

AXIS financing:

A case study on cross border Islamic financing

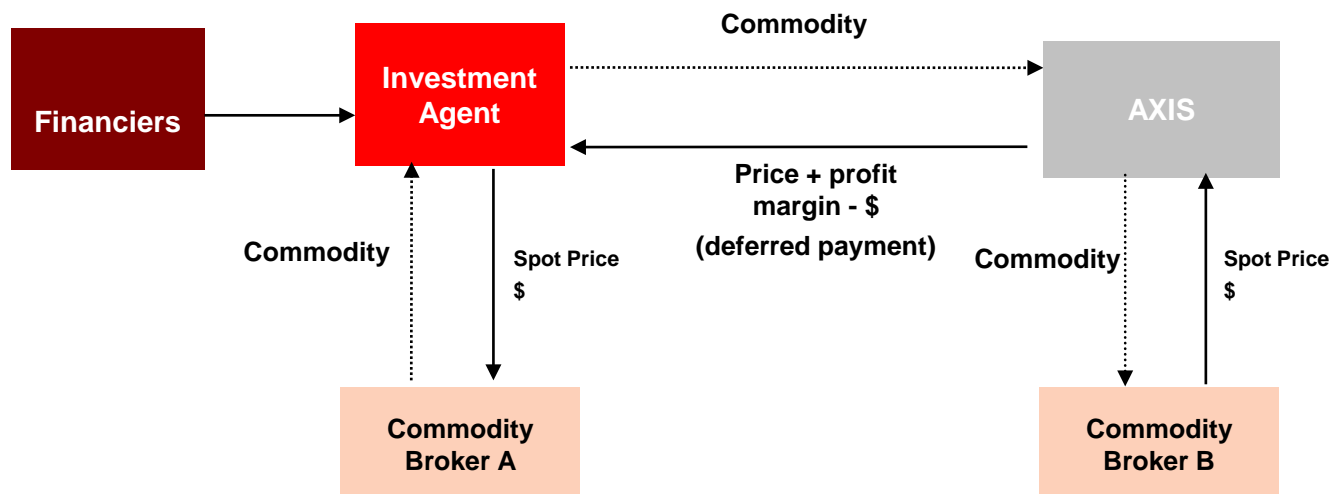
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Why is it interesting?

- In May 2011, PT Axis Telekom Indonesia ('AXIS') entered into a US\$1.2bn Islamic financing comprising three murabaha facilities (including export credit financing) sourced across multiple jurisdictions.
- The largest private sector financing in Indonesia in 2011
- The largest shari'a compliant hedge trade ever undertaken by an Asian company.
- The first Islamic financing that involved China Development Bank supporting the procurement of product and civil works services from Huawei Technologies Company for USD 400 million, and a USD 350 million equipment purchase from Ericsson funded by AB Svensk Eksportkredit - backed by EKN Sweden's export credit agency.
- It includes a USD 450 million syndicated Murabaha, featuring dual currencies, to be applied towards AXIS's general expansion. This portion was structured with dual currencies in order to attract appetite of Saudi based investors to participate in the financing.
- It incorporates political risk guarantee from the World Bank Groups' Multilateral Investment Guarantee Agency (MIGA).

Structure



1. Funding:

The Murabaha Investment Agency Agreement is executed by, among others, AXIS as Purchaser, the Murabaha Investment Agent, and the Murabaha Facility Participants, and the Financiers (represented by the investment agent) to, among others, provide funds and the purchase of certain type of commodities from Commodity Broker A.

2. Sale of the Commodity:

Utilisation of the Facility will be via a purchase and sale of commodities under a Murabaha arrangement. Under the Facility, the Investment Agent on behalf of the Financiers will purchase from Commodity Broker A, specific shariah compliant commodities for a purchase price on a spot basis, and subsequently for a sale on a deferred payment basis to AXIS as the Purchaser. As owner of the commodity, AXIS sells the commodity to Commodity Broker B on a spot basis to realise the cash. The purchase and sale of the Commodity by AXIS is completed in a short period after its purchase from the Investment Agent that it is not subject to any price or inventory risk.

Transaction Documents

- the Common Terms Agreement;
- the Intercreditor Agreement;
- the Sponsor Support Deed;
- the Master Murabaha Agreement;
- the Investment Agency Agreement;
- the MMA Supplemental Letter;
- the Murabaha Netting Letter;
- the Security Assignment;
- the Offshore Project Account Charge;
- Fiducia Security Documents (which consist of the Fiduciary Assignment of Insurance Proceeds, Fiduciary Assignment of Movable Assets and Fiduciary Assignment of Receivables;
- Pledge of Indonesia Accounts; and
- Pledge of Shares.

Interesting features

Break-funding cost

- Possibility of break-funding cost should one of the tranches is not fully utilized.
- Wa'd or undertaking was made to accommodate its Shariah compliancy. Additional profit (amounting the possible break-funding cost) was incorporated to the profit calculation, which can only be exercised by the promisee (the financiers) if such tranche is not fully utilised.
- If such tranche is fully utilised, the promisee (the financiers) can waive their rights to such additional profit.

Late payment charges

- Wa'd was also used in which a late payment charges is added to the profit margin calculation (based on an certain assumption and calculation, and payable on the next payment date). If there is no late payment charge applicable, the promisee may again waive its right to such additional profit amount.

Limitations of Commodities Murabahah in Indonesia

- Criticisms made on commodity murabahah-based financial products contain a striking likeness to interest-based products.
- The model of commodity murabahah (or tawarruq in some jurisdictions) has only recently been widely applied and accepted, with certain limitation and usage in respective jurisdictions.
- In Indonesia, the structure is allowed only for commodities trading via the Future Exchange. The objective is more to provide alternatives of money market transactions, notably, for transactions between Islamic banks to manage liquidity management.
- Given the financiers are mostly offshore, fatwas compliance is for the syariah board for such offshore financiers, rather than for Indonesian banks.

CONCLUSION

The AXIS financing was a landmark transaction, that introduces foreign governmental institutions in conducting their maiden Shariah compliant transactions.

It becomes a precedent that gives opportunity to Indonesian companies to seek Islamic cross-border financing.