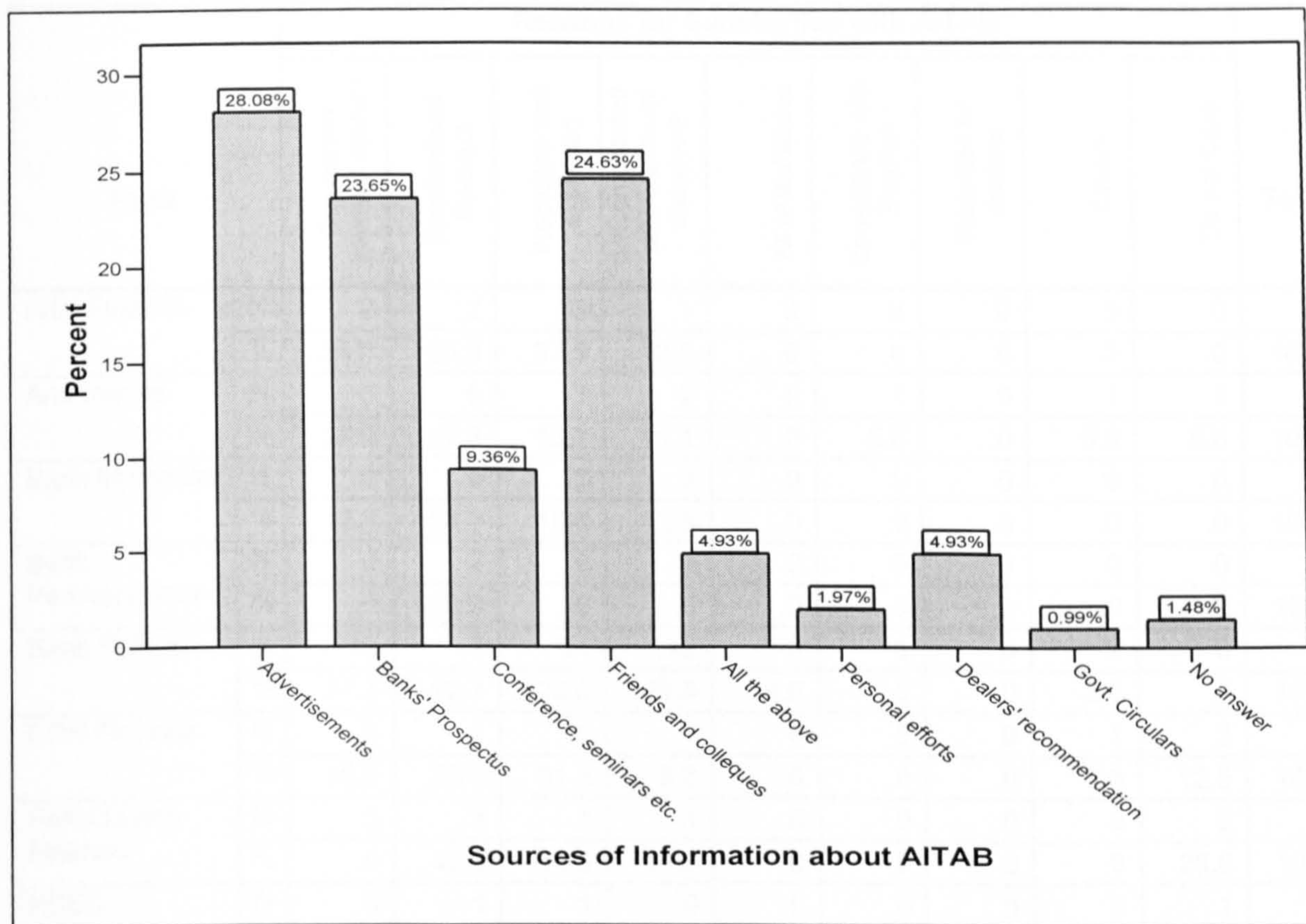
As shown by the K-W Test and U-Test results in Table 7.1, even though there are differences in the mean ranks of various subgroups in terms of their age, gender, marital status, education level and occupation, these variations are not likely to hold in the population since the observed significance levels are all higher than 0.05 confidence intervals. The computed χ^2 and z values are all lower than the tabulated chi-square and z-score values, at various degrees of freedom. The null hypothesis of equal independent means, therefore, cannot be rejected; which suggests that customers are homogeneously satisfied with the AITAB facility offered by financial institutions in Malaysia irrespective of their differences in terms of age, level of education, occupation, gender and marital status.

This result implies a strong potential of AITAB in appealing to various groups of customers. Since satisfaction is an important component of the total package of value required by customers, financial institutions can use a segment of satisfied customers in their marketing strategy and as promotional tools to attract new customers. This necessitates banks to strategically promote and market AITAB facility through various channels of marketing communications.

7.2.2 Sources of Information on AITAB

The above results show that banks need to strategically market AITAB facility. This is further confirmed by the findings of our study as depicted in Figure 7.2, whereby respondents have indicated their awareness and knowledge about AITAB from various sources of information. More specifically, the majority of respondents (61%) point out that they got the knowledge and understanding about AITAB from various means of communication endeavoured by the industries such as advertisements, banks' prospectus, and conferences and seminars. Besides direct effort by banks, 'word-of-mouth' communication is undoubtedly among the strongest communication tools in forming expectations and influencing subsequent purchasing behaviour. This is substantiated by the fact that 30% of the customers have been influenced to use AITAB facility based on the recommendation made by friends and dealers.

FIGURE 7.2:
Customers' Sources of Information about AITAB



To add up, more than 90% of customers benefit from these direct and indirect sources of information or means of marketing communication, as compared to only 2% of customers who claim that they took their own initiatives and personal efforts in getting to know and learn about AITAB. This proves the importance of the financial institutions to strategically package and market AITAB product to stimulate and influence patronage behaviour of customers by adopting various marketing tools and strategies.

7.2.3 Reasons for Satisfaction with AITAB

The findings in the preceding section seem to suggest that customers are generally satisfied with AITAB facility. To further illuminate the reasons for their satisfaction, a question with a set of probable reasons that may explain why customers have chosen AITAB facility for financing was posed to the respondents. The results are reproduced in Table 7.2.

TABLE 7.2:
Cross-Tabulation of Reasons for Satisfaction by Banks

Bank		Reasons for Satisfaction with AITAB									Total
		Convenient payment system	Standardised Contract	Procedure well explained	Uncomplicated preparation of document	All of the above	Compliance with <i>Shariah</i>	Managed by dealers	Others	Do not Care	
Affin Finance	N	2	2	3	1	0	0	0	0	0	8
	%	25.0	25.0	37.5	12.5	.0	.0	.0	.0	.0	100.0
AmFinance	N	5	5	3	2	0	1	0	1	1	18
	%	27.8	27.8	16.7	11.1	.0	5.6	.0	5.6	5.6	100.0
Bank Muamalat	N	2	9	3	2	0	0	0	0	0	16
	%	12.5	56.3	18.8	12.5	.0	.0	.0	.0	.0	100.0
Bank Pembangunan	N	0	2	0	0	0	0	0	0	0	2
	%	.0	100.0	.0	.0	.0	.0	.0	.0	.0	100.0
Bank Rakyat	N	15	7	11	12	8	0	0	2	0	55
	%	27.3	12.7	20.0	21.8	14.5	.0	.0	3.6	.0	100.0
EON Finance	N	3	4	5	1	0	0	0	1	2	16
	%	18.8	25.0	31.3	6.3	.0	.0	.0	6.3	12.5	100.0
Hong Leong Finance	N	0	3	1	1	0	0	0	0	2	7
	%	.0	42.9	14.3	14.3	.0	.0	.0	.0	28.6	100.0
HSBC	N	0	1	1	0	0	0	0	0	1	3
	%	.0	33.3	33.3	.0	.0	.0	.0	.0	33.3	100.0
Mayban Finance	N	2	6	8	4	1	1	1	1	2	26
	%	7.7	23.1	30.8	15.4	3.8	3.8	3.8	3.8	7.7	100.0
OCBC	N	0	0	0	0	0	0	0	0	2	2
	%	.0	.0	.0	.0	.0	.0	.0	.0	100.0	100.0
Public Finance	N	3	1	4	3	1	0	0	1	3	16
	%	18.8	6.3	25.0	18.8	6.3	.0	.0	6.3	18.8	100.0
Southern Finance	N	0	1	1	1	0	0	0	0	1	4
	%	.0	25.0	25.0	25.0	.0	.0	.0	.0	25.0	100.0
Cooperative Societies	N	1	1	2	0	0	0	0	0	0	4
	%	25.0	25.0	50.0	.0	.0	.0	.0	.0	.0	100.0
Total	N	33	42	42	27	10	2	1	6	14	177
	%	18.6	23.7	23.7	15.3	5.6	1.1	.6	3.4	7.9	100.0

According to the results depicted in Table 7.2, a large majority (87%) of respondents indicate that factors pertaining to documentation and procedure constitute the main reasons why they chose AITAB facility for financing. In particular, 47% of respondents assign 'standardised contract' and 'procedure well explained' as two key reasons for their satisfaction with AITAB, followed by 'convenient payment system' and 'uncomplicated preparation of document' with 19% and 15%, respectively.

Interestingly, only 1% express their satisfaction merely based on religious reason, i.e. compliance with *Shari'ah*. This does not indicate that the religion factor is not important. It merely underscores the paramount importance of documentation and procedure in the service quality as assessed by customers who shall shortly, give this factor in the context of AITAB benefits in section 7.4.1.

The cross-tabulation of reasons for satisfaction with AITAB by respondents' bank, as depicted in Table 7.2, reveal a similar pattern of response. The majority of respondents who indicated their reasons for satisfaction with AITAB on the basis of contractual and procedural convenience are customers of conventional banks with Islamic windows.

7.2.4 Reasons for Dissatisfaction with AITAB

As depicted in Figure 7.1 above, a small percentage (13%) of the respondents expressed their dissatisfaction with AITAB facility. Hence, it is appropriate to investigate the reasons for their dissatisfaction. The study posed a question with a set of probable reasons for dissatisfaction with AITAB to the respondents. The results are presented in Table 7.3.

The results in Table 7.3 reveal that 42% of the customers indicate their reasons for dissatisfaction are mainly due to the lengthy and confusing AITAB contract. Nineteen percent further claim that the terms and condition attached to AITAB transaction are very complicated, while 8% feel that they had to go through a confusing procedure. Fifteen percent allege that AITAB contract is not truly compliant with principles of *Shari'ah*.

Zooming in the results of cross-tabulation in Table 7.3 further reveals that 20% of customers of Bank Muamalat claim that the bank was slow in processing the AITAB, 50% of Hong Leong Finance customers indicate that no standardised AITAB contract was offered to them and 25% of Mayban Finance feel that AITAB is offered at a higher rate than the conventional facility.

TABLE 7.3:
Cross-Tabulation of Reasons for Dissatisfaction by Banks

Banks		Reasons for Dissatisfaction with AITAB							Total	
		No standardised contract	Lengthy & confusing contract	Confusing procedure	Very complicated terms and conditions	Not compliance with <i>Sharf'ah</i>	Slow Processing	Higher rate than conventional		Do not care
AmFinance	N	0	1	0	2	0	0	0	0	3
	%	.0	33.3	.0	66.7	.0	.0	.0	.0	100.0
Bank Muamalat	N	0	1	1	1	0	1	0	1	5
	%	.0	20.0	20.0	20.0	.0	20.0	.0	20.0	100.0
Bank Rakyat	N	0	5	0	1	0	0	0	0	6
	%	.0	83.3	.0	16.7	.0	.0	.0	.0	100.0
EON Finance	N	0	0	0	1	1	0	0	0	2
	%	.0	.0	.0	50.0	50.0	.0	.0	.0	100.0
Hong Leong Finance	N	1	1	0	0	0	0	0	0	2
	%	50.0	50.0	.0	.0	.0	.0	.0	.0	100.0
HSBC	N	0	0	1	0	0	0	0	0	1
	%	.0	.0	100.0	.0	.0	.0	.0	.0	100.0
Mayban Finance	N	0	0	0	0	3	0	1	0	4
	%	.0	.0	.0	.0	75.0	.0	25.0	.0	100.0
OCBC	N	0	1	0	0	0	0	0	0	1
	%	.0	100.0	.0	.0	.0	.0	.0	.0	100.0
Public Finance	N	0	2	0	0	0	0	0	0	2
	%	.0	100.0	.0	.0	.0	.0	.0	.0	100.0
Total	N	1	11	2	5	4	1	1	1	26
	%	3.8	42.3	7.7	19.2	15.4	3.8	3.8	3.8	100.0

Comparing the results in Table 7.2 and 7.3 above, it is interesting to note that despite a majority of customers who express their satisfaction with AITAB contract especially in terms of documentation, procedure and transaction, there is a considerable minority (13%) who respond to the contrary. Three plausible reasons may account for such perception. Firstly, there could be some lack of consistency and uniformity in the processing and executing AITAB contract by the financial institutions. This may be true as the results of Tables 7.2 and 7.3 depict that customers from the same bank offer two contradictory views regarding the standard of documentation and procedures involving AITAB contract. A case in point is customers of Hong Leong Finance who have two different views regarding the standard of AITAB contract. Secondly, there may be also lack of consistency in service quality particularly when banks interact with clients and fail to give a satisfactory explanation regarding AITAB

contract. As a result, unconvinced customers become confused about the system. The lack of consistency is more apparent when customers from the same institution (e.g. Mayban) Finance have two different opinion regarding the issue of *Shari'ah*-compliance. Thirdly, the responses from the small minority could reflect isolated incidences involving those who might have bad experiences with the service. Hence, some greater efforts should be taken to improve these deficiencies.

Overall, the above result implies the need for financial institutions to secure and attract their customers by offering a product like AITAB which is characterised by features like user-friendly, convenient and less complicated in terms of documentation, procedures, transaction and payment system. Moreover, bank officers should also be trained to explain AITAB in a language that can easily be understood by their customers as well as to stimulate their interest in dealing with AITAB. Perhaps one of the most important market implications emerging from this finding is the ability of financial institutions like Islamic banks and Islamic windows to provide convenient banking to attract patronage from a wider section of the Malaysian population. Thus, Islamic banks and windows must not take for granted assuming religious motivation to be sufficient to sustain patronage from the existing customers. Instead, banks should package their products in such a way that convenience becomes a paramount importance that can satisfy the customers.

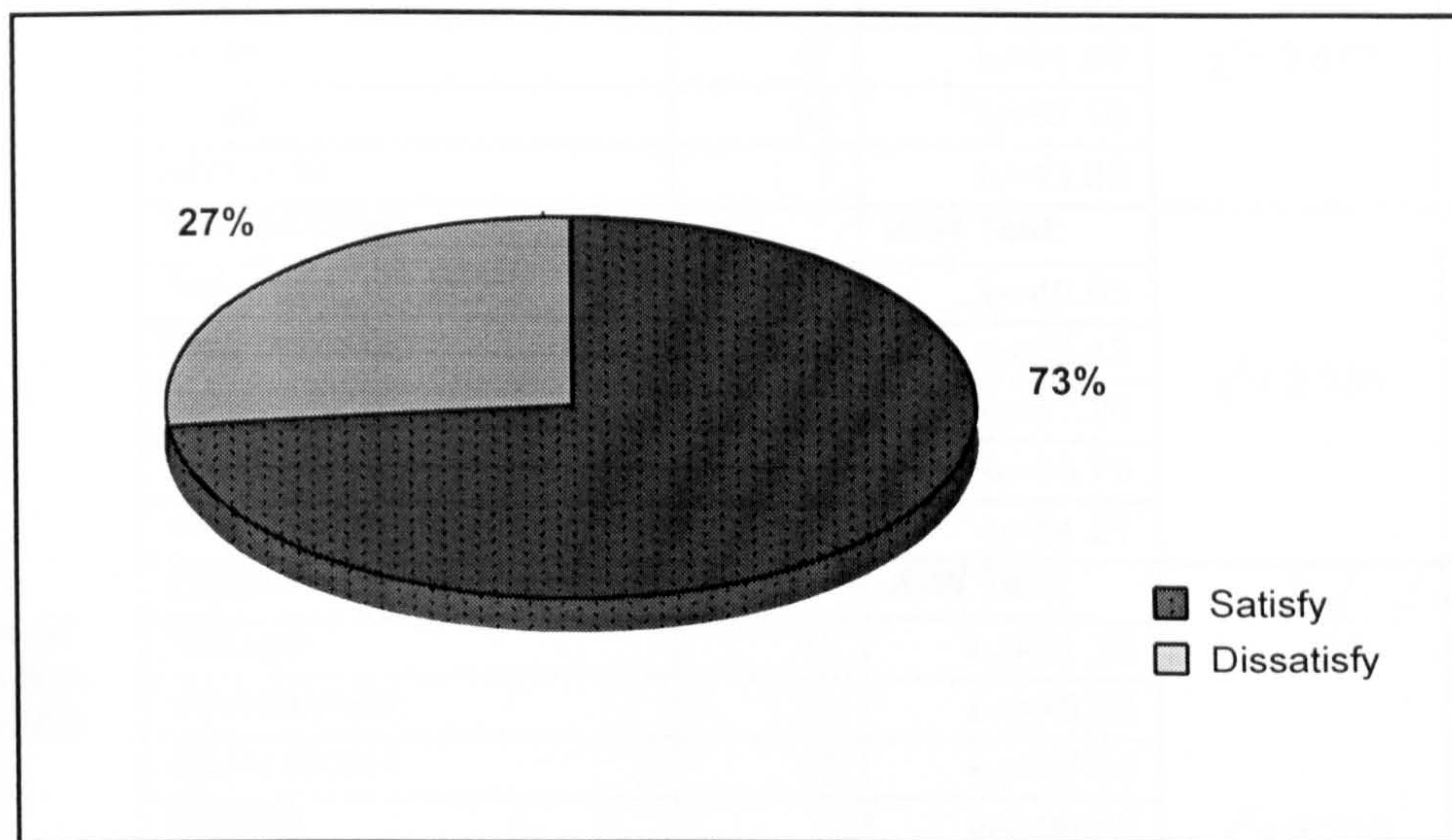
7.3 CUSTOMERS' SATISFACTION WITH CONVENTIONAL HIRE-PURCHASE FACILITY

This study has also elicited customers' opinion from those who have experienced conventional hire-purchase facility. Out of 203 total respondents, more than half (55%) have indicated that they have experienced conventional hire-purchase facility. It is expected that previous banking experiences are likely to influence customers' attitudes, perceptions and degree of satisfaction with AITAB. Therefore, it is interesting to investigate these customers' perceptions towards the conventional facility.

Customers who have experienced the conventional hire-purchase were asked about their level of satisfaction towards the facility. Figure 7.3 depicts the proportion of satisfied and dissatisfied customers towards the conventional facility. From Figure

7.3 below, it is evident that majority (73%) of customers indicate that they are satisfied with the facility, while only 27% are dissatisfied. This is interesting when comparing their opinion towards the two products i.e. AITAB and conventional hire-purchase, which will be explored in the later part of this chapter.

FIGURE 7.3:
Customers' Satisfaction with Conventional Hire-Purchase



To further examine the relationship between the degree of satisfaction and other demographic factors related to the respondents (age, gender, level of education, marital status and occupation) chi-square, χ^2 and Z-score, z values are computed.

7.3.1 Comparative Analysis across Different Respondents' Characteristics

The study has once again conducted the Kruskal-Wallis test (K-W Test) and Mann-Whitney test (U-Test) on these variables. The null hypothesis to be tested reads:

Ho: There are no significant differences in the various subgroups of respondents when expressing their degree of satisfaction with conventional hire-purchase, i.e. the mean ranks of various subgroups (age, marital status, gender, education level and occupation) are equals.

H₁: There are significant differences in the various subgroups of respondents when expressing their degree of satisfaction with conventional hire-purchase, i.e. the mean ranks of various subgroups are not equals.

The results are presented in Table 7.4.

TABLE 7.4:

K-W Test and U-Test Results Comparing the Mean Ranks of the Degree of Satisfaction towards Conventional Hire-Purchase in terms of Age, Education, Occupation, Gender and Marital Status

Variable	Subgroup	N	Mean Rank	z, χ^2	Asymp. Sig. (p)
Degree of Satisfaction with AITAB	AGE:		K-W Test:	$\chi^2 = 3.672$	0.299
	20-30	18	$k_1 = 67.69$		
	31-40	57	$k_2 = 54.99$		
	41-50	30	$k_3 = 55.60$		
	Above 50	7	$k_4 = 43.86$		
	EDUCATION:		K-W Test:	$\chi^2 = 2.736$	0.603
	Secondary or lower	11	$k_5 = 49.05$		
	Diploma/A-Level	32	$k_6 = 53.42$		
	Bachelor (first degree)	53	$k_7 = 61.24$		
	Professional Qualification	4	$k_8 = 45.75$		
	OCCUPATION:		K-W Test:	$\chi^2 = 8.313$	0.306
	Manager	13	$k_{10} = 61.23$		
	Professionals	34	$k_{11} = 49.38$		
	Academician	45	$k_{12} = 57.98$		
	Student	1	$k_{13} = 96.00$		
	Businessman/Trader	1	$k_{14} = 66.00$		
	Clerical/Support staff	8	$k_{15} = 59.63$		
	GENDER		U-Test:	$z = -0.803$	0.422
	Male	65	$u_1 = 58.50$		
	Female	47	$u_2 = 53.73$		
MARITAL STATUS		U-Test:	$z = -1.180$	0.238	
Single	14	$u_3 = 65.64$			
Married	98	$u_4 = 55.19$			

As shown by the K-W Test and U-Test results in Table 7.4, even though there are differences in the mean ranks of various subgroups in terms of their age, gender, marital status, education level and occupation, these differences are not likely to hold in the population, since the observed significance levels are all higher than 0.05 confidence intervals. The computed χ^2 and z values are all lower than the tabulated chi-square and z -score values, at various degrees of freedom. The null hypothesis of equal independent means can therefore be accepted; suggesting that customers are homogeneously satisfied with the conventional hire-purchase instrument offered by various banks in Malaysia.

7.3.2 Reasons for Satisfaction with Conventional Hire-Purchase

The study also manages to gauge the reasons for customers' satisfaction with conventional hire-purchase facility. The results are reproduced in Table 7.5.

TABLE 7.5:

Cross-Tabulation of Reasons of Satisfaction with Conventional Hire-Purchase By Banks

Bank		Reasons for Satisfaction with Conventional Hire-purchase									Total
		Convenient payment system	Standardised Contract	Procedure well explained	Uncomplicated preparation of document	All of the above	Others	Fast Process	No different from AITAB	Do not know	
Affin Finance	N	1	0	0	1	0	0	0	0	0	2
	%	50.0	.0	.0	50.0	.0	.0	.0	.0	.0	100.0
AmFinance	N	1	1	2	0	0	1	0	0	2	7
	%	14.3	14.3	28.6	.0	.0	14.3	.0	.0	28.6	100.0
Bank Muamalat	N	2	1	2	1	0	2	1	0	0	9
	%	22.2	11.1	22.2	11.1	.0	22.2	11.1	.0	.0	100.0
Bank Rakyat	N	3	2	2	7	3	2	0	0	2	21
	%	14.3	9.5	9.5	33.3	14.3	9.5	.0	.0	9.5	100.0
EON Finance	N	2	1	0	2	0	2	0	0	1	8
	%	25.0	12.5	.0	25.0	.0	25.0	.0	.0	12.5	100.0
Hong Leong Finance	N	0	4	0	0	0	1	0	0	0	5
	%	.0	80.0	.0	.0	.0	20.0	.0	.0	.0	100.0
HSBC	N	0	1	0	0	0	0	0	0	0	1
	%	.0	100.0	.0	.0	.0	.0	.0	.0	.0	100.0
Mayban Finance	N	1	8	3	1	0	4	0	1	0	18
	%	5.6	44.4	16.7	5.6	.0	22.2	.0	5.6	.0	100.0
Public Finance	N	2	2	0	0	0	1	0	0	1	6
	%	33.3	33.3	.0	.0	.0	16.7	.0	.0	16.7	100.0
Southern Finance	N	0	1	1	1	0	0	0	0	0	3
	%	.0	33.3	33.3	33.3	.0	.0	.0	.0	.0	100.0
Cooperative Societies	N	1	0	0	1	0	0	0	0	0	2
	%	50.0	.0	.0	50.0	.0	.0	.0	.0	.0	100.0
Total	N	13	21	10	14	3	13	1	1	6	82
	%	15.9	25.6	12.2	17.1	3.7	15.9	1.2	1.2	7.3	100.0

Corresponding to the previous findings, the results shown in Table 7.5 reveal that customers highly regard documentation and procedural issues as important reasons for satisfaction with conventional hire-purchase. In total, 55% of the customers who have experienced conventional hire-purchase state that standardised hire-purchase contract,

well-explained procedure and uncomplicated preparation of documents are the main reasons for their satisfaction with the facility. Other factors include convenient payment system (16%), fast process (1%) and others (16%). There is 5.6% respondent who feels there is no difference between conventional and Islamic hire-purchase. Again, these results reinforce our earlier assertion that customers are very much concerned with a product which is characterized with convenience and ambiguity-free features whether in terms of its documentation, procedure, processing and payment system. Therefore, banks must always take these factors into consideration when offering and developing a product especially in the case of AITAB.

7.3.3 Reasons for Dissatisfaction with Conventional Hire-Purchase

It is also important to further investigate the opinion of 27% of customers pertaining to reasons for their dissatisfaction with the conventional facility as depicted in the earlier Figure 7.3. Table 7.6 below highlights the reasons for customers' dissatisfaction with conventional hire-purchase. There are mixed responses obtained from the respondents. 23% of customers indicate their dissatisfaction with conventional hire-purchase due to its interest-based nature. This is a very interesting finding which shows an increasing Islamic-consciousness among the Malaysian customers. This attitude is also reflected in their response to the later questions which require an overall assessment of AITAB facility and their possible choices in the future.

Other reasons raised, include no standard set of hire-purchase contract offered by the bank (20%), very complicated terms and conditions (20%), confusing procedure (13%), lengthy and confusing contract (10%), late penalty charges imposed (7%) and others (7%). On the whole, most customers states misleading documentation and procedure as the main reasons for their dissatisfaction with the hire-purchase facility. This is true for both AITAB and conventional hire-purchase customers. This is no surprise unless customers are given sufficient explanation on how hire-purchase transaction works in terms of procedure and documentation, they can easily get confused¹²⁵.

¹²⁵ The customers will only become absolute owners of the assets under hire-purchase agreement after they have settled all payments as agreed in the agreement. Prior to the transfer of ownership, the assets

TABLE 7.6:

**Cross-Tabulation of Reasons of Dissatisfaction with Conventional Hire-Purchase
By Banks**

Bank		Reasons for Dissatisfaction with Conventional HP						Total	
		No standardised contract	Lengthy & confusing contract	Confusing procedure	Very complicated terms and conditions	Interest-based scheme	Late penalty charges imposed		Others
Affin Finance	N	0	0	0	0	1	0	0	1
	%	.0	.0	.0	.0	100.0	.0	.0	100.0
AmFinance	N	1	0	0	0	0	0	1	2
	%	50.0	.0	.0	.0	.0	.0	50.0	100.0
Bank Muamalat	N	1	1	0	0	0	0	1	3
	%	33.3	33.3	.0	.0	.0	.0	33.3	100.0
Bank Pembangunan	N	.0	0	0	1	0	0	0	1
	%	.0	.0	.0	100.0	.0	.0	.0	100.0
Bank Rakyat	N	3	1	3	3	3	1	0	14
	%	21.4	7.1	21.4	21.4	21.4	7.1	.0	100.0
HSBC	N	0	0	0	0	0	1	0	1
	%	.0	.0	.0	.0	.0	100.0	.0	100.0
Mayban Finance	N	0	0	0	0	1	0	0	1
	%	.0	.0	.0	.0	100.0	.0	.0	100.0
OCBC	N	0	0	0	1	1	0	0	2
	%	.0	.0	.0	50.0	50.0	.0	.0	100.0
Public Finance	N	0	1	1	0	1	0	0	3
	%	.0	33.3	33.3	.0	33.3	.0	.0	100.0
Cooperative Societies	N	1	0	0	1	0	0	0	2
	%	50.0	.0	.0	50.0	.0	.0	.0	100.0
Total	N	6	3	4	6	7	2	2	30
	%	20.0	10.0	13.3	20.0	23.3	6.7	6.7	100.0

The results given above reinforce the need for banks and other relevant parties such as lawyers or dealers to carefully and adequately explain to their clients about hire-purchase contract. This is necessary in order to avoid confusion and misunderstanding about the procedure, obligations and duties of each party to the contract. For example, one of the typical issues that may easily create misunderstanding relates to the ownership status. In conventional hire-purchase financing, customers can easily get confused by thinking that banks merely finance their purchasing assets like other financing instruments do. However, they should be enlightened that banks hold

are owned by the financiers who can repossess the assets if there is a violation of the agreement. In Malaysia, there have been many reported cases relating to hire-purchase which arise from the same root of problem (Penang 1986; Khair, Veera et al. 2001).

ownership claim over the asset insofar as they can repossess the asset in the case of default. Hence, such procedure and obligation need to be sufficiently explained to the clients before entering into the agreement.

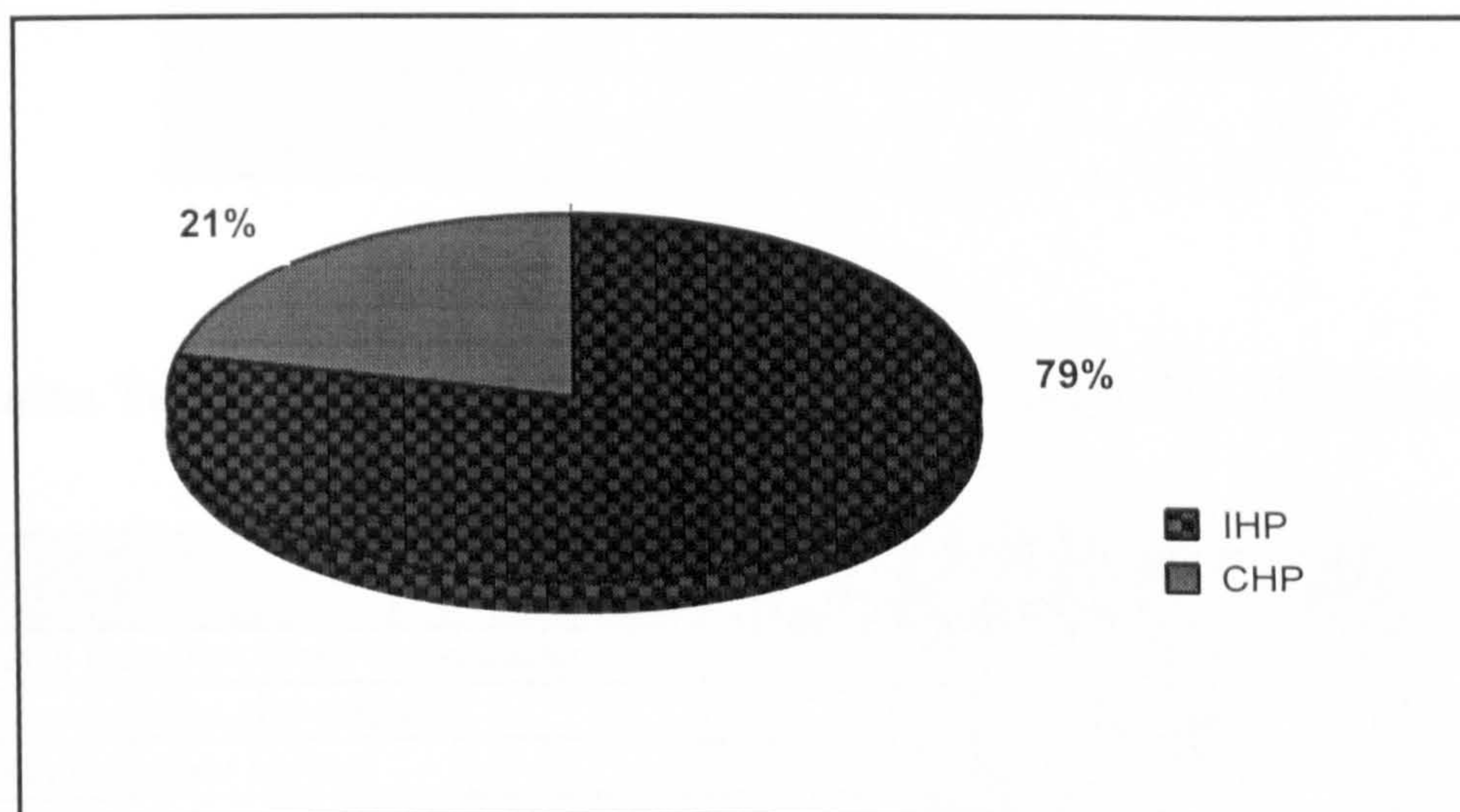
The ensuing sections provide an analysis of perceptions of the conventional-experienced customers towards both conventional and Islamic hire-purchase facility.

7.4 COMPARATIVE ANALYSIS OF AITAB AND CONVENTIONAL HIRE-PURCHASE

Since the study has managed to obtain responses from customers who have experienced using both AITAB and conventional facilities, it is pertinent to gauge their opinion towards the benefits of using these two facilities. This enables us to further study and make comparative analysis between the two instruments offered by various banks. Hence, the respondents were asked to compare both facilities in term of their benefits. Figure 7.4 reveals that a vast majority of respondents (79%) feel that AITAB has given more benefits as compared to only 21% stating otherwise.

FIGURE 7.4:

Comparison of Benefits between AITAB and Conventional Hire-Purchase



To provide better insights into the possible reasons of why these customers think Islamic hire-purchase gives more benefits, the following sections further discuss the findings and analysis of various variables which may constitute major reasons for the customers' perceptions.

7.4.1 Benefits of AITAB

To qualify on the finding in section 7.2.3, we have asked the customers to rank the different benefits which they obtain from AITAB. Respondents who prefer AITAB to conventional facility were asked to rate, on a five-point Likert scale ranging from 1 = strongly disagree to 5 = strongly agree, the extent to which they have agreed in each benefit gained from using the product. The null hypothesis is advanced as follows:

Ho: There is no significant difference in customers' degree of agreement regarding all benefits gained from using AITAB facility i.e. the mean ranks of various benefits gained from using Islamic hire-purchase facility are equal.

H₁: There is significant difference in customers' degree of agreement regarding all benefits gained from using AITAB facility i.e. the mean ranks of various benefits gained from using Islamic hire-purchase facility are not equal.

The results are presented in Table 7.7 and 7.8 below.

