Journal of Islamic Finance (Special Issue) (2017) 054 – 072
IIUM Institute of Islamic Banking and Finance
ISSN 2289-2117 (O) / 2289-2109 (P)

Challenges of Islamic Debt Restructuring in a Multi Creditor Environment

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Abstract

The growth of Islamic Finance over the last few decades has brought Islamic Finance to a level where it co-exists hand in hand with conventional banking. It is now common for the same customer to take up both Islamic financing and conventional loans as opposed to only conventional loans in the past. While such development is positive, there are inherent issues resulting from such co-existence. One notable issue is when default occurs due to non-payment by the customer, and when both the Islamic financier (Islamic creditor) and the conventional lender (conventional creditor) subsequently opt for debt restructuring instead of proceeding with insolvency action. Debt restructuring helps prevent further default, thus can assist in preserving the business value of the customer and the interests of the creditors as a whole. It is not a difficult task if a customer has one creditor only. However, the situation can become complex when the debt of both the Islamic and conventional creditor are to be restructured concurrently. This situation is referred to as Multi-Creditor debt restructuring. While the objective of a Multi-Creditor Debt Restructuring is beneficial to all creditors and the customer, there are challenges for Islamic debt restructuring in a Multi-Creditor situation such as differing creditor' rights, multiple interpretation on *Shari'ah* contracts and lack of clarity in documentation of transactions. These could lead to difficulties, amongst others, in proving the right amount of debts due and owing as well as in ascertaining the priority of claims vis-a-vis conventional loans. This research discusses some of the key issues faced when restructuring Islamic debts in a Multi-Creditor situation and how those issues and gaps are to be addressed with some recommended process flow, procedures and guidelines.

Keywords: *Islamic Financing, Debt Restructuring, Multi Creditor, Framework, Guidelines*

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1. Introduction

Islamic financing has grown significantly over the last few decades and is now widely accepted as an alternative to Conventional loans. This world-wide acceptance of Islamic financing is further evidenced by major deals which have been financed via *Shari'ah* compliant instruments by both Muslims and non-Muslim customers. The total participation by Muslims and non-Muslim customers in the Islamic finance industry are currently estimated at over USD 1.3 trillion and basing on current rate of growth, it is expected to reach USD 2.6 trillion by 2017 (Hossain, 2014).

Islamic finance is now existing hand in hand with conventional banking and this co-existence is commonly seen where the same customer takes up both Islamic financing and conventional loan, as compared to Conventional loan only in the past. It is also common for syndicated financing to comprise both conventional and Islamic financing. Though separated by Islamic and conventional tranches within the syndication, the total syndication is granted to finance the same project or granted for same purpose to one same customer. As defined by Investopedia (2014), syndicated loan is a loan offered by a group of lenders called a syndicate, who work together to provide funds for a single borrower.

The position of Multi-Creditors comprising Islamic financiers and conventional lenders can be depicted by way of a Figure 1 below:

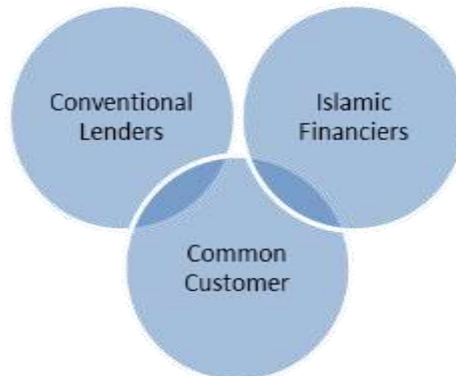


Figure 1: Relationship in a Multi-Creditor situation

The above shows that while Islamic financing and conventional loans are separate on their own, the Islamic financiers and conventional lenders are dealing with the same customer and hence, face the same risk exposure of that customer. As such, any event affecting the customer's position will affect both Islamic financing and conventional loan concurrently.

As with any type of debt or financing, there is always risk of default. In a situation where the customer failed to comply with any of the terms of the financing or debt contract, the customer is deemed to have breached the contract, leading to the occurrence of an event of default by the customer. A default can be attributed to financial or non-financial breaches, where a financial breach relates mainly to default in payment while a non-financial breach relates to default in other terms or covenants.

