

Pronouncement of the Shariah Committee of Bursa Malaysia Islamic Services Sdn Bhd

In the Name of Allah, the Most Gracious the Most Merciful

19th Muharram 1444H – 17th August 2022

Subject: Voluntary Carbon Market and *Takyif Fiqhi* of Carbon Credits

All praise is due to Allah, prayers and peace be upon the last Prophet Mohammad, and be upon his relatives and all his companions,

The Shariah Committee of Bursa Malaysia Islamic Services Sdn. Bhd. (“Committee”) during its 40th Meeting held on 17 August 2022 had discussed on the proposed Voluntary Carbon Market (“VCM”) and *Takyif Fiqhi* (Fiqh Adaptation) of Carbon Credits.

VCM facilitates trading of Carbon Credits in Malaysia. VCM allows corporations to offset their unavoidable emissions by purchasing Carbon Credits issued from verified projects targeted at removing or reducing Greenhouse Gases (“GHG”) equivalent emissions from the atmosphere. Each Carbon Credits, which corresponds to one metric ton of reduced, avoided or removed GHG equivalent can be used by corporations to compensate for the emission of one ton of GHG equivalent. When a Carbon Credits is used for this purpose, it becomes an offset. It is moved to a register for retired credits, or retirements, and it is no longer tradable.

On the VCM, the Committee has been presented with the followings:

- Onboarding Process
- Account Management
- Product Listing and Linkages with Carbon Registries
- Pre-trade Condition
- Trading
- Settlement
- Retirement or Transfer of Carbon Credits

In addition, the Committee was presented on the different types of Carbon Credits and Carbon Registries namely:

- Verra;
- Gold Standard; and
- ART Trees.

The Committee was presented on the verification processes, its principles, methodologies and has deliberated on the *Takyif Fiqhi* of Carbon Credits. Carbon Credits issued as the result of a carbon-reduction project either from Nature-Based Solution (NBS) project or Non-NBS/Tech-Based Solution project is a certificate with a unique serial number on a Carbon Registry, representing one metric ton of GHG equivalent that is either prevented from being emitted or removed from the atmosphere.

The Committee then deliberated on the *Takyif Fiqhi* of Carbon Credits where the Committee first look upon the legal nature and the legal implications of Carbon Credits as provided by the legal firm appointed for the VCM.

It was presented that in the absence of legislation in Malaysia prescribing the legal characteristics of Carbon Credits, it is likely to be regarded as “intangible property” with the holder of such “intangible property” which are digital in nature being entitled to the relevant rights and subject to the obligations which are prescribed under the rules of the relevant Carbon Registries.

The legal firm also shared precedent cases where the court in determining one as "property" requires the satisfaction of the requirements of being "definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability".

For the Carbon Credits, it appears to fulfil all elements of the definition of "property" by the court as:

1. there is a certificate with a unique serial number and is therefore definable;
2. it is identifiable by third parties as it is recorded on a Carbon Registry;
3. it is capable of assumption by third parties given that it is tradeable, subject to the rules of the relevant Carbon Registry; and
4. it has permanence and stability since it continues to exist on the Carbon Registry until it is retired.

The Committee then observed into the elements for a property or an asset to be recognized in Shariah. There are four elements of an asset that can be recognised in Shariah (*see: Sheikh Ali Muhyiddin Al-Qaradaghi, Al-Mal fi al-Islam – Dirosah Fiqhiyyah Ta'siliah, 18th Conference of the European Council for Fatwa and Research, Paris, 2008*) based on the classical views of the Hanafis and Jumhur as follows:

- 1. The asset (whether an item, benefits or rights) must have an attached value -**
كل عين ، أو حق له قيمة مادية

Carbon Credits are issued from verified projects where the verification processes follow a specific standard to ensure the amount of GHG removed or reduced from the atmosphere. The Carbon Credits gives rights to its holders based on the rules of Carbon Registries to offset their unavoidable carbon emission with a value based on Carbon Pricing mechanism which include Carbon Tax where economic value or price tag is attached to carbon emissions. Attached value of Carbon Credits is also influenced by the volume of credits traded at a time (demand and supply), the geography of the project, its vintage, and the delivery time.