TABLE 7.7:

Friedman's Test Statistics: Benefits of AITAB

N	96
Chi-Square, χ^2	133.305
df	8
Asymp. Sig.	0.000

TABLE 7.8:

Friedman Test to Rank the Various Reasons of Benefits Gained From Using AITAB

	Arithmetic Mean	Std. Deviation	Mean Rank	Rank
AITAB is based on <i>Shari'ah</i> principles	4.5625	.59493	6.70	1
Free consultation and enquiries	3.9688	1.07069	5.41	2
Friendly customer service	3.8854	.91617	4.99	3
Easy instalment payments	3.8646	.90169	4.95	4
Attractive financing terms and conditions	3.8542	.94009	4.93	5
Speedy processing and approval	3.8229	1.03613	4.90	6
Free processing	3.7604	1.15845	4.88	7
Longer financing period	3.5938	1.06205	4.31	8
Lower rates of bank's return	3.5000	1.04630	3.95	9

Note: Mean values – scoring: 1 = strongly disagree; 5 = strongly agree

The results in Table 7.7 shows that the chi-square value ($\chi^2 = 133.305$) is higher than the tabulated chi-square value ($\chi^2 = 15.51$) at 0.05 confidence interval; 8 degree of freedom. The observed significance level $p = 0.000$, is lower than the 0.05 confidence level, which implies that variations between the nine variables are likely to hold in the population. Thus, we may infer that the ranking of benefits of AITAB as perceived by customers is statistically significant, thus, the null hypothesis can be rejected. The extent to which customers have agreed in each benefits gained from using AITAB is tabulated in Table 7.8.

The results in Table 7.8 clearly indicate that customers rank 'AITAB is based on *Sharī'ah* principles' as the highest benefit gained from using AITAB. In other words, respondents regard the Islamic legitimacy aspect of the product as the most important benefit to gain from AITAB. The result reinforces the importance of AITAB facility to be *Sharī'ah*-compliant. Therefore, although the documentation and procedure factors were more important than the religious factor in the earlier question (refer to section 7.2.3), it has now become clear that the religious factor is most important when stated in the context of different benefits that customers can draw from AITAB. Furthermore, by complying with all the necessary *Sharī'ah* requirements, banks can secure patronage and enhance confidence amongst their customers, which may consequently reap comparative advantage in competing with conventional products. This proves that banks may still create a niche in the market for pious Muslims who are committed in avoiding interest and engaging in *Sharī'ah*-compliant products. Even this feature appeals to the non-Muslims as there are evidences that these group of customers are increasingly attracted to the Islamic banking products which are well-known to be based on *Sharī'ah*¹²⁶.

On the other hand, 'lower rates of bank's return' is considered the least benefit that customers have gained from using AITAB facility. This does not imply that customers do not really care about the rate of payment which they have to pay to the bank. Rather they are more concerned with the religious aspect of AITAB facility, which

¹²⁶ This fact is further confirmed by an interview conducted among bank officers of various Islamic financial institutions. In particular all bank officers acknowledge that about 60% of AITAB customers are non-Muslims. They proclaim that these non-Muslim customers are attracted due to the late penalty charges which are far lower than the conventional facilities. Some financial institutions do not even impose this penalty charge to attract customers. For details of the results, refer to Chapter 8.

they have benefited most. It is also interesting to note that, respondents highly regard human factors and convenience as important benefits that they have gained from using AITAB. In particular, both 'free consultation and enquiries' and 'friendly customer service' are ranked second and third respectively. This also reinforces our earlier assertions that customers do not only value product in terms of its pricing and attractive terms and conditions but more importantly the quality of services attached to the products that bank can offer.

7.4.2 Benefits of Conventional Hire-Purchase

For the purpose of comparative analysis, the opinion of respondents who prefer conventional hire-purchase to AITAB facility is also gauged. The respondents were asked to rate, on a five-point Likert scale ranging from 1 = strongly disagree to 5 = strongly agree, the extent to which they have agreed in each benefit gained from using the conventional product. The null hypothesis is advanced as follows:

Ho: There is no significant difference in customers' degree of agreement regarding all benefits gained from using conventional hire-purchase facility i.e. the mean ranks of benefits gained from using conventional hire-purchase facility are equal.

H₁: There is significant difference in customers' degree of agreement regarding all benefits gained from using conventional hire-purchase facility i.e. the mean ranks of benefits gained from using conventional hire-purchase facility are not equal.

To test this null hypothesis, the study performs Friedman Test statistics to calculate the chi-square as well as the mean ranks for each variable under study. The results are presented in Table 7.9 and 7.10.

TABLE 7.9:

Friedman's Test Statistics: Benefits of Conventional Hire-Purchase

N	26
Chi-Square, χ^2	35.276
df	8
Asymp. Sig.	.000

Table 7.9 reveals that the chi-square value ($\chi^2 = 35.276$) is higher than the tabulated chi-square value ($\chi^2 = 15.51$) at 0.05 confidence interval; 8 degree of freedom. The observed significance level $p = 0.000$, is lower than the 0.05 confidence level, which implies that variations between the nine variables are likely to hold in the population. Thus, we may infer that the ranking of benefits of conventional hire-purchase as perceived by customers is statistically significant, thus null hypothesis can be rejected.

TABLE 7.10:
Friedman Test to Rank the Various Reasons of Benefits Gained From Using Conventional Hire Purchase

	Arithmetic Mean	Std. Deviation	Mean Rank	Rank
Easy instalment payments	3.9615	.59872	6.04	1
Clear procedure	3.7692	.90808	5.75	2
Free consultation and enquiries	3.8077	.56704	5.48	3
Speedy processing and approval	3.6923	.88405	5.35	4
Friendly customer service	3.6923	.92819	5.25	5
Free processing	3.3077	1.19228	4.65	6
Low monthly instalments	3.3846	1.02282	4.60	7
Attractive financing terms and conditions	3.4231	.94543	4.46	8
Lower rates of bank's return	3.0769	.97665	3.42	9

Note: Mean values – scoring: 1 = strongly disagree; 5 = strongly agree

The corresponding mean rank table as depicted in Table 7.10 further demonstrates that respondents mostly rank factors associated to convenience and unambiguous transaction procedures and processes as the main benefits obtained from using conventional hire-purchase facility. To be more specific, the highest ranked benefit perceived by the respondents is 'easy instalment payments', followed by 'clear procedure', 'free consultation and enquiries', 'speedy processing and approval' and 'friendly customer service', which are ranked second, third, fourth, fifth and sixth respectively. This finding implies that customers who prefer conventional hire-purchase to AITAB facility perceive that AITAB does not provide more satisfactory level of benefits in terms of convenience and clear procedures as compared to conventional product. This necessitates banks to improve their business strategy especially with regards to repackaging AITAB facility to satisfy the clients' need by reducing elements of ambiguities relating to documentation and procedure.

On the other hand, similar to the earlier findings, consumers who prefer conventional hire-purchase also rank 'lower rates of bank's return' lowest among other benefits gained. This again substantiates our claim that consumers do not emphasize on returns or pricing issues, rather they are concerned more with convenience and ambiguity-free transaction. Therefore, banks should endeavour to emphasize on reducing any elements of confusion that may arise from AITAB facility especially with respect to documentation and procedural matters. This can be done by taking effort to educate the customers about the products and adequately explain to them about various issues pertaining to contractual obligations and procedures.

7.5 GENERAL PERCEPTION TOWARDS AITAB

This section utilises a simple descriptive statistical approach i.e. means and standard deviation. The study aims to assess the consensus among respondents by way of extracting their overall views on AITAB. In the final section, a non-parametric Mann-Whitney U-Test is also adopted to test any association between each statement and preferences of AITAB.

7.5.1 Customers' General Perception of AITAB

To enable the study to gather a general overview of respondents' perception towards AITAB, five different statements were posed to them. The statements are measured on a five point Likert-scale (from 1 = strongly disagree to 5 = strongly agree). Table 7.11 describes respondents' perception on Islamic Hire Purchase.

TABLE 7.11:
General Perceptions towards AITAB

	Statements	Disagree (%)	Do not know (%)	Agree (%)	Mean	Std. Dev.
1	<i>AITAB is in accordance with Sharf'ah guidelines</i>	1.0	19.7	79.3	4.1527	0.76516
2	<i>AITAB is a good alternative to purchase</i>	0.0	21.1	78.9	4.0837	0.70912
3	<i>AITAB is not much different from conventional hire-purchase</i>	23.6	38.4	37.9	3.1626	0.97401
4	<i>AITAB is too costly</i>	29.1	49.3	21.6	2.8818	0.93120
5	<i>AITAB is a financing method of last resort</i>	45.3	40.9	13.8	2.5764	1.00387

Note: 1 = strongly disagree; 5 = strongly agree

Table 7.11 shows that the vast majority of the respondents (79%) agree with Statement 1 that: "AITAB is in accordance with *Sharī'ah*". With high means and low standard deviation of 4.15 and 0.765 respectively, it indicates a strong consensus amongst the respondents. This high response reflects the positive perceptions amongst the customers towards AITAB. It implies that customers have a high degree of confidence on banks' current practices especially with respect to offering products that are fully *Sharī'ah*-compliant. Therefore, banks must maintain their level of integrity and take necessary steps to ensure that their practices are in accordance with the Islamic principles. This in turn will ensure the customers' loyalty and continuous support to the banks' operation.

Statement 2 examines the perceptions of respondents towards the potential of AITAB as an alternative to other financing methods. The statement states: "AITAB is a good alternative to purchase". The mean for Statement 2 turns out to be 4.08 which imply that, in general, the respondents agree with the view that AITAB is a good alternative to purchase transaction. This is confirmed by the fact that the majority of respondents (79%) agree with the statement. Considering a relatively low standard deviation (0.709) associated with the statement, it is believed that a conclusion based solely on the mean score is adequate to measure the degree of agreement among the respondents.

This particular finding substantiates many assertions made in the literature pertaining to the various advantages of AITAB to both parties of the contract, the customers and the bankers. For example, as discussed earlier in Chapter 3, among the advantages that banks can gain from offering AITAB is lower credit risk since it is an asset-backed transaction and ensure the security of the underlying assets due to the retention of title by the owner at the same time offer the prospects of an attractive rate of return (see for example in Pervez 1990; Fisher 1993). On the part of customers, they can also gain the benefits of having a fixed-rate facility¹²⁷ as opposed to other financing facilities. Hence, AITAB adds to the list of financing product menu that customers can choose at their convenience and preference.

¹²⁷ In other word, AITAB is a non-floating rate facility. With a fixed-rate facility, the customers can plan ahead the payment of instalments and manage their resources.

Additionally, Statement 3 examines perception of respondents about the nature of AITAB vis-à-vis conventional hire-purchase. The statements states: "AITAB is not much different from conventional hire-purchase". Referring to the Table 7.11, there are mixed responses obtained from the respondents. The mean score is 3.16 and the standard deviation is 0.974. About 24% disagree with the statement, while the percentages of those who 'agree' and 'are not sure' are quite similar. About 37.9% agree with the statement, while 38.4% do not know or unsure. In total, those who responded 'agree' and 'do not know' represent 76%, implying a vast percentage of respondents incline to be of the opinion that AITAB and conventional hire-purchase are similar. This is not a surprising result, since there has been much arguments and scepticism amongst the practitioners and *Sharī'ah* scholars that AITAB resembles conventional hire-purchase. However, this does not preclude the need for banks to ensure the authenticity of AITAB so as to comply with all the necessary requirements specified by the *Sharī'ah* principles, especially pertaining to issues like documentation, possession of asset and pricing to avoid any element of *ribā*.

Furthermore, Table 7.11 also depicts diverse responses on Statement 4 which states: "AITAB is too costly". Majority of respondents (49%) seem to be unsure about this issue. There is a reasonable balance of opinion amongst the respondents between those who agree (22%) and those who disagreed (29%). This result further substantiates our earlier finding that customers do not really care much of the cost and price issues, rather they care more about other aspects like convenience and ease in the transactions.

When asked their opinion whether AITAB is a financing method of the last resort, the majority (45%) disagree while only small minority agree with the statement. Another 41% are indifferent. The mean for Statement 5 is 2.58, while the standard deviation is 1.004. It indicates, in general that, the respondents disagree that they commit to AITAB as a last resort. In other words, it implies that the customers commit to AITAB based on their careful examination about the cost and benefit associated with AITAB compared to other products. This signals the potential of AITAB to appeal to those customers who really shop around for the most attractive products. Hence, as argued before, bankers need to package AITAB in an attractive manner that can

stimulate the public interest towards the product. These include efforts such as rigorous marketing, advertising and education programmes that can further enlighten the general public about the product and its benefits.

7.5.2 Mann-Whitney U-Test

It is presumed that customers who prefer AITAB ranked higher for all the statements posed to them than those who prefer conventional hire-purchase. Accordingly the Mann-Whitney U-Test is conducted. Since the U-Test is a two-tailed test, the null and alternative hypotheses are stated as follows:

H₀: The mean ranks of customers who prefer AITAB and customers who prefer conventional hire-purchase are equal for all the statements (Statement 1 to 5)

H₁: The mean ranks of customers who prefer AITAB and customers who prefer conventional hire-purchase are not equal for all the statements (Statement 1 to 5)

Where $u_1, u_2, u_3, u_4, u_5, u_6, u_7, u_8, u_9,$ and u_{10} represents the mean ranks (mean degree of importance) **Statement 1, 2, 3, 4** and **5**, for both customers who prefer AITAB and those who prefer conventional hire-purchase respectively. The results are presented in Table 7.12.

TABLE 7.12:
Mann-Whitney U-Test of Association between each statement and Preference for AITAB

	Statement	Mean Score*	Std. Dev.	Prefer ?	N	Mean Rank	Mann-Whitney U-Test		
							U value	z value	Prob. Asym
1	AITAB is in accordance with Shari'ah guidelines	4.15	0.765	AITAB	181	$u_1 = 107.54$	987.5	-4.145	0.000
				CHP	22	$u_2 = 56.39$			
2	AITAB is a good alternative to purchase	4.08	0.709	AITAB	181	$u_3 = 107.68$	963.0	-4.298	0.000
				CHP	22	$u_4 = 55.27$			
3	AITAB is not much different from conventional hire-purchase	3.16	0.974	AITAB	181	$u_5 = 101.78$	1951.0	-.161	0.872
				CHP	22	$u_6 = 103.82$			
4	AITAB is too costly	2.88	0.931	AITAB	181	$u_7 = 100.14$	1654.5	-1.390	0.164
				CHP	22	$u_8 = 117.30$			
5	AITAB is a financing method of last resort	2.58	1.003	AITAB	181	$u_9 = 97.30$	1141.0	-3.444	0.001
				CHP	22	$u_{10} = 140.64$			

Note: * 1 = strongly disagree; 5 = strongly agree, N = 203

From Table 7.12 above, it is evident that customers who prefer AITAB to conventional hire-purchase have higher mean scores for Statement 1 and 2 which implies they agree more strongly with the two statements than those who prefer conventional hire-purchase to AITAB facility. The z values for Statement 1 and 2 are -4.145 and -4.298 respectively which is higher than the critical values of $z_{0.025} = 1.96$. Hence, the null hypotheses that the mean rank of customers who prefer AITAB and customers who prefer conventional hire-purchase are equal for Statement 1 and 2 can be rejected. These variations on the mean ranks are likely to hold in the population, since the observed probabilities (0.000) are lower than the 0.05 significant levels. Therefore, it can be inferred that, only respondents who prefer AITAB to conventional facility have strongly agreed with the Statement 1 and 2. In other words customers who prefer AITAB are really concerned with the *Shari'ah*-compliance aspects of the product and perceive AITAB as a good financing alternative.

Furthermore, the results in Table 7.12 reveal that customers who prefer conventional hire-purchase to AITAB have higher mean scores for Statement 5. This implies that they only consider AITAB as the last resort for financing. The z values for Statement 5 is -3.444 which is also higher than the critical values of $z_{0.025} = 1.96$. Hence, the null hypotheses that the mean rank of customers who prefer AITAB and customers who prefer conventional hire-purchase are equal for Statement 5 can be rejected. These variations on the mean ranks are likely to hold in the population, since the observed probabilities (0.000) are lower than the 0.05 significant levels. This finding can be expected since the customers who do not really prefer AITAB would naturally opt the facility as the last alternative.

On the other hand, Table 7.12 reveals no significant differences in opinion between those who prefer AITAB and those who opt otherwise on Statement 3 and 4. This is supported by the results of z values for Statement 4 and 5 which are -0.161 and -1.390 respectively which is lower than the critical values of $z_{0.025} = 1.96$. Hence, the null hypotheses that the mean rank of customers who prefer AITAB and customers who prefer conventional hire-purchase are equal for Statement 3 and 4 cannot be rejected. These variations on the mean ranks are not likely to hold in the population, since the

observed probabilities (0.872 and 0.164, respectively) are higher than the 0.05 significant levels.

7.5.3 Respondents' Choice in the Future

As a concluding remark, the final question was posed to them in order to inquire their preference in the future, whether to use AITAB or conventional hire-purchase. The results are illustrated in Table 7.13 below:

TABLE 7.13:

Cross Tabulation of Preference to Use AITAB or Conventional Hire-Purchase by Experience of Using Conventional Hire-Purchase

			Preference To Use AITAB Or Conventional Hire-Purchase		Total
			AITAB	Conventional hire-purchase	
Experience Of Using Conventional Hire-Purchase	Yes	N	103	9	112
		%	92.0	8.0	100.0%
	No	N	78	13	91
		%	85.7	14.3	100.0%
	Total	N	181	22	203
		%	89.2	10.8	100.0%

From the above table, 89% out of 203 respondents prefer AITAB; while only 11% (22 respondents) said they are going to choose conventional hire-purchase. Among the respondents who prefer AITAB to conventional facility, 92% have experienced conventional hire-purchase. This finding affirms the previous result of the Mann-Whitney U-Test that a large majority of respondents (181) have indicated their preference of AITAB to conventional hire-purchase; while only 22 of them prefer otherwise.

The above results describe a large majority of respondents who have used AITAB facility decide to apply for the same facility in the future. The most significant finding is, almost all conventional hire-purchase users are now thinking of subscribing AITAB facility in their future financing application. These outcomes do not only prove an increasing level of awareness of AITAB facility among the customers, but also show that Islamic financial institutions have managed to provide competitive Islamic products (in this case, AITAB facility) which are able to offer satisfactory services and benefits to the customers' demand.

7.6 SUMMARY

This chapter has discussed results of questionnaire survey conducted among 203 AITAB customers. The level of customers' satisfaction of AITAB is assessed in the first section, which reveals that a large majority of them are satisfied with AITAB. This shows a strong potential of AITAB to be further developed into a more competitive and attractive Islamic banking product that can appeal to various groups of customers. The second section analyses the perception of conventional-experienced customers towards the conventional hire-purchase facility. Most of them appear to be satisfied with the facility because it is convenient and absent from ambiguity in documentation, procedure, processing and payment system. The third section examines comparative views given by respondents who have experienced using both AITAB and conventional facilities. A vast majority of them feel that AITAB has given more benefits as compared to the conventional facility, mainly because of its compliance to *Sharī'ah* principles. Finally, the respondents' overall views of AITAB are studied, whereby they highly regard it as *Sharī'ah*-compliant product and a good financing alternative to purchase an asset. These encouraging views are further supported by their widely-held preference of using AITAB in their future dealings.

Overall, the results presented in this chapter provide a strong signal to the bankers that efforts need to be intensified in educating the public about the distinctive characteristics of AITAB and how it may suit the interest of customers in financing their assets. There is a huge potential of AITAB to be marketed to various segments of customers comprising those who are concerned with the legitimacy of the facility, and those who seek for convenience and less complicated transactions. This again relates to the importance of simplified and ambiguity-free documentation and procedures in the transaction. Banks must also ensure their staffs are adequately trained to handle customers' enquiries and provide sufficient explanation about the facility.

Following the above analysis, the next chapter will present an analysis of interview data which involve AITAB providers and experts in Islamic hire-purchase transactions.

OPERATIONAL AND REGULATORY FRAMEWORK OF ISLAMIC HIRE-PURCHASE IN MALAYSIA (ANALYSIS OF INTERVIEW DATA)

8.1 INTRODUCTION

This is the core chapter which presents an analysis of the legal framework for Islamic hire-purchase (AITAB) business in Malaysia. The chapter analyses information obtained from face-to-face semi-structured interviews which were carried out to gather primary data for this study. The interviews were conducted from 11th May 2004 till 27th July 2004, involving forty-six respondents (details are given in the next section). Interviews serve as the most significant data and essential information in the methodology of the study. The groups interviewed were all important individuals in their organizations, which make them key persons and experts in their respective areas.

The purpose of employing face-to-face interviewing is to get first-hand information and clear insights into what the interviewees perceive from their experiences in AITAB transaction, and their opinions in related issues. Perceptions of the interviewees represent diverse observations of interested and disinterested individuals about AITAB operation in Malaysia¹²⁸. The data used to explain their opinion is based on transcripts from interviews. Some interview questions are structured to generate standard answers capable of being quantified in terms of facts and figures. As a part of interviewing, an examination of statutes is also made, with special reference to Hire-Purchase Act 1967 and the draft of *Mu'amalah* Hire-Purchase Bill being currently debated within the official circles in Malaysia. Both regulations are examined in order to identify their strengths, limitations, and possible impact on the legal framework.

¹²⁸ The interviewees comprised individuals who directly and indirectly involve in Islamic hire-purchase business. Some of them have special interest in the operation because of their involvement, either as bankers, or *Sharī'ah* advisors, or legal practitioners dealing with hire-purchase cases.

8.2 INTERVIEWEES' CHARACTERISTIC

A series of 46 independent interviews has been carried out with each one of 46 Islamic banking experts from different institutions and positions who have participated in the interviews. They are categorized into six groups, based on their expertise and involvement in AITAB transaction in Malaysia. The sample consists of 12 bank officers, 9 *Sharī'ah* advisors, 8 *Sharī'ah* scholars, 8 economists, 6 legal experts and 3 government officers. The researcher could have done group interviews with selected interviewees' group, but decides to take their views individually so as to get a maximum independent observation from each interviewee without being influenced by others. These independent observations and views will give a special quality to the data provided by this study. Table 8.1 provides a breakdown of interviewees by group, position, and expertise.

TABLE 8.1:
Profile of Interviewees

Group	Position	Expertise
Bank Officer (12 officers)	Head, Islamic Banking Division	Asset Financing
	Deputy General Manager, IBD	Non-Muslim customer of Islamic Banking
	General Manager Hire-Purchase Department	Hire-purchase product
	Executive Hire-Purchase (AITAB) Section	AITAB (Islamic hire-purchase)
	Head of Islamic Banking Division	Islamic Banking
	Executive, Hire-Purchase Department	Credit & Processing
	Manager Islamic Banking Division	Financing
	Manager Islamic Banking Division	Consumer Financing
	Manager (CMB) <i>Amanah</i> Finance	Product Development & Management
	Assistant Vice President, Head of IBD	Islamic Banking
	Assistant President, Business Banking Unit, Islamic Banking Division	Islamic Banking
Senior Manager, Business Development IBD	Islamic Banking	
<i>Sharī'ah</i> Advisor (9 advisors)	Deputy Rector Student Affairs IIUM	Islamic Jurisprudence, Islamic Banking and Finance, <i>Shari'ah</i> , Islamic Medical Law
	Very Distinguished* Academic Fellow Ahmad Ibrahim Kulliyah Of Laws IIUM	<i>Sharī'ah, Mu'amalah</i>
	Vice President ANGKASA	Islamic Law, Islamic Banking and Finance
	Department of Private Law, Ahmad Ibrahim Kulliyah Of Laws IIUM	Company & Securities, Islamic Law of Transaction, Islamic Banking and Finance
	Head, Islamic Law Department Ahmad Ibrahim Kulliyah Of Laws IIUM	Islamic Transaction, Islamic Banking and Finance
	Distinguished* Lecturer in Law, UKM	Islamic Law
	Head of <i>Sharie</i> Judge Department of <i>Sharī'ah</i> Judiciary Malaysia	<i>Sharī'ah</i> , Islamic Banking and Finance
	Director of Institute of Islamic Understanding Malaysia (IKIM)	Islamic Law, Islamic Banking and Finance
	Department of <i>Sharī'ah</i> , UM	<i>Mu'amalah</i>

Group	Position	Expertise
Sharī'ah Scholar (8 persons)	Associate Professor, Islamic Law Department IIUM	Islamic Jurisprudence, Islamic Transaction
	Director, International Institute for Muslim Unity	Professor in Islamic Jurisprudence, Islamic Economics
	Assistant Professor, Islamic Law Department IIUM	Islamic Law, Islamic Transaction
	Associate Professor, Department of Sharī'ah, UKM	Islamic Law, Islamic Economics, Islamic Jurisprudence
	Assistant Professor, Faculty of Economics & Management Sciences, IIUM	Islamic Jurisprudence, Islamic Law, Islamic Economics
	Assistant Professor, Faculty of Economics & Management Sciences, IIUM	<i>Fiqh, Usul Fiqh, Siyasah Shar'iyah</i>
	Head, Sharī'ah and Economy Department, UM	Islamic Law, Islamic Economics
	Associate Professor, Centre for Islamic Studies and Social Development, UTM	Islamic Jurisprudence, Islamic Banking
Economist (8 persons)	Professor in Economics	Islamic Economics, Banking and Finance
	Professor, School of Finance & Banking Northern University of Malaysia	Economics, Finance and Banking
	CEO IBFIM	Islamic Transaction, Sharī'ah, Economics
	Internal Research Fellow for Centre of <i>Fiqh Mu'amalat</i> IBFIM	Islamic Transaction, Sharī'ah, Economics
	Executive Director BIMB Securities	Economics, Islamic Banking and Finance
	Islamic Banking and <i>Takāful</i> Department, Central Bank of Malaysia	Sharī'ah Specialist
	Head of Islamic Banking and Finance, Faculty of Business Management, UiTM	Finance, Islamic Banking
	Senior Manager, Bank Islam Malaysia Berhad (BIMB)	Economics, Banking
Legal Expert (6 experts)	Associate Professor in Law, IIUM	Islamic Banking and Finance
	Professor in Business Law UPM	Business Law
	Associate Professor in Islamic Law, UM	Islamic Contract, Succession, <i>Zakat</i> , Islamic Law
	Head of <i>Sharie</i> ** Judge, Sharī'ah Court, State of Kelantan	Islamic Law, Islamic Transaction
	Project Manager IFSB, Corporate Governance	Islamic Banking and Finance, Corporate
	Partner, Zul Rafique & Partners	Islamic banking, corporate
Government Officer (3 persons)	Bank Negara Malaysia	Business and Economics
	JAKIM Prime Minister Dept	Sharī'ah
	Ministry of Domestic Trade and Consumerism	Law

IBD - Islamic Banking Division

IIUM - International Islamic University Malaysia

UM - University of Malaya

UKM - National University of Malaysia

UPM - Putra University of Malaysia

UiTM- Institute of Technology Malaysia

IBFIM- Islamic Banking and Finance Institute of Malaysia

* Distinguished lecturer is a special title given by Malaysia universities to senior and outstanding academic staff

** *Sharie* is an adjective of *Shari'ah*

8.3 THE STRUCTURE OF INTERVIEW DATA

Interview transcripts have been examined and analysed using the study's research objectives as basic guidelines, bearing in mind that the main objective of this study is to examine the current concept and application of AITAB transaction in Malaysia from legal, practical and social perspectives. Accordingly, this chapter will present the results of the interviews, based on a set of questions (*refer to Appendix B*). The results are analysed and then summarised in the final section. The presentation of the results is made within seven broad sections indexed by relevant interview questions. The following discussion introduces basic interviewing questions to show their consistency with the research objectives and set the scene for the interviewing result as they are demonstrated in the later sections.

Interview Question (1): *“From your experience and understanding, please explain the operation of Islamic hire-purchase (AITAB) in general”*

This question is consistent with a research objective which aims to obtain a clear insight of AITAB practices from the providers and experts in AITAB business in Malaysia.¹²⁹ Although Islamic hire-purchase (AITAB) is well-defined in the literatures, yet it is a relatively new product, and therefore it is worthwhile considering how it is viewed by different interviewees. The analysis of interviewees' opinion reflects two broad categories of interviewees; practitioners and non-practitioners depending on the extent of their involvement in the actual operation of AITAB.

Interview Question (2): *“From your opinion, to what extent has Islamic hire-purchase (AITAB) been accepted by the bank customers?”*

This question was already asked to the bank customers in order to examine the extent of their awareness¹³⁰ of AITAB facility and their responses are presented in Chapter 7. It has been found that majority of the customers strongly accept AITAB facility and decide to continue using it in the future. In this chapter the same question is re-

¹²⁹ Refer to the research objective (a) in Chapter 1.

¹³⁰ This type of question is developed to several other questions which are addressed to the customer in order to know their ways of getting to know Islamic hire-purchase facility, their first impression of it, level of satisfaction with the facility, their possible choice between Islamic and conventional facility in the future etc.

addressed to the interviewees comprising the bankers and other experts in AITAB. The objective is to assess their relative awareness of the customers' acceptance and perception towards the facility and at the same time confirm the previous findings about customer acceptance.¹³¹ Again, the results will show that the extent of their involvement with the public or users of AITAB facility does influence their opinions in this issue.

Interview Question (3): *“Are there any pertinent problems arising from the current practice of Islamic hire-purchase (AITAB)? If yes, could you please explain such problem(s)?”*

This question is formulated in line with a research objective which aims to identify problems faced by the customers and management in the provision of AITAB transaction.¹³² Out of these responses, some problems have been clearly identified with the implementation of AITAB; such as, negative customers' attitude, inexperienced bank officers, non-cooperative dealers, strong competition in the market and some pertinent issues relating to the basic concept of the facility.

Interview Question (4): *“How is Islamic hire-purchase (AITAB) legally operated now?”*

The interviewees' opinions on the legal implementation of AITAB in Malaysian financial institutions starts from this section, which is then followed by succeeding sections examining other legal issues in more detail. This question is based on the research objective to critically analyse the implementation of AITAB in Malaysia in procedural and legal aspects.¹³³ It is interesting to see how the interviewees perceive the current legal framework of AITAB's operation, and the reasons for this situation.

Interview Question (5): *“Do you find Hire-Purchase Act 1967 adequate to govern the operation of AITAB?”*

The analysis of this question is based on a research objective to prove the inadequacy of Hire-Purchase Act 1967 as a mean to regulate a fully legitimate AITAB transaction

¹³¹ This question is designed in line with the research objective (c).

¹³² Refer to the research objective (e).

¹³³ Refer to the research objective (b).

according to *Sharī'ah* requirements.¹³⁴ The result reveals that relatively half of the interviewees observe HPA as inadequate regulation for AITAB transaction. From the responses obtained, this section further examines the strength of Hire-Purchase Act 1967 and its provisions which are in conformity with *Sharī'ah*. It also presents some deficiencies of HPA within *Sharī'ah* application.

Interview Question (6-9):

- (6) "Do you think Islamic hire-purchase (AITAB) should be governed by a specific *Sharī'ah* law?"
- (7) "What is your opinion of the Bill?"
- (8) "What are your suggestions to provisions that need to be included in the *Mu'amalah Hire-Purchase Bill*?"
- (9) "What are the impediments of implementing *Mu'amalah Hire-Purchase Bill* in Malaysia?"

Based on the above questions, the analysis is done in the light of research objective to suggest a workable *Sharī'ah* framework of AITAB transaction to be properly implemented in the Malaysian financial system.¹³⁵ From the interviewees' responses, the current position of the *Mu'amalah Hire-Purchase Bill* is highlighted, covering its advantages, its impact on the Malaysia legal system and some practical impediments of its implementation.

Interview Question (10): "How do you foresee the future of AITAB?"

Finally, the above question was asked in achieving the research objectives to inquire into interviewees' opinions and expectations towards AITAB in the future.¹³⁶ Their responses are diversified based on their involvement in the transaction, but all of them are generally confident that the future of AITAB in Malaysia is very promising.

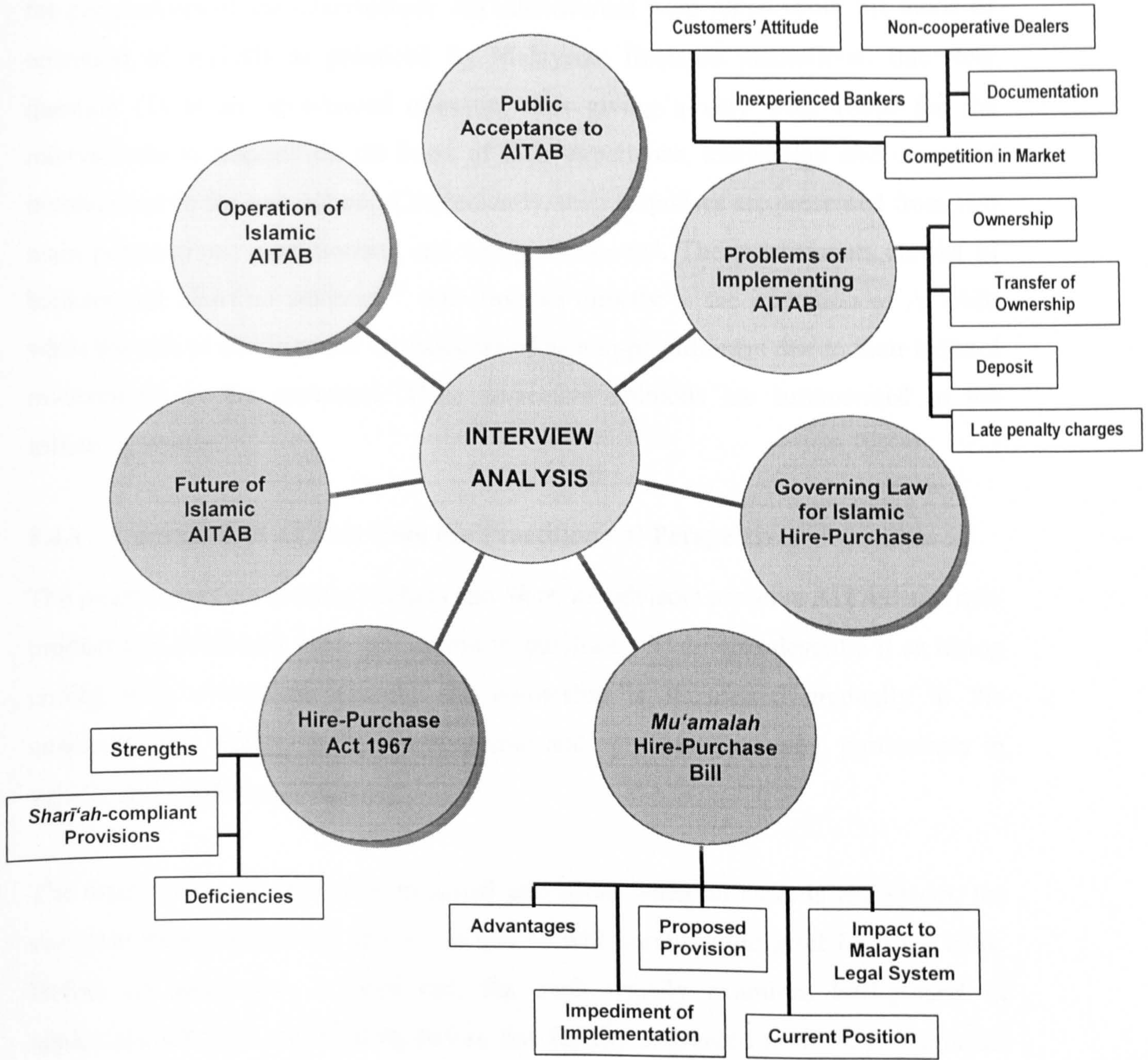
Having outlined the importance and expected contribution of each subject analysis, the following chart describes the flow of discussion in this chapter:

¹³⁴ Refer to the research objective (g).

¹³⁵ Refer to the research objective (h).

¹³⁶ Refer to the research objective (d).