Once a default occurs, the Islamic financier or the conventional lender has various options. They can declare the occurrence of an event of default which will then entitle the Islamic financier and/or the conventional lender to proceed with various courses of action as provided in the contract, including but not limited to insolvency proceedings. Alternatively, the Islamic financier and/or conventional lender can opt not to declare an event of default but to proceed with restructuring of the Islamic financing and/or conventional loan instead. Going forward, in this paper the word 'creditor' is used interchangeably to refer to the Islamic financier or conventional lender or both.

A creditor may opt for restructuring after a financing has gone into default. Restructuring of Islamic financing has its' own challenges, and the challenges are further compounded if such restructuring is to be done hand-in-hand alongside conventional banking. This situation occurs when the customer has taken both Islamic financing and conventional loan, and both are in default and need to be restructured concurrently. The researcher refers to such situation as a Multi-Creditor debt restructuring, as it is a debt restructuring involving more than one creditor to the same customer (hence the use of the term 'Multi-Creditor'), and of which there is a mix of Islamic and conventional creditors.

This paper focuses on the challenges for the Islamic financiers in a situation where the debt restructuring has to be acceptable to all creditors of the same customer concurrently, including that of the conventional lenders. Baker, Bannister and Vogel (2011) stated that restructuring an Islamic financing poses particular problems unlike conventional debt transaction, and this is due to the lack of precedents to guide the process of restructuring such transaction. They further added that in many Islamic jurisdictions, bankruptcy and insolvency law is less developed and relatively untested. It therefore creates risk of unpredictable outcome. This is unlike in the West which, essentially has more developed and established laws in the said area.

The key challenges will be identified and analysed in this research. At the conclusion of the research, recommendations are made towards addressing areas of concern in Islamic debt restructuring in the context of a Multi-Creditor situation.

2. Problem Statement

In many situations where customers have defaulted, debt restructuring can provide a reprieve which in turn can provide a win-win situation for the customer(s) and the creditor(s). The win-win situation is where the customer is able to pay the amounts due in a manner within its' financial means and capacity, thus avoiding a bankruptcy situation. The creditor(s) in turn will be able to recoup amounts due, even if it may be lower than the original amount, but in any event higher than a liquidation or bankruptcy scenario.

The debt restructuring entails a variation to the original terms of the contract and involves negotiation and ultimately an agreement between the customer and the creditor with regards to the variation. Debt restructuring may not be as difficult to conclude if there is only one customer and one creditor relationship. However, debt restructuring can be a challenge in situations where Multi-Creditors are involved, and especially so when the Multi-Creditors comprise both conventional and Islamic creditors. The complexity is further compounded if the creditors are from various countries around the world and are not under a single jurisdiction.

In a Multi-Creditor situation, there are established restructuring principles which serve as a guide for creditors and customers when undergoing debt restructuring. Various bodies around the world have established their respective guidelines which set the basic standards of debt restructuring, even though they maybe informal in nature and thus are not legally binding. The guidelines are not binding because debt restructuring itself is an option at the discretion of the creditors. Since debt restructuring is optional, in a Multi-Creditor situation where there are many different type of creditors with different interests involved, there is a need for some standards to serve as a guide in order to ensure the debt restructuring is undertaken in a systematic, coordinated and equitable manner.

The key challenge is how best an equitable position can be fully achieved in debt restructuring given that both conventional loan and Islamic financing have different sets of requirement and both now have to share the same limited funds of the customer. While some aspects of the debt restructuring can be matched equitably amongst creditors, there are occasions where the equitability is not easily achieved for Islamic creditors.

3. Literature Review

3.1 Impact of a Default to Creditors

When a financing goes into default, there are many implications to a creditor. As creditors give out financing to earn returns on the same, one of the key concern is the potential or actual loss suffered by the creditor pursuant to the default in financing and consequently the deterioration in the creditor's asset quality and financial position, as a result of such loss.