Similar concept can be deduced from Mufti Taqi Usmani when he commented on the issue of trade license and trademarks in government registries as contemporary assets with value and can be traded:

“Like electric power or gas, which in previous times was not counted as valuables and valuable objects, because it is not a self-existing thing, and its attainment was not within human capacity, but it is now become one of the dearest and most valuable assets that there is no doubt about the permissibility of buying and selling it, for its huge benefit, and the possibility of acquiring it, and it is known to people for its worth and its value. Likewise, the trade name or trademark has become very valuable with government registration in the business custom, and it is certified that it is achieved by obtaining its written testimony before the government. The reality in this license is that it is not a physical asset, but rather it is the right to sell the goods in abroad or buying it from them, so what we have mentioned in the trade name is that this right is authentically established. It is permissible to exchange it with money, and since obtaining this license from the government requires both efforts, time and money, and gives its holder a legal status represented by written certificates and the facilities provided by the government to their holders are deserved by the traders, and this license has become in the business custom the same great value with which to follow the path of other valuables, so it is not unlikely that it will join the physical assets in the permissibility of selling and buying it.”

(Taqi Usmani, Buhuth fi Qadaya Fiqhiyyah Al-Mu'asoroh - Bai' al-Huquq al-Mujarradah, pg. 120)

2. The asset must prove to be beneficial according to prevalent customs -

منفعة حسب العرف السائد

Corporations today are aligning themselves with the sustainable and net-zero agenda. Based on McKinsey, the number of companies with net-zero pledges doubled, from 500 in 2019 to more than 1,000 in 2020. To meet the worldwide net-zero target, corporations need to reduce their own emissions as much as they can. For some corporations, certain sources of emissions cannot be eliminated so purchasing Carbon Credits is one way for a corporation to address emissions it is unable to eliminate.

Purchasing Carbon Credits in the current business environment increases the holder's reputation, attracting socially conscious investor and assisting corporations in their

sustainability and carbon reporting to shareholders and stakeholders. Finally ensuring corporations to be accountable for their sustainable and net-zero agenda.

3. The asset must be able to be owned and controlled by a party - تحقق الحيازة

Carbon Registries such as Verra issues a certificate and a unique serial number for each issued Carbon Credits. Furthermore, each Carbon Credits will be able to be traded by involved parties until it is used as offset and retired from the Carbon Registries.

4. The asset must be allowed to be utilized by the Shariah - إباحة الانتفاع به شرعاً

Carbon Credits does not fall under the categories of Shariah-prohibited assets both as *Haram Lizatihi* (prohibited in essence) or *Haram Lighairihi* (prohibited based on external factors), hence are considered Shariah-recognized assets.

The Committee are of the opinion based on the legal and Shariah considerations that Carbon Credits is to be considered as an **asset recognised by Shariah**. Based on the relevant rights and obligations which are prescribed under the rules of the Carbon Registries, corporations holding Carbon Credits may among others offset their unavoidable GHG equivalent emission which resulted from their business activities.

Considering the legal opinion of Carbon Credits as intangible asset or intangible property due to its digital nature, it can also be recognised in Shariah based on both the International Islamic Fiqh Academy - Organization of Islamic Cooperation (“IFA-OIC”) and the Accounting and Auditing Organization for Islamic Financial Institutions (“AAOIFI”) which have considered intangible assets as real property:

“Business name, corporate name, trademark, literary production, invention or discovery, are rights belonging to their holders and have in contemporary times, financial value which can be traded. These rights are recognized by Shariah and should not be infringed.”

(IFA-OIC Resolution no. 43 (5/5))

AAOIFI emphasised on the IFA-OIC resolution by adopting word by word the IFA-OIC Resolution in defining intangible assets.

The Committee hoped that the establishment of the VCM and the *Takyif Fiqhi* of Carbon Credits will assist various stakeholders in meeting their carbon commitment focusing on reducing GHG equivalent emissions and achieving carbon neutrality as soon as possible for the sake of humanity.

ظَهَرَ الْفَسَادُ فِي الْبَرِّ وَالْبَحْرِ بِمَا كَسَبَتْ أَيْدِي النَّاسِ لِيُذِيقَهُمْ بَعْضَ الَّذِي عَمِلُوا لَعَلَّهُمْ يَرْجِعُونَ

“Calamities have appeared on land and sea because of what the hands of the people have earned, so that He (Allah) makes them taste some of what they did, in order that they may return (to the right way).”

(Ar-Rum: 41)

The Committee has reviewed the trading mechanism of VCM and contract specifications of the Carbon Credits that will be offered on the VCM. We, the members of Shariah Committee of Bursa Malaysia Islamic Services Sdn. Bhd., to the best of our knowledge, do hereby confirm that it is compliant with Shariah principles.

And prayers and peace be upon the last Prophet Mohammad, and be upon his relatives and all his companions.