FIGURE 8.1:
Flow of Analysis Discussion



8.4 OPERATION OF ISLAMIC HIRE-PURCHASE (AITAB)

This section provides an overview of how AITAB is operated and implemented from the perspectives of the interviewees. All interviewees were asked about the mode of operation of AITAB as practiced by Malaysian financial institutions. Interview question (1) is an open-ended question, thus giving a very wide room for the interviewees to respond on the basis of their experience, knowledge and extent of involvement in the transaction. Conveniently, their responses are presented from two main perspectives; practitioners' and non-practitioners'. The practitioners consist of bankers and *Sharī'ah* advisors¹³⁷ who involve directly in the operation of AITAB; while the rest of interviewees are categorised as non-practitioners due to their indirect involvement in the operation. Their respective opinions are summarized in the following points:

8.4.1 Operation of AITAB from the Practitioners' Perspectives

The practitioners comprising bankers and *Sharī'ah* advisors perceive AITAB as a new product that combines lease and option to purchase. They also describe it as hiring ending with ownership whereby the ownership is transferred gradually to the customer. It is widely applied in consumer and corporate financing, particularly in vehicle and machinery financing.

The interviewees describe that in actual operation, when an asset is leased out, the customer pays instalments, and at the end he will purchase the asset from the bank. Before an application is approved, the bank usually examines background of applicants and their credit rating before this facility is granted to them. Some banks authorise their customers to find the asset supplier. The bank will assess the application from managerial, technical, marketing and investment perspectives. During the operation, the bank will not take any risk of getting it back because that is not the intention of the transaction. Bank only aims to help the customer to own the asset and at the end it will be passed to the customer by selling it at a nominal amount. In some instances, the monthly payment is treated as part of the purchase price which

¹³⁷ *Sharī'ah* advisors directly involve in the operation of AITAB when serving for Islamic financial institutions. They have a wide experience and knowledge of Islamic banking system, the products, regulation and the role of Central Bank as a supervisory body.

the last instalment, in nominal amount, constitutes the sale. The transfer of ownership at the end can be affected in two ways; firstly, as mentioned earlier, final payment is treated as purchasing the asset, or secondly, upon satisfying final payment, asset is given as gift (*hibah*). In determining a selling price, this facility applies the concept of cost plus mark-up (*murābahah*); for example, cost price of a car is 100,000 and profit is 50,000, so the selling price is 150,000. If period of payment is 10 years, monthly payment will be calculated by dividing the selling price with an amount that is resulted from timing the period of payment with 12 months¹³⁸.

The practitioners confirm their knowledge of the operation of any Islamic products, including AITAB being supervised by the Central Bank of Malaysia (Bank Negara Malaysia). In fact, the Central Bank has put certain guidelines to financial institutions offering Islamic products. If the institutions are to offer any *Sharī'ah* product, they must obtain an approval from Islamic Banking Department of the Bank Negara. However, finance companies are not bound by this regulation, as they may have to follow their own *Sharī'ah* advisors in any matter pertaining to Islamic products. *Sharī'ah* advisors should include experts who are able to supervise the operation of the company, and report cash flow, sources and application of fund with auditors' assistance.

The practitioners have asserted that many financial institutions prefer AITAB contract to conventional facility because there are additional documents authorizing them to hold the ownership of asset until full settlement. Thus, bank acting as beneficial owner and financier, will have an ownership claim over the goods. Today, most financial institutions really want to be all-out in AITAB operation because it confers more benefit to the institutions and customers, in terms of lower Islamic default rate of only 2% and comparatively low overdue interest of 1%. In some institutions, default rate is less than 1%, probably because of the religious element, for example, a customer who plans to perform pilgrimage (*hajj*) will pay on time in order to have a peace of mind in the pilgrimage.

¹³⁸ To illustrate calculation of monthly payment;

$$\frac{\text{Selling price}}{(\text{Period of payment} \times 12 \text{ months})} = \frac{150,000}{(10 \times 12)} = \underline{1,250}$$

8.4.2 Operation of AITAB from the Non-Practitioners' Perspectives

The non-practitioners (*Sharī'ah* scholars, economists, legal experts and government officers) view that the purpose of introducing AITAB facility is to give an Islamic alternative to hire-purchase financing for bank customers, especially Muslims. AITAB is usually applicable for a customer who wants to buy very expensive assets, for instance machinery. By utilising AITAB facility, the bank will buy it on behalf of the customer, and then lease it to him. However, some of the non-practitioners are sceptical towards AITAB as offered by banks today, because it is not in real sense, an Islamic compliant product as it still bears element of interest. A true model of Islamic hire-purchase can be a headache to bankers. It requires bank as owner to maintain the asset and fulfil other obligations, including paying insurance, road tax and cost of maintenance such as change of engine oil, car park, exhaust pipe etc. However, if the customer causes damage to the asset through negligence, he shall bear the cost of repairing it.

In term of comparison with conventional facility, the non-practitioners observed that there is not an essential difference between AITAB and conventional hire-purchase, except for the following:

- formal prohibition of the interest element
- requirement for a hiring contract at the beginning
- Requirement for a sale contract at the end.
- Signing of an acceptance letter (*'Aqd* letter) to indicate the parties' intention of accepting the terms of agreement.

However, they argued that the operation of AITAB as practiced today does not follow the principles of *Sharī'ah* due to non-existence of Islamic hire-purchase law. It is strictly governed by Hire-Purchase Act (HPA) 1967, in which some terms are in conflict with *Sharī'ah* principles.

Economists who have experienced working with Bank Islam (first Islamic bank in Malaysia) refer to the bank's involvement in AITAB transaction. Although Bank Islam introduced AITAB facility, the bank does not continue operating the facility due to some problems. One of the problems is difficulty in operating a *Sharī'ah*-compliant hire-purchase transaction as the one which is currently operated is a form of finance

lease that is still debateable among the *Sharī'ah* scholars. Alternatively, the bank resorts to deferred payment sale concept (*bay' bithaman ājil*) in its car financing scheme.

Government officers representing three government bodies¹³⁹ are involved in supervision of the facility's operation. They assert that they endeavour to improve and develop the AITAB facility from conceptual and legal aspects so that the facility becomes more *Sharī'ah*-compliant and at the same time, competitive to its conventional counterpart.

To conclude, the above information reveals how AITAB is currently operated from the practitioners' and non-practitioners' perspectives.

- Practitioners have given a practical insight of the operation from the providers or suppliers' perspectives. They prefer AITAB facility to others for the ability to maintain ownership throughout the period of the transaction, making it possible to repossess the asset upon default and also the lower rate of default among their customers.
- Non-practitioners highlight some vital issues in the transaction, like executing two contracts in sequence and intention of the party. They emphasize the importance of having a separate law for AITAB so that the transaction can comply with the true spirit of *Sharī'ah*. They criticize the current operation of AITAB for not observing the principles of *Sharī'ah*. They conclude that, unless the authority comes with a legal solution, this problem will continue to subsist.

¹³⁹ Ministry of Domestic Trade and Consumerism, Central Bank of Malaysia and Islamic Development Department of Prime Minister Department (JAKIM).

8.5 CUSTOMERS' ACCEPTANCE OF AITAB FACILITY

All interviewees were asked to give their views, based on their knowledge and experience, on the extent of customers' acceptance of AITAB facility. As mentioned in the earlier section, the question aims to assess their relative awareness of customers' acceptance and perception towards the facility. The interviewees are offered a choice of three answers; "well accepted", "not well accepted" and "don't know". Table 8.2 below illustrates their responses to the question.

TABLE 8.2:

Cross tabulation of Customers' Acceptance by Interviewees' Profile

Interviewees		Extent of Customers' Acceptance			Total
		Well accepted	Not well accepted	Don't Know	
Bank's Officers	N	12	0	0	12
	%	100.0	.0	.0	100.0
Sharī'ah Advisors	N	8	0	1	9
	%	88.9	.0	11.1	100.0
Sharī'ah Scholars	N	8	0	0	8
	%	100.0	.0	.0	100.0
Economists	N	8	0	0	8
	%	100.0	.0	.0	100.0
Legal Experts	N	3	1	2	6
	%	50.0	16.7	33.3	100.0
Government Officers	N	3	0	0	3
	%	100.0	.0	.0	100.0
Total	N	42	1	3	46
	%	91.3	2.2	6.5	100.0

The majority (91%) view that this facility has been well accepted by the customers; which are unanimously agreed by bank's officers, *Sharī'ah* scholars, economists and bank officers. This result confirms the previous findings that 87% of the customers are satisfied with AITAB facility.¹⁴⁰ On the other hand, only 2% observes that the facility is not well accepted. Apart from the above views, nearly 7% interviewees are unaware of customers' acceptance to the facility. They include a *Sharī'ah* advisor and *Sharī'ah* judges. According to them, their duty as judges and *Sharī'ah* advisor who decide plenty of cases or *Sharī'ah* rulings do not expose them to such details as the extent of customers' acceptance to AITAB facility.

¹⁴⁰ Detail analysis of customers' acceptance to AITAB has been discussed in Chapter 7.

During the interview, the interviewees illustrate in more detail the extent of customers' acceptance to AITAB facility. Their opinions are summarized as follows:

- (a) Islamic hire-purchase or *Al-Ijārah thumma al-bay'* (AITAB) is a name which capture a public acceptance. Muslim customers, who accept and understand its operation, request it as an alternative to conventional hire-purchase. They will come to an institution which they know offering such Islamic product. For example, many corporate customers come to Bank Pembangunan (Development Bank) to purchase machinery through AITAB facility, because they know the benefits that the facility has to offer, for example, full margin of financing and lower penalty for late payment.
- (b) AITAB also gains support from the non-Muslims. In some institutions, 60% of their customers are non-Muslims, comprising the Chinese in majority. They can see the advantage of signing up AITAB, which is 1% penalty for late payment, as compared to conventional hire-purchase which imposes 8% penalty.¹⁴¹
- (c) Apart from the above-mentioned two groups of bank customers, most others, do not really care what scheme they apply or have applied, whether Islamic or conventional products. The interviewees believe that many customers are only interested to own a car and concerned with profit margin of financing, not the nature of the financing contract. This could be partly due to lack of awareness and partly due to the pragmatic nature of customers who downplay the jurist value of the contract.

Some banks and finance companies do make effort to hold public awareness campaigns to explain the benefits of Islamic products. The campaign is also aimed at making dealers, who are the first contact group with the customer, aware of the fact that almost all banks offer Islamic products. Some dealers and customers wrongly think that only Islamic banks (Bank Islam and Bank Muamalat) offer such products.

¹⁴¹ This issue will be discussed in the next section.

From the above discussion, the majority of the interviewees (91%) believe that customers accept the AITAB facility very well. They consist of all bank officers, *Shari'ah* scholars, economists and government officers. A very small number of them (7%) who are not involved with customers are not aware of it. Three patterns of customers' acceptance are described; first, a well-informed Muslim customer prefers AITAB to conventional facility; second, the facility also captures the non-Muslim customers; third, uninformed customers usually disregard the nature of facility as they are more concerned with getting the goods as soonest as they could and the lowest amount of payment offered by any facility. Therefore, the interviewees remark that awareness campaign of Islamic products must be intensified for the purpose of increasing public understanding and at the same time promoting Islamic banking to the public.

8.6 PROBLEMS AND ISSUES IN IMPLEMENTING AITAB FACILITY

This section highlights the interviewees' opinions of problems faced by the parties involved in AITAB business, comprising financial institutions, customers and dealers in the course of implementing AITAB facility in Malaysian financial institutions. Interviewees have expressed their concern with the manner of operating AITAB facility. There are a number of crucial issues relating to the provision and conceptual nature of the facility. Problems in the provision of AITAB facility include:

- customer's attitude towards the facility,
- inexperienced bank officers,
- non-cooperative dealers,
- documentation, and
- stiff competition in the market.

In addition, focal issues relating to the conceptual nature of the facility are also expressed by the interviewees. They cover such issues as;

- ownership
- methods of transferring ownership
- deposit payment
- penalty in case of default.

8.6.1 Customers' Attitude

This issue has been mentioned in the previous chapter while assessing the customers' perception towards AITAB facility. Most interviewees, especially the bankers show their similar concerns in the issue. According to them, one of the problems faced is customer's attitude towards the product; some customers do not really understand the basic differences between AITAB and conventional hire-purchase facility due to their close similarity in the operation, documentation and legal action. Customers are also unable to comprehend in what way that AITAB is *Sharī'ah*-compliant and how it would provide them with a better scheme and prospect. Some customers say that AITAB is another way of imposing interest, except for its name (*al-ijārah thumma al-bay'*) which sounds more 'Islamic'.

8.6.2 Lack of Experience among Bank Officers

Bankers and *Sharī'ah* advisors reveal that lack of experience among bank officers is a prevailing problem in the operation of AITAB facility. The interviewees emphasize the importance of having a sufficient knowledge of the facility, in terms of how it works, its differences from conventional facility, procedure in executing the documents, and some advantages it offers. With sufficient knowledge and information, bankers will be able to explain to their customers as well as the dealers the benefits they would gain if they sign up the Islamic facility.

8.6.3 Lack of Awareness and Cooperation among the Dealers

A dealer acts as a middleman between a financial institution and a customer. The customer usually approaches the dealer first for the purpose of purchasing a particular vehicle before applying hire-purchase facility at a financial institution. Bankers and some *Sharī'ah* advisors explained that the customer's choice between conventional and Islamic financing facility depends mostly on the dealer's explanation and recommendation of either the two facilities. A dealer of the Islamic facility will mostly suggest AITAB to the customer and explain how the facility works, its advantages and differences from conventional facility, unless the customer decides otherwise. However, not all dealers have such awareness, while others may simply suggest using conventional facility because they view AITAB as unnecessarily

complicated. Realizing the importance of dealers' role and influence on the prospective customers, some financial institutions which actively promote Islamic banking regularly organise training or briefing sessions for their appointed dealers for the purpose of increasing their understanding in the Islamic products.

8.6.4 Documentation

Term and conditions in AITAB agreement are designed by lawyers on the basis of the Hire-Purchase Act 1967 and principles of contract law, except for some modifications made to these documents to comply with *Sharī'ah* requirements. Therefore, the documentation requirements of AITAB may seem more complicated than that of conventional facility, because it involves additional document; acceptance (*'aqd*) letter¹⁴². Documents must be presented before the customer in sequence; first, leasing (*ijārah*) agreement, second, sale and purchase agreement. The officers must explain the terms, conditions, rights and liabilities in the agreement, the commencement and expiry of agreement. If the customer understands and agrees with the terms of the agreement, he may then sign the agreement. The customer must also be made aware of the consequences of signing every document, so that he understands his rights and obligations under the Islamic hire-purchase agreement. Some banks require a customer to complete a bulk of documents relating to the facility. Such requirements often burden the customer, especially when there is an error or mistake made by the customer, which may cause delay in the processing of the application. This is one of the reasons why some dealers recommend conventional hire-purchase in order to speed up their customer's application.

8.6.5 Competition in the Market

Another challenge faced by AITAB facility is in the issue of competition vis-à-vis conventional hire-purchase. The main issue here is how to penetrate into a market which has been already occupied by the long-established conventional hire-purchase

¹⁴² *'Aqd* letter is a supplementary document to the main Hire-Purchase Agreement. It contains the description of asset and undertakings by the finance company and customer in the following matters:
 (a) that the AITAB transaction will be bound by the Hire-Purchase Agreement and Schedule 2 of HPA,
 (b) that the asset on hire-purchase shall be used for purposes which do not contravene the *Sharī'ah*,
 (c) agree that Hire-Purchase Act 1967 shall be governed and is applicable to the transaction,
 (d) that other provisions in HPA a1967 which do not contradict the *Sharī'ah* will remain in effect for both parties.

product. This is particularly true in the case of car financing whereby conventional hire-purchase has already established its name and reputation for so long in the market. This naturally poses an enormous challenge for AITAB to penetrate into the market to appeal to customers who already familiar and have confidence in the conventional product. The problem is further exacerbated especially when many customers still perceive AITAB is really no different from conventional product except in their use of religious or Arabic name to disguise the current established practice.¹⁴³ Similarly, the dealers and bankers are more accustomed with conventional hire-purchase mechanism. With the lack of religious conscience, they may opt to offer customer the conventional product instead of Islamic one, not only because they are more familiar with the conventional transaction and mechanism but also they feel both products are actually identical, hence, less complication and more convenience. Another arising issue with respect to competition is cost-efficiency. Naturally, as a relatively new product, AITAB faced a challenge on how it can be offered at a lower cost compared to its counterpart. Since AITAB requires more documents and paper works to be filled by both parties, the cost issue will pose an inevitable challenge to banks.

8.6.6 Ownership

In Islamic hire-purchase, bank is required to hold the ownership of the asset before renting it out to the customer. Ownership is vital as it represents the extent of rights and liabilities of the parties involved in hire-purchase agreement. As an owner, the bank will have to be a purchaser of the asset which requires certain marketing expertise. The bank will also have to maintain the asset, bear all costs associated therewith, and dispose of it when the asset is no longer needed. According to the interviewed *Sharī'ah* scholars, any leasing contract that absolves the bank from all these activities will violate the *Sharī'ah* principle of leasing (*ijārah*) and thus, should be avoided; otherwise, it will fall into the category of conventional financial leasing which is not permitted in *Sharī'ah*. Also as a consequence of holding the ownership, bank will assume certain risks, responsibilities and liabilities that most banks would attempt to avoid them as much as possible. In the current AITAB practice, almost all

¹⁴³ This fact is confirmed by one of the findings in Chapter 7 that many customers realize both AITAB and conventional hire-purchase facilities are identical.

liabilities and risks attached to the asset are borne by the customer. The clearest example is maintenance responsibility which is undertaken solely by the customer, while the bank only acts as a financier.

When this issue is posed to the bank officers, they argued that their customers' ultimate objective of engaging in hire-purchase is to own an asset, particularly a motor vehicle, not merely to hire it for certain period of time. In fact, the customer is acknowledged in the document of title as a legal owner of the asset. Bank only acts as a beneficial owner which has an ownership claim over the asset until full payment has been made.¹⁴⁴ Therefore, it is reasonable from the bankers' perspectives to require the customer to maintain the asset since he is the one who uses and utilizes it. Yet, the customer has a right to sue the bank if he found that the asset is defective in a way that results in failure of rendering intended benefits. If the customer repairs the defective asset, he is entitled to claim the cost of repair from the bank. The situation would be different if the defect is caused by the hirer's negligence. In this, case, he will bear the cost of repairing the asset.

According to 88 % of *Sharī'ah* scholars¹⁴⁵, the owner is responsible in maintaining the leased asset, but in practice this responsibility is passed to the hirer. However, 44% of *Sharī'ah* advisors and 12% of *Sharī'ah* scholars hold that this condition does not nullify the AITAB contract because the practice is based on *'urf* (local custom) and market practice in Malaysia. Thus, they believe that there is a room for a more flexible interpretation of AITAB. When asked about how to resolve the above conflict of interest, they explain that the duty to maintain the leased property must be made clear to the contracting parties and put in clear terms in the agreement. It is unlikely to put all maintenance responsibilities onto the owner. The responsibility can be mutually determined in a way that each party owes certain duties as to make sure that the property will continuously render specified benefits which is paramount in the *ijārah* contract.

¹⁴⁴ In the Malaysian practice, bank holds beneficial ownership of the asset (usually a motor vehicle) while the customer, having his name in the document of title, becomes the legal owner. The bank will usually have to register its ownership claim over the title of the asset and have it endorsed in the registration card (Davies 1995). Thus, the customer cannot dispose of the asset as he wishes because he does not have absolute ownership over the asset yet until the bank's beneficial ownership is released by executing a sale and purchase contract. This signifies a complete transfer of ownership to the customer.

¹⁴⁵ These opinions are expressed by 7 out of 8 *Sharī'ah* scholars.

8.6.7 Transfer of Ownership

The interviewees, most particularly *Sharī'ah* scholars observe that method of transferring the assets' ownership is a vital issue which needs serious consideration. If the hirer exercises the option to buy the leased asset, the manner of transferring the ownership must be mutually ascertained and documented. This issue is also emphasized by the *Sharī'ah* advisors who assert that there must be a stipulation in the contract stating the manner in which the transfer of ownership takes place. For example, if the transfer of ownership is affected by sale, the asset is purchased at a nominal amount which is mutually agreed by both parties. The price need not necessarily be based on market condition and the real value of the property¹⁴⁶. The bankers confirm the mechanism of transfer in the current practice whereby the final payment or last instalment is automatically considered a purchase price. In this situation, valid intention of the parties in the practical level becomes a problem; whether both bank and customer are aware that they are executing a sale contract when the customer completed his final payment. One of the solutions is to explicitly spell out the intention in the agreement, such that the intention to hire during the first period is included in leasing (*ijārah*) contract, and then intention to buy is put in a separate contract of sale in the latter period.

In concluding their remarks on this issue, the interviewees stress the importance of stipulating in clear terms how transfer of ownership takes place, and that such terms must be understood and agreed by both parties. In deciding the terms and conditions of the contract, cautious consideration must be made in terms of *Sharī'ah* compliance, practicality and convenience of the contracting parties.

8.6.8 Deposit Payment

It has been a common commercial practice to pay a deposit before starting to use any newly acquired asset. Deposit serves as a security against future loss or misconduct caused by the hirer. Article 7/1 of the AAOIFI *Sharī'ah* Rules for *Ijārah* and *Ijārah Muntahia Bittamleek* (2000) regards a deposit made by the hirer as a security for the rental payments or security against loss of leased asset caused by the misuse or negligence of the hirer. In this study, the issue of deposit payment is posed to the

¹⁴⁶ Refer to the legitimacy of Islamic hire-purchase in Chapter 3.

interviewees in order to explore their opinions about its legality and purposes. Most interviewees give a general remark of deposit payment as stated earlier, but a few of them have provided constructive responses which give valuable contribution to the study.¹⁴⁷

In Malaysia's practice a deposit payment of 10% is required in AITAB transaction which is the same as conventional practice. The issue arising is only pertaining to the function of deposit and its legality from *Sharī'ah* point of view. The main concern is the position of deposit-payment made to the vendor (seller), not to the bank, which is a common practice everywhere. In this case, members of National *Sharī'ah* Advisory Council have decided that the deposit paid by the customer to the vendor must be perceived as a payment made on behalf of the bank, causing the following contractual liabilities¹⁴⁸:

- (i) As between the bank (owner) and vendor (seller), the deposit is considered part of the purchase price of the asset paid by the bank to the vendor.
- (ii) As between the customer (hirer) and the bank, the deposit is considered the first rental payment and will be accounted in determining the monthly rental payment.

Majority of the interviewees accept deposit payment as no big issue because most parties involved in the transaction agree to perform this obligation. However, *Sharī'ah* scholars emphasize that in Islamic transaction, the intention and purpose of the payment must be made much clearer, especially to the customer, to ensure that the customer fully understands the purpose of deposit payment and function it serves.

8.6.9 Penalty in Case of Default

In this issue, there are two conflicting reactions from the interviewees. Some of them including *Sharī'ah* scholars and economists reject penalty for late payment of rentals as not permissible. Their arguments are based on the followings:

- (i) Due rentals become a debt obligation payable by the hirer.

¹⁴⁷ They include some of government officers, bankers, *Sharī'ah* advisors and *Sharī'ah* scholars who are members of technical committee that is in charged of examining *Mu'amalah* Hire-Purchase Bill.

¹⁴⁸ This information was obtained from a government officer and some *Sharī'ah* advisors who are among the Council's members.

- (ii) If the penalty is meant to add to the income or generate profit for the owner, is not acceptable by the *Sharī'ah*.
- (iii) A monetary charge from a debtor for his late payment is exactly an interest (*ribā*) prohibited by the Holy *Qur'ān*. Therefore, the owner cannot charge an additional amount in case the hirer delays payment of the rent.

They suggest imprisonment as a penalty for default instead of charging an amount of money, but it seems that this kind of sentence would involve higher cost to the bank.

On the other hand, practitioners (bankers and *Sharī'ah* advisors) who constantly deal with the moral hazard problem believe that unless such penalty is imposed, dishonest customers would exploit the situation to their best advantages. To avoid adverse consequences resulting from the misuse of *Sharī'ah* prohibition against interest, other alternatives must be sought to. Members of the Malaysian National *Sharī'ah* Advisory Council¹⁴⁹ argued that the late penalty charges ought to be imposed on defaulters in Islamic financing because the default is a kind of oppression (*zalim*) to investors, and must be penalised.

In order to standardize the penalty imposition, the Central Bank of Malaysia has decided to enforce 1% penalty¹⁵⁰ for the purpose of protecting the banks and other financial institutions from taking any advantage on their customer by charging them

¹⁴⁹ Members of the Malaysian National *Sharī'ah* Advisory Council have been included in the interviews.

¹⁵⁰ Resolution of the National *Sharī'ah* Advisory Council of Bank Negara Malaysia (Central Bank of Malaysia). The imposition of penalty was made effective on 1st January 1999. The Council ruled out that the customer shall pay to the bank the sum equivalent to the costs incurred by the bank in the maintenance on such default amounts or such rate as prescribed by the Bank Negara Malaysia. The mechanisms of imposing the penalty are outlines as follows (Bank Negara Malaysia 1998):

- (a) If the default happens before the maturity period, a penalty of 1% per annum will be imposed on the overdue instalments.
- (b) If the default is caused after the maturity period, the rate of penalty must be based on Islamic money market rate.
- (c) The maximum penalty amount for late payment cannot exceed 100% of outstanding balance of purchase price. For example, if the balance purchase price is RM50,000 the amount of penalty cannot exceed RM 50,000.
- (d) Penalty for late payment must be put into Bank account as profit and divided between the bank and investors according to the agreed profit ratio.

The penalty will commence from the date of the first default until the date of actual receipt of payment by the bank. Provided to that, the bank must consider some special cases and problems suffered by the defaulters, for example unavoidable financial difficulty, or having not misused any of financing amount for other purposes not provided by the Letter of Offer, or any case on merit to disqualified from paying the costs to the bank at absolute discretion of the bank.

excessively and misusing the money. Moreover, it is difficult to ascertain the quantum of actual loss which is resulted from a default. Hence, the 1% penalty is intended to serve as a deterrent to the customers and to cover part of administrative costs incurred as a result of default, including postal and services.

The interviewees generally conclude that the late penalty charges should be prescribed in order to prevent a moral hazard among the customers. The penalty aims to penalize the intentionally defaulted customers as well as to compensate the actual loss (*táwīd* or indemnities) suffered by the bank and investors, thus, the charges should be distributed among them accordingly. Some interviewees give their remarks in a more specific way. *Sharī'ah* scholars suggest the best way of managing the charged money is to give it to the charity.¹⁵¹ Economists opine that the penalty should not be fixed to 1%, but it should be based on actual cost incurred. Half of them recommend the banks to check the background and financial eligibility of their customers from all sources, which are not limited to application form only, but they should gather as much information concerning the customers as they could possibly do. Legal practitioners stress that the imposition of penalty must be clearly stated in the contract and the customer is made aware of it.

From the above discussion, the practitioners (bankers and *Sharī'ah* advisors) have mainly highlighted problems in the provision of AITAB; while other interviewees, particularly the *Sharī'ah* scholar are more concerned with conceptual and legality of the facility. The practitioners, having been dealing in the actual operation of AITAB, appear to understand the problems in its provision and operation involving the main players of the transaction; financial institutions, customers, and dealers. The government officers seem to be cooperative in furnishing valuable information relating to its latest development.

¹⁵¹ This practice has not been exercised by any financial institution in Malaysia. It's worth mentioning that most Islamic banks outside Malaysia do not act in accordance with financial penalty against defaulters. In the rare cases where it is done, the proceeds of the penalty are dispensed in charity.

8.7 GOVERNING LAW FOR AITAB TRANSACTION

In order to know the current position and implementation of AITAB transaction, all experts who participated in the interview were inquired about how AITAB is legally operated in Malaysian financial institutions. Their responses are illustrated in Table 8.3 below.

TABLE 8.3:

Cross Tabulation of AITAB Operation by Respondent's Profile

Respondent's Profile		Operation of AITAB From Legal Aspect			Total
		Conventional Hire-Purchase	Principles of <i>Ijārah</i> and sale	Not sure	
Bank's Officers	N	8	2	2	12
	%	66.7	16.7	16.7	100.0
Sharī'ah Advisors	N	6	3	0	9
	%	66.7	33.3	.0	100.0
Sharī'ah Scholars	N	7	0	1	8
	%	87.5	.0	12.5	100.0
Economists	N	6	0	2	8
	%	75.0	.0	25.0	100.0
Legal Experts	N	6	0	0	6
	%	100.0	.0	.0	100.0
Government Officers	N	3	0	0	3
	%	100.0	.0	.0	100.0
Total	N	36	5	5	46
	%	78.3	10.9	10.9	100.0

The above table generally shows that 78% of the interviewees opine that the operation of AITAB is based on conventional hire-purchase concept; only 11% believe that it follows the *Sharī'ah* principles of *ijārah* and sale. Another 11% comprising a few bank officers, economists and a *Sharī'ah* scholar are uncertain of whether AITAB is legally based on conventional concepts or *Sharī'ah* principles. Looking at their area of expertise, it is not surprising to find a lack of legal awareness among them although they possess a wide knowledge of the facility. In other words, although the bankers, economists and *Sharī'ah* scholar know very well how AITAB works in practice; they do not necessarily understand how it operates within its legal framework.

All legal experts and government officers unanimously agree that the operation of AITAB is based on conventional concept. These opinions demonstrate their legal awareness and frequent exposure to hire-purchase cases in their official works.

Sharī'ah advisors give two contrasting opinions; 67% view the operation follows conventional concept, while 33% believe that such operation is based on *Sharī'ah* principles. These responses are based on the interviewees' actual experience in dealing with issues relating to AITAB transaction which result to two conflicting observations; firstly, two-third of them probably have to admit the application of conventional hire-purchase concept to the Islamic transaction due to the non-existence of Islamic legal alternative. Secondly, the remaining *Sharī'ah* advisors who respond otherwise, possibly because they observe that AITAB facility is progressively developing towards being a *Sharī'ah*-compliant product. 88% of *Sharī'ah* scholars and 75% of economists appear to admit the application of conventional concept to AITAB operation. The relatively high responses from both groups are most likely due to their observation to the current operation which does not entirely follow the *Sharī'ah* principles of *ijārah* and sale.

Responses from bank officers are rather interesting, where 67% agree with Islamic AITAB's inclination to conventional concept; 17% opine otherwise; and the remaining 17% are not sure of the current legal position. The second view of AITAB operation is based on *Sharī'ah* principles are probably resulted from the bank officers' observation on positive development of AITAB facility and increasing Islamic awareness among the bankers in some financial institutions.

According to the majority interviewees, there is a visible inclination of AITAB operation to conventional concepts, which is due to several factors including the followings:

- 1) Absence of proper and standard Islamic hire-purchase regulation, thus practitioners in AITAB transaction have no other legal recourse except the conventional hire-purchase law; Hire-Purchase Act 1967 (HPA).
- 2) Operation of AITAB is similar to conventional hire-purchase; the only difference is in the issue of interest (*ribā*) and issuance of acceptance (*'aqd*) letter. As regards to determination of fixed rate, standard documentation, and formation of agreement, AITAB transaction follows the same spirit of HPA.
- 3) Conventional hire-purchase business has been in the market for quite a long period of time and has established its rules and policy, thus its operation appears to be much easier in practice.

- 4) Legal institution (civil court) that handles commercial and mercantile matters will decide a case based on existing rules of law. Jurisdiction of civil courts also covers Islamic banking transactions. Since there is no legal authority for AITAB transaction, any case connected to it will be referred to HPA.
- 5) As stated in the earlier part, motor vehicles are the most demanding goods under AITAB facility, and consumer goods are also in demand. Both types of goods are bound by the HPA. Thus, any institution offering these goods must abide this law.
- 6) Full understanding in Islamic law among the practitioners has not been attained yet.

The majority interviewees confirm that AITAB is operated on the basis of conventional concepts because presently, there is no written *Sharī'ah* law which specifically regulates the operation of AITAB. The only existing regulatory *Sharī'ah* rules on the facility can be found in *Sharī'ah* Rules for Investment and Financing Instruments, Accounting and Auditing Organization for Islamic Financial Institutions of Bahrain (AAOIFI)¹⁵². In Malaysia, because there is no specific regulations governing AITAB, institutions offering this facility tend to impose rules in the spirit of Hire-Purchase Act 1967 and Contract Act 1950. This section highlights the importance of Hire-Purchase Act 1967 in the operation of AITAB business. HPA will be further analysed in the following section in which interviewees' opinions of the HPA and other arising issues thereof will be presented.

8.8 STRENGTHS AND DEFICIENCIES OF HIRE-PURCHASE ACT 1967

This section provides key contributions of this research to the current dialogue about the adequacy or otherwise of the Hire-Purchase Act 1967 to govern the operation of AITAB. Hire-Purchase Act 1967 is the main regulation governing hire-purchase transaction in Malaysia. Detail description of the law has been made in Chapter 4 which outlines its scope and application, contents, formation of agreement, rights and obligations of parties and repossession. In this section, HPA is further analysed with respect of its strength and deficiencies in the light of the interviewees' opinions. In order to inquire into the interviewees' state of mind in this issue, they were asked

¹⁵² AAOIFI *Sharī'ah* Rules for *Ijārah* and *Ijārah Muntahia Bittamleek* at page 31 to 46.

whether or not HPA is sufficient to govern the operation of AITAB. Their responses are presented in Table 8.4 below.

TABLE 8.4:
Cross tabulation of Adequacy of Hire-Purchase Act 1967 by Respondent's Profile

Respondent's Profile		Adequacy of Hire-Purchase Act 1967			Total
		Yes	No	Not sure	
Bank's Officers	N	7	4	1	12
	%	58.3	33.3	8.3	100.0
Shari'ah Advisors	N	1	8	0	9
	%	11.1	88.9	.0	100.0
Shari'ah Scholars	N	1	6	1	8
	%	12.5	75.0	12.5	100.0
Economists	N	2	4	2	8
	%	25.0	50.0	25.0	100.0
Legal Experts	N	3	2	1	6
	%	50.0	33.3	16.7	100.0
Government Officers	N	1	2	0	3
	%	33.3	66.7	.0	100.0
Total	N	15	26	5	46
	%	32.6	56.5	10.9	100.0

Generally, almost 57% of the interviewees observe that Hire-Purchase Act 1967 is not adequate to govern and regulate AITAB transaction. On the other hand, 33% of them perceive HPA is sufficient and treat it as a comprehensive law that can be used to govern the operation of AITAB; only 11% are not sure of the adequacy of the HPA's application to AITAB business.

Most of the interviewees, who uphold the adequacy of Hire-Purchase Act 1967 as a governing law of AITAB, are the bankers (58%). As providers of Islamic hire-purchase facility, they constantly refer to HPA in order to ensure that the operation of AITAB is made within the proper legal framework. Other main reason is to secure a legal protection and remedy which the HPA provides.

There are mixed responses within the bankers' group. 58% of the bankers agree that Hire-Purchase Act 1967 is sufficient; 33% of them think otherwise; while 8% are not sure of the position in question. These responses appear to be consistent with their earlier responses to the issue of governing law for AITAB transaction.¹⁵³ Two

¹⁵³ Refer to para 2 at page 211.

plausible reasons may account for such diverse responses. First, since AITAB is a relatively new product and still evolving, it is anticipated that many issues will naturally emerge as time goes by. Hence, it is not surprising that bankers who are directly exposed to these various issues will have different views on the matter. Secondly, the level of knowledge and experience of the bankers may also contribute in part to such diverse opinion.