Financial Reporting Standard 137 as issued by Malaysian Accounting Standard Board (MASB) requires the appropriate reporting of provisions, contingent liabilities and contingent assets. Essentially, the said Standard 137 implies that if there is a default or potential default in loan or financing where the potential of full recoverability is affected, then a loan loss (for conventional loans) or a financing loss (for Islamic financing) provision has to be made the extent of the non-recoverable portion. Loan loss or financing loss provision is defined as an expense set aside as an allowance for bad loans arising from customer defaults, or terms of a loan that have to be renegotiated (Investopedia, 2014).

In Malaysia, Bank Negara Malaysia (BNM) has issued a guideline called Classification and Impairment Provision for loans/financing (2012). The guideline is relevant in determining the appropriate treatment of defaulted loans. The guideline states that 'a banking institution shall appropriately classify the rescheduled and restructured facilities based on the assessment of the financial condition of the customer and the ability of the customer to repay based on the restructured terms'. On further understanding of the guideline, the term 'classify' used in the guideline refers to the requirement for Banks to report the defaulted accounts as non-performing and to take the relevant provisions or impairment thereto, which supports what the researcher has indicated regarding loan loss or financing loss provision as discussed in the preceding paragraph.

3.2 Debt Restructuring

One of the options to remedy a default and minimize potential loss is to undertake debt restructuring. In this manner, loss could be prevented or minimized as both the creditor and the customer renegotiate the terms of financing in such a way to allow the customer to service the financing within its' means. According to Thomas (1994), debt restructuring is defined as any action by a creditor that officially alters the terms established for repayment in a manner that provides a reduction in the near-term debt service obligation (debt relief). Thomas (1994) further cited examples of debt restructuring modes which include buy-backs, debt and debt service reduction exchanges, forgiveness, rescheduling, re-phasing and refinancing. The key feature of debt restructuring is that it essentially alters the original terms established for repayment.

In Malaysia, BNM has also given a definition relating to debt restructuring. Under BNM Guidelines on Classification and Impairment Provision for loans/financing (2012), BNM defines restructured credit facility as one whose terms and conditions have been modified principally. Some of the examples as referred to in the definition include a change in the type or structure of facilities or changes to other facility terms to assist the borrower overcome its shorter term financial difficulties particularly where the longer term prospect of the business or project is deemed to be viable. The said guideline further stipulates that when the borrower enters into Schemes of Arrangement, the new facility will constitute a restructured facility.

Based on definitions above, the researcher explains debt restructuring therefore as one of the options that parties to a contract can agree to, in a situation where the customer could not fulfil any one or more of the obligations under the original financing contract. However, debt restructuring is not mandatory since there is no provision under a financing contract to compel parties to enter into a debt restructuring. Instead, it is a mutual agreement between contracting parties towards resolving a default situation. Since it is an agreement reached outside the contractual terms, it is also commonly known as 'out of court' settlement as it represents resolution of an event of default outside the court. This is as opposed to insolvency proceeding which is a court actions are taken in event of default occurs.

The above explanation is supported where Garrido (2012), a senior counsel at the World Bank who stated that out-of-court debt restructuring involves changing the composition and/or structure of assets and liabilities of debtors in financial difficulty. Consistent with previous definitions provided by Thomas (1994) and BNM earlier, indication of debt restructuring is one without resorting to a full judicial intervention, and one with the objective of promoting efficiency, restoring growth, and minimizing the costs associated with the debtor's financial difficulties. Some of the examples of restructuring activities as mentioned by him include measures that restructure the debtor's business (operational restructuring), and measures that restructure the debtor's finances (financial restructuring).

3.3 Rationale for Debt Restructuring

Debt restructuring is intended to be a win-win situation for both the customers and the creditors. It is for this reason that debt restructuring is normally the preferred option before the creditors decide to exercise their rights pursuant to a contract.

Rendak and de Ranitz (2009) stated that from a customer or debtor's perspective, debt restructuring can reduce the debt servicing burden, while the creditors have the assurance that the company will continue to be an ongoing concern. That shows a win-win situation for debtors and creditors, who both stand to benefit from the debt restructuring exercise. The authors further explained on how the benefit can be seen in comparison to a liquidation scenario. Under a liquidation scenario, both the company and the creditors may lose out as a liquidation action will prevent the company from continuing as an ongoing concern. Without ongoing business operations, generation of cash flow will be affected and thus affecting the payment to the creditors, since cash flow from business operations is normally the main source of payment.