A relatively high opposition to the adequacy of HPA is made by 89% of *Shari'ah* advisors and 75% of *Shari'ah* scholars. The responses from the *Shari'ah* scholars are not surprising because they are more concerned with the facility's concept that must be in line with *Shari'ah* requirements, which are not completely provided by the HPA. For this reason, they observe that *Shari'ah* rules are needed to fill in the loopholes within the HPA. Unexpectedly, the response of the *Shari'ah* advisors appears to be different from their previous pragmatic observations on AITAB operation. Similar responses are also shown in the previous discussion. This situation is most likely due to two reasons; first, they constantly work on the HPA when dealing with legal matters relating to AITAB facility; this experience exposes them to some inconsistencies in the law. Secondly, they may probably give this opinion independently based on their individual experience, without being restricted by their formal position.

The most remarkable finding is that at least 10% of the *Shari'ah* scholars are not adamant about resorting to *Shari'ah* alternatives. Two possible explanations for this situation; firstly, they may acknowledge the adequacy of HPA in regulating the AITAB transaction because HPA has already been accommodating many similar features of *Shari'ah*¹⁵⁴; and secondly, due to their limited experience in dealing with legal matters, they are probably not sure of the legal framework governing the transaction, hence, are not able to assess the adequacy of HPA.

Most of the interviewees who are not sure of the adequacy of HPA are the economists (25.0%). This is not a surprising result considering their backgrounds which make

¹⁵⁴ Refer to discussion on 'Provisions of Hire-Purchase Act 1967 which are in conformity to *Shari'ah* in the proceeding section.

little emphasis on legal issues rather focusing much on the economic and theoretical aspect of the contract.

Having known the interviewees' different stands in the issue of adequacy of Hire-Purchase Act 1967, the following subsections discuss their opinions in more detail. Those who maintain that HPA is a sufficient governing law of AITAB transaction, provide justifications in respect of strengths of HPA, some of which are in conformity to *Sharī'ah*. 58% of them are bankers and half of the legal practitioners. On the other hand, the interviewees comprising majority of *Sharī'ah* advisors and *Sharī'ah* scholars, 33% of legal practitioners and 67% of government officers argue that HPA is inadequate. They list some of HPA's deficiencies within legal and *Sharī'ah* application.

It is important to note that, discussion on the HPA's strengths, including its *Sharī'ah*-compliant provisions and its deficiencies are mainly provided by the legal practitioners and supported by researcher's thorough examination of the HPA 1967.

8.8.1 Strengths of Hire-Purchase Act 1967

Hire-Purchase Act 1967 is the only legal mechanism available in Malaysia to regulate hire-purchase transaction. Its main objective is to protect the hirers and guarantors against unscrupulous dealers who directly handle the transaction. Such protection constitutes a major strength of the HPA. By substantial amendments to HPA, procedure for entering into hire-purchase agreements is tightened up by imposing several requirements and penalties against non-compliance. These requirements include the following:

- (a) Before entering into hire-purchase agreement, the prospective owner or its representative must give a Notice in the form prescribed in Part I of the Second Schedule on the details of the prospective hirer's financial obligations. This requirement gives documentary evidence to the hirer a discrepancy arises between the details in hire-purchase agreement and in the proposal form section¹⁵⁵.

¹⁵⁵ section 4(1)(a)

- (b) A dealer representing the owner must also give the hirer further notice in the form prescribed in Part II of the Second Schedule to show that the prospective owner has consented to become the owner of the goods in the proposed transaction. This condition identifies the actual owner from the very beginning, so that the hirer will not mistakenly regard a dealer as the real owner¹⁵⁶.
- (c) In the issue of repossession, the hirer will not be charged with the costs of repossession and storage if he returned the goods within 21 days of the owner serving notice of intention to repossess on him¹⁵⁷.
- (d) The owner is required to give the hirer an option to purchase the repossessed goods before a sale to another party can be made. This is to prevent a sale at an under-value to related parties to the prejudice of the hirer¹⁵⁸.
- (e) Requirement for separate agreements with respect to every item of goods is enforced in order to overcome problems relating to the appropriation of payments to separate goods in cases where the hirer is unable to fulfil all his obligations¹⁵⁹.

In addition to the above requirements, there are various provisions incorporating rules and protection of parties to hire-purchase agreement.

- Part 2 of the Hire-Purchase Act 1967 contains provisions illustrating formation and contents of hire-purchase agreements. All related procedure and formalities of entering into the agreement are explained in the provisions.
- Part 3 guarantees the protection of hirers and guarantors by applying implied conditions and warranties in respect of the goods in hire-purchase agreement and liability of the owner for misrepresentation. For example, there shall be an implied condition that the goods are of merchantable quality¹⁶⁰. If the hirer signed the agreement and then found that the goods are defective, the owner will be liable for misrepresentation, and the hirer has a right to rescind the agreement¹⁶¹.
- Part 4 states rights and duties of the hirer during the hire-purchase transaction and in the event of repossession.

¹⁵⁶ Section 4(1)(b)(ii)

¹⁵⁷ Section 16A

¹⁵⁸ Section 18(4)

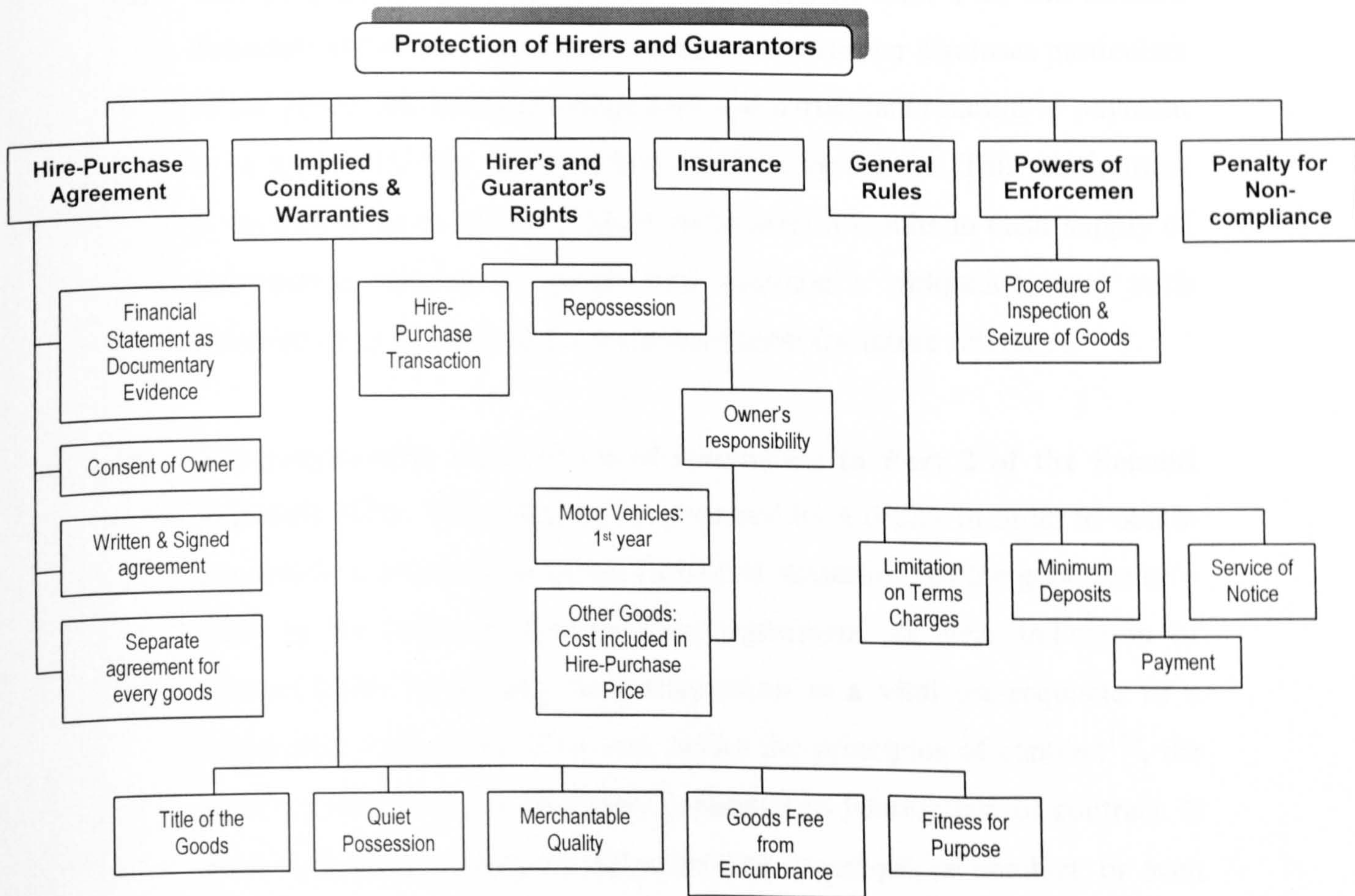
¹⁵⁹ Section 4D

¹⁶⁰ Section 7(2)

¹⁶¹ Section 8(1)

- Part 5 further spells out rights and liabilities of guarantors which include rights against the owner as well as the hirer.
- Part 6 governs matters relating to insurance, comprising contents of insurance contracts and power of courts in that respect.
- Part 7 provides various general rules, including limitation on term charges, minimum deposits, issue of receipt in respect of payments, powers of court, service of notice, penalty etc.
- Finally, Part 8 governs powers of enforcement when a hire-purchase case is brought to the court.

FIGURE 8.2:
Strengths of Hire-Purchase Act 1967



The above provisions state specific rules in every stage of hire-purchase transaction. Hence, Hire-Purchase Act 1967 appears to strongly govern all hire-purchase business which involves goods listed in the First Schedule. In respect of the contract, hire-purchase agreement which follows rules set in Part 2 of the Act will become binding

to all parties to the transaction. Any person who is found guilty of an offence under the Act is liable to penalty of either fine or imprisonment or both¹⁶². It appears that Hire-Purchase Act 1967 maintains its strength by providing proper procedure and formalities of a hire-purchase transaction, spelling out rights and liabilities of the owner, hirer and guarantor and, prescribing legal remedy as well as penalty for the claimant and offender respectively.

8.8.2 Provisions of Hire-Purchase Act 1967 which are in conformity to *Sharī'ah*

About 33% of interviewees who uphold the adequacy of Hire-Purchase Act 1967 have shed light on the fact that hire-purchase law as regulated by the HPA does not entirely contradict *Sharī'ah* principles. For instance, the following provisions of the HPA are, in fact, in harmony with the spirit of *Sharī'ah*:

- (a) **The preparation and service of statements in Part 1 of the Second Schedule HPA.** By this written statement, a customer discloses particulars of the goods, his financial obligations and particulars relating to payment to be made under the proposed hire-purchase agreement. This requirement is deemed to be in line with *Sharī'ah* because it results in clear supply of information relating to goods and customer's obligation, and such information is documented in a standard form for future reference.
- (b) **The preparation and service of statements in Part 2 of the Second Schedule HPA.** This statement is prepared by a dealer in order to obtain consent from prospective owner (financial institution) of the goods to be a party in the proposed hire-purchase agreement. A clear indication of consent (*ri'lo*) by a party to a transaction is a vital pre-requisite in a contractual transaction. However, unlike the principles of contract¹⁶³, the party's consent cannot be simply presumed in Islamic law of contract. It must be made expressly by either an oral statement, or conduct, or even put into writing. This *Sharī'ah* requirement is very important as it prevents confusion (*gharār*) relating to parties to a hire-purchase

¹⁶² Section 46 of Hire-Purchase Act 1967 prescribes penalty for an offence committed under the Act. The penalty includes a fine not exceeding RM3,000 (GB£409.25), or to imprisonment for a term not exceeding six months or both.

¹⁶³ In the Law of Contract, the existence of a contractual obligation can be presumed by nature of relationship between the parties in question and their intention to create legal relations (Alsagoff 1996).

transaction; where most customers wrongly view a dealer, instead of the financial institution, as the owner of the goods.

- (c) **Requirements relating to the formation of hire-purchase agreements** (section 4, 4A, 4B, 4D and 5). Such requirements include strict imposition of preparing the Second Schedule forms as discussed earlier; the hire-purchase agreement must be in writing and signed by all parties to the agreement; a separate hire-purchase agreement must be prepared for every item of goods; and a copy of the agreement must be served on the customer and guarantors within fourteen days after the making of the agreement. These procedural requirements are necessarily encouraged by the *Sharīāh* in order to avoid misleading information which will cause dispute among the parties in the future.
- (d) **Contents of hire-purchase agreement** (section 4C). The HPA requires every hire-purchase agreement to specify in detail the commencement date, number and amounts of instalments, time for payment, description and location of the goods, description of the consideration to be provided other than in cash (if any) and other particulars as contained in the written statements in the Second Schedule of HPA. If the hire-purchase agreement contravenes these requirements, it will become void and the owner will be guilty of an offence under the HPA. The specific contents of hire-purchase agreement as provided by the HPA are in fact, in line with the *Sharīāh* requirements of contractual transparency in agreements which must be spelt in detail to avoid any ambiguity and potential dispute.
- (e) **Conditions and warranties for the protection of hirers and guarantors** (Part 3). In addition to the earlier express contents of a hire-purchase agreement, the HPA also provides implied conditions and warranties which are imposed onto the owner in order to safeguard the interest of the customer (hirer) and guarantors. The protections cover:
- Warranty to have and enjoy quiet possession of the goods throughout the period of hire-purchase agreement. If the owner wants to inspect the goods, he must obtain the hirer's permission and do so during the

time specified by the hirer. This warranty is an important provision of leasing which guarantees peaceful possession and privacy to the hirer, hence conforms to *Sharī'ah* principle of *ijārah*.

- Condition that the owner has a good title in the goods so that he is able to sell it to the hirer at the end of hire-purchase agreement. This requirement is compatible to *Sharī'ah* rule of transferring an ownership from the legal and absolute owner of the goods.
- Warranty that the goods are free from any charge or claim by the third party before the ownership is transferred to the hirer. The *Sharī'ah* views that this encumbrance will affect the hirer's absolute ownership and complete enjoyment of the goods, thus violating the principles of *ijārah*.
- Condition that the goods must be of merchantable quality that is valuable for the hirer's use and worth for selling to other parties. This condition is warranted by *Sharī'ah* principles of *ijārah* and sale in which the subject matter must have some value.¹⁶⁴
- Condition that the goods must be fit to render benefit for hirer's use is upheld by the *Sharī'ah*. If the goods cease to provide the intended benefit, the purpose of renting it is not attained, hence, the hirer may terminate the contract.¹⁶⁵

If the above requirements are not specified in the agreement, they can be invoked if the owner does not comply with any of them. If there is a misrepresentation by the owner or dealer in respect of the goods and the earlier-stated requirements, the hirer shall be entitled to rescind the agreement and claim damages. These requirements protect the user (hirer)

¹⁶⁴ The subject matter of sale must be something which satisfies the characteristic of property or *māl* (Rahman 2001) which are as follow:

- (a) It must have some value.
- (b) It must be a thing which provides lawful benefits. In other word, the subject matter must be a lawful property in *Sharī'ah*, thus sale of liquor or casino building is prohibited by *Sharī'ah*.
- (c) It must be possessed, meaning that the subject matter is a lawful property of the seller.

The subject matter of lease must have a valuable use. Therefore, thing having no usufruct at all cannot be leased (Usmani 2002).

¹⁶⁵ Malikis and Shafiis view that *ijārah* is terminated by a defect (*'ayb*) affecting the leased object, and also if the purpose of the lease has disappeared. Hanbalis hold an opinion that the termination takes place if the leased object is destroyed or affected by a material defect. (Salleh 1986).

of the goods against injustice dealings and oppression, thus are in line with the *Sharī'ah* principles.

- (f) **Rights and obligations of hirer.** Part 4 of the HPA provides statutory rights to a hirer (customer) which include, right to a copy of a statement relating to his financial position, right to early completion of agreement, right to terminate agreement, right on repossession by owner and many more. The hirer also owes principal obligations including, to place the goods in the place as specified in the hire-purchase agreement, to pay regular instalments and not to sell or dispose the goods to other party. These rights and obligations give the hirer complete enjoyment of the goods and convenient dealing in a commercial transaction which are paramount considerations in the *Sharī'ah*.
- (g) **Rights and obligations of guarantors (Part 5).** Sections 21 and 22 of the HPA deal with the extent of guarantors' liability in respect of hire-purchase agreement; section 23 spells out rights of guarantor against the owner, while section 24 states his right against the hirer. These provisions also aim to protect a party to hire-purchase transaction, which are encouraged by the *Sharī'ah*.
- (h) **Rules for repossession.** Sections 16 to 20 of HPA contain detailed provision spelling out the rights and obligations of both hirer and owner in the event of repossession of the goods. Among the hirer's rights are entitlement to be served with notice before and after repossession taking place; exemption from paying cost of repossession if he returns the goods; requirement for owner to redeliver the goods or sell it to any person introduced by the hirer; and entitlement to recover from the owner the difference in amount where the value of the goods exceeds the debt. These rights do not, in principle, contradict *Sharī'ah* principles in the treatment of debtor by which he must be given sufficient and reasonable time to pay his debt.

- (i) **Insurance liability on the owner (Part 6).** A very significant rule relating to insurance responsibility which is in conformity to *Sharī'ah* principles is found in section 26 of the HPA. Section 26(1) puts an obligation onto an owner to take out insurance cover in the name of the hirer. In case of motor vehicles, the obligation is limited to the first year of the agreement; the hirer will have to renew the insurance for the subsequent years. For other goods, the owner is obliged to bear the insurance cost for the duration in which the goods remain under hire-purchase agreement, and such cost is included in the hire-purchase price. The owner cannot insist on the hirer to insure with a particular insurer, thus, the hirer has complete freedom to choose an insurance company which he desires. Non compliance with this rule on part of the owner or hirer will constitute an offence under the HPA.
- (j) **Avoidance of the agreement if any of the above-mentioned requirements are not met (section 34).** The protection of hirer is strengthened by section 34 which declares certain provisions in a hire-purchase agreement to be void. These provisions attempt to remove or reduce rights conferred on the hirer by the HPA, for example, a provision requiring the hirer to pay more than a fixed rate on overdue instalments.
- (k) **Collection of payments** is an important stage in any commercial transaction. In Islamic transactions, payment constitutes a consideration of contract; ignoring it will amount to avoiding the contract. In this respect, the HPA appears to be in harmony with the *Sharī'ah* rule of transaction by putting down certain rules for collection of hire-purchase payments. Section 36A prohibits any collection of payment other than those listed in the Second Schedule of the HPA, or stated in the hire-purchase agreement. Section 36B again prohibits any collection of payments by persons other than owner, dealer, agent or other authorised persons. Section 36C requires the collector of hire-purchase payment to issue a receipt to the hirer in relation to every payment collected; if he does not do so, he shall be guilty of an offence under the HPA. Section 36D further requires the owner to inform the hirer if the dealer or other authorised collector has

ceased to be authorised to collect payment, thus, no payment should be made to such dealer or collector.

- (1) **The imposition of penalties for violation of the above requirements.** Section 46 of the HPA spells out punishment for any person who is found guilty of an offence under the HPA. The punishment covers a fine not exceeding three thousand ringgit or imprisonment for a term not exceeding six months or both fine and imprisonment.

The above HPA provisions clearly spell out procedural rules and requirements which aim to make a hire-purchase transaction a success, and at the same time, to protect the hirer and guarantors by imposing certain duties onto the owner. Detail discussions on procedural matters, rights and obligations of parties and requirements of hire-purchase agreement have been dealt with in Chapter 4.

The interviewees emphasize that above discussed rules are in line with the spirits of *Sharī'ah* which promote justice and forbid oppression while engaging in a commercial transaction. Therefore, AITAB facility should not be prevented from adopting these rules and incorporating them in the agreement. Even in term of management, it is permitted to refer to the conventional hire-purchase and the prevailing practice (*'urf*) at a particular place, as long as such practices are not against the *Sharī'ah* principles.

8.8.3 Deficiencies within *Sharī'ah* and Legal Application

As discussed in the earlier sections, Hire-Purchase Act 1967, being the only existing governing rule for hire-purchase transaction, possesses some advantageous features. Despite having numerous advantages, HPA, like any other law, is not completely perfect and does contain certain loopholes, either in *Sharī'ah* or legal requirements of Islamic transaction. The interviewees¹⁶⁶ mention some deficiencies which are identified in the following aspects:

¹⁶⁶ They comprise 89% *Sharī'ah* advisors, 75% *Sharī'ah* scholars, 33% legal experts and 67% government officers who maintain that HPA is inadequate to govern AITAB operation.

- *Deficiencies within Sharī'ah requirements*

- (a) In Islamic contract, intention and understanding of parties entering into a contractual obligation are paramount requirements for a valid contract. In AITAB transaction, the parties must know and understand the nature of leasing (*ijārah*) and sale (*bay'*) contract, the effects and consequences which result in different relations, rights and obligations. Hire-Purchase Act 1967, however, fails to specify this vital requirement; it merely emphasizes on the formation and contents of a hire-purchase contract.
- (b) AITAB agreement should specify precisely terms of leasing (*ijārah*) and sale (*bay'*); when these contracts become effectives; and how contract of leasing (*ijārah*) is turned into sale (*bay'*), in order word, how transfer of ownership takes place. In this instance, HPA is completely silent in distinguishing between both contracts. It only acknowledges some requirements, formalities and contents of a standard hire-purchase agreement.
- (c) One of the important deficiencies of HPA is making the hire-purchase facility as a financial lease (full pay-out lease). A true model of Islamic hire-purchase does not totally adopt the financial lease concept because of its contradicting principles to leasing (*ijārah*) and sale (*bay'*) contract¹⁶⁷.
- (d) The HPA does not only allow interest (*ribā*) but also to a certain extent makes provisions for it, for example, section 4C requiring the amount of term charges to be stated in the hire-purchase agreement; and section 34 stating about paying an interest on overdue instalments. In respect of term charges, although HPA guarantees a fixed rate of annual charges, the calculation of the charges is made based on a pre-determined interest-bearing benchmark¹⁶⁸. The dependence on interest-based mechanism in commercial transactions is against the principles of *Sharī'ah*.
- (e) Hire-Purchase Act 1967 provisions fail to specify the extent of the parties' rights and responsibility and the consequence of transferring any right or

¹⁶⁷ Among features of financial lease are its non-cancellable nature, hirer's liability for full rent even though the goods ceases from rendering its benefit and construction of future sale.

¹⁶⁸ The Sixth Schedule of HPA provides the calculation of term charges, and the Seventh Schedule states the calculation of annual percentage rate.

responsibility from one party to the other. For example, the transfer of maintenance and insurance responsibility from the owner to the hirer (customer) for a particular consideration is often not explained to the hirer. In practice, maintenance and insurance responsibility are usually passed to the hirer in consideration of reducing the amount of payment paid to the bank (owner). As such, the hirer can save the cost of maintenance and insurance by utilising the most reasonable deal that he could afford from the market. Therefore, this matter must be clarified to the hirer or it will amount to uncertainty and unknown (*gharār and jahālah*) elements which could invalidate a hire-purchase agreement.¹⁶⁹

(f) Legal documentation of AITAB has been drafted to suit the HPA in a manner that mixes up between lawful and unlawful elements. For example, the transaction is effected under a single agreement comprising terms that invariably provide that-

- The owner shall lease the goods to the hirer for an agreed duration. During that time the owner still retains full title to the goods subject to the right of the hirer to possess and use the same so long as the rental or instalments are duly paid by the hirer on time.
- Upon payment of the final instalment by the hirer to the owner, the hirer shall become the absolute owner of the goods.

The first term spells out a leasing contract and the second one describes the manner of concluding a sale contract between the owner and the hirer. Both contracts are lawful in *Sharī'ah*; but because of improper procedure of executing them without indicating clear offer and acceptance (*ijāb and qabul*), the transaction become unlawful.

¹⁶⁹ Al-Sanhuri explains the difference between *gharār* and *jahālah*; *jahālah* means to sell something which exists but its quantity is unspecified, and *gharār* means to sell something whose availability is unknown. Both *gharār* and *jahālah* may render a contract void or voidable. Thus, a contract should not contain any element of either *gharār* or *jahālah* because otherwise, the contract will become void or voidable depending on the degree of *gharār* or *jahālah* respectively (*Ma'ādir al-Haqq fi al-Fiqh al-Islāmi*, vol. 2, p.232) (Bakar 2000).

- *Deficiencies within Legal requirements*

- (a) Hire-Purchase Act 1967 is known to be a very rigid law. It applies strong restrictions in law and agreement, in which any contravention or non-compliance will invalidate the agreement or amount to an offence under the Act. Even a minor procedural offence will invoke a penalty as prescribed in section 46 of HPA. For example, an owner and dealer who do not comply with a requirement to serve on the hirer a written statement of financial obligation, they will be guilty of an offence. If convicted, they will be liable to a fine not exceeding RM3,000 or to imprisonment for a term not exceeding six months or to both penalties.
- (b) The strict rules of the HPA 1967 bind strongly the hire-purchase agreement, to the extent that if there is any inconsistency between the agreement and HPA, a party may challenge the validity of the contract and apply to the court to nullify the whole transaction. For example, an Islamic hire-purchase agreement containing the additional provision of offer and acceptance can be strictly regarded as inconsistent with HPA. This strict rule may enable an irresponsible customer to nullify the agreement in order to avoid further obligation in the transaction, thus, may cause injustice to the other parties like the bank and guarantors.
- (c) Limited application to certain goods is another drawback of HPA Hire-Purchase Act 1967 shall only apply to goods specified in the First Schedule, which covers consumer goods¹⁷⁰ and motor vehicles. The later goods comprise invalid carriages, motor cycles, motor cars including taxi cabs and hire cars, goods vehicles and busses. These goods are usually used for transportation, either for personal or public use. Other types of vehicles will not be subject to HPA. To illustrate, in case of *MBf Finance Bhd. v. Ting Kah Kuong & Anor.*¹⁷¹, the issue was whether a particular heavy lifting machine, for instance a crane or forklift, can be regarded as a motor vehicle,

¹⁷⁰ Section 2(1) of the 1967 Act defines 'consumer goods' as goods purchased for personal, family or household purposes. Accordingly, goods that are normally regarded as consumer goods but purchased for business purpose are excluded from the 1967 Act. By virtue of section 2(1), goods also include any replacements or renewals by the hirer of any part or parts and any accessories added by the hirer during the period of hiring.

¹⁷¹ [1993] Malayan Law Journal Volume 3 page 73

and thus subject to the Hire-Purchase Act 1967. The court held that a forklift was not a motor vehicle and therefore the agreement was not subject to the Hire-Purchase Act 1967.

- (d) Another recognized loophole in HPA is section 22 which exempts a guarantor from his liability as a consequence from limited application of HPA. Section 22 expressly provides that a guarantor is not bound to perform an obligation in respect of goods other than the goods comprised in the First Schedule of HPA. Hence, if a hirer who enters into a hire-purchase agreement in respect of industrial equipments, in the event of default, the guarantor is not responsible to make any payment on the hirer's behalf. The reason being, the industrial equipments are not included in the list of goods which are covered by the HPA.

The above analysis has expounded some deficiencies of the HPA 1967 within *Shari'ah* and legal application which prove that the HPA is not a complete law to regulate AITAB transaction. Majority of interviewees (57%) observed that, the inadequacy of HPA can be remedied by having a *Shari'ah* regulation providing a complete rule for the transaction. It is important to note that, some of the points raised in this section have been discussed in Chapter 4 when analysing Hire-Purchase Act 1967 and the comparison of the HPA and *Mu'amalah* Hire-Purchase Bill.

The next section will look into the newly proposed *Mu'amalah* Hire-Purchase Bill which has been drafted by some government bodies in Malaysia as an alternative to Hire-Purchase Act 1967.

8.9 THE PROPOSED MU‘AMALAH HIRE-PURCHASE BILL

This section provides a sharper focus on the proposed *Mu‘amalah* Hire-Purchase Bill which is a result of continuous effort by early Islamic banking practitioners in Malaysia who feel that AITAB facility needs to have its own governing law. The introduction of *Mu‘amalah* Hire-Purchase Bill is believed to be due to the inadequacy or difficulty in applying Hire-Purchase Act 1967 that conforms to *Shari‘ah* principles relating to hire-purchase. This section analyses interviewees’ opinions of the Bill in respect of the following matters:

- The advantages of the Bill
- The interviewees’ suggestion to terms and provisions of the Bill
- The impacts of the Bill to Malaysian legal system
- Impediments of its implementation and its future prospect and;

8.9.1 Interviewees’ Opinion of the *Mu‘amalah* Hire-Purchase Bill

Firstly, the study seeks to identify the interviewees’ opinion on whether AITAB transaction needs to have a specific law to govern its operation in the light of *Shari‘ah*. Their responses are provided in Table 8.5 below:

TABLE 8.5:
Cross tabulation of Whether AITAB should be governed by *Shari‘ah* Law by Respondent's Profile

Respondent's Profile		Whether Islamic Hire-Purchase should be governed by <i>Shari‘ah</i> Law		Total
		Yes	No	
Bank Officers	N	9	3	12
	%	75.0	25.0	100.0
<i>Shari‘ah</i> Advisors	N	9	0	9
	%	100.0	.0	100.0
<i>Shari‘ah</i> Scholars	N	8	0	8
	%	100.0	.0	100.0
Economists	N	6	2	8
	%	75.0	25.0	100.0
Legal Experts	N	6	0	6
	%	100.0	.0	100.0
Government Officers	N	3	0	3
	%	100.0	.0	100.0
Total	N	41	5	46
	%	89.1	10.9	100.0

From the above table, almost 90% of the interviewees opine that AITAB transaction must be governed by a specific *Sharī'ah* law. Only 11% view otherwise consisting of 25% bank officers and 25% economists who think the operation of AITAB is fine under the existing Hire-Purchase Act 1967. Referring to the previous analysis on the adequacy of Hire-Purchase Act 1967, the most striking finding is that about 33% of the interviewees who initially opine that the HPA is adequate to govern AITAB have now viewed that the transaction should be governed by a *Sharī'ah* law. These conflicting views are mostly expressed by the following interviewees' group:

- (a) 67% of the legal experts, possibly because they realize that some *Sharī'ah* issues cannot be dealt by HPA alone although HPA is deemed sufficient in regulating AITAB transaction in procedural aspect. Reference should therefore, be made to *Sharī'ah* regulation.
- (b) 42% of the bankers probably observe that by having a *Sharī'ah* law for AITAB, the customers will be more attracted and convinced in using the facility.¹⁷²
- (c) Similar opinions are expressed by 33% of the government officers, most likely because they are actually working on the Bill and decide ways to implement it.

After that, this study seeks to obtain the interviewees' opinion of the Bill. Almost all interviewees are aware of the Bill, but only 35% of them have actually looked into it, thus, they are able to give a more detail comparative view of it and the Hire-Purchase Act 1967 (HPA). Generally, the interviewees assert that the Bill is more or less a carbon copy of the HPA; the only differences are in matters of contract (*'aqd*) and elimination of interest (*ribā*) elements. The 89% of interviewees, who opine that AITAB should be governed by a specific *Sharī'ah* law, give their full support to the Bill. They outline the following views and suggestions:

- (a) The Bill is based on Hire-Purchase Act 1967 with some modifications for certain provisions which are in conflict to *Sharī'ah*. The Bill uses a very simple language, but some provisions are difficult to understand because they are

¹⁷² Referring to the customers' overall reasons of dissatisfaction towards AITAB facility as illustrated in Chapter 7, 15% of them view that the facility is not 100% *Sharī'ah*-compliant.

translated from conventional hire-purchase. However, the translation doesn't bring up the same meaning as that of conventional hire-purchase.

- (b) If the Bill is successfully implemented, it will need a very strong commitment by all parties involving directly or indirectly in AITAB transaction. Parties to AITAB agreement will be bound by *Sharī'ah* rules that will not be challenged by civil law any longer. Even both *Sharī'ah* and civil rules can be equally accepted in the court.
- (c) A law-enforcement body must be established to facilitate the Islamic hire-purchase law. Unless there is a respected enforcement body, the law will be impractical.
- (d) To pass a law, any law contradicting to it must be repealed, and any uncertainty and questionable (*shubhah*) elements must be eliminated.

According to the interviewees, the public generally accept AITAB facility and regard it as an alternative to conventional facility. Furthermore, the Central Bank of Malaysia has no objection against implementing the Bill, besides they carry out a research to look into the future effects of Islamic hire-purchase law. Yet, the process of implementation of Islamic hire-purchase law has taken much time. It has been delayed for several times.

In addition to the above views, the interviewees propose two ways of implementing Islamic hire-purchase law; firstly, it must be independent from Hire-Purchase Act 1967, because Islamic and conventional hire-purchase are based on different principles; secondly, Islamic hire-purchase must have separate rules and regulation which spell out the true concept of *ijārah*, liability in an event of default, rights of hirer and owner and many more.

On the other hand, the 11% of interviewees who suggest that AITAB transaction does not need a specific *Sharī'ah* law put forward the following arguments:

- (a) Hire-Purchase Act 1967 is sufficient to support the operation of AITAB.
- (b) Hire-Purchase Act 1967 must be examined thoroughly. If some sections prove to be inconsistent with *Sharī'ah* requirements, such inconsistencies can be modified without the need for a new law.

- (c) Hire-Purchase Act 1967 can be amended or some provisions are added to make HPA general and flexible so that it can be applied to both conventional hire-purchase and AITAB transactions.
- (d) So far, AITAB operations are based on conventional hire-purchase financing and it works very fine. Moreover, AITAB finances the same items as in the First Schedule of HPA.

To conclude this analysis, there are generally two opposite views on the issue whether or not AITAB transaction should be governed by a specific *Sharī'ah* law. Majority of the interviewees (90%) support a self-governing Islamic hire-purchase law so that AITAB practice can be properly implemented in the light of *Sharī'ah*. Only 11% interviewees observe that the existing law is fine; if not completely sufficient, efforts should be made to tackle those insufficiencies only. They agreed that a special law is needed for AITAB, but this does not mean that everything needs to be changed just to comply strictly with the *Sharī'ah*. Hence, they hope that the harmonization of Islamic and conventional law will bring a positive impact to development of Islamic law from within conventional practices.

8.9.2 Advantages and Positive Impact of *Mu'amalah* Hire-Purchase Bill

During the interview session, some of interviewees mention the advantages and impacts of *Mu'amalah* Hire-Purchase Bill on AITAB transaction. Their opinions are compressed in the following points:

- 1) The Bill, if later becoming a governing law, will affect a total change in rules governing hire-purchase transaction. The transaction will have an independent legal framework of its own without having to rely on conventional legal framework which has some inconsistencies with *Sharī'ah* principles. Accordingly, this law aims to avoid conflict of principles between *Sharī'ah* and conventional framework which may lead to disputes.
- 2) One of the most significant advantages of *Mu'amalah* Hire-Purchase Bill is its wider scope of application as compared to conventional hire-purchase. The law applies to all goods stated in the First Schedule. In addition to consumer goods and motor vehicles, the Schedule in the Islamic hire-purchase law also includes houses of not more than RM250,000 and machinery equipments. In the current

practice, houses are purchased using an interest-based financing; while machinery equipments are usually offered through industrial hire-purchase financing.

- 3) Due to its wider scope of application, a specific advantage of the Bill applies to the customer and developer in house-financing. Under *Sharī'ah* concept of hire-purchase, only completed houses can be used as a subject of the transaction. In other word, the house must exist before the hire-purchase transaction takes place. Hence, when a customer enters into a hire-purchase agreement, he can physically possess and live in the house without having to wait for several years until the house is completed. Indeed, this facility gives an opportunity to low-income groups to buy houses without having to bear much cost¹⁷³.
- 4) This law protects the customer against unscrupulous developers who tend to misuse the deposit money paid by the customer. They either use low quality construction materials which later cause defects to the house; or in the worst case, abandon the uncompleted construction works. The customer often suffers monetary loss and is also unable to own a dream house. By requiring the house to be in existence first before any transaction taking place, this law enables the customer to inspect and choose the house before making any decision to purchase it.
- 5) As far as developers are concerned, the law does not negatively affect their business. They can apply for financial assistance from any financial institution for the purpose of constructing houses or residential area. When completed, only then they can sell the houses to the customer. This kind of arrangement indirectly imposes a duty onto the developer to build a good quality house to the customer's demand.
- 6) In respect of international relationships, the existence of Islamic hire-purchase law is vital in order to gain confidence from other Islamic countries operating the same facility. Based on Malaysia's previous experience during financial crisis in 1997 and 1998, when the country applied for funding some projects (including lease and hire-purchase based projects) from the middle-east

¹⁷³ Buying a house usually burdens the low income group, because they have to pay for uncompleted house for certain period of time, and at the same time they also need to pay monthly rent for their current rented home.

countries, its request was refused by Saudi Arabia because there is no governing *Shari'ah* law which look into Islamic banking business.

Having listed some advantages and positive impacts of Islamic hire-purchase law, the importance of having the law become more crystallised. The following section discusses some suggestions forwarded by the interviewees in respect of provisions of the *Mu'amalah* Hire-Purchase Bill.

8.9.3 Interviewees' Suggestions to *Mu'amalah* Hire-Purchase Bill

One of the most important questions addressed to the interviewees is an attempt to explore their ideas pertaining to matters that they think should be inserted in the *Mu'amalah* Hire-Purchase Bill. The interviewees¹⁷⁴, mainly *Shari'ah* advisors and bank officers have put forward some proposals to the Bill which are categorised as follows:

(a) Clear provision stating basic concepts of Islamic hire-purchase

Firstly, the interviewees have emphasized that the *Mu'amalah* Hire-Purchase Bill must not simply be a duplicate of Hire-Purchase Act 1967. It can refer to HPA in respect of procedural matters but should not that contradict to *Shari'ah*. The Bill should be bound by *Shari'ah* rules; if there is any contradiction to the *Shari'ah* principles, it will be automatically invalidated.

Basically, the Bill has to specify that any AITAB transaction must be carried out based on two main *Shari'ah* requirements; firstly, avoidance of interest-bearing (*ribā*) elements; for example, imposing minimum amount of penalty for late payment to purposely compensate the actual loss and overcome the moral hazard among the customers.¹⁷⁵ Excessive amount of charges will amount to charging an interest. Secondly, avoidance of contractual ambiguity and uncertainty (*gharār*) elements; for example, repossession cannot be exercised unless its legal implications have been made clear to the hirer in the earlier stage.

¹⁷⁴ About 78% *Shari'ah* advisors, 75% bankers, 38% *Shari'ah* scholars, 17% legal experts and 13% economists have given their suggestions to the Bill.

¹⁷⁵ A penalty of only 1% p.a. is imposed onto defaulters in Islamic hire-purchase facility. This late penalty charge is far lower than that's prescribed by conventional facility of 8% p.a.

(b) AITAB documentation

Documentation of AITAB transaction is the second important matter that is frequently mentioned by the interviewees. The Bill must specify that the documentation shall comprise two distinct contracts ('*aqd*'); leasing (*ijārah*) and sale and purchase contracts. The sequence and procedure of entering the contracts must be clearly stated so that the contracting parties understand how the transaction works, when transfer of ownership takes place and how to indicate proper offer and acceptance. In addition to the general procedure, the Bill needs to spell out contents of AITAB agreement. Generally, an agreement is drafted based on provision of laws and it must have legal effect to the transaction. Its contents must be concise and substantive. In respect of transfer of ownership, the AITAB agreement must explain clearly whether it is automatically affected upon full settlement of purchase price, or by other way agreed by both parties. If the owner intends to transfer certain ownership risk, such as maintenance, to the customer in return of granting a rebate and flexibility in the transaction, he must also insert the terms into the contract and make known those terms to the customer.

(c) Islamic hire-purchase Goods

Mu'amalah Hire-Purchase Bill should cover a wider range of goods, hence is not limited to consumer goods and motor vehicles only. The goods under hire-purchase transaction must fulfil certain conditions, such as, the purpose of using the goods must be specified, the goods must be utilised in compliance to *Sharī'ah* principles and the goods must be in existence in order to avoid hardship and oppression to the customer.

(d) Monetary matters

The Bill must state clearly the purpose, calculation, method and procedure of payment and other essentials relating to monetary matters. They cover the following items:

- Calculation of profit margin
- Penalty payment, for example, penalty for late payment
- Pre-payment or deposit

- Fees and charges, for example, administrative fees, stamp duty charges etc.
- Rebate (*ibrā'*) payment.

Certain monetary matters like profit margin, deposit and fees must be included in the contents of agreement.

(e) Rights and liabilities of parties

All parties involved in the hire-purchase transaction must have distinct rights and liabilities which are necessarily provided by the Bill. The customer's right as well as the bankers' must be protected by inserting certain conditions and warranty in the law. The responsibility towards insurance and maintenance must also be ascertained by the law, whether it should be borne by the bank or customer, or shared by both parties. In most cases, this responsibility is transferred to the customer because he will be the owner soon. This matter should therefore, be clarified in the law and the agreement so that both parties, especially the customer, are aware and understand the extent of their rights and responsibility in a hire-purchase agreement. Beside owner and hirer, the transaction involves a dealer who is appointed as an agent by the financial institution, as such, the concept and liability of agency (*wakālah*) must also be explained in the Bill.

(f) Power of Enforcement

There must be an appropriate enforcement of law so as to make the law effective and its implementation a success. The enforcement body must be properly formed consisting enforcers who have a background or at least, a minimum knowledge of Islamic law and procedure. Control of the transaction should be necessarily undertaken by the enforcers in order to avoid any oppression onto the customer or guarantor. Therefore, the Bill should provide clear description of the enforcer or controller of AITAB to ensure they fulfil required qualification to manage the transaction.

In addition to the above, the *Mu'amalah* Hire-Purchase Bill must have social element. It should look to practicality aspect by assessing the established local practices (*'urf*) and extent of public acceptance to the law. Another vital aspect,

the procedure of the transaction must be clearly drawn up. With clear rules and procedure, the law enforcer would be able to observe and control the transaction efficiently.

As it follows from the above, most interviewees put more emphasis on the concept and documentation of AITAB transaction because both are significant matters that distinguish AITAB from its conventional counterpart. Additionally, other suggestions cover wider scope of goods, monetary matters, rights and liabilities of parties and characteristic of enforcement body.

The following section will discuss the impact of Islamic hire-purchase law on the Malaysian legal system and some impediments of enforcing the law in the system.

8.9.4 Impact on the Malaysian Legal Framework

According to the interviewees, the *Mu'amalah* Hire-Purchase Bill will have certain impacts on the Malaysian legal framework. The law, if successfully implemented and enforced will be a comprehensive *Sharī'ah*-compliant regulation that works side by side with conventional law. It will mark a positive impact towards upgrading the position of *Sharī'ah* law and institutions in Malaysia. It is also expected to become a milestone for other area of law to come with a *Sharī'ah* alternative in order to promote a truly dual legal system in the country.

On the other hand, some interviewees view that if the *Mu'amalah* Hire-Purchase Bill is to be passed, it would be redundant with Hire-Purchase Act 1967, as in case of Islamic Banking Act 1983 (IBA) and Banking and Financial Institutions Act 1989 (BAFIA). The IBA is said to be a carbon copy of the BAFIA. IBA is also not an exhaustive law governing Islamic banking businesses in Malaysia. Many references in procedural and documentation are still made to the BAFIA. Likewise, *Mu'amalah* Hire-Purchase Bill appears to be very similar to the Hire-Purchase Act 1967, except in certain aspects¹⁷⁶.

¹⁷⁶ A comparison of *Mu'amalah* Hire-Purchase Bill and Hire-Purchase Act 1967 is thoroughly discussed in Chapter 4. An examination of the Bill and HPA reveals some identical and conflicting features between the two regulations.

8.9.5 Impediments of Implementation of *Mu'amalah* Hire-Purchase Bill

Having realized the possible impact of *Mu'amalah* Hire-Purchase Bill to the Malaysian system, the study inquires the interviewees' opinion about obstacles and challenges of implementing the Bill in the country. The interviewees' responses cover several issues relating to possible loophole in the Bill, institutional involvement, enforcement of law and public reaction. Their observations on the matter are compressed in the following points:

- (a) The provisions in the Bill still refer to conventional law in many areas. Thus, implementation based on the *Sharī'ah* law will be limited. If there is a loophole in the Islamic law, reference is usually made to the Hire-Purchase Act 1967.
- (b) The Bill is silent in many provisions significant to safeguard the interest of the hirer. For example, the hirer's right during repossession as provided by the HPA in the following respects:
 - Hirer's exemption from paying cost of repossession if he returns goods within the prescribed period.¹⁷⁷
 - Some of the hirer's other rights and immunities when good repossessed, including right to require the owner to sell the goods to any person recommended by the hirer and right to recover certain amount from the owner.¹⁷⁸
 - Power of hirer to regain possession of goods in certain circumstances.¹⁷⁹

The Bill's failure in providing such protection amounts to obvious inadequacies which will affect public confidence in it, hence, will impede its implementation.

- (c) Another potential impediment of executing the Bill is with respect to a possible ambiguity in determining the profit margin of the Islamic hire-purchase transaction. The Bill merely provides a statement indicating that the profit margin has to be calculated based on the concept of cost-plus sale (*bay' al-murābahah*), without specifying any formula or elaborating on its mechanism. This would indeed be insufficient for a law that is going to be the main reference governing the operation of AITAB. Hence, the determination of profit-margin needs to be clearly defined and delineated in the proposed Bill especially with respect to its definition and calculation methods. This is important to avoid any

¹⁷⁷ Section 16A of HPA.

¹⁷⁸ Section 18(1) and (2) of HPA.

¹⁷⁹ Section 19 of HPA.

confusion and misunderstanding especially when it comes to interpretation of the Bill and executing it.

- (d) The Bill fails to provide a proper legal structure to decide the dispute with certainty and flexibility based on *Sharī'ah* principles. A legal structure is a specialised law enforcement body which comprise police, prosecution and judiciary. This drawback restricts the law to be implemented successfully, because a law without a proper legal structure or enforcement body hardly obtains public confidence and assurance. Thus, whenever there is a violation of law, but the law cannot be enforced, the public will not respect the system.
- (e) There is uncertainty as which court should have the final decision in deciding the Islamic hire-purchase cases. At the moment, High court is the forum for Islamic banking disputes (including hire-purchase cases) and the basic law used to try Islamic banking cases is the Law of Contract. In case of AITAB transactions, reference is made to the existing Hire-Purchase Act 1967, thus, the case which may involve *Sharī'ah* issues will be decided according to the civil law, not *Sharī'ah* principles.
- (f) There is inadequacy of experts in AITAB transaction including officers, lawyers and judges who are in charge of enforcing Islamic hire-purchase law. These law-enforcers should possess a minimum knowledge of Islamic law and jurisprudence beside necessary expertise in the area banking and finance. Lack of these experts will certainly impede the efficiency of Islamic hire-purchase law.

Realizing the above impeding factors, the interviewees submit that the law-maker should deal with these impediments by taking them into consideration when drafting the *Mu'amalah* Hire-Purchase Bill. They view that a law without proper enforcement will be useless.

8.9.6 Current Position of the *Mu'amalah* Hire-Purchase Bill

According to some interviewees who have been involved directly in the committee¹⁸⁰, the government views that the Bill needs to be thoroughly examined before passing it as a governing law. This examination has been carried out for nearly five years. A few of interviewees question the efficiency of persons in charge of conducting the examination and drafting the Bill which has delayed the implementation of the Bill. The latest situation concerns with an issue whether or not Islamic Bill is really necessary to control the operation of Islamic hire-purchase. If not, another issue needs to be considered; whether or not Hire-Purchase Act 1967 should be amended to make it more consistent with *Sharī'ah* principles. According to the interviewed government officers, the government is likely to amend the HPA because there are only few provisions of the HPA which are inconsistent with *Sharī'ah* principles. Other main reasons are, to promote a harmonization between conventional and Islamic regulations, and to avoid redundancy of laws in the Malaysian legal system.

However, some other interviewees opine that for the long run, it is not a good idea to amend Hire-Purchase Act 1967 for the purpose of harmonising the law because the amendment will not bring a big impact to the development of AITAB. If the system resulting from such amendment fails and causes injustice, Islamic hire-purchase law will be condemned. Thus, it will not lead to full implementation of Islamic hire-purchase law but probably a part of it. It is worth noting that the above matter is still pending. The debate is ongoing, either to include provisions of Islamic hire-purchase into the Hire-Purchase Act 1967, or allow it to exist as a separate law independently. The researcher observes that the question of either to implement Islamic hire-purchase Bill or amend the HPA needs a thorough examination. The advantages and disadvantages, positive and negative implications of either matter do need serious consideration before deciding the best legal approach to AITAB transactions. The researcher's stand in this issue will be presented in the next chapter.

¹⁸⁰ The committee who is in charged of conducting research and examination of the *Mu'amalah* Hire-Purchase Bill. They consist of officers from the Central Bank of Malaysia, Attorney General Chambers, Ministry of Domestic trade and Consumerism and members of National *Sharī'ah* Advisory Council.

8.10 FUTURE OF AITAB

Having understood the operation and application of AITAB from interviewees' point of view, finally, this section discusses the future of AITAB. It takes into account the interviewees' observations and expectations towards the facility. In general, all interviewees are optimists that the future of AITAB in Malaysia is very bright and promising. The future of AITAB is very bright because the facility has improved a lot and is accepted by the public. There are many Muslim customers in Malaysia, and the awareness of Islamic products is increasing among the non-Muslim customers as well. AITAB facility receives a strong acceptance because it provides better features¹⁸¹ compared to conventional hire-purchase.

Economists observe that AITAB business promises a very bright future for trading company. They give an example of furniture traders like Courts Mammoth, Tesco, Carrefour, moneylender and others that adopt hire-purchase concept in their businesses. Therefore, AITAB can be a competitive facility that can be utilized by all and should not be limited to financial institutions only.

Realizing the potential of AITAB, some banks increase the number of branches which offer the facility. Encouraging initiative is even taken by a bank to widen the scope of financing in order to include non-national cars¹⁸² which has started in December 2003. They also admit that a strong commitment by the Central Bank of Malaysia has led to a rapid growth of Islamic products. According to the Central Bank's direction, every financial institution in Malaysia must have a total Islamic loan base at 10% by 2005; and at 20% by 2010¹⁸³. One bank managed to make a total Islamic loan base at 16% in 2004; while one finance company had reached 15% of total loan base in the same year. In order to comply with the direction, financial institutions have no other mean except to fully mobilize their Islamic products, the most practical one is AITAB facility.

¹⁸¹ For example, a low charges for late payment of only 1% p.a.

¹⁸² Certain banks offer AITAB facility for financing of national cars only. But, because of increasing demand to the facility, they start to include the foreign-manufactured cars.

¹⁸³ This requirement aims to encourage every financial institution to promote Islamic banking scheme and become more active in providing Islamic banking products to the public.

The interviewees emphasize that AITAB needs more improvement in order to be more *Shari'ah*-compliant, practical and flexible. There is a need for a standard regulation to govern and standardize its operation in all financial institutions. They view that the current operation of AITAB will be more standardized and well-organised if an Islamic hire-purchase regulation can be implemented.

Finally, the interviewees observe that the AITAB facility needs to lie on preposition of true concept of (leasing) *ijarah* and sale contract. It should not totally adopt what has been applied in conventional hire-purchase. In other word, AITAB is perceived as similar to conventional hire-purchase, because new and distinct concepts of Islamic hire-purchase are yet to be introduced. According to them, as long as both are identical, there is no point of talking about the future of the facility. Therefore, more research in the area of Islamic hire-purchase must be carried out in order to suggest a true and practical concept of Islamic hire-purchase which has distinctive features from conventional facility.

8.11 SUMMARY

This chapter analyses data comprising interviewees' opinions and observations on the implementation of AITAB business in Malaysia. Their responses produce significant data which are categorised into seven sections. The mechanism of AITAB operation in Malaysia is discussed from practitioners' and non-practitioners' perspectives to get a clear insight into the operation from the two different views. Problems and crucial issues in AITAB transaction are analysed from two aspects; firstly, provisions and operation of the facility; and secondly, its conceptual nature in view of *Shari'ah*.

Issues on the adequacy of Hire-Purchase Act 1967 are examined from its strengths and weaknesses. Detail analysis shows that the bankers as main practitioners accept HPA as a comprehensive law governing hire-purchase operation; while the *Shari'ah* advisors and *Shari'ah* scholars oppose to the adequacy of HPA because according to them, HPA does not provide sufficient *Shari'ah*-compliant rules regulating AITAB practice.

An analysis is made to the proposed *Mu'amalah* Hire-Purchase Bill, in respect of its advantages, impacts to the Malaysian legal framework and impediments of its implementation. Interestingly, majority of the interviewees, including those who have been comfortable with Hire-Purchase Act 1967, support a self-governing Islamic hire-purchase law. Their main reason for supporting the Bill is that AITAB practice can be properly implemented in the light of *Sharī'ah*.

From the above analysis, this study observes that the interviewees generally are well-aware of the current operation of AITAB and the legal implications to the transaction. Those who are involved directly in the operation as bankers and *Sharī'ah* advisors (practitioners) appear to give a very valuable insight of AITAB practice. Others like *Sharī'ah* scholars, economists, legal experts and government officers have also enriched this study by providing substantial information relating to *Sharī'ah* and legal issues, and scenario of the Malaysian legal framework.

This chapter has contributed in understanding the real situation and extent of implementation of AITAB in the Malaysian financial institutions. Most important, the chapter revealed the significant position that AITAB holds on part of the providers (financial institutions) as well as the users (customers). Analysis of interview data also manages to present the position of two vital regulations relating to Islamic hire-purchase in Malaysia, namely Hire-Purchase Act 1967 and *Mu'amalah* Hire-Purchase Bill. These analyses will certainly give valuable contributions to the practice of Islamic banking and finance in Malaysia particularly.

CONCLUSION AND RECOMMENDATIONS

9.1 SUMMARY OF THE STUDY

This research has presented an in-depth study on Islamic hire-purchase in the light of the Malaysian experience. It constitutes a preliminary attempt at gaining a holistic and comprehensive understanding of Islamic hire-purchase both from the theoretical and legal framework as well as providing valuable empirical evidence based on in-depth interviews and questionnaire surveys. Compared to other Islamic financial products, Islamic hire-purchase is a relatively new innovation. Since its first inception in Malaysia more than 10 years ago, Islamic hire-purchase or popularly known as AITAB has expanded tremendously partly due to the overwhelming acceptance and increased demand by customers, either individuals or corporations including the non-Muslims. The continuous support of Malaysian government towards AITAB also adds to its flourishing development.

Notwithstanding its heightened popularity and demand, AITAB is still lacking in terms of regulatory framework as it adopts conventional rules enunciated by the Hire-Purchase Act 1967 (hereafter HPA). It has been observed that if AITAB is continuously controlled by the HPA, it has to face three basic problems; **first**, HPA does not provide a *Sharī'ah*-compliant agreement which clearly spells out contract of *ijārah* and contract of sale; **secondly**, HPA contains provision of interest-bearing term charges which is clearly prohibited by the *Sharī'ah*; and **thirdly**, HPA is known as a rigid law and hence could affect the validity of Islamic hire-purchase agreement.¹⁸⁴ To overcome these shortcomings, the Malaysian government has recently proposed a new Bill known as *Mu'amalah* Hire-Purchase Bill (*Mu'amalah* Bill). The proposed bill is expected to remedy the inconsistencies in certain HPA provisions particularly when dealing with *Sharī'ah* issues arising from AITAB transaction. A thorough review of

¹⁸⁴ Islamic hire-purchase agreement has been modified to comply with *Sharī'ah*, but such modification renders a violation to the statutory form in hire-purchase agreement as per HPA 1967. If argued in the Court, the Judge may hold it as a violation of the HPA and thus, HPA rules does not apply to the Islamic hire-purchase transaction because it does not conform to the rules for the formation of agreement as provided by the HPA.

the HPA and the new *Mu'amalah* Bill reveals trivial differences in terms of overall contents and procedural rules. Potential discrepancies between the two regulations are found only in their respective concepts and interpretations, agreements and arrangement of provisions.

To get a better insights into the actual scenario of AITAB in Malaysia especially with respect to its legal and operational issues on the ground, the study provides empirical evidence based on in-depth interviews and questionnaire surveys which has been conducted on the providers of AITAB facility (financial institutions), users of the facility (bank customers) and experts in Islamic hire-purchase business in Malaysia. There are 46 respondents involved in the interviews representing different backgrounds ranging from Islamic bankers, *Sharī'ah* advisors, *Sharī'ah* scholars, economists, legal experts and government officers. The interviews cover pertinent issues such as the legal frameworks governing AITAB practice, mechanism and operation of AITAB, its strength, problems and weaknesses, and the extent of public acceptance to the product. Additionally, a questionnaire survey has been carried out among 203 bank customers to elicit their perceptions and expectations towards AITAB. Overall, the findings reveal that customers of AITAB have positive views of the facility. One of the most important reflections of their positive attitude is that their reported level of satisfaction towards the product is very high.

9.2 MAJOR FINDINGS OF THE STUDY

Since this study is the first attempt to discuss and examine Islamic hire-purchase in the light of its current practice in Malaysia, it produces major findings on the basis of theoretical justification and empirical data which contribute in filling an important gap in Islamic banking literature and regulatory framework. It also offers suggestions which have practical relevance in the Islamic banking industry. This section reviews the major findings of this study.

9.2.1 *Sharī'ah* Framework of Islamic Hire-Purchase (AITAB)

Based on the comparative review of Hire-Purchase Act 1967 and *Mu'amalah* Hire-Purchase Bill as well as the feedbacks obtained from expert interviews, it is observed that AITAB should have a distinct legal framework in order to make its *Sharī'ah*-

based operation more efficient and effective. However the main question is, whether this *Sharī'ah* framework should be expressed in terms of an independent regulation or to simply incorporate its principles within the existing regulation. Obviously, there are advantages and disadvantages associated to either option.

If the decision is to opt for an independent regulation, it certainly requires a specific *Sharī'ah* Code and structured legal institutions (*Sharī'ah* Court) which have an appropriate hierarchy with sufficient authority to decide and make a final decision in a dispute. For this purpose, necessary amendments must be made to the Civil Law Act 1956 and Federal Constitution¹⁸⁵ to give an effect to the proposed framework. The establishment of this framework will result in a dual system of laws which may give more legal certainty and variety. This regulation if successfully implemented, may give more choices to the public to submit themselves to either civil or *Sharī'ah* laws, whichever suit their affairs. However, such endeavour is nearly impossible as it involves huge costs and problems of red-tapes. The enactment of a new law is not as easy as one might perceive since it has to go through many stages, either in pre-parliamentary or during parliamentary stage (refer to Appendix F). A proposed law, before being passed and gazetted as a law must have a strong administration and enforcement body. This poses some serious impediments since the current status of the *Sharī'ah* courts is far below the civil courts in terms of its limited jurisdiction to hear and have final decision in most cases. This is due to the prevalence of conventional law in Malaysia. Moreover, the proposed amendments to both 'supreme' laws (Civil Law Act 1956 and Federal Constitution) are believed to be almost impossible because such amendments would need full support from the government, comprising executive, legislative and judiciary bodies.

In view of these major obstacles in the way of establishing an independent *Sharī'ah* law for AITAB, the study views that another possible and viable way of establishing the *Sharī'ah* principles of AITAB is by incorporating them into the existing law. This

¹⁸⁵ Civil Law Act 1956, by virtue of section 5 permits the application of English Law to banking and mercantile matters in the absence of any specific regulation. Federal Constitution is the supreme law of the land which provides that matters relating to Islamic law are under the state list (not federal list) and limited to personal matters such as betrothals, marriage, custody etc. Thus, as Islamic law is a state matter, the law and its administration vary from state to state.

necessitates few modifications and adjustments to the Hire-Purchase Act 1967¹⁸⁶ to make it compatible with all *Sharī'ah* requirements. In case of minor incompatibilities, certain modification to the law can be made by inserting supplementary provisions to give effect to the *Sharī'ah* principles. Alternatively, the *Sharī'ah* rules can be incorporated into a Schedule¹⁸⁷ of the HPA. The Schedule will become an independent rule, and the parties to AITAB agreement must submit to the rule under this Schedule. This option of implementing *Sharī'ah* principles to the AITAB operation is believed to be more feasible, realistic and less complicated as compared to establishing an independent *Sharī'ah* law. Furthermore, cases involving AITAB transaction can benefit from the existing administrative and legal institutions of HPA which have been established for a long period of time.

9.2.2 Prospect of AITAB in Malaysia

In addition to the issue of *Sharī'ah* regulation discussed above, the empirical study also provides instructive information pertaining to the future prospects of AITAB in Malaysia. Based on the results of interviews and questionnaire surveys, it is found that AITAB is very well accepted by the customers. A large majority of respondents are homogenously satisfied with AITAB facility offered by financial institutions in Malaysia irrespective of their differences in terms of age, level of education, occupation, gender and marital status. A close scrutiny into their reasons of satisfaction reveals that the religious factor along with convenience aspects such as ambiguity-free and uncomplicated transaction with respect to documentation, procedure, processing and payment system, are perceived as important factors in their patronage decision of AITAB. This result implies the pragmatism of Malaysian customers who are religious-conscience but at the same time insist on convenience when dealing with *Sharī'ah*-based instrument. When investigating customers who have experienced both AITAB and conventional hire-purchase facilities, a vast majority feel AITAB has given them more satisfaction than conventional product. The

¹⁸⁶ Although it is understandable that HPA suffers a deficiency of rigidity as mentioned earlier, it still has a possibility of permitting the incorporation of the *Sharī'ah* principles into it. As a result, the operation of AITAB will be securely protected by the HPA and at the same time, adheres the *Sharī'ah* requirements of AITAB.

¹⁸⁷ A schedule is an important component in a legislation which provides supplementary matters that are not covered by the main provisions. There are currently seven Schedules in the HPA containing list of goods, documents and notices and manners of calculating the term charges and annual percentage rate. These schedules are effective and enforceable under the HPA.

main reason given was its *Sharī'ah*-compliant nature and hence fulfilling their religious obligation in avoiding *riba*. This result certainly implies that Islamic financial institutions operating in a competitive dual-banking system like Malaysia can still create their own niche in the market for those who are committed and concerned with *ribā*-free financial instruments.

9.2.3 Problems of AITAB in Malaysia

Despite the positive results obtained from the findings as presented above, AITAB is not without a problem. Based on the interviews and questionnaire surveys, it is discovered that there are many pertinent problems associated to AITAB operation expressed by the respondents. Among the focal issues emphasised are issues relating to the conceptual and operational aspects of AITAB such as ownership, methods of transferring ownership, deposit payment and penalty in case of default. Other pertinent operational problems highlighted include the lacking of experienced and well-trained personnel, non-cooperative dealers, complicated documentation and stiff competition in the market. Some of the problems highlighted by the interviewees also correspond to the findings from customers' questionnaires surveys. For example, for some customers (13%) who dissatisfied with AITAB, indicated their reasons for dissatisfaction due to the complicated documentation and inefficiency in the procedure and processing. They also feel that AITAB does not fully comply with *Sharī'ah* principles. This result suggests the lack of consistency in service quality due to the inexperienced and incompetent personnel particularly when they interact with clients and fail to furnish them with a satisfactory explanation regarding AITAB contract. As a result, unconvinced customers become confused about the system.

9.3 RECOMMENDATIONS FROM THE FINDINGS OF THE STUDY

Based on the major findings discussed above, this study proposes several important recommendations.

1. The *Sharī'ah* framework for AITAB should be based upon the HPA 1967 since it has been shown that not all provisions in HPA 1967 contradict the *Sharī'ah*. In fact, most of HPA's provisions are acceptable and within the spirit of *Sharī'ah*. It is more feasible to work on the existing law, instead of

introducing a new hire-purchase law which will certainly encounter many bureaucratic problems in the course of implementing it. However, the proposed framework could not be a success unless it is enforced by well structured legal institutions and procedural rules based on the spirit of *Sharī'ah*.

2. To support the above proposal, efforts to improve the jurisdiction of *Sharī'ah* courts in handling Islamic banking and commercial matters (in this case, AITAB) must also be given serious consideration. The jurisdiction of court to try Islamic banking cases is still an unresolved issue. Civil court is currently given power to try Islamic banking disputes, which include AITAB cases. In this respect, three matters relating to the procedure of handling Islamic banking cases which invoke *Sharī'ah* issues are proposed; first, since banking matters fall within the jurisdiction of the civil court, the court must introduce a specific procedure for Islamic transactions (*Mu'amalah*). With the procedural rules, the court will be more cautious when making decisions in Islamic banking matters. They may also begin to understand and appreciate Islamic banking concept. Secondly, the judge who hears an Islamic banking case must have some basic knowledge of Islamic contract and Islamic transaction (*Mu'amalah*). Thirdly, a qualified *Sharī'ah* judge can be put in the sitting of the civil court whenever there is a case involving *Sharī'ah* issues.
3. There is need to standardise the procedure for all financial institutions offering AITAB. The study observes that 'lease ending with sale' and 'lease ending with *hibah*' are the best mechanisms to be applied in the present operation because both have been used by many financial institutions, besides their procedures are easy to understand. The study proposes that clear and standard guidelines must be drawn up to explain how these instruments work in the light of legal and *Sharī'ah* framework. The guideline must specify that the parties have two choices to own the leased asset; firstly, by way of sale at an agreed price or treating the final instalment as purchase price; and secondly, by way of *hibah* upon payment of all instalments. As such, the study opines that the operation of Islamic hire-purchase is more suitable to be called *Al-*

Ijārah al-Muntahiyah bil al-Tamlik (AIMAT), instead of *Al-Ijārah Thumma Al-Bay'* (AITAB).

4. A standard documentation of AITAB to be used by all financial institutions is also viewed as an important aspect that needs to be considered for more effective implementation of AITAB. It is proposed that 'aqd (acceptance) letter and document evidencing the transfer of ownership (sale and purchase agreement) need to be standardised by all financial institutions offering AITAB facility. 'Aqd letter should give sufficient notice to the prospective customer on how AITAB works and the extent of HPA's application to the transaction. The sale and purchase agreement must clearly specify the methods and conditions of transferring ownership either by way of sale or *hibah* as agreed by both contracting parties.
5. In view of the feedbacks obtained from respondents, there is a need for financial institutions to improve their service quality. This necessitates them to provide sufficient training and adequate knowledge about various Islamic financial products in general and AITAB in particular to their personnel. This will certainly enable them to deal with customers of AITAB effectively and satisfactorily.
6. Another important aspect is to strategically market AITAB through rigorous publicity, not only to attract potential customers but also serve as an effective tool for educating the public about AITAB. As shown in our findings, many customers are not aware the benefits of AITAB especially with regards to its fixed-rate facility in which they could plan ahead the payment of instalments and manage their resources more efficiently. Additionally, some customers are confused about the actual operation of AITAB. Therefore, endeavours to educate and inculcate the understanding among customers and public through various means of marketing tools may alleviate their confusion and scepticism about the authenticity of AITAB vis-à-vis *Sharī'ah* principles.
7. It is also necessary for financial institutions to widen the operation of AITAB to include house financing as opposed to the current restrictive practice that

confine to motor vehicles and consumer product financing. Even though the *Shari'ah* regulation is still an unresolved issue, the financial institutions may consider offering such facility as part of their social responsibility to accommodate and facilitate lower income group who will benefit most from such arrangement.

9.4 LIMITATIONS AND FUTURE RESEARCH

Despite our efforts to provide an instructive conceptualisation of Islamic hire-purchase in the light of Malaysian experience and examine it from various respondent groups' perceptions, the research is not without limitations.

Firstly, problems are encountered during the empirical works. Since the main focus of this research is the operation of Islamic hire-purchase and its regulatory framework, interview is the best research tool for the said purpose. Though it guarantees reliability and accuracy of data, it has proved to be costly, time-consuming and very tiring. 46 face-to-face personal interviews involving six different groups of experts, have been a real challenging experience to the researcher who has to be prepared for any postponement, cancellation or possibility of getting insufficient data from respective respondents, and immediately work on other plan of action, for example, prepare a back-up list of potential respondents. Accordingly, the future research could concentrate on a particular group of interviewees so that their observations and reactions in particular issues of Islamic hire-purchase can be assessed in more detail.

The second limitation of the study is providing a satisfactory representation of the survey sample. The ideal sampling frame would be the lists of all customers of AITAB of all financial institutions under study. The availability of such lists would enable the researcher to sample the population through the use of a table of random numbers which could ensure random sampling and prevent biasness. However, developing such an ideal sampling frame would have been almost near to impossible, as time and resources were the main constraints to this study. Furthermore, to gain access to information of respondents was also a problem since all banks are bound by duty of secrecy as prescribed by Banking and Financial Institutions Act (BAFIA)

1989. To overcome this difficulty, many channels were used to administer the questionnaires which include conducting surveys at various banks' premises, schools and various government institutions. Thus, future research on customers' perception may want to concentrate only on few financial institutions and getting their approval to conduct surveys on their customers at their premises.

Thirdly, the study is limited to the operation of Islamic hire-purchase in thirteen financial institutions in Malaysia; leasing companies are excluded. Thus, we cannot generalise the results to the leasing companies that also provide the Islamic hire-purchase facility. Future research may reach these companies and examine their experience in Islamic hire-purchase business, and then make a comparative study to the experience of Islamic financial institutions.

Finally, due to specific interest and focus on the operational and legal aspect of AITAB facility, it is beyond the scope of this study to examine other related areas, particularly, Islamic hire-purchase bond (Sukuk AITAB) which is the latest development in AITAB facility. Thus, it is worth considering this issue for future research, especially when the government seems to be very serious in promoting and developing Islamic banking products.

Despite its caveats and limitations, this study has yielded preliminary attempt and evidence evaluating the operation of Islamic hire-purchase in Malaysia from different perspectives. It provides important insights into the various issues relating to the operation of Islamic hire-purchase from three important components in the industry, mainly the user (customers), providers (financial institutions) and the experts. Most importantly, because this study represents a pioneering work in the operational and legal aspects of Islamic hire-purchase both from theoretical and empirical viewpoint, it is believed that its findings encourage the interest for future research.

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www.hlf.com.my
www.southernfinance.com.my

GLOSSARY

<i>al-ajr</i>	: substitute, compensation, indemnify, consideration, return or counter value
<i>'aqd</i>	: contract
<i>'ayb</i>	: defect, imperfection, shortcoming, disadvantage
<i>'ayn</i>	: corporeal object
<i>'urf</i>	: local custom, prevailing practice at a particular place
<i>bay'</i>	: sale
<i>bay' al- istisna'</i>	: a contract of acquisition of goods by specification or order, where the price is paid in advance, but the goods are manufactured and delivered at a later date.
<i>bay' al-salam</i>	: a contract of sale of goods where the price is paid in advance and the goods are delivered in the future.
<i>bay' bā'ūl</i>	unlawful sale
<i>bay' bithaman ājil/ bay' mu'ajjal</i>	: this contract refers to the sale of goods on a deferred payment basis. Equipment or goods requested by the clients are bought by the bank which subsequently sells the goods to the client at an agreed price which includes the bank's mark-up (profit). The client may be allowed to settle the payment by instalments within a pre-agreed period, or in a lump sum. Similar to a <i>murābahah</i> contract, but with payment on a deferred basis.
<i>fatwā</i>	: Legal rulings
<i>fiqh / usūl fiqh</i>	: Islamic jurisprudence/principles of Islamic jurisprudence
<i>gharār</i>	: deception. <i>Bay' al-gharār</i> is an exchange in which there is an element of deception either through ignorance of the goods, the price, or through faulty description of the goods
<i>ghayr mun'aqid</i>	: not by concluded bargain
<i>hibah</i>	: gift
<i>Ḥadīth (pl. <i>aḥādīth</i>)</i>	: Prophet's Tradition
<i>Ḥajj</i>	: Pilgrimage to Makkah
<i>Ḥalāl</i>	: Permissible according to <i>Sharī'ah</i>
<i>Ṣarf</i>	: exchange of money for money
<i>ibrā'</i>	: rebate
<i>ijāb</i>	: offer
<i>ijārah</i>	: Leasing. A contract under which a bank purchases and leases out equipment required by its clients for a rental fee. The duration of the lease and rental fees are agreed in advance. Ownership of the equipment remains in the hands of the bank.
<i>ijārah wa-iqtinā'/ al-ijārah thumma al-bay'/ al-ijārah al-muntahiyyah</i>	: lease ending with acquisition, or lease and then purchase, or lease ending with ownership
<i>bit-tamlīk</i>	: consensus of scholars
<i>ijmā'</i>	: consensus of scholars

<i>jahālah</i>	: ignorance, to sell something which exists but its quantity is unspecified
<i>kitāb al-bay'</i>	: the book of sale
<i>kitāb al-ijārah</i>	: the book of letting
<i>māl</i>	: property or commodity
<i>manfa'ah</i>	: usufruct of the property
<i>maslahah</i>	: public interest
<i>mu'amalah</i>	: transaction
<i>mu'ajir</i>	: lessor
<i>muḍārabah</i>	: an agreement made between two parties: one which provides 100 percent of the capital for the project and another party known as a <i>muḍarrib</i> , who manages the project using his entrepreneurial skills. Profits are distributed according to a predetermined ratio. Any losses accruing are borne by the provider of capital. The provider of capital has no control over the management of the project.
<i>mun'aqid</i>	: a concluded bargain
<i>murābahah</i>	: a contract sale between the bank and its client for the sale of goods at a price which includes a profit margin agreed by both parties. As a financing technique, it involves the purchase of goods by the bank as requested by the client. The goods are sold to the client with a mark-up. Repayment, usually in instalments is specified in the contract.
<i>mushārahah</i>	: a partnership contract between two parties who both contribute capital towards the financing of a project. Both parties share profits on a pre-agreed ratio, but losses are shared on the basis of equity participation. Either parties or just one of them may carry out management of the project. This is a very flexible partnership arrangement where the sharing of the profits and management can be negotiated and pre-agreed by all parties.
<i>musta'jir</i>	: lessee
<i>Ṣallallāhu 'alayhi wasallam (ص)</i>	: Peace be upon him (Prophet Muhammad)
<i>qabūl</i>	: acceptance
<i>qard-al Ḥasan</i>	: benevolent loan, an interest-free loan given mainly for welfare purposes. The borrower is only required to pay back the amount borrowed. In some cases, a minimum administrative fee may also be charged to the borrower.
<i>ribā</i>	: Literally means an increase or addition. Technically it denotes in a loan transaction any increase or advantage obtained by the lender as a condition of the loan. In a commodity exchange it denotes any disparity in the quantity or time of delivery.
<i>riḍo</i>	: consent
<i>Sharī'ah</i>	: lit. the path to water – the source of all life, the clear path to be followed and the path which the believer has to tread in order to obtain guidance in this world and the deliverance in the next. Technically, it means a set of norms, values and laws that govern Muslim's lives.
<i>shubhah</i>	: uncertainty and questionable element

<i>sunnah</i>	: Literally means custom; the habits and religious practices of the Prophet Muhammad, which were recorded for posterity by his companions and family and are regarded as the ideal Islamic norm.
<i>ta'wīḍ</i>	: indemnities
<i>ujrah</i>	: a rent as a consideration of <i>ijārah</i> contract
<i>al-waḍī'ah</i>	: Saving account
<i>wakālah</i>	: agency
<i>zalim</i>	: oppression

APPENDICES

**APPENDIX A:
HIRE-PURCHASE ACT 1967**

**APPENDIX B:
SAMPLE OF INTERVIEW GUIDE**

**APPENDIX C:
SAMPLE OF QUESTIONNAIRE**

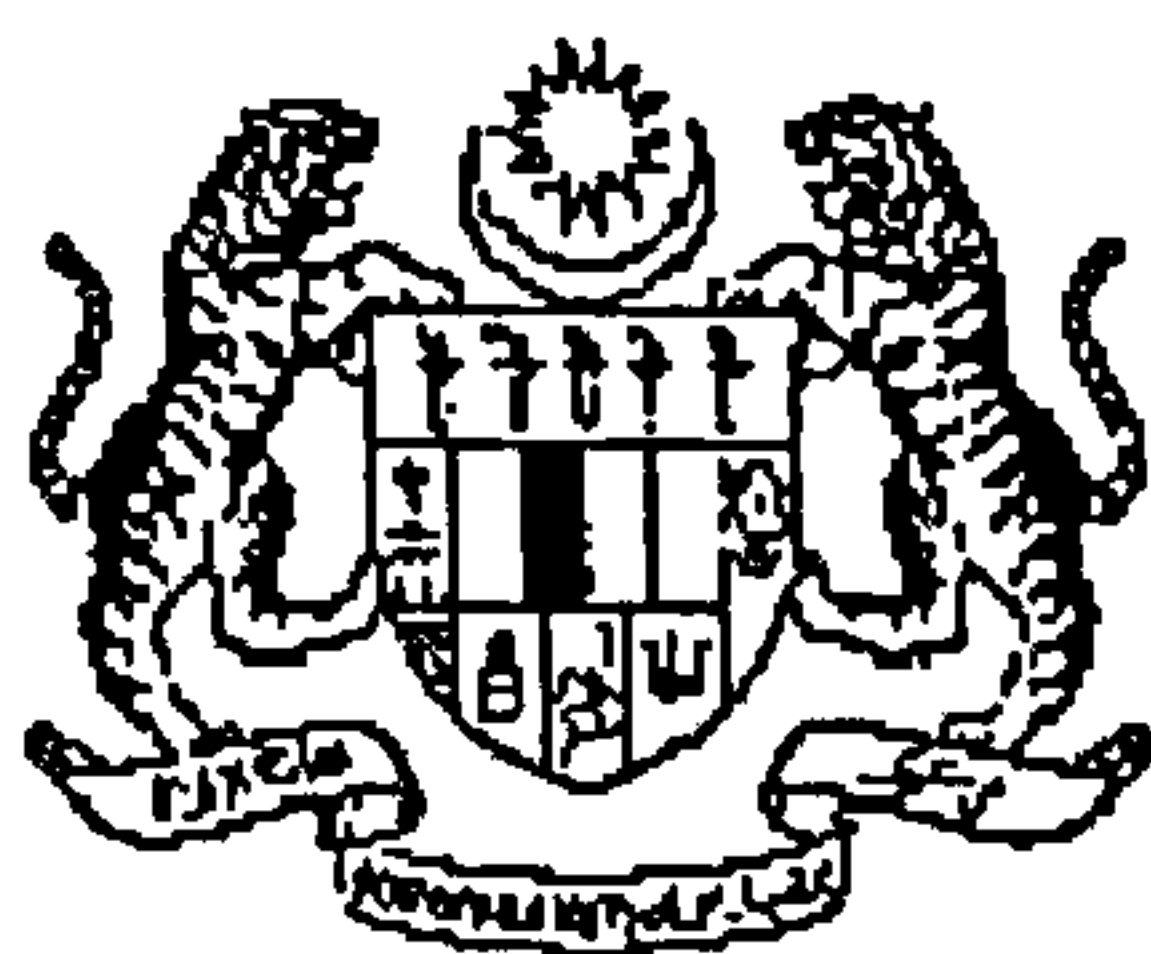
**APPENDIX D:
COVER LETTER OF INTERVIEW**

**APPENDIX E:
COVER LETTER OF SURVEY**

**APPENDIX F:
PROCEDURE FOR THE ENACTMENT OF A LAW**

**APPENDIX G:
DETAILS OF SHARĪ'AH ADVISORS AND SHARĪ'AH SCHOLARS**

APPENDIX A



LAWS OF MALAYSIA

ACT 212

HIRE - PURCHASE ACT 1967 (REVISED - 1978) [REPRINT - 2001] *Incorporating latest amendment - P.U.(A) 163/2005*

First enacted	:	1967 (Act No. 24 of 1967)
Date of coming into operation	:	15 April 2005, [P.U.(B) 119/2005]
Revised up to	:	1st January 1978
Date of publication in the Gazette of revised edition	:	26th October 1978
Date of coming into operation of revised edition	:	1978 (Act 212) 15th November 1978

Section 24. Rights of guarantor against hirer.
Section 25. Guarantor not to seize.

PART VI - INSURANCE

Section 26. Insurance of goods comprised in hire-purchase agreements.
Section 27. Powers of court in relation to insurance contracts associated with hire-purchase agreements.
Section 28. Contents of contracts of insurance.
Section 29. Application of Part VI.

PART VII - GENERAL

Section 30. Limitation on terms charges.
Section 31. Minimum deposits.
Section 32. Certain payments, etc., not to be treated as deposits for the purposes of this Part.
Section 33. Power of court to reopen certain hire-purchase transactions.
Section 34. Avoidance of certain provisions.
Section 35. Provisions relating to securities collateral to hire-purchase agreements.
Section 36. False statement by dealers, etc., in proposals.
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HIRE - PURCHASE ACT 1967 (ACT 212)

An Act to regulate the form and contents of hire-purchase agreements and the rights and duties of parties to such agreements.

PART 1 PRELIMINARY

Section 1. Short title and application.

(1) This Act may be cited as the **Hire-Purchase Act, 1967**.

(2) This Act shall apply throughout Malaysia and in respect only of hire-purchase agreements relating to the goods specified in the First Schedule.

(3) *[Deleted by Act A1234:s.2]*

(4) This Act shall apply only to hire-purchase agreements entered into after the coming into operation of the Act.

Section 2. Interpretation.

(1) In this Act, unless the context otherwise requires -

"action" includes counter-claim and set off;

"base lending rate" means the minimum interest rate based on owner's cost of funds and other administrative costs;

[Ins. Act A1234:s.3]

"cash" includes a cheque drawn on a banker,

"consumer goods" means goods purchased for personal, family or household purposes;

[Am. Act A813:s.2]

"contract of guarantee" means, in relation to any hire-purchase agreement, a contract made at the request, expressed or implied, of the hirer to guarantee the performance of the hirer's obligations under the hire-purchase agreement, but does not include the dealer or a person engaged at the time of giving of the guarantee in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement, and the expression "guarantor" shall be construed accordingly;

"Controller", "Deputy Controller" and "Assistant Controller" mean respectively, the Controller of Hire-Purchase, a Deputy Controller of Hire-Purchase and an Assistant Controller of Hire-Purchase appointed under section 3 (1);

[Am. Act A813:s.2]

"court" *[Repealed by Am. Act A813:s.2.]*

"dealer" means a person, not being the hirer or the owner or a servant of the owner, by whom or on whose behalf negotiations leading to the making of a hire-purchase agreement with the owner were carried out or by whom or on whose behalf the transaction leading to a hire-purchase agreement with the owner was arranged;

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"goods" includes any replacements or renewals by the hirer of any part or parts thereof and any accessories added or additions made thereto by the hirer during the period of the hiring; [Ins.Act 4/68]

"hire-purchase agreement" includes a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise), but does not include any agreement -

(a) whereby the property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods; or

(b) under which the person by whom the goods are being hired or purchased is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement;

"hire-purchase price" means the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of goods to which the agreement relates, exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement;

"hirer" means the person who takes or has taken goods from an owner under a hire-purchase agreement and includes a person to whom the hirer's rights or liabilities under the agreement have passed by assignment or by operation of law;

"Minister" means, unless otherwise stated, the Minister for the time being charged with the responsibility for consumer affairs;

"owner" means a person who lets or has let goods to a hirer under a hire-purchase agreement and includes a person to whom the owner's rights or liabilities under the agreement have passed by assignment or by operation of law; [Am. Act A813:s.2]

"prescribed" means prescribed by the Minister under this Act;

"statutory rebate" -

(a) in relation to terms charges -

(i) means the amount derived by multiplying the terms charges by the sum of all the whole numbers from one to the number which is the number of complete months in the period of the agreement still to go (both inclusive) and by dividing the product so obtained by the sum of all the whole numbers from one to the number which is the total number of complete months in the period of the agreement (both inclusive); or

(ii) where it is agreed in a hire-purchase agreement that the terms charges have been calculated on a simple interest basis at a rate specified in the agreement on the amount outstanding from month to month-means the amount of interest attributable to the period of complete months still to go under the agreement;

(b) in relation to insurance, means the sum of -

(i) the amount of premium paid in respect of any annual period not yet commenced; and

(ii) the amount of premium paid in respect of the current annual period less the amount of premium which would have been paid at the insurers short period rates for the period which the policy has been in force provided no claim has arisen during this period;

"third-party insurance" means any insurance in relation to liability in respect of death or bodily injury caused by or arising out of the use of a motor vehicle being insurance required by law;

"vehicle registration fees" means any amount to be provided under a hire-purchase agreement by the owner for payment by or on behalf of the hirer under this Act in connection with the registration and use of a motor vehicle, including any amount payable for third-party insurance.

(2) Where an owner has agreed that any part of the hire-purchase price may be discharged otherwise than by the payment of money, any such discharge shall, for the purposes of this Act, be deemed to be a payment of that part of the hire-purchase price.

Section 3. Appointment of officers.

(1) The Minister may appoint a Controller of Hire-Purchase and such number of Deputy Controllers of Hire-Purchase, Assistant Controllers of Hire-Purchase and other officers as may be necessary for the purposes of this Act.

[Am. Act A813:s.3]
(2) The Controller shall, subject to the general direction and control of the Minister, perform the duties and exercise the rights and powers imposed and conferred upon him by this Act and any regulations made thereunder.

[Am. Act A813:s.3]
(3) The Deputy Controller, Assistant Controllers and other officers appointed under subsection (1) shall be under the control and direction of the Controller.

[Am. Act A813:s.3]
(4) A Deputy Controller may exercise all the powers conferred and duties imposed upon the Controller under this Act except any powers or duties expressed to be exercisable by the Controller personally.

[Am. Act A813:s.3]
(5) The Controller or Deputy Controller may perform such duties and exercise such powers and functions conferred upon an Assistant Controller by this Act or any regulations made thereunder.

[Am. Act A813:s.3]
(6) All officers appointed under this section shall be deemed to be public servants within the meaning of the Penal Code [Act 574].

[Am. Act A813:s.3]

PART II
FORMATION AND CONTENTS OF THE HIRE-PURCHASE AGREEMENTS

Section 4. Requirements relating to hire-purchase agreements.

- (1) Before any hire-purchase agreement is entered into in respect of any goods -
 - (a) in a case where negotiations leading to the making of the hire-purchase agreement is carried out by any person who would be the owner under the hire-purchase agreement to be entered into, or by any person, other than the dealer, acting on his behalf, such person shall serve on the intending hirer a written statement duly completed and signed by him in accordance with the form set out in Part I of the Second Schedule;
 - (b) in a case where negotiations leading to the making of the hire-purchase agreement is carried out by a dealer, such dealer shall -
 - (i) serve on the intending hirer a written statement duly completed and signed by him in accordance with the form set out in Part I of the Second Schedule;
 - and
 - (ii) at any time after the service of the written statement referred to in subparagraph (i) but before the hire-purchase agreement is entered into, serve on the intending hirer a written statement duly completed and signed both by him and the prospective owner in accordance with the form set out in Part II of the Second Schedule.
- (2) The written statements referred to in subsection (1) shall be served by delivering it in person to the intending hirer or his agent who shall acknowledge receipt of the same by signing under his hand at the appropriate column contained therein.
- (3) Any person who has been served with the written statement or statements referred to in subsection (1) shall not be under any obligation to enter into any hire-purchase agreement and no payment or other consideration shall be required from him in respect of the preparation or service of such statement or statements, as the case may be.

(4) A hire-purchase agreement entered into in contravention of subsection (1) shall be void.

(5) An owner who enters into a hire-purchase agreement and a dealer who carries out negotiations leading to the making of a hire-purchase agreement that does not comply with subsection (1), irrespective of whether such hire-purchase agreement is void or otherwise, shall be guilty of an offence under this Act.

(6) Where a person upon whom a written statement or statements referred to in subsection (1) have been served is subject to any obligation to enter into any hire-purchase agreement to which such written statement or statements relate or is required to make any payment or other consideration in respect of the preparation or service of such statement or statements, as the case may be, any person who imposed such obligation or requirement shall be guilty of an offence under this Act.

(7) The Minister may, by order, amend, vary, delete from, or add to, Part I and Part II of the Second Schedule.

[Subs. Act A813:s.4]

Section 4A. Hire-purchase agreement to be in writing.

- (1) A hire-purchase agreement in respect of any goods specified in the First Schedule shall be in writing.
- (2) A hire-purchase agreement that does not comply with subsection (1) shall be void.
- (3) An owner who enters into a hire-purchase agreement that does not comply with subsection (1) shall, notwithstanding that the hire-purchase agreement is void, be guilty of an offence under this Act.

[Ins. Act A813:s.5]

Section 4B. Hire-purchase agreement to be signed, etc.

- (1) Every hire-purchase agreement shall be signed by or on behalf of all parties to the agreement.
- (2) No owner, dealer, agent or person acting on behalf of the owner shall require or cause any intending hirer or his agent to sign a hire-purchase agreement or any other form or document relating to a hire-purchase agreement unless such hire-purchase agreement, form or document has been duly completed.
- (3) A hire-purchase agreement that does not comply with subsections (1) and (2) shall be void.
- (4) An owner, dealer, agent or person acting on behalf of the owner who -

(a) enters into a hire-purchase agreement in contravention of subsection (1); or

(b) requires or causes an intending hirer or his agent to sign a hire-purchase agreement in contravention of subsection (2), shall, notwithstanding that the hire-purchase agreement is void, be guilty of an offence under this Act.

[Ins. Act A813:s.5]

Section 4C. Contents of hire-purchase agreement.

(1) Every hire-purchase agreement -

(a) shall -

- (i) specify a date on which the hiring shall be deemed to have commenced;
- (ii) specify the number of instalments to be paid under the agreement by the hirer;
- (iii) specify the amounts of each of these instalments and the person to whom and the place at which the payments of these instalments are to be made;
- (iv) specify the time for the payment of each of those instalments;
- (v) contain a description of the goods sufficient to identify them;
- (vi) specify the address where the goods under the hire-purchase agreement are;

(b) where any part of the consideration is or is to be provided otherwise than in cash, shall contain a description of that part of the consideration;

(c) shall set out in a tabular form -

(i) the price at which at the time of signing the agreement the hirer might have purchased the goods for cash (in this Act referred to and in the agreement to be described as "cash price");

(ii) the amount paid or provided by way of deposit (in this Act referred to and in the agreement to be described as "deposit") showing separately the amount paid in cash and the amount provided by any consideration other than cash;

(iii) any amount included in the total amount payable to cover the expenses of delivering the goods or any of them or to the order of the hirer (in this Act referred to and in the agreement to be described as "freight");

(iv) any amount included in the total amount payable to cover vehicle registration fees in respect of the goods (in the agreement to be described as "vehicle registration fees");

(v) any amount included in the total amount, payable for insurance in respect of the goods or any of them;

(vi) the total of the amounts referred to in subparagraphs (i), (iii), (iv) and (v) less the deposit;

(vii) the amount of any other charges included in the total amount payable (in this Act referred to and in the agreement to be described as "terms charges");

(viii) the annual percentage rate for terms charges which shall be calculated in accordance with the formula set out in the Seventh Schedule;

(ix) the total of the amounts referred to in subparagraphs (vi) and (vii) of this paragraph (in this Act referred to as "the balance originally payable under the agreement"); and

(x) the total amount payable;

(d) shall not contain any particulars which differ in any material way from the particulars contained in the written statement or statements served on the hirer pursuant to section 4(1)(a) or 4(1)(b), as the case may be.

(1A) Paragraph (1)(d) shall not apply where in the hire-purchase agreement the terms charges are at a variable rate.

(1B) Where in a hire-purchase agreement the terms charges are at a variable rate, the following items shall be specified in the hire-purchase agreement based on the terms charges calculated in accordance with the base lending rate applicable at the time the hire-purchase agreement is entered into:

(a) the number of instalments to be paid under the agreement by the hirer;

(b) the amount of each of these instalments;

(c) the annual percentage rate of terms charges which shall be calculated in accordance with the formula set out in the Seventh Schedule; and

(d) the balance originally payable under the agreement.

[Ins. Act A1234:s.4]

(2) A hire-purchase agreement that contravenes subsection (1) shall be void.

(3) An owner who enters into a hire-purchase agreement in contravention of subsection (1) shall, notwithstanding that the hire-purchase agreement is void, be guilty of an offence under this Act.

[Ins. Act A813:s.5]

Section 4D. Separate agreement for every item of goods.

(1) There shall be a separate hire-purchase agreement in respect of every item of goods purchased under this Act.

(2) A hire-purchase agreement that does not comply with subsection (1) shall be void.

(3) An owner who enters into a hire-purchase agreement that does not comply with subsection (1) shall, notwithstanding that the hire-purchase agreement is void, be guilty of an offence under this Act.

(4) For the purposes of this section, any goods which are essentially similar or complementary to each other and sold as a set shall be regarded as an item.

[Ins. Act A813:s.5]

Section 5. Copy of documents to be served on hirer.

(1) Within fourteen days after the making of a hire-purchase agreement, the owner shall serve or cause to be served on the hirer and the guarantors a copy of the agreement each.

[Am. Act A813:s.6]

(1A) Failure to comply with subsection (1) would render the hire-purchase agreement unenforceable by the owner.

[Am. Act A813:s.6]

(2) At any time before the final payment has been made under a hire-purchase agreement the owner shall, within fourteen days after he has received a request in writing from the hirer, supply to the hirer a copy of any memorandum or note of the agreement -

(a) on payment by the hirer of the prescribed fee; or

(b) where no fee is prescribed, one free copy, and thereafter a fee as may be prescribed shall be charged for the supply of a second or subsequent copy thereof.

[Am. Act A813:s.6]

(3) Where any part of the total amount payable consists of an amount paid or to be paid under a policy of insurance in respect of the goods, the owner shall serve or cause to be served on the hirer forthwith a copy of the insurance payment receipt and, within seven days of receipt of the policy, a copy of the policy or statement in writing setting out the terms, conditions and exclusions of the policy that affect the rights of the hirer.

[Am. Act A813:s.6]

Section 6. [Repealed].

[Repealed by Act A813:s.7].

**PART IIA
OPTION TO HIRER**

Section 6A. Option to hirer.

(1) An owner shall provide an option to the hirer for the terms charges under a hire-purchase agreement to be at a fixed rate or at a variable rate.

(2) A variable rate of terms charges shall be quoted at a margin percentage above the base lending rate.

[Ins. Act A1234:s.5]

Section 6B. Right of owner to revise the base lending rate.

(1) Where in the hire-purchase agreement the terms charges are at a variable rate, the owner may revise the base lending rate at any time during the continuance of the agreement.

(2) Where the owner has revised the base lending rate, the rate and total amount of terms charges and the amount of each instalment or the number of instalments under the hire-purchase agreement shall be revised accordingly.

(3) Where the owner has revised the base lending rate, he shall serve a notice to hirer specifying the following:

(a) the revised base lending rate;

(b) the revised rate of terms charges;

(c) the revised total amount of terms charges; and

(d) the revised amount of instalments or the revised number of instalments, as the case may be.

[Ins. Act A1234:s.5]

Section 6C. Right of hirer where the base lending rate is revised.

Where the owner has revised the base lending rate, the hirer may opt whether—

(a) to retain the existing number of instalments and vary the amount of instalments; or

(b) to retain the existing amount of instalments and vary the number of instalments.

[Ins. Act A1234:s.5]

Section 7. Conditions and warranties to be implied in every hire-purchase agreement.

(1) In every hire-purchase agreement there shall be -

(a) an implied warranty that the hirer shall have and enjoy quiet possession of the goods;

(b) an implied condition on the part of the owner that he shall have a right to sell the goods at the time when the property is to pass;

(c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass.

(2) In every hire-purchase agreement there shall be an implied condition that the goods shall be of merchantable quality, but such a condition shall not be implied -

(a) where the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed; or

(b) if the goods are second-hand goods and the agreement contains a statement to the effect that -

(i) the goods are second-hand; and

(ii) all conditions and warranties as to quality are expressly negatived, and the owner proves that the hirer has acknowledged in writing that the statement was brought to his notice.

(3) Where the hirer expressly or by implication makes known to the owner or the dealer or to any servant or agent of the owner or the dealer the particular purpose for which the goods are required, there shall be implied in the hire-purchase agreement a condition that the goods shall be reasonably fit for that purpose, but such a condition shall not be implied if the goods are second-hand goods and the agreement contains a statement to the effect -

(a) that the goods are second-hand; and

(b) that all conditions and warranties of fitness and suitability are expressly negatived, and the owner proves that the hirer has acknowledged in writing that the statement was brought to his notice.

(4) Nothing in this section shall prejudice the operation of any other written law or rule of law whereby any condition or warranty is to be implied in any hire-purchase agreement.

Section 8. Liability of the owner and person acting on his behalf for misrepresentation.

(1) Every representation, warranty or statement made to the hirer or prospective hirer, whether orally or in writing, by the owner or the dealer or any person acting on behalf of the owner or the dealer in connection with or in the course of negotiations leading to the entering into of a hire-purchase agreement shall confer on the hirer -

(a) as against the owner - the same right to rescind the agreement as the hirer would have had if the representation, warranty or statement had been by an agent of the owner; and

(b) as against the person who made the representation, warranty or statement, and any person on whose behalf the person who made the representation, warranty or statement was acting in making it - the same right of action in damages as the hirer would have had against them or either of them if the hirer had purchased the goods from the person who made the representation, warranty or statement or the person on whose behalf the person who made the representation, warranty or statement was acting (as the case may be) as a result of the negotiations.

(2) Every covenant, condition or term in any hire-purchase agreement or other document purporting to exclude, limit or modify the operation of subsection (1) or to preclude any right of action or any defence based on or arising out of any such representation, warranty or statement shall be void. [Am. Act A20:s.4]

(3) Without prejudice to any other rights or remedies to which an owner may be entitled, an owner shall be entitled to be indemnified by the person who made the representation, warranty or statement, and by any person on whose behalf the representation, warranty or statement was made against any damage suffered by the owner as a result of any such representation, warranty or statement.

PART IV HIRERS

Statutory Rights of Hirers

Section 9. Duty of owners and sellers to supply documents and information.

(1) At any time before the final payment has been made under a hire-purchase agreement the owner shall, within fourteen days after he has received a request in writing from the hirer, supply to the hirer a statement signed by the said person or his agent showing -

- (a) the amount paid to the owner by or on behalf of the hirer;
- (b) the amount which has become due under the agreement but remains unpaid; [Am. Act A813:s.8]
- (c) the amount which is to become payable under the agreement; and [Am. Act A813:s.8]
- (d) the amount derived from interest on overdue instalments: [Am. Act A813:s.8]

Provided that an owner need not comply with such a request if he has sent the hirer a statement under this section within a period of three months immediately preceding the receipt of the request.

(2) In the event of a failure without reasonable cause to comply with subsection (1) then, while the default continues-

- (a) the owner shall not be entitled to enforce -
 - (i) the agreement against the hirer;
 - (ii) any right to recover the goods from the hirer.

(iii) any contract of guarantee relating to the agreement;

(b) any security given by the hirer in respect of money payable under the agreement or given by a guarantor in respect of money payable under such a contract of guarantee as aforesaid shall not be enforceable against the hirer or the guarantor by any holder thereof.

(3) If the default aforesaid continues for a period of one month, the owner shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit. [Am. Act A813:s.8]

Section 10. Appropriation of payments made in hire-purchase agreements.

A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to require the owner to appropriate the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and, if he fails to make any such appropriation as aforesaid, the payment shall by virtue of this section be appropriated towards the satisfaction of the sums due under the respective hire-purchase agreements in the order in which the agreements were entered into.

Section 11. Power of court to allow goods to be removed.

Where, by virtue of a hire-purchase agreement, it is the duty of a hirer to keep the goods comprised in the agreement in his possession or control at a particular place or not to remove the goods from a particular place, a court of a Magistrate may, on the application of the hirer, make an order approving the removal of the goods to some other place, which place shall, for the purposes of the agreement, be substituted for the place mentioned in the agreement.

Section 12. Assignments of rights under hire-purchase agreement.

- (1) The right, title and interest of a hirer under a hire-purchase agreement may be assigned with the consent of the owner, or if his consent is unreasonably withheld, without his consent.
- (2) Except as otherwise provided in this section, no payment or other consideration shall be required by an owner for his consent to such an assignment as is mentioned in subsection (1) and where an owner requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld.
- (3) Where, at the request of a hirer under a hire-purchase agreement, the owner fails or refuses to give his consent to an assignment by the hirer or his right, title and interest under the agreement, the hirer may apply to the High Court for an order declaring that the consent of the owner to that assignment has unreasonably been withheld, and where such an order is made that consent shall be deemed to be unreasonably withheld. [Am. Act A813:s.9]
- (4) As a condition of granting consent to an assignment of the right, title and interest of the hirer under a hire-purchase agreement, the owner may stipulate that all defaults under the agreement shall be made good and may require the hirer and assignee -

(a) to execute and deliver to the owner an assignment in a form approved by the owner whereby without prejudicing or affecting the continuing personal liability of the

hirer in those respects the assignee agrees with the owner to be personally liable to pay the instalments remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the assignee indemnifies the hirer in respect of those liabilities; and

(b) to pay the reasonable costs (if any) incurred by the owner in stamping or registering the assignment agreement or counterparts.

(5) The refusal on the part of the owner to give consent to an assignment as is mentioned in subsection (1) on the ground that he requires other or additional guarantors to guarantee the assignee's obligation shall be deemed unreasonable -

(a) where the same guarantors who have guaranteed the hirer's obligation under the hire-purchase agreement have agreed to guarantee the assignee's obligation under that agreement; or

(b) where the assignee has furnished the same number of guarantors as was furnished by the hirer to guarantee his obligation under the hire-purchase agreement as guarantors for his obligation under the agreement.

[Am. Act A813:s.9]

Section 13. Operation of law.

The right, title and interest of a hirer under a hire-purchase agreement shall be capable of passing by operation of law to the personal representative of the hirer and if the hirer is a company the liquidator may exercise the same right under the agreement as the company but nothing in this section shall relieve any personal representative or liquidator from compliance with the provisions of the agreement.

Section 14. Early completion of agreement.

(1) The hirer under a hire-purchase agreement may, if he has given notice in writing to the owner of his intention to do so, on or before the day specified for that purpose in the notice, complete the purchase of the goods by paying or tendering to the owner the net balance due under the agreement.

(2) For the purposes of subsection (1)—

(a) where in the hire-purchase agreement the terms charges are at a fixed rate, the net balance due is the balance originally payable under the agreement less—

(i) any amounts (other than the deposit) paid or provided by or on behalf of the hirer under the agreement;

(ii) the statutory rebate for terms charges; and

(iii) if the hirer requires any contract of insurance to be cancelled, the statutory rebate for insurance; or

(b) where in the hire-purchase agreement the terms charges are at a variable rate, the net balance due is the outstanding amount financed and terms charges accrued and calculated up to the next due date of payment less, if the hirer requires any contract of insurance to be cancelled, the statutory rebate for insurance.

[Subs. Act A1234:s.6]

(3) The rights conferred on the hirer by this section may be exercised by him -

(a) at any time during the continuance of the agreement; or

(b) where the owner has taken possession of the goods, upon payment to the owner (within twenty-one days after the owner has served a notice in the form set out in the Fifth Schedule) in addition to the net balance due together with the reasonable costs including costs (if any) of storage, repair or maintenance of the goods incurred by the owner incidental to his taking possession of the goods; or

[Am. Act A813:s.10]

(c) where the hirer has returned the goods to the owner within twenty-one days after the service on him of the notice in the form set out in the Fourth Schedule, upon payment to the owner (within twenty-one days after the owner has served a notice in the form set out in the Fifth Schedule) the net balance due under the Act.

[Am. Act A813:s.10]

Section 15. Power of hirer to determine agreement.

(1) The hirer of any goods comprised in a hire-purchase agreement may terminate the agreement by returning the goods to the owner during ordinary business hours at the place at which the owner ordinarily carries on business or to the place specified for that purpose in the agreement.

[Am. Act A813:s.11]

(2) Where the nature of the goods comprised in a hire-purchase agreement or the facilities available at the place or places of business of the owner or the place specified in the agreement is or are such that it would be impracticable to return the goods to such a place, the hirer may terminate the agreement by returning the goods to any place agreed to by the parties to the agreement.

[Am. Act A813:s.11]

(3) Where the parties fail to agree, the hirer who proposes to return goods to the owner under this section may, subject to subsection (4), apply to a court of a Magistrate for an order fixing the place to which the goods may be returned, and the court -

(a) shall fix the place that is in its opinion reasonable having regard to all the circumstances surrounding the transaction;

(b) may order that, subject to the goods being returned to the owner, the agreement shall be determined on such date as is specified in the order, not being the date before the hirer required the owner to nominate a reasonable place for the return of the goods.

[Am. Act A813:s.11]

(4) Notice of an application under subsection (3) shall be given to the owner by the hirer.

(5) Where a hire-purchase agreement is determined pursuant to this section -

(a) the hirer may require the owner to sell the goods to any person introduced by the hirer who is prepared to buy the goods for cash at a price agreeable to the owner,

(b) where the value of the goods at the time when it is returned to the owner is more than the balance outstanding under the hire-purchase agreement, the hirer is entitled to the difference which is recoverable as a debt due;

(c) where the value of the goods at the time when it is returned to the owner is less than the balance outstanding under the

hire-purchase agreement, the owner is entitled to the difference which is recoverable as a debt due.

[Am. Act A813:s.11]

(6) For the purposes of this section -

(a) "balance outstanding under the hire-purchase agreement" means—

(i) where in the hire-purchase agreement the terms charges are at a fixed rate, the total sum payable by the hirer to complete the purchase of goods to which the agreement relates and the amount derived from interest on overdue instalments which has yet to be paid less—

(a) the amount paid by or on behalf of the hirer excluding deposit;

(b) statutory rebate for terms charges; and

(c) statutory rebate for insurance, if any; or

(b)

(ii) where in the hire-purchase agreement the terms charges are at a variable rate, the outstanding amount financed and terms charges accrued and calculated up to the next due date of payment less statutory rebate for insurance, if any.

[Subs. Act A1234:s.7]

(b) "value of the goods at the time when it is returned to the owner" means -

(i) the best price that could reasonably be obtained by the owner, or

(ii) if the hirer had introduced a person who had bought the goods for cash, the amount paid by that person.

[Ins. Act A813:s.11]

(7) Before and when exercising the power of taking possession the owner or his servant or agent shall, in addition to the provisions of this Act, comply with any regulations relating to the manner of taking possession as may be prescribed.

[Ins. Act A332:s.5]

Repossession

Section 16. Notices to be given to hirer when goods repossessed.

(1) Subject to this section, an owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments unless there had been two successive defaults of payments or a default in respect of the last payment and he has served on the hirer a notice, in writing, in the form set out in the Fourth Schedule and the period fixed by the notice has expired, which shall not be less than twenty-one days after the service of the notice.

(1A) Where a hirer is deceased, an owner shall not exercise any power of taking possession of goods comprised in a hire- purchase agreement arising out of any breach of the agreement relating to the payment of instalments unless there has been four successive defaults of payments.

[Am. Act A813:s12.]

(2) An owner need not comply with subsection (1) if there are reasonable grounds for believing that the goods comprised in the hire-purchase agreement will be removed or concealed by the hirer contrary to the provisions of the agreement, but the onus of proving the existence of those grounds lies upon the owner.

(3) Within twenty-one days after the owner has taken possession of goods that were

comprised in a hire-purchase agreement he shall serve on the hirer and every guarantor of the hirer a notice, in writing, in the form set out in the Fifth Schedule.

[Am. Act A813:s12.]

(4) Where the owner takes possession of goods that were comprised in a hire-purchase agreement he shall deliver or cause to be delivered to the hirer personally a document acknowledging receipt of the goods or, if the hirer is not present at that time, send to the hirer immediately after taking possession of the goods a document acknowledging receipt of the goods.

(5) The document acknowledging receipt of the goods, required under subsection (4) shall set out a short description of the goods and the date on which, the time at which and the place where the owner took possession of the goods.

(6) If the notice required by subsection (3) is not served, the rights of the owner under the hire-purchase agreement thereupon cease and determine; but if the hirer exercises his rights under this Act to recover the goods so taken possession of, the agreement has the same force and effect in relation to the rights and liabilities of the owner and the hirer as it would have had if the notice had been duly given.

(7) Before and when exercising the power of taking possession the owner or his servant or agent shall, in addition to the provisions of this Act, comply with any regulations relating to the manner of taking possession as may be prescribed.

Section 16A. Hirer who returns goods not liable to pay cost of repossession, etc.

A hirer who returns goods comprised in a hire-purchase agreement within twenty-one days after the service on him of the notice in the form set out in the Fourth Schedule shall not be liable to pay -

(a) the cost of repossession;

(b) the cost incidental to taking possession; and

(c) the cost of storage.

[Ins. Act A813:s.13]

Section 17. Owner to retain possession of goods repossessed for twenty-one days.

(1) Where an owner has taken possession of any goods under section 16 he shall not, without the written consent of the hirer, sell or dispose of the goods or part with possession thereof until after the expiration of twenty-one days after the date of the service on the hirer of the notice referred to in subsection 16(3) or, if notice under paragraph 18(1)(a) has been given, until the time for payment or tender pursuant to that notice has expired (whichever is the later).

[Am. Act A813:s.14]

(2) An owner who sells or disposes of any goods or parts with possession of any goods in contravention of subsection (1) shall be guilty of an offence under this Act.

[Ins. Act A813:s.14]

Section 18. Hirer's rights and immunities when goods repossessed.

(1) Where the owner takes possession of any goods under section 16 agreement -

(a) the net amount payable is the total amount payable less the statutory rebates for terms charges and insurance as at the time of the owner taking possession of the goods;

[Am. Act A1234:s.8]

(aa) the balance outstanding under the hire-purchase agreement is the outstanding amount financed and terms charges accrued and calculated up to the time of the owner so taking possession of the goods less the statutory rebate for insurance; and

[Ins. Act A1234:s.8]

(b) the value of any goods at the time of the owner taking possession thereof is -

(i) the best price that could be reasonably obtained by the owner; or

(ii) if the hirer has introduced a person who has bought the goods for cash, the amount paid by that person,

less -

(iii) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods;

(iv) any amount properly expended by the owner on the storage, repair, or maintenance of the goods; and

(v) (whether or not the goods have subsequently been sold or disposed of by the owner) the reasonable expenses of selling or otherwise disposing of the goods.

[Am. Act A813:s15.]

(4) Where an owner takes possession of any goods comprised in a hire-purchase agreement and intends to sell them -

(a) by public auction, he shall be required to serve or cause to be served on the hirer a copy of the notice of such public auction not less than fourteen days from the date the said auction is to be held; or

(b) otherwise than by public auction, he shall be required to give the hirer an option to purchase the goods at the price at which he intended to sell them if that price is less than the owner's estimate of the value of the goods repossessed as stated in the notice referred to in subsection 16(3), and if he fails to comply with such requirement he shall be guilty of an offence under this Act.

[Am. Act A813:s.15]

(5) No amount is recoverable by the hirer under this section except where the owner has failed to serve on the hirer notice as required by subsection 16(3) unless -

[Am. Act A813:s.15]

(a) the hirer, within twenty-one days after the owner has served a notice as required by subsection 16(3), gives to the owner notice in writing -

(i) setting out the amount claimed under the provisions of this section and the amount that is claimed by the hirer to be the value of the goods at the time of the owner taking possession thereof; and

(ii) signed by the hirer or his advocate and solicitor or agent; and

(b) proceedings for the recovery of the amount so claimed under the provisions of this

[Am. Act A813:s.15]
(a) the hirer may within twenty-one days after the service on him of the notice referred to in subsection 16(3) by giving to the owner a notice in writing signed by the hirer or his agent -

[Am. Act A813:s.15]

(i) require the owner to re-deliver to or to the order of the hirer (subject to the compliance by the hirer with the provisions of section 19) the goods that have been repossessed; or

(ii) require the owner to sell the goods to any person introduced by the hirer who is prepared to buy the goods for cash at a price not less than the estimated value of the goods set out in the first mentioned notice;

(b) the hirer may recover from the owner -

(i) where in the hire-purchase agreement the terms charges are at a fixed rate, if the value of the goods at the time of the owner so taking possession of the goods—

(A) is less than the net amount payable but the total of that value and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement exceeds the net amount payable, the difference between that total and the net amount payable; or

(B) is equal to or greater than the net amount payable, the total of that value and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, less the net amount payable; or

[Subs. Act A1234:s.8]

(ii) where in the hire-purchase agreement the terms charges are at a variable rate and the value of the goods at the time of the owner so taking possession of the goods is equal to or greater than the balance outstanding under the hire-purchase agreement, the difference between the value of the goods and the balance outstanding under the hire purchase agreement.

[Subs. Act A1234:s.8]

(2) Where the owner takes possession of any goods comprised in a hire-purchase agreement, the owner is not entitled to recover—

(a) where in the hire-purchase agreement the terms charges are at a fixed rate, any sum (whether under a judgment or order or otherwise) exceeding the net amount payable in respect of the goods obtained by adding—

(i) the value of the goods at the time of the owner so taking possession of the goods; and

(ii) the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement; or

(b) where in the hire-purchase agreement the terms charges are at a variable rate, any sum (whether under a judgment or order or otherwise) which exceeds the balance outstanding under the hire-purchase agreement.

[Subs. Act A1234:s.8]

(3) For the purposes of this section -

**PART V
GUARANTORS**

Section 20A. Owner may require Guarantors.

An owner may require a hirer to furnish a guarantor or such number of guarantors acceptable to the owner to guarantee the performance of the hirer's obligations under the hire-purchase agreement.

[Ins. Act A813:s.17]

Section 21. Provisions as to guarantors.

(1) Save as provided in this Act a guarantor is not, by reason of the operation of this Act, discharged from liability under his guarantee.

(2) The liability of a guarantor continues notwithstanding that the owner has, pursuant to the provisions of a hire-purchase agreement, taken possession of the goods comprised therein (and whether or not the goods have been re-delivered to the hirer pursuant to this Act); but nothing in this subsection operates to preserve the liability of a guarantor where the owner and the hirer have entered into a new agreement in respect of the goods comprised in any hire-purchase agreement.

(3) No guarantor shall be liable to any further or other extent than the hirer, the performance of whose obligations he has guaranteed; but, nothing in this Act affects any agreement by the guarantor binding him to the performance of any obligation that is not one of the obligations imposed on the hirer under the hire-purchase agreement in respect of which the guarantee is given.

(4) Where goods have been delivered to the hirer pursuant to a hire-purchase agreement and the owner subsequently takes possession thereof, any guarantor who has paid any moneys to the owner in accordance with his guarantee has the like right in like manner to recover those moneys as he would have had if he had been the hirer of the goods, but for the purpose of calculating the amount received by the owner all moneys paid and the value of any other consideration provided by or on behalf of the hirer shall be deemed to have been paid or provided by the guarantor.

Provided that no moneys shall be recovered by the guarantor in excess of the moneys actually paid by him.

Section 22. Guarantor not to be bound in certain cases.

Where a guarantor of the performance of the obligations of the hirer under a hire-purchase agreement enters into an agreement binding the guarantor -

(a) to pay to the owner an aggregate sum which is larger than the balance originally payable under the agreement; or

(b) to perform an obligation in respect of goods other than the goods comprised in the hire-purchase agreement, the agreement so entered shall be void unless the agreement is executed by the guarantor in the presence of a Magistrate, a Commissioner for Oaths or a Notary Public.

[Am. Act A20:s.5]

Section 23. Rights of guarantor against owner.

(1) The guarantor under this Part may at any time secure his discharge by paying the amount

section are commenced not later than three months after the giving by the hirer to the owner of the notice referred to in paragraph (a).

(6) If, before the proceedings referred to in subsection (5) are commenced by the hirer, the owner serves an offer in writing on the hirer to pay any amount in satisfaction of the claim by the hirer under this section, the owner, in the proceedings, is entitled to pay into court the amount so offered and, upon so doing, is entitled to the same rights as he would have had if that amount had been tendered to the hirer before the proceedings were commenced:

Provided that no such right shall be available to the owner in any proceedings by the hirer to recover the amount so offered or any lesser amount if the hirer, before commencing the proceedings, notifies the owner in writing of the acceptance by the hirer of the amount so offered.

Section 19. Power of hirer to regain possession of goods in certain circumstances.

(1) If, within twenty-one days after giving notice to the owner pursuant to the provisions of paragraph 18(1)(a), the hirer -

[Am. Act A813:s.16]

(a) pays or tenders to the owner any amount due by the hirer under the hire-purchase agreement in respect of the period of hiring up to the date of the payment or tender (and for the purposes of this paragraph the hiring shall be deemed to have continued up to that date);

(b) remedies any breach of the agreement or (where he is unable to remedy the breach by reason of the fact that the owner has taken possession of the goods) pays or tenders to the owner the costs and expenses reasonably and actually incurred by the owner in doing any act, matter, or thing necessary to remedy the breach; and

(c) pays or tenders to the owner the reasonable costs and expenses of the owner of and incidental to his taking possession of the goods and of his returning them to the hirer, the owner shall forthwith return the goods to the hirer and the goods shall be received and held by the hirer pursuant to the terms of the hire-purchase agreement as if the breach had not occurred and the owner had not taken possession thereof.

(2) Where goods are returned to the hirer pursuant to subsection (1) and any breach of the hire-purchase agreement has not been remedied, the owner has no right arising out of the breach to take possession of the goods unless -

(a) by notice in writing given to the hirer at the time of the return of the goods he specifies the breach and requires it to be remedied; and

(b) the hirer fails within twenty-one days or within the time specified in the notice (whichever is the longer) after receiving the notice to remedy the breach.

[Am. Act A813:s.16]

Section 20. Power of court to vary existing judgments or orders when goods are repossessed.

In any legal proceedings in relation to a hire-purchase agreement, after the owner has taken possession of the goods, the court before which the proceedings are brought may vary or discharge any judgment or order of any court against the hirer for the recovery of money so far as is necessary to give effect to section 18.

due to the owner from the hirer.

(2) Upon such payment being made he is entitled to -

(a) sue the hirer in the name of the owner for any breach of the hirer's obligations under the hire-purchase agreement subject to providing the owner with a suitable indemnity for costs or sue in his own name if he takes a legal assignment of the hire-purchase debt;

(b) insist upon the transfer to himself of all securities taken by the owner from the hirer to secure performance of the hirer's obligations.

(3) The guarantor is entitled in the event of any claim being made against him by the owner on the guarantee to avail himself of any set-off or counter-claim which the hirer may possess against the owner.

Section 24. Rights of guarantor against hirer.

(1) The guarantor is entitled to be indemnified by the hirer against any claim made by the owner on the guarantee.

(2) The guarantor is entitled to compel the hirer to pay the instalments in respect of the hire-purchase agreement as and when they fall due; and for this purpose he may apply to a court of a Magistrate for an order to that effect.

Section 25. Guarantor not to seize.

Nothing in this Part shall entitle the guarantor to exercise a licence to seize conferred on the owner by the hire-purchase agreement except where the agreement expressly provides that such licence shall be assignable.

PART VI INSURANCE

Section 26. Insurance of goods comprised in hire-purchase agreements.

(1) An owner shall cause to be insured in the name of the hirer -

(a) motor vehicles comprised in a hire- purchase agreement, for the first year only; and

(b) all other goods comprised in a hire- purchase agreement, for the duration of time that the goods remain under hire- purchase, against any risks that he thinks fit.

(2) Where the goods comprised in a hire- purchase agreement is a motor vehicle, it shall be the duty of the hirer to cause the said vehicle to be insured in respect of the second and all subsequent years that the motor vehicle remains under hire-purchase.

(3) An owner shall not require a hirer to insure any risks with any particular registered insurer.

(4) An owner who fails to comply with subsection (1) and a hirer who fails to comply with subsection (2) shall be guilty of an offence under this Act.

(5) A hirer shall, not less than fourteen days before the date of expiry of a policy of insurance in respect of a motor vehicle, inform the owner that he has renewed the said policy or that he has caused a fresh policy of insurance to be issued.

(6) Where the hirer has failed to renew the policy of insurance or to cause a fresh policy to be issued, the owner shall be at liberty to cause the motor vehicle to be insured and any costs thereby incurred shall be borne by the hirer.

(7) All amounts payable in respect of insurance, excluding such amounts payable in respect of the insurance of motor vehicles for the second and subsequent years, shall form part of the hire-purchase price.

(8) Where in respect of the insurance of goods comprised in a hire-purchase agreement, the insurer allows any commission or rebate including a no-claim rebate or any other rebate of a similar nature (as distinct from legitimate agency commission) to an owner who is also a *bona fide* agent of an insurer and who arranges the insurance on behalf of the hirer, the hirer under the hire-purchase agreement is entitled to the benefit of the commission and the rebate and any person who knowingly pays or allows any such commission or rebate to an owner and any owner who receives such commission or rebate shall be guilty of an offence under this Act.

[Am. Act A813:s.18]

Section 27. Powers of court in relation to insurance contracts associated with hire-purchase agreements.

(1) In any proceedings taken in any court in respect of any difference or dispute arising out of a contract of insurance if it appears to the court that a failure by the insured or the hirer under the hire-purchase agreement concerned to observe or perform a term or condition of the contract of insurance may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may, unless an order excusing the failure has already been made under subsection (2), order that the failure be excused.

(2) Where a difference or dispute has arisen out of a contract of insurance, the insured or the hirer under the hire-purchase agreement concerned or any guarantor in respect of that agreement may, unless an order excusing the failure concerned has already been made under subsection (1), apply to the court for an order that the failure to observe or perform a term or condition of the contract of insurance be excused; and if it appears to the court that the failure may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may order that the failure be excused.

(3) Where an order of the nature referred to in subsections (1) and (2) has been made the rights and liabilities of all persons in respect of the contract of insurance concerned shall be determined as if the failure the subject of the order had not occurred.

Section 28. Contents of contracts of insurance.

(1) Every copy of a policy of insurance (not being a policy of third party insurance), and every statement, served upon a hirer pursuant to section 4 shall -

(a) identify the goods or the part of the goods to be insured; and

(b) contain a statement of the amount and period for which the goods are insured or are to be insured; and

(c) if the amount for which the goods are or are to be insured will vary during the period of the agreement, contain a statement showing the varying amounts.

(2) Subject to subsection (3) any provision in any agreement, policy of insurance or other document -

(a) requiring differences or disputes arising out of a contract of insurance to be referred to arbitration;

(b) providing that no action or suit shall be maintainable upon such a contract or against the insurer in respect of any claim under, or difference or dispute arising out of, such a contract unless the claim, difference, or dispute has been referred to arbitration or an award pursuant to arbitration proceeding has been first obtained;

(c) providing that arbitration or an award pursuant to arbitration proceedings is a condition precedent to any right of action or suit upon such a contract; or

(d) otherwise imposing by reference to arbitration or to an award made in arbitration proceedings any limitation on the right of person to bring or maintain any action or suit upon such a contract, shall not bind the hirer.

(3) Nothing in subsection (2) shall prevent the parties to a contract of insurance from making an agreement, after a difference or dispute has arisen out of the contract of insurance, to submit the difference or dispute to arbitration.

Section 29. Application of Part VI.

Subsection (1) Repealed by *Am. Act A813.s.19*

The provisions of this Part shall have effect notwithstanding anything to the contrary contained in any other written law.

PART VII GENERAL

Section 30. Limitation on terms charges.

(1) The terms charges in relation to a hire-purchase agreement shall not, when calculated as a rate per centum per annum in accordance with the formula set out in the Sixth Schedule, exceed a rate per annum as may be prescribed by any regulations made under this Act in respect of any goods or class of goods.

(2) Where a hire-purchase agreement is entered into in contravention of this section, the hirer may, by notice in writing to the owner signed by the hirer or hirer's agent, elect either to treat the agreement as void or to have his liability reduced by the amount included in the agreement for terms charges; and -

(a) where the hirer elects to treat the hire-purchase agreement as void, the agreement shall be void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement shall be recoverable by action as a debt due to him by the owner;

(b) where the hirer elects to have his liability reduced by the amount included in the agreement for terms charges, his liability shall be reduced by that amount and that

amount may be set off by the hirer against the amount that would otherwise be due under the agreement and, to the extent to which it is not so set off, may be recovered by action by the hirer as a debt due to him by the owner.

Section 31. Minimum deposits.

(1) Where the minimum amount of the deposit in respect of any goods or class of goods is not prescribed, an owner who enters into a hire-purchase agreement without having first obtained from the proposed hirer thereunder a deposit in cash or in goods, or partly in cash and partly in goods, to a value not less than one-tenth of the cash price of the goods comprised in the agreement, shall be guilty of an offence under this Act.

(2) In this section and in section 32 "hire-purchase agreement" does not include any agreement or arrangement that is entered into solely for the purpose of giving effect to an assignment or transfer of the rights and liabilities under an existing hire-purchase agreement from the hirer to another person.

Section 32. Certain payments, etc., not to be treated as deposits for the purposes of this Part.

(1) No deposit -

(a) to the extent that it is in cash and that it is made out of moneys borrowed directly or indirectly -

(i) from or through the owner (if the owner is not a banker);

(ii) from or through an agent or servant of the owner; or

(iii) from or through any person whose business or part of whose business it is, by agreement with the owner or any person acting on behalf of the owner, to advance money to enable deposits to be paid in respect of hire-purchase agreements with the owner;

(b) to the extent that, where the deposit is in goods or partly in goods and the amount allowed in respect of the goods is substantially greater than the value of the goods, that amount exceeds that value;

(c) to the extent that it is made out of an amount allowed or credited in respect of, or by reference to, amounts paid by the hirer as rent or hire under a bailment of the goods before the making of a hire-purchase agreement in respect of the goods; or

(d) to the extent that it is provided by goods that were, to the knowledge of the owner or dealer, acquired by the hirer for the purpose of being used by the hirer to provide the deposit under the agreement, shall be taken into account for the purpose of determining whether the provisions of section 31 have been complied with.

(2) The provisions of this Part shall be deemed to have been complied with by the owner if a deposit in accordance with the provisions of this Part has been obtained by the dealer or an agent or employee of the owner.

(3) Any person who knowingly enters into, or procures, arranges, or otherwise assists or participates in, a transaction contravening the provisions of this section shall be guilty of an offence under this Act.

(e) any right conferred on the hirer by this Act to determine a hire-purchase agreement is excluded or restricted;

(b) the hirer is subject to any greater liability on the determination, in any manner whatsoever, of the hire-purchase agreement or of the bailment thereunder, than the liability to which he would be subject if the hire-purchase agreement were determined in accordance with this Act;

(c) the hirer is required to pay interest on any overdue instalments at a rate exceeding eight per centum per annum under a hire-purchase agreement which provides for terms charges at a fixed rate or, two per centum above the prevailing rate of terms charges, under a hire-purchase agreement which provides for terms charges at a variable rate, simple interest calculated on a daily basis or such other rate of interest as may be prescribed;

(d) the owner is relieved from liability for the acts or defaults of any person acting in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement;

[Am. Act A1234.s.9]

(e) the owner or any person acting on his behalf is authorized to enter upon any premises for the purpose of taking possession of goods otherwise than in accordance with the provisions of this Act comprised in the hire-purchase agreement or is relieved from liability for any such entry;

(f) the operation of the hire-purchase agreement is determined or modified or any person is authorized to re-possess any goods comprised in a hire-purchase agreement if the hirer becomes bankrupt or commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement (whether all or any of those events are named); or

(g) except as expressly provided by this Act, the operation of any provision of this Act is excluded, modified, or restricted, shall be void and of no effect.

Section 35. Provisions relating to securities collateral to hire-purchase agreements.

Where -

(a) a bill of exchange or promissory note has been given by a hirer or guarantor under a hire-purchase agreement to the owner in respect of an amount payable under the agreement; and

(b) the payment in due course of the bill of exchange or promissory note would, by virtue of the operation of any provision of this Act or otherwise, result in payment of an amount in excess of the liability of the hirer under the agreement, the owner is liable to indemnify the hirer or guarantor, as the case may be, in respect of the amount of the excess.

Section 36. False statement by dealers, etc., in proposals.

Where -

(a) a dealer, an agent or a person on behalf of an owner prepares or causes to be prepared a hire-purchase agreement or offer in writing that, if accepted, will constitute a hire-purchase agreement with the intention of bringing about a contractual

Section 33. Power of court to reopen certain hire-purchase transactions.

(1) In any proceedings under this Act or arising out of a hire-purchase agreement, or instituted pursuant to subsection (4), where it appears to the court that the transaction is harsh and unconscionable or is otherwise such that it will be just to give relief the court may reopen the transaction.

(2) The court re-opening any transaction under this section may, notwithstanding any statement or settlement of accounts or any agreement purporting to close previous dealings and create a new obligation -

(a) re-open any account already taken between the parties;

(b) relieve the hirer and any guarantor from payment of any sum in excess of such sum in respect of the cash price, terms charges, and other charges as the court adjudges to be fairly and reasonably payable;

(c) set aside either wholly or in part or revise or alter any agreement made or security given in connection with the transaction;

(d) give judgment for any party for such amount as having regard to the relief (if any) that the court thinks fit to grant, is justly due to that party under the agreement; and

(e) if it thinks fit give judgment against any party for delivery of the goods if they are in his possession.

(3) Where it appears to the court that any person other than the owner has shared in the profits of or has any beneficial interest prospectively or otherwise in the transaction that the court holds to be harsh and unconscionable the court may add that person as a party to the case and may give judgment against that person for such amount as it thinks fit or for the delivery of the goods if they are in his possession and the court may make such other order in respect of that person as it thinks fit.

(4) Subject to subsection (5), proceedings may be instituted in a court by the hirer or any guarantor under a hire-purchase agreement for the purpose of obtaining relief under this section.

(5) A hirer or guarantor under a hire-purchase agreement is not entitled to institute proceedings under this section -

(a) in a case where the owner has taken possession of the goods comprised in the agreement after the expiration of a period of four months after the date on which the owner serves on the hirer the notice required by subsection 16(3) to be served on him; or

(b) in any other case - after the expiration of a period of four months from the time when the transaction is closed.

(6) In any proceedings under this section the court has and may exercise all or any of the powers conferred by subsections (1), (2) and (3) notwithstanding that the time for the payment of any of the amounts payable under the agreement may not have arrived.

Section 34. Avoidance of certain provisions.

Any provision in any hire-purchase agreement whereby -

relationship between an owner and a hirer, and

(b) the agreement or offer contains to the knowledge of the dealer, agent or person acting on behalf of the owner, as the case may be, a false statement or representation that is false in any material particular, the dealer, agent or person acting on behalf of the owner shall be guilty of an offence under this Act and shall, on conviction, be liable to a fine not exceeding three thousand rringgit or to imprisonment for a term not exceeding six months or to both.

Section 36A. Prohibition against collection of payment other than those in the Second Schedule.

Any owner, dealer, agent or person acting on behalf of the owner who collects any payment in respect of a hire-purchase agreement other than a payment listed in the Second Schedule or a payment permitted under this Act shall be guilty of an offence under this Act.

[Ins. Act A813:s.20]

Section 36B. Prohibition against collection of payment by persons other than owners, dealers, agents, etc.

Any person not being an owner, dealer, agent or person acting on behalf of the owner who collects any payment from a hirer in respect of a hire-purchase agreement shall be guilty of an offence under this Act.

[Ins. Act A813:s.20]

Section 36C. Issue of receipt in respect of payments.

(1) An owner, dealer, agent or person acting on behalf of the owner who collects any payment in respect of a hire-purchase agreement shall issue a receipt to the hirer in respect of every such payment collected.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence under this Act.

[Ins. Act A813:s.20]

Section 36D. Owner to inform hirer where dealer, etc. has ceased to be authorized to collect payment.

Where it is within the knowledge of the owner that any dealer, agent or person acting on behalf of the owner to collect any payment in respect of a hire-purchase agreement has ceased to be a dealer or agent or person authorized to act on his behalf, it shall be the duty of the owner to inform every hirer from whom such dealer, agent or person ordinarily collects payment that the dealer, agent or person has ceased to be authorized to so act and that no further payments should be made to such dealer, agent or person.

[Ins. Act A813:s.20]

Section 37. Hirer may be required to state where goods are.

(1) The owner of any goods comprised in a hire-purchase agreement may, at any time by notice in writing served on the hirer thereof, require him to state in writing where the goods are, or if the goods are not in his possession, to whom he delivered the goods or the

circumstances under which he lost possession of them, and any hirer who does not within fourteen days after the receipt of such a notice give to the owner such a statement or who gives a statement containing any information that is to the knowledge of the hirer false shall be guilty of an offence under this Act.

(2) Where -

(a) a hirer removes the goods comprised in a hire-purchase agreement from the address specified; or

(b) goods comprised in a hire-purchase agreement are lost or are removed from or are taken out of the hirer's possession, the hirer shall inform the owner in writing or state in the presence of the owner -

(i) the new address where the goods are kept; or

(ii) the date and circumstances in which the goods were lost; or

(iii) the date and circumstances in which the goods were removed or taken out of his possession, and any hirer who does not within fourteen days of the removal or loss comply with the provisions of this subsection shall be guilty of an offence under this Act.

[Am. Act A813:s.21]

Section 38. Fraudulent sale or disposal of goods by hirer.

Every person who, by the disposal or sale of any goods comprised in a hire-purchase agreement, or by the removal of the goods, or by any other means, defrauds or attempts to defraud the owner shall be guilty of an offence under this Act and shall, on conviction, be liable to a fine not exceeding ten thousand rringgit or to imprisonment for a term not exceeding three years or to both.

Section 39. Certain alterations, etc., of hire-purchase agreements to be of no effect.

Any alteration of, or matter added to, a hire-purchase agreement or any written document that contains the terms and conditions of the agreement after the document was signed, if the alteration is an alteration of any of the matters set out in the written statement or statements required to be served on the hirer pursuant to paragraph 4(1)(a) and (b) before the hire-purchase agreement was entered into, shall have no force or effect unless the hirer or his agent has consented to the alteration or the additional matter by signing or initialling the agreement or the written document in the margin thereof opposite the alteration or additional matter or, the hirer or his agent has consented to the alteration or the additional matter by signing an agreement supplemental to the hire-purchase agreement.

[Subs. Act A1234:s.10]

Section 40. Second-hand goods.

Where goods comprised in a hire-purchase agreement are, at the time when the agreement is entered into, secondhand goods then unless -

(a) the goods are described in the agreement as second-hand goods; or

(b) in any proceedings taken by the owner to enforce the agreement, the court is satisfied that -

(i) the hirer was aware at the time when he or his agent signed the agreement that goods comprised or to be comprised therein were second-hand goods; or

(ii) the owner was not aware at the time when the agreement was entered into that the goods comprised therein were second-hand goods, the liability of the hirer thereunder shall be reduced by the amount included in the agreement for terms charges. The amount may be set off by the hirer against the amount that would otherwise be due or become due to the owner under the agreement and, to the extent to which it is not so set off may be recovered by the hirer from the owner as a civil debt.

Section 41. Power of court to extend time.

Any time prescribed by this Act for the service or giving of any notice or other document or for the commencement of proceedings may, on an application made to a court of a Magistrate (either before or after the expiration of that time but after notice to the other party to the hire-purchase agreement), be extended by such court for such further period, and upon such conditions, as the court thinks fit.

Section 42. Power of court to order delivery of goods unlawfully detained.

(1) Upon complaint made to a court of a Magistrate by an owner who is entitled to take possession of any goods comprised in a hire-purchase agreement or by any person acting on behalf of an owner that the hirer or any person in possession of the goods has refused or failed to deliver up possession of the goods on the service of a notice of demand made by the owner or by an agent of the owner authorized in that behalf, the Magistrate may summon the person complained of to appear before the court and if it appears to the court hearing the case that the goods are being detained without just cause, the court may order the goods to be delivered up to the owner at or before a time, and at a place, to be specified in the order.

(2) Any person who neglects or refuses to comply with any order made under this section shall be guilty of an offence under this Act.

Section 43. Service of notices.

Any notice or document required or authorized to be served on or given or sent to an owner or hirer under this Act may be served or given or sent -

(a) by delivering it to him personally; or

(b) [Repealed by Act A813:s23]

(c) by posting it by registered post addressed to him at his last known place of abode or business.

[Am. Act A813:s.23]

Section 43A. Substituted service.

(1) Where it appears that it is impracticable for any reason to serve a notice or document required or authorized to be served on or given or sent to an owner or hirer in accordance

with section 43, a court of a Magistrate may, on application by an owner or hirer, as the case may be, make an order for substituted service of the notice or document.

(2) An application for an order for substituted service must be made by notice supported by an affidavit stating the facts on which the application is founded.

(3) Substituted service of the notice or document is effected by taking such steps as the court may direct to bring the notice or document to the attention of the person to be served.

[Am. Act A813:s.24]

Section 44. Proof of service.

The affidavit or oral evidence of an owner or his servant or agent, or of a hirer, as to the delivery, posting or service of any notice or document required or authorized to be served, given or sent by this Act is admissible as *prima facie* proof of the service, giving or sending of the notice or document.

[Am. Act A813:s.25]

Section 45. Size, type, etc., required in certain documents.

(1) Any prescribed document or part thereof -

(a) not being the signature or initials of any person, that is in handwriting that is not clear and legible; or

(b) that is printed in type of a size smaller than the type known as ten-point Times, shall, for the purposes of this Act, be deemed not to be in writing.

(2) In this section "prescribed document" means -

(a) any hire-purchase agreement;

(b) any statement under subsection 4(1);

(c) any copy of an agreement, notice or statement required by section 5 to be served on a hirer;

(d) any statement required by subsection 9(1) to be sent to a hirer; and

(e) any notice under subsection 16(1) or (3).

(3) Where, by virtue of this section, a prescribed document or part of a prescribed document is, for the purposes of this Act, deemed not to be in writing, then, except as is otherwise in this Act expressly provided, the validity or effect of the prescribed document is not affected.

Nothing in this subsection affects the liability of any person to be convicted of an offence under this Act.

Section 46. Penalty.

Any person who is guilty of an offence under this Act or any regulations made thereunder for which no other penalty is expressly provided by this Act or regulations shall, on conviction, be

liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Section 47. Liability of responsible officers of company.

Where any offence under this Act has been committed by any body corporate (whether or not the body corporate has been prosecuted) any person who at the time of the commission of the offence was a director, manager or an officer concerned in the management of the body corporate or was purporting to act in such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances of the case.

Section 48. Principal criminally liable for acts of servant or agent.

Where the agent or servant of a person commits an offence, or does anything or omits to do anything (which if done or omitted to be done by that person would constitute an offence under this Act) that person shall notwithstanding that he has no knowledge of the offence be deemed guilty of the offence and be liable to punishment for the offence unless he proves that-

(a) the act or omission complained of was not within the ordinary scope of the employment of the agent or servant; or

(b) the act or omission complained of was done or omitted to be done without his consent or connivance and that he exercised all such diligence to prevent the commission as he ought to have exercised having regard to all the circumstances of the case.

PART VIII POWERS OF ENFORCEMENT

Section 49. Declaration of office.

Every officer appointed under this Act when acting against any person under this Act shall on demand declare his office and produce to the person against whom he is acting such authority card as the Controller may direct to be carried by such officer.

Section 50. Power to enter premises and inspect and seize goods and documents.

(1) Any officer appointed under this Act may, at all reasonable hours, exercise the following powers, that is to say -

(a) if he has reasonable cause to suspect that an offence under this Act has been committed, he may for the purpose of ascertaining whether it has been committed, enter any premises other than premises used only as a dwelling and require any person carrying on a trade or business or employed in connection with a trade or business to supply him any information or to produce any goods or any documents relating to the trade or business and he may take copies of, or copies of any entry in, any such document;

(b) he may seize and detain any goods and document which he has reason to believe may be required as evidence in proceedings for an offence under this Act.

(2) Any officer appointed under this Act seizing documents and goods in the exercise of his powers under this section shall, as soon as possible, supply a list of the documents and goods seized to the person from whom they are seized.

(3) If a Magistrate, on sworn information in writing -

(a) is satisfied that there is reasonable ground to believe either -

(i) that any document or goods which any officer appointed under this Act has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under this Act; or

(ii) that any offence under this Act has been, is being or is about to be committed on any premises; and

(b) is also satisfied either -

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier, or

(ii) that an application for admission or the giving of such a notice would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return, the Magistrate may by warrant under his hand, which shall continue in force for a period of one month, authorize any officer appointed under this Act to enter the premises, if need be by force.

(4) Any officer appointed under this Act entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary, and on leaving any premises which he has entered by virtue of the powers under subsection (1) or a warrant under the preceding subsection he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

Section 51. Obstruction of officers.

(1) Any person who-

(a) wilfully obstructs any officer appointed under this Act acting in pursuance of this Act;

(b) wilfully fails to comply with any requirement properly made to him by such an officer under section 50; or

(c) without reasonable cause fails to give such an officer so acting any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under this Act, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) If any person, in giving any such information as is mentioned in the preceding subsection, makes any statement which he knows or has reason to believe to be false, he shall be guilty of an offence and shall, on conviction, be liable to the penalty mentioned in that subsection.

Section 55A. Court may order disposal of goods.

The court trying any person accused of an offence under this Act may, at the conclusion of the trial, regardless whether that person is convicted or not, order that any goods or documents seized from that person be delivered to the rightful owner.

[Am. Act A813.s.28]

Section 56. Compounding.

(1) The Controller or, in his absence, the Deputy Controller may compound any offence which is prescribed to be a compoundable offence by collecting from the person reasonably suspected of having committed such offence a sum of money not exceeding such amount as may be prescribed.

(2) Upon receipt of the payment under subsection (1), no further proceedings shall be taken against such person in respect of such offence and where possession has been taken of any goods or documents under this Act or any regulations made thereunder in connection with such offence, such goods or documents may be released, subject to such conditions as may be imposed.

(3) Where any person has compounded an offence under this Act or any regulations made thereunder, evidence of the notice of acceptance of the offer to compound shall, on production to any court, be treated as proof of the commission of the offence by that person and of the matters set out therein.

(4) The power to compound offences under subsection (1) shall be exercised by the Controller or the Deputy Controller personally.

[Am. Act A813.s.29]

Section 56A. Protection of Controller, Deputy Controllers, Assistant Controllers, etc.

No action or prosecution shall be brought, instituted or maintained in any court against the Controller, Deputy Controllers, Assistant Controllers or any other officer duly appointed Controllers, by the Minister for or on account of or in respect of any act ordered or done for the purpose of carrying into effect this Act, and no suit or prosecution shall lie in any court against any other person for or on account of or in respect of any act done or purported to have been done by him under the order, direction or instruction of the Controller, Deputy Controllers, Assistant Controllers or any other officer duly appointed by the Minister for any such purpose as aforesaid:

Provided that the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served thereby.

[Ins. Act A813.s.30]

Section 57. Regulations.

(1) The Minister may make regulations for or in respect of every purpose which is deemed by him necessary for carrying out the provisions of this Act and for the prescribing of any matter which is authorized or required under this Act to be so prescribed.

**PART IX
REGULATIONS, ETC.**

(3) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

Section 51A. Warrant admissible notwithstanding defects, etc.

A warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission therein or in the application for such warrant and any goods or documents seized under such warrant shall be admissible in evidence in any proceedings under this Act

[Ins. Act A813.s.26]

Section 51B. Powers of investigation.

An Assistant Controller shall have the power to investigate the commission of any offence under this Act or any regulations made thereunder.

[Ins. Act A813.s.26]

Section 52. Supply of information.

(1) The Controller, Deputy Controller and any other officer specially authorized in writing by the Controller in that behalf may in writing require any owner or dealer to supply him any information he may request relating to any hire-purchase agreement or to the goods to which such agreement relates.

(2) Any person who without reasonable excuse fails to supply any information requested under subsection (1) or supplies any information which he knows or has reason to believe to be false commits an offence under this Act.

[Am. Act A813.s.27]

Section 53. Information given by accused person admissible in evidence.

Notwithstanding any law to the contrary for the time being in force, any information given by any person, whether orally or in writing, in compliance or purported compliance with any request made or in response to any question put to him under this Act may be given in evidence in any proceedings against that person for an offence against this Act notwithstanding that it may tend to incriminate him in respect of the offence with which he is charged.

Section 54. Disclosure of information.

If any person discloses to any other person any information obtained by him in pursuance of this Act he shall be guilty of an offence unless the disclosure was made in or for the purpose of the performance of functions under this Act

Section 55. Prosecution.

Any officer appointed under this Act shall have the power to prosecute any offence under this Act or any regulations made thereunder.

FIRST SCHEDULE

[Section 1]

LIST OF GOODS

1. All consumer goods;
2. Motor vehicles, namely -
 - (a) Invalid carriages;
 - (b) Motor Cycles;
 - (c) Motor Cars including taxi cabs and hire cars;
 - (d) Goods Vehicles (where the maximum permissible laden weight does not exceed 2540 kilograms);
 - (e) Buses, including stage buses.

[Subs. Act A 613:s.32]

SECOND SCHEDULE

PART I

[Paragraph 4(1)(a) and Subparagraph 4(1)(b)(i)]

SUMMARY OF YOUR FINANCIAL OBLIGATIONS UNDER THE PROPOSED HIRE-PURCHASE AGREEMENT

This document contains a short description of the goods comprised in the hire-purchase agreement and a summary of your financial obligations under the proposed hire-purchase agreement.

1. Particulars of goods

- (a) Short description of goods:
- (b) If motor vehicle, state registration number.
- (c) State whether new or second-hand:
- (d) Address where goods will be kept:

2. Particulars Relating To Your Financial Obligations

- (a) Cash price of goods^{1*} RM.....
- (b) Amount to be paid before entering into the hire-purchase Agreement (hereinafter referred to as "deposit") RM.....
- (c) Cash price less deposit RM.....
- (d) Freight charges, if any RM.....
- (e) Vehicle registration fee, if any RM.....

¹ * Price stated will be valid for a period of 7 days.

(2) Without prejudice to the foregoing power the Minister may by regulations -

(a) after consultation with the Minister charged with the responsibility for insurance prescribe -

- (i) the rates of insurance in respect of any class or classes of goods;
- (ii) the different rates for insurance in respect of different classes of goods;
- (iii) the rates on a sliding scale; or
- (iv) the rates according to or upon any specified principle or criterion;

(b) require the owners to supply names and other particulars of his servants or agents who shall be exercising the power of taking possession;

(c) regulate the manner by which an owner, his servant or agent shall exercise the power of taking possession;

(d) require records to be maintained by owners and dealers and prescribe the particulars to be recorded;

(e) require owners and dealers to supply at such times as may be specified information relating to hire-purchase transactions;

[Am. Act A 613:s.31]

(f) prescribe the offences under this Act which may be compounded, the amount of such compound and the procedure to be followed in compounding.

[Ins. Act A 613:s.31]

Section 57A. Power to amend Schedules.

The Minister may by order published in the Gazette amend the Schedules to this Act.

(2) Hire-purchase agreements entered into prior to any amendment, or variation of, deletion from, or addition to, any Schedule to this Act shall not be affected by such amendment, variation, deletion or addition and the Act shall continue to apply or not to apply, as the case may be, to such hire-purchase agreements.

[Ins. Act A 1234:s.11]

Section 58. Operation of certain laws.

The Bills of Sale Ordinance 1950 [F.M.No. 30 of 1950] of the States of Malaya, the Bills of Sale Ordinance of Sabah [Cap 14] and the Bills of Sale Ordinance of Sarawak [Cap. 68] and any subsequent or other legislation for the time being in force in the Federation relating to Bills of Sale shall not apply to any provision in any hire-purchase agreement whereby the rights of the owner thereunder are extended to any replacements or renewals by the hirer of any part or parts of or any accessories added or additions made by the hirer to any goods comprised in any such agreement.

PART II

(Subparagraph 4(1)(b)(ii))

CONSENT OF PROSPECTIVE OWNER

3. Insurance:
(a) For motor vehicle, insurance in respect of the first year only: RM
(b) For goods other than motor vehicles, in respect of the duration of the hire-purchase agreement RM

4. Terms charges:
(a) For fixed rate
i. Rate per annum %
ii. Total amount of terms charges RM
(b) For variable rate
i. Rate per annum % + BLR, currently at %
ii. Total amount of terms charges** RM
Balance originally payable under the agreement** RM
Annual Percentage Rate** RM
Balance originally payable under the agreement, inclusive of deposit, referred to in the agreement as the "hire-purchase price"*** RM
Difference between cash price of goods and the total amount you will have to pay** RM

5. Particulars Relating to Payment
Duration of payment of instalments in--
(a) number of months or years**
(b) number of instalments**
(c) amount of each instalment**

This document is issued by or on behalf of on this day of at pursuant to Paragraph 4(1)(a)/Subparagraph 4(1)(b)(i)*** of the Hire-Purchase Act 1967.
This document is given free of charge without any obligation to enter into a hire-purchase agreement.

I/We of hereby acknowledge receipt of this document.
NRIC No. Signature
Date [Subs. P.U.(A) 163/2005]

2 ** where the terms charges are at a variable rate, the particulars specified shall be based on the BLR applicable at the time of serving of this written statement.
3 *** Strike out whichever is inapplicable.

TO
TAKE NOTICE that
NRIC No. of intends to enter into a hire-purchase agreement in respect of and a copy of a summary of his financial obligations under the proposed hire-purchase agreement has been served on him on the day of 19, a copy of which is attached herewith, pursuant to subparagraph 4(1)(b)(i) of the Hire-Purchase Act 1967.
2. If you agree to be a party as owner in the proposed hire-purchase agreement, kindly confirm by signing at the appropriate column of this document.
..... (Signature of Dealer)
Name:
Address:
Date:

TO
4. I/We hereby agree to be a party as owner in the proposed Hire-Purchase agreement.
..... (Signature of the prospective owner)
Name:
Address:
Date:

[Act A813:s.33]

THIRD SCHEDULE
[Deleted by Act A813:s.34]

FOURTH SCHEDULE

4. * Insert Description

NOTICE OF INTENTION TO RE-POSSES

Take notice that we the owner of \$..... hired by you under an agreement dated the , intends to retake possession of the goods after the expiration of days from the service of this notice unless the arrears of instalments including arrears of interest due on overdue instalments which now amount to RM are paid to at on or before

Total amount payable ⁵ as at ... / ... / ... RM
 Amount paid or provided by hirer to ⁶ RM
 / / RM
 Arrears under agreement to / RM
 / / /

And further take notice that if the goods are returned to the owner within twenty-one days after the service on you of this notice, you will not be liable to pay the following, namely:

- (i) cost of repossession;
- (ii) cost incidental to taking possession; and
- (iii) cost of storage.

[Subs. P.U.(A) 163/2005]

FIFTH SCHEDULE

NOTICE TO HIRERS UNDER SECTION 16

Now that the goods you hired have been re-possessed you will be entitled to get them back- (a) if, within twenty one you require the owner, by notice in writing signed by you or your agent, to re-deliver the goods to you and if, within twenty one days after giving the notice, you reinstate the agreement by paying the arrears and remedy the following breaches of the agreement (or pay the owner's expenses in remedying them):

The owner's estimate of the amount you must pay to reinstate the agreement is-

Arrears of instalments	RM.....
Arrears of interest due on overdue instalments	RM.....
Cost of storage, repair or maintenance	RM.....
Cost of re-possession	RM.....
Cost of re-delivery	RM.....
Total	RM.....

Or

(b) if within twenty one days, you give notice of intention to finalise the agreement and pay the balance due under the agreement and costs of the re-possession:

The owner's estimate of the amount required to finalise the agreement is--

(i) where in the hire purchase agreement the term charges are at a fixed rate:
 Total amount payable under the agreement RM.....
 Less deposit and instalments paid RM.....
 Balance due under agreement RM.....
 Less statutory rebates RM.....
 Add arrears of interest due on overdue interests RM.....
 Add costs of re-possession RM.....
 Storage, repair or maintenance RM.....
Total **RM.....**

(c) If you do not reinstate or finalise the agreement you will be liable for the owner's loss unless the value of the goods re-possessed is sufficient to cover your liability. If the value of the goods is more than sufficient to cover your liability you will be entitled to a refund.

The owner's estimate of the value of the goods re-possessed is RM.....
⁶ On the basis of that estimates you are entitled to a refund of RM.....
 You are liable to pay the owner RM.....

⁵ * Insert description of goods

⁶ **where the term charges are at a variable rate, the total amount payable consists of outstanding amount financed and term charges accrued up to the date indicated above.

⁷ *** not applicable where the term charges are at a variable rate.

⁸ * Strike out whichever inapplicable.

expressed in years and fractions of years.
 P represents the difference between the cash price of the goods comprised in the agreement and the amount of the deposit, together with—

- (a) freight, if any; and
- (b) vehicle registration fees, if any; and
- (c) insurance, if any.

expressed in ringgit and sen.

2. Where the terms charges are at a variable rate, the terms charges shall be calculated in accordance with the following formula:

$$\left[\left(\frac{P (RT)}{100 [1 - (1 + (RT/100))^N]} \right) \times N \right] \cdot P$$

Where

R represents the terms charges calculated as a rate per centum per annum (based on total of Base Lending Rate (BLR) plus margin)

T represents the number of scheduled payments per annum

N represents the total number of instalments for the hiring period

P represents the difference between the cash price of the goods comprised in the agreement and the amount of the deposit, together with—

- (a) freight, if any; and
- (b) vehicle registration fee, if any; and
- (c) insurance, if any,

expressed in ringgit and sen.

[Subs. P.U.(A) 163/2005]

NOTE- You may give a written notice to the owner requiring the owner to sell the goods to any cash buyer you can introduce who is willing to pay the owner's estimate of the value, i.e.,

DO NOT DELAY

Action to enforce your rights should be taken at once. You will lose your rights twenty one days after the service or posting of this notice if you do not take action.

NOTE- Where this notice is sent to a guarantor it shall be endorsed as follows:

This notice is sent to you as guarantor of.

As guarantor you have certain rights under the Hire-Purchase Act 1967 and you are advised to seek advice at once.

[Subs. P.U.(A) 163/2005]

SIXTH SCHEDULE
 [Section 30]

TERMS CHARGES

1. Where the terms charges are at a fixed rate, the terms charges shall be calculated in accordance with the following formula:

$$R = 100 \times C \frac{T \times P}{T \times P}$$

Where

R represents the terms charges calculated as a rate per centum per annum.

C represents the amount of terms charges expressed in ringgit and fractions of ringgit.

T represents the time that elapses between the time fixed by or under the agreement for the making of the first instalment and the time so fixed for the making of the last instalment, together with—

- (a) one week where the instalments are payable under the agreement at regular weekly intervals;
- (b) two weeks where the instalments are payable under the agreement at regular fortnightly intervals;
- (c) one month where the instalments are payable under the agreement at regular monthly intervals.

* + Insert owner's estimate of value.

SEVENTH SCHEDULE
[Schedule 4C]

ANNUAL PERCENTAGE RATE

The annual percentage rate shall be calculated in accordance with the following formula:

$$\frac{2NF (300C + NF)}{2NF + 300C (N+1)}$$

Where

N is the total number of instalments.

C is the number of instalments that, under the contract, will be paid in one year or, where the contract is to be completed in less than one year, the number of instalments that would be paid in one year if instalments continued to be paid at the same intervals.

F is the amount determined in accordance with the formula -

$$\frac{100C \times T}{N \times A}$$

Where

C is the same number as the first-mentioned formula.

T is the total amount of the pre-determined terms charges.

N is the total number of instalments.

A is the amount financed.

The Operation Of
HIRE PURCHASE-i (Islamic Hire-Purchase)

Also Known as

AL-IJĀRAH THUMMA AL-BAI' (AITAB)

In The Malaysian Financial Institutions

(Interview Guide)

Nurdianawati Irwani Abdullah
Department of Economics, Loughborough University
Loughborough, Leicestershire
LE11 3TU ENGLAND
N.I.Abdullah@lboro.ac.uk



- 1) From your experience and understanding, please explain the operation of Islamic Hire-Purchase (AITAB) in general.
- 2) From your opinion, to what extent has Islamic hire-purchase (AITAB) been accepted by the bank customers?
 - Well accepted
 - Not well accepted
 - Don't Know
- 3) Are there any pertinent problems arising from the current practice of Islamic hire-purchase (AITAB)? If yes, could you please explain such problem(s)?
- 4) How is Islamic Hire-Purchase (AITAB) legally operated now?
 - Based on conventional hire-purchase concept
 - Based on principle of *ijārah* and sale
 - Not sure
- 5) Do you find Hire-Purchase Act 1967 (HPA) adequate to govern the operation of Islamic hire-purchase (AITAB)?
 - Yes
 - No
 - Not sure
- 6) Do you think Islamic hire-purchase (AITAB) should be governed by a specific *Sharī'ah* law?
 - Yes
 - No
- 7) What is your opinion of the Bill?
- 8) What are your suggestions to provisions that need to be included in the *Muámalah* Hire-Purchase Bill?
- 9) What are the impediments of implementing *Muámalah* Hire-Purchase Bill in Malaysia?
- 10) How do you foresee the future of Islamic hire-purchase (AITAB)?
- 11) Additional information and issues pertaining to the operation of AITAB (Islamic Hire-Purchase) in Malaysia.



PROFILE OF RESPONDENT

- Name : _____
- Institution : _____
- Position : _____
- Specialization : _____
- Other Involvements: _____

- Years with the present institution:

- Less than 1 year
- 1-5 years
- 6-10 years
- More than 10 years

- Years in the present position:

- Less than 1 year
- 1-5 years
- 6-10 years
- More than 10 years

***Thank you for taking the time to complete all questions in this survey.
Your assistance in providing this information is very much appreciated.***

If you would like a summary of results, please write your e-mail address below.

E-mail: _____

For office use only

Questionnaire No. :

Date of Interview :

Date of Delivery :

Started at :

Date of Receipt :

Finished at :



A Survey on The Operation Of

**HIRE PURCHASE-i
(Islamic Hire-Purchase)**

Also known as

**AL-IJĀRAH THUMMA AL-BAI'
(AITAB)**

In The Malaysian Financial Institutions

Confidential

Nurdianawati Irwani Abdullah
Department of Economics, Loughborough University
Loughborough, Leicestershire
LE11 3TU ENGLAND
N.I.Abdullah@lboro.ac.uk

FOR OFFICE USE ONLY

Questionnaire No.: _____

Date of Delivery: □□ / □□ / 2004
Date of Receipt: □□ / □□ / 2004

GENERAL INSTRUCTIONS AND INFORMATION

1. All individual response to this questionnaire will be kept **STRICTLY CONFIDENTIAL**.
2. Based on your experience, please give your honest impressions of the current practice and implementation of Hire Purchase-i (Islamic hire-purchase)) in Malaysia. Islamic hire-purchase is also known as Al-Ijārah Thumma Al-Bai' (AITAB).
3. There is nothing you need to go and “look up”. Thus, there is no right or wrong answer. Please do not worry about questions that seemingly look alike. If you do not have the exact answer to a question, please provide your best estimate by ticking the appropriate boxes in the questions. **Your answers are very important to the accuracy of the study.**
4. If you wish to make any comment, please feel free to use the space at the back of the questionnaire.

Thank you very much!

SECTION 1: OPINION ABOUT AITAB

(Please tick (✓) an appropriate box)

1) How did you get to know AITAB (Islamic hire-purchase)?

- Advertisement
- Bank's prospectus
- Conferences and seminars
- Friends and colleagues
- All the above
- No answer
- Others *(please specify)*: _____

2) Which bank or company did you sign for AITAB?

- Affin Finance
- AmFinance
- Bank Muamalat
- Bank Pembangunan
- Bank Rakyat
- EON Finance
- Hong Leong Finance
- HSBC
- Mayban Finance
- Public Finance
- Southern Finance
- Others *(please specify)*: _____

3) Are you satisfied with the procedure of entering into AITAB (Islamic hire-purchase)?

- Satisfied
- Not satisfied

4) If you are SATISFIED with the procedure, is this because

- Convenient payment system
- Standard AITAB contract
- The procedure has been made clear to you before you entered into AITAB transaction
- Uncomplicated preparation of documents
- All the above
- Do not care
- Other reason *(please specify)*: _____

5) If you are NOT satisfied with the procedure, is this because

- No standard set of AITAB contract
- The AITAB contract(s) is lengthy and confusing
- The procedure is confusing
- Very complicated terms and conditions
- Not compliance with *Sharīah* requirements
- Do not care
- Other reason *(please specify)*: _____

SECTION 2: OPINION ABOUT CONVENTIONAL HIRE-PURCHASE

(Please tick (✓) an appropriate box)

6) Have you ever used CONVENTIONAL hire-purchase?

- Yes *(please go to the next question)*
- No *(please go to Section 4)*

7) Are you satisfied with conventional hire-purchase?

- Satisfied
- Not satisfied

8) If you are SATISFIED with the facility, is this because:

- Convenient payment system
- Standard hire-purchase contract
- The procedure has been made clear to you before you entered into hire-purchase transaction
- Uncomplicated preparation of documents
- All the above
- Do not care
- Other reason *(please specify)*: _____
(Please go to question 10)

9) If you are NOT satisfied with the facility, is this because:

- No standard set of hire-purchase contract
- The hire-purchase contract(s) itself is confusing and lengthy
- The procedure is confusing
- Very complicated terms and conditions
- Interest-based scheme
- Do not care
- Other reason *(please specify)*: _____

SECTION 3: HIRE-PURCHASE COMPARED

Please tick (✓) an appropriate box.

10) If you have used both AITAB (Islamic hire-purchase) and Conventional Hire-Purchase before, which one has given you MORE benefits?

- AITAB (please go to the next question)
 Conventional Hire-Purchase (please go to Question 12)

11) If AITAB (Islamic hire-purchase) has given you more benefits, do you agree with the reasons below:

	Strongly Agree	Moderately Agree	Do Not Know	Moderately Disagree	Strongly Disagree
▪ Free processing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Free consultation and enquiries	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Speedy processing and approval	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Attractive financing terms and conditions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Friendly customer service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Lower rates of Bank's return	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Longer financing period	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Easy instalment payments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ AITAB is based on <i>Sharīah</i> principles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Other reason (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(Please go to Question 13)

12) If CONVENTIONAL hire-purchase facility has given you more benefits, please indicate to what extent you agree or disagree with the reasons provided below.

	Strongly Agree	Moderately Agree	Do Not Know	Moderately Disagree	Strongly Disagree
▪ Clear procedure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Low monthly instalments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Lower rates of Bank's return	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Free processing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Free hire-purchase consultation and enquiries	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Speedy processing and approval	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Attractive financing terms and conditions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Friendly customer service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Easy instalment payments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Other reason (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION 4: CONCLUDING REMARK

Please tick (√) an appropriate box.

13) Please indicate your overall view on AITAB (Islamic hire-purchase) facility.

	Strongly Agree	Moderately Agree	Do Not Know	Moderately Disagree	Strongly Disagree
▪ In accordance to <i>Shari'ah</i> guidelines	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ A good alternative to purchase	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ No much different from conventional hire-purchase	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Too costly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Financing method of last resort	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Better than nothing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ No view	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Other view (<i>specify</i>) :	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

14) Finally, if you were given a choice to use either AITAB (Islamic hire-purchase) or Conventional hire-purchase, which one do you prefer?

- AITAB
- Conventional Hire-Purchase

SECTION 5: PERSONAL INFORMATION

Please tick (✓) an appropriate box.

- **Gender:**
 - Male
 - Female

- **Age:**
 - Below 20
 - 20-30
 - 31-40
 - 41-50
 - Above 50

- **Marital Status:**
 - Single
 - Married

- **Occupation:**

<input type="checkbox"/> Manager	<input type="checkbox"/> Businessman/Trader
<input type="checkbox"/> Professionals	<input type="checkbox"/> Clerical/Support staff
<input type="checkbox"/> Academician	<input type="checkbox"/> Unemployed
<input type="checkbox"/> Housewife	<input type="checkbox"/> Retired
<input type="checkbox"/> Student	<input type="checkbox"/> Others

- **Educational Background:**

<input type="checkbox"/> Secondary and lower	<input type="checkbox"/> Professional Qualification
<input type="checkbox"/> Diploma/A-Level	<input type="checkbox"/> Masters or Ph.D
<input type="checkbox"/> Bachelor (First Degree)	

*Thank you for taking the time to complete this questionnaire.
Your assistance in providing this information is very much appreciated.*

If there is anything else you would like to tell us about this survey or other comments you wish to make that you think may help us to understand the operation of AITAB and issues arising thereof, please do so in the space provided below.

.....

.....

.....

If you would like a summary of results, please write your e-mail address below.

E-mail: _____

Please return your completed questionnaire to:

Nurdianawati Irwani Abdullah
Researcher
Department of Business Administration, KENMS,
International Islamic University Malaysia,
53100 Kuala Lumpur.

Tel: 03-2056 4663/4758 Fax: 03-2056 4850 email: N.I.Abdullah@lboro.ac.uk

APPENDIX D



Date: 17th May 2004

السلام عليكم ورحمة الله وبركاته

Dear Sir/Madam,

RESEARCH ON THE OPERATION OF ISLAMIC HIRE-PURCHASE IN MALAYSIA

I am currently conducting a research project about the operation of *Al-Ijarah Thumma Al-Bai'* (AITAB) or Islamic Hire-Purchase in Malaysian Financial Institutions. The main objective of this research is to analyse the perspectives and impressions of financiers and experts in AITAB operation.

Therefore it would be very grateful if I could discuss with you some issues arising from the implementation of AITAB (*please refer to the attached Interview Guide*). Your assistance will provide invaluable input to this research, and is very important to the accuracy of the study. The outcome of the study will be very significant for the legal development of Islamic banking system in Malaysia.

Your responses to the questionnaires will be treated as highly CONFIDENTIAL and used for academic purposes only. If you would like a summary of result please write your e-mail address on the enclosed interview guide.

Your cooperation and support are very much appreciated.

Thank you.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'N.I. Abdullah'.

Nurdianawati Irwani Abdullah

Researcher

Department of Economics, Loughborough University

Leicestershire LE11 3TU

United Kingdom

Email: N.I.Abdullah@lboro.ac.uk

Department of Business Administration

Kulliyyah of Economics and Management Sciences

International Islamic University Malaysia

Tel: 03-2056 4663/4758

Fax: 03-2056 4850

Department of Economics
Loughborough University Leicestershire LE11 3TU UK
Switchboard: +44 (0)1509 263171 Department: +44 (0)1509 222701



APPENDIX E

Dear Sir/Madam,

We are currently conducting a research project about the operation of *Al-Ijarah Thumma Al-Bai'* (AITAB) or Islamic Hire-Purchase in Malaysian Financial Institutions. Our main objective is to analyse the perspectives and impressions of persons who are involved in AITAB either as customers or financiers.

We would be very grateful if you could complete this questionnaire and return it as soon as possible. Your participation will provide invaluable input to this research, and is very important to the accuracy of the study. The outcome of the study will be very significant for further legal development of Islamic banking system in Malaysia.

Your responses to the questionnaires will be treated as highly CONFIDENTIAL and used for academic purposes only. If you would like a summary of result please write your e-mail address on the enclosed questionnaire.

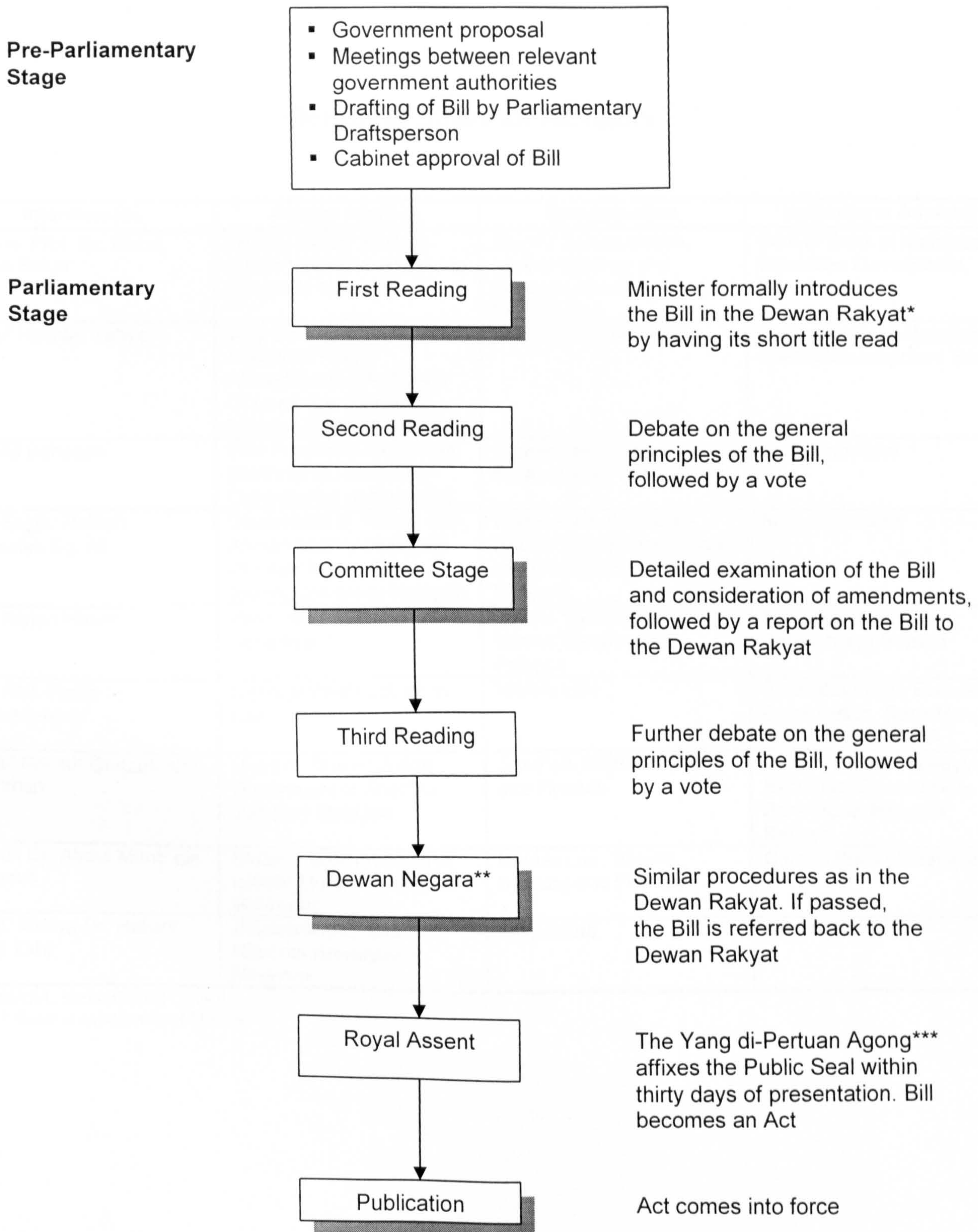
Your cooperation and support are very much appreciated.

Thank you.

Yours faithfully,

APPENDIX F

PROCEDURE FOR THE ENACTMENT OF AN ACT OF PARLIAMENT



Note:

- * Dewan Rakyat : House of Representatives
** Dewan Negara : House of Senate
*** Yang di-Pertuan Agong : The Royal Highness, Constitutional Head of Malaysia

APPENDIX G

Details of *Sharī'ah* Advisors

Interviewees	Formal Position	Specialization	Institutions Advised
Assoc. Prof. Dr. Mohd. Daud Bakar	Deputy Rector Student Affairs International Islamic University Malaysia	Islamic Jurisprudence, Islamic Banking and Finance, <i>Sharī'ah</i> , Islamic Medical Law	Central Bank of Malaysia, Securities Commission, Dow Jones
Dato' Hashim Yahya	Very Distinguished Academic Fellow Ahmad Ibrahim Kulliyah Of Laws International Islamic University Malaysia	<i>Sharī'ah</i> , <i>Mu'amalah</i>	Central Bank of Malaysia, Islamic Development Bank
Dr. Ali Baharum	Vice President ANGKASA (National Co-operative Organisation of Malaysia)	Islamic Law, Islamic Banking and Finance	Bank Muamalat
Dr. Engku Rabiah Adawiah Eg. Ali	Department of Private Law, Ahmad Ibrahim Kulliyah Of Laws International Islamic University Malaysia	Company & Securities, Islamic Law of Transaction, Islamic Banking and Finance	Bank Muamalat
Dr. Aznan Hasan	Head, Islamic Law Department	Islamic Transaction, Islamic Banking and Finance	Bank Muamalat, Amanahraya Berhad
Dr. Abd. Halim Muhammady	Distinguished Lecturer in Law	Islamic Law	Bank Muamalat, Securities Commission, Bank Rakyat, MARA & ANGKASA
Dato' Sheikh Ghazali Abd. Rahman	Head of <i>Sharī'ah</i> * Judge Department of <i>Sharī'ah</i> Judiciary Malaysia	<i>Sharī'ah</i> , Islamic Banking and Finance	Central Bank of Malaysia, Securities Commission, Bank Islam Malaysia Berhad
Datuk Dr. Abdul Monir bin Yaacob	Director IKIM (Institute of Islamic Understanding Malaysia)	Islamic Law, Islamic Banking and Finance	Central Bank of Malaysia
Prof. Madya Dr. Hailani Muji Tahir	Department of <i>Sharī'ah</i> , National University of Malaysia	<i>Mu'amalah</i>	Affin Finance

MARA: National Trust Council

* *Sharī'ah* is an adjective of *Shari'ah*

Details of *Shari'ah* Scholars

Interviewees	Formal Position	Specialization	Other Involvement
Mahmood Mohamed Sanusi	Associate Professor, Islamic Law Department IIUM	Islamic Jurisprudence, Islamic Transaction	-
Prof. Dr. Sano Koutoub Moustapha	Director, International Institute for Muslim Unity	Professor in Islamic Jurisprudence, Islamic Economics	Council of International <i>Fiqh</i> Academy, OIC Assembly of Muslim Jurists in America Board of Trustees AAOIFI, Bahrain
Assoc. Prof. Dr. Shafaai Musa	Assistant Professor, Islamic Law Department IIUM	Islamic Law, Islamic Transaction	Advisor to <i>Waqf</i> institution
Siti Zalikah Hj. Mohd. Noor	Associate Professor, Department of <i>Shari'ah</i> , UKM	Islamic Law, Islamic Economics, Islamic Jurisprudence	National Technical Committee, <i>Sharie</i> Lawyer
Dr. Samsuri Sharif	Assistant Professor, Faculty of Economics and Management Sciences, IIUM	Islamic Jurisprudence, Islamic Law, Islamic Economics	<i>Shari'ah</i> Advisor EON Finance, CIMB, Southern Bank
Dr. Mohd. Parid Sheikh Hj. Ahmad	Assistant Professor, Faculty of Economics and Management Sciences, IIUM	<i>Fiqh, Usul Fiqh, Siyasaah Shariyyah</i>	<i>Shari'ah</i> Advisor CIMB, Hijrah Unit Trust
Prof. Abdullah Alwi	Head, <i>Shari'ah</i> and Economy Department, UM	Islamic Law, Islamic Economics	<i>Shari'ah</i> Advisor, Al- <i>Hidayah</i> Investment Bank (Labuan) Ltd and IBFIM
Dr. Osman Sabran	Associate Professor, Centre for Islamic Studies and Social Development, UTM	Islamic Jurisprudence, Islamic Banking	<i>Shari'ah</i> Advisor Cooperative Society

IIUM: International Islamic University Malaysia
 UKM: National University of Malaysia
 UM: University of Malaya
 UTM: Technology University of Malaysia
 IBFIM: Islamic Banking and Finance Institute of Malaysia
 CIMB: Commerce International Merchant Bankers Limited
 EON: National Automobile Distributor