However, while the rationales by the authors above have strong merits, the researcher is of the opinion there could be instances when there are arguments in favour of a liquidation scenario. One instance is when a liquidation scenario brings better recovery for the creditor(s) than a restructuring. This may hold true if the financing is sufficiently collateralized where the liquidation of the collateral may yield sufficient proceeds to settle all amounts due. However, it will not be so if the financing is only partially collateralized or is granted on clean basis i.e. without collateral.

This position can be supported by Garrido (2012)'s writing which stated that generally, in situation of limited resources of the customer, out-of-court debt restructuring comes with clear benefits. The author's mention of 'limited resources' would imply that debt restructuring is beneficial in a situation where there is insufficient proceeds. This therefore, validates the researcher's view that if proceeds are sufficient, for instance from the realization of collateral, then debt restructuring may not be a really viable option from a creditor's standpoint.

Where restructuring is the viable option, Garrido (2012) further mentioned that restructuring can help preserve the business value of debtor enterprises and the interests of other stakeholders, to the benefit of the creditors as a whole. He also mentioned how out-of-court debt restructuring performs an important role in all insolvency systems. This is where in numerous situations of financial difficulty, the debtor and the creditors can protect their respective interests more effectively if an informal solution is implemented.

As debt restructuring is an option and an out of court settlement, the decision to opt for a debt restructuring would be based on various criteria as determined by each creditor. These criteria may differ from one creditor to another and would depend on many factors, including but not limited to the risk appetite of the respective creditors. Besides the creditor's own internal set of criteria, debt restructuring is also governed by guidelines and regulations set by the relevant authorities in respective jurisdictions which will be discussed in subsequent section.

3.4 Guidelines on Debt Restructuring

In Malaysia and in many parts of the world, guidelines on debt restructuring have been issued by their respective Central Banks and/or other regulatory bodies to stipulate conditions pertaining to debt restructuring. Guidelines have also been issued by bodies or associations on informal basis.

For better understanding of the need of a guideline, reference is made to the definition of 'Guideline'. A 'Guideline' is a statement by which to determine a course of action. A guideline aims to streamline particular processes according to a set routine or sound practice. By definition, following a guideline is never mandatory. Guidelines are not binding and are not enforced (U.S. Dept. of Veterans Affairs, 2014).

Based on the explanation of a guideline as above, a similar definition can be applied for debt restructuring guidelines, wherein such guidelines are meant to streamline the process of debt restructuring exercise. Here, the guideline serves to set some acceptable standards and processes, including governance and ethics. This is crucial as the respective stakeholders have differing interests, where such interests can even be conflicting in nature. Hence, it is necessary to have a set of rules to ensure the process of debt restructuring is undertaken systematically with impartiality and transparency, and in compliance to prevailing laws.

While the definition indicates guidelines are generally not binding, some guidelines issued are indeed binding and need to be complied as a mandatory requirement. These are normally guidelines issued by Regulators in order to safeguard certain key areas of concerns, though not all guidelines issued by Regulators are necessarily mandatory in nature. An example of a binding guideline is as issued by BNM entitled Guidelines on Classification and Impairment Provision for loans/financing which took effect commencing 2012.

A question may be asked as to why some guidelines are binding in nature (hereinafter referred to as formal guidelines) while others are informal in nature (hereinafter referred to as informal guidelines). From the researcher's observations, formal guidelines cover areas which are deemed critical, for that reason compliance to the formal guideline is made mandatory.

From the assessment of the Guidelines on Classification and Impairment Provision for loans/financing issued by BNM (2012), one of the critical areas as observed by the researcher is in ensuring debt restructuring is not used as a means of 'ever-greening' of loans/financing, as this could lead to inaccurate reporting of actual losses arising from defaulted financing. The term ever-greening can be defined as 'a loan that does not require the principal amount to be paid off within a specified period of time. Evergreen loans are usually in the form of a short-term line of credit that is routinely renewed leaving the principal remaining outstanding for the long-term (Investopedia Financial Directory, 2014). From the definition above, ever-greening would mean a certain portion of the debt is left outstanding but not categorized as default since the term of financing allows routine renewal of the financing.

Another area stated in the said BNM guideline is that the terms of the debt rescheduling must be in compliance with *Shari'ah* rules and principles. The researcher's view is that such requirement is imposed

by BNM in the guideline to reinforce that *Shari'ah* compliance is required throughout the life of the financing, including after restructuring, and not just at the initial stage when financing was first granted.

The observations above are premised on BNM's Guidelines on Classification and Impairment Provision for loans/financing where Section 8.1 (BNM, 2012:7) of the guideline states that:

> "Banking Institutions must have in place policies approved by their Board which define the circumstances and conditions under which a loan/financing may be rescheduled or restructured. The policies should address the following:
>
> (i) controls to avoid 'ever-greening' of loans/financing, including situations where loans/financing may be rescheduled or restructured more than once, and provisioning policies with respect to such loans/financing;
>
> (ii) compliance with *Shari'ah* rules and principles in rescheduling or restructuring of financing for IBIs. This may include administrative policies on the performance of a new agreement ('aqad') and the treatment of charges i.e. capitalization of compensation amounts in relation to the restructured financing; and
>
> (iii) a repayment period (based on the revised and restructured term) to be continuously observed before the rescheduled and restructured facilities can be reclassified as non-impaired."

Section 8.2 of the said guideline further added that Banking Institutions must ensure that full assessment is made on the customer's financial position to justify that the loan/financing can be rescheduled or restructured. In furtherance thereto, once a loan/financing is restructured, there is a need for close monitoring by allocating adequate resources to ensure that the restructured loan/financing complies to the terms of restructuring and that there is no further default.

From the stipulations of the said Section 8.2, it is clear that restructuring cannot be done unless there is a strong basis to do so and conditions precedent as set by the guidelines must first be complied. Further, the conduct of the financing post restructuring must be closely monitored.

In addition to formal guidelines which are mandatory in terms of compliance, there are various other guidelines which are informal in nature. Where guidelines are informal, they serve to guide the creditors towards a systematic manner of achieving a consensual restructuring plan. Some of the steps in such plan include establishing coordinating committee, establishing standstill, classification and ranking of claims, negotiating new terms, all of which may form the key restructuring principles.

The researcher identifies three examples of informal guidelines that have been issued to-date as follows:

Table 1: Examples of Informal Debt Restructuring Guidelines

Title of Guideline	**Issuer (Date)**	**Country of Origin**
Corporate Debt Restructuring Committee: Code of Conduct (CDRC Guideline)	Bank Negara Malaysia (2012)	Malaysia
Principles and Guidelines Restructuring of Corporate Debt :The Singapore Approach (Singapore Guideline)	The Association of Banks in Singapore (n.d)	Singapore
Statement of Principles for Global Approach to Multi-Creditor Workouts (INSOL Guideline)	International Association of Restructuring, Insolvency and Bankruptcy Professionals (2000)	World-wide federation of national associations for insolvency practitioners, based in London

The reason for selecting the three above is to determine the similarities and/or differences of guidelines as practiced in Malaysia, Singapore and the rest of the world. Malaysia is chosen as it is the main hub of Islamic Banking and Finance in South East Asia while Singapore is selected for comparison purposes in the same region, being one of Malaysia's nearest neighbour with established insolvency laws. As for the rest of the world, International Association of Restructuring, Insolvency and Bankruptcy Professionals (INSOL) is chosen as it is a world-wide federation of national associations for accountants and lawyers who specialise in turnaround and insolvency with currently 44 Member Associations world-wide with over 9,800 professionals participating (INSOL International, 2014).

3.5 Assessment of Key Restructuring Principles

Discussion on the key restructuring principles, which form the main basis of informal guidelines are important in order to ascertain whether these principles can be easily applied to an Islamic debt restructuring.

Firstly, before identifying the key restructuring principles, the researcher ascertains whether there are indeed common restructuring principles applied in different restructuring guidelines as issues in different countries. If they are commonly applied, then it is justified to say that they are indeed key restructuring principles as they appear consistently across different guidelines. While their form may be different in one guideline compared to another, the underlying substance is similar in nature.

Secondly, the researcher identifies the common restructuring principles that appear in the three guidelines issued in 3 different countries as indicated in Table 2.1 above. It is observed that many of the restructuring principles are indeed common across different guidelines. This denotes that Multi-Creditors across various countries are guided by similar key principles, irrespective of location. This further indicates there are some form of established best practices in the area of Multi-Creditor debt restructuring commonly exercised by creditors.

The observation on some of the key restructuring principles are as follows:

1. Standstill Period to be observed:

INSOL Guideline states that there should be a standstill period during which all creditors are required to refrain from enforcement of their claims. The act of refrainment or withholding of enforcement therefore tantamount to a 'standstill', hence the period is called standstill period. However despite the standstill period, the position of respective creditors relative to each other should remain unaffected and such standstill should not prejudice any creditor's position. Similar principle is applied in the CDRC Guideline and Singapore Guideline.

2. Ranking

All three guidelines stipulate that the ranking of each creditor relative to each other should be maintained. This essentially means that preservation of creditors' rights is paramount in a debt restructuring exercise where a creditor should not be worse off relative to another creditor.

This can be clearly seen from the stipulations of the 3 guidelines. INSOL Guideline (p.3) states that "proposals for resolving the financial difficulties of the debtor and, so far as practicable, arrangements between relevant creditors relating to any standstill, should reflect applicable law and the relative positions of relevant creditors at the standstill commencement date." CDRC Guideline (p.4) similarly articulates the same position wherein the guideline specified that "the debt restructuring scheme shall recognize and acknowledge the existing priority and status of claims of the creditors of an eligible debtor at the time of application or referral of such eligible debtor to the Corporate Debt Restructuring Committee and there shall be no changes in respect of the prevailing ranking and status of creditors." Singapore Guideline similarly indicated the same position where it states that lenders with existing collateral rights are to should retain such rights.

3. Status of New Monies

According to INSOL Guideline (p.3), "if additional funding is provided during the standstill period or under any rescue or restructuring proposals, the repayment of such additional funding should, so far as practicable, be accorded priority status as compared to other indebtedness or claims of relevant creditors." CDRC Guideline (p.4) stipulates similar requirement wherein "any claims by creditors of an eligible debtor in respect of new monies provided by its creditors, if any, to sustain the viability of the business

shall be accorded a senior ranking status to the existing debts of the eligible debtor." Singapore Guideline (p.9) indicates that any additional funding is likely to require priority to reflect the uncertain circumstances in which it is provided.

4. Equitable treatment
All three guidelines consistently propagate that there must be equitable treatment to all creditors. The key principles as discussed above show the importance of recognizing and preserving creditors' right based on the creditors' position as at the commencement of the debt restructuring. Essentially, it means that no creditor should gain or suffer more, relative to its' position to other creditors. Any gain or suffering should be proportionately shared according to respective creditors' ranking and prevailing laws. The guidelines mentioned that it is essential in every case for creditors to assess their respective positions and to ensure any way forward is done in the most equitable manner.

In addition to the comparisons of the three guidelines above, the London Approach, a United Kingdom-based informal restructuring guideline as mentioned under section 1.3 above reflects similar key principles as INSOL, CDRC and Singapore guidelines above. Under the London Approach, Buljevich (2005:5) explained as follows:

> "Commercial banks were requested to work together with other creditors to reach a collective view on whether and on what terms a company should be granted restructuring relief. In addition, they were urged to make decisions about a distressed debtor's long-term future and any potential restructuring plan on the basis of comprehensive information received and shared among all bank lenders during a so-called standstill period. Also, interim financings were facilitated by means of standstill, super-priority and subordination solutions."

It is observed that despite various informal guidelines issued by different bodies across the world, the underlying substance is basically similar in nature. The guidelines essentially state that time must be given for the restructuring to be formulated, during which period creditors cannot take action that will jeopardize the restructuring. In terms of ranking, creditors position must be preserved where such ranking should also prevail post restructuring so that creditors do not lose out or become worse off (relative to each other) by participating in the debt restructuring.

Another point is that if new monies are given to salvage the business, then new monies should be repaid first. Again, this falls back on the principle of equitability. The researcher supports the principle that new monies must be repaid first since a creditor who provides new monies when a customer is in poor financial position is effectively taking a higher risk than an existing creditor.

Hence, it is equitable for the one who takes a higher risk to be paid off in priority to other creditors. Finally, there must also be equitability in how the limited resources of the customer is eventually shared across all creditors, and this is addressed by the ranking principle as stipulated in all three guidelines above.

3.6 Challenges In Islamic Debt Restructuring

Despite the various guidelines, there are indeed many challenges in Islamic debt restructuring, especially in a Multi-Creditor situation where the creditors would involve both Islamic and Conventional debts. The challenges particularly are in respect of ensuring that Islamic financing can be restructured in a manner that is at par, if not better, than Conventional counterpart. In particular, the position of the Islamic financing post restructuring should not be worse-off than the post restructuring position of Conventional debt.

The challenges can come from many areas, but the discussion in this research is will focus on the processes, *Shari'ah*, legal, transaction structure and human capital perspectives as defined under the scope of this research.

Tata (2012) highlighted several issues when dealing with default and insolvency situations in Islamic financing. He indicated the need to resolve several issues in order for an effective and workable interface between Islamic financial industry and the global financial system. Here, Tata's reference to global financial system includes the conventional financial system as well. Some of the issues highlighted by him

in the event of default by the customer include, amongst others, insufficient clarity on the ranking and status of claims of creditors against the customer, against other Islamic financial transactions; and against/or between the participants in the transaction.

Tata (2012) also said that since the fundamentals of title, ownership and possession of Islamic banking assets are distinctly different from the conventional banking assets, different courts have approached the concept of ownership and possession differently. This in turn causes uncertainty to Islamic banks and banks providing Islamic banking services. With such uncertainty, assessment and management of associated risks can become very difficult.

Similar concerns have been expressed by other scholars. Siddiqui (2011) mentioned that through his reading of many cases that have so far been litigated in courts around the world, he found that in almost all cases, the courts have struggled to reconcile the substance and form of the contract. Examples mentioned were on whether it was a sale, lease, construction or partnership contract or a financing arrangement between the parties. Some of the further examples mentioned by Siddiqui (2011:6) during the panel discussion were, amongst others:

a. "in numerous BBA cases in Malaysian courts, the determination of the amount due to the Islamic Financial Institution (IFI) in a 20 or 25 year *murabahah* financing, which ended earlier as a result of the default of the customer within a short period of signing the *murabahah* contract, depended on whether the contract was literally a deferred payment sale contract or a financing arrangement. If it were a sale contract, the total unpaid *murabahah* debt (including the IFI's cost as well as unearned profit from financing) would be owed by the customer to the IFI. If it were a financing arrangement, the IFI would be entitled to the unpaid *murabahah* cost (the unpaid principal) only."

b. "in Dubai, the determination by the court whether a lease-to-own contract was an operating lease or an installment sale contract, determined the identity of the actual owner of the property (the IFI or its customer). This in turn determined the equitable distribution of the proceeds of the house between the IFI and its customer. If the court held the contract as the operating lease contract, the IFI would have held to be the owner of the whole house despite the fact the customer has paid substantial numbers of installments leading up to his ownership, leaving only few unpaid installments as a result of the financial distress. The court, despite the title of lease-to-own, re-characterized the contract as an installment sale."

The issues as raised by the authors above are of real concerns as such issues have serious implication on how Islamic financing will be treated in a debt restructuring situation. These issues need to be addressed before an Islamic debt restructuring same can be concluded successfully. Otherwise, it could cause an Islamic creditor to end up claiming less than what is provided under the contract and therefore be worse off than its' Conventional counterpart. This will result in a restructured Islamic financing being in a subordinated position as compared to its' Conventional counterpart. The principle of equitability as required under a debt restructuring is therefore defeated.

4. Issues for Consideration in Islamic Debt Restructuring

Various written publications have identified gaps that need to be addressed in structuring of an Islamic financing, and the same is equally crucial when undertaking a debt restructuring exercise. The ways in which the issues are addressed will determine the ability of the Islamic creditor to defend its' claim in a Multi-Creditor debt restructuring process. Amongst the issues raised from various authors are elaborated below.

a) Concepts underlying Islamic Banking assets

One of the key challenge that still prevails is on the interpretation of *Shari'ah* for different types of contract. The interpretation of Islamic financing contract have a profound impact in a Multi-Creditor debt restructuring as it determines the positioning and ranking status of an Islamic creditor vis-à-vis other creditors. The types of Islamic contracts are still open to many interpretations by different courts. According to IFSB as cited by Tata (2012), when questions regarding the actual structure of different financing contracts arise, courts tend to use Conventional law in characterizing the legal rights and obligations of the parties. This, according to Vijay Tata, poses an additional challenge for managing legal risks and determining the rights of stakeholders in Islamic financial institutions.

b) Clarity on the position of the Islamic creditor based on underlying Islamic contract

How the creditor's position is defined has an impact on how the creditor's debt is treated under a Multi-Creditor debt restructuring process. For instance, in the case of an equity-based financing like musharakah or mudharabah, the Islamic creditor may be treated as a creditor or, possibly as a shareholder since it is a partner in the business venture. If the Islamic creditor maintain its' stand as a joint owner of the business venture, then it can be interpreted as a shareholder instead of a creditor. If such is the case, the researcher's view is that a complication can arise in Multi-Creditor debt restructuring where as a shareholder, the Islamic creditor's position will rank after all other creditors.

In Malaysia, Section 292 of Companies Act 1965 provides for an order of priority in payment of monies available from realisation of assets in compulsory or voluntary winding-up, wherein the creditors' claims will rank in priority before the shareholders. This priority is adopted in a debt restructuring situation as well. Hence, if an Islamic creditor is classified as a shareholder in an equity-based contract, the Islamic creditor's claim will rank after all other creditors. This will certainly put the Islamic creditor in a disadvantaged position.

Another example would be in the case of an *Ijarah* contract. Here, the position of the Islamic creditor can be viewed as either a financier or the lessor of the asset. If the position is determined as a lessor, there could be possibility that the Multi-Creditor debt restructuring may require that claims be made on rental in arrears only and thereafter the asset be returned to the lessor. In such a case, the Islamic creditor may not be able to claim on the customer's cash flow beyond the amount of rentals due and therefore has to depend on liquidation of the asset to recover future rentals.

Therefore, based on the above concerns, interpretation and clarity of form and substance of Islamic documents are very important in a Multi-Creditor debt restructuring situation. In the event the Islamic creditor failed to prove its' secured position, it may end up as unsecured creditor and hence, has lesser bargaining power and essentially lesser claims on the customer's cash flow. It may then be compelled to accept a lesser position than it was before restructuring. Even worse is if its' position is categorized as a shareholder, whereupon it will be the last to be paid, ranking below all creditors.

c) Uncertainty and lack of convergence in Shari'ah interpretation

Tata (2012) mentioned that certainty and predictability of *Shari'ah* compliant transactions can be weakened when there are divergences in *Shari'ah* scholars' views, in particular when scholars in one jurisdiction dispute precedence established by a scholar in another jurisdiction.

The researcher agrees that such lack of convergence will make it very difficult for Islamic financing to be restructured. This is so since what is acceptable to one *Shari'ah* Committee may not be not acceptable to another. Multiple interpretation of *Shari'ah* related matters by different *Shari'ah* scholars and failure to adopt one unified stand can lead to challenges in a Multi-Creditor situation. Since there is no bench-marking, it will be difficult for the Islamic creditor to defend its' position against other creditors, especially when each creditor attempts to claim the maximum that they can within the limited available cash flow of the customer.

d) Use of Conventional debt restructuring techniques can add complexity to Shari'ah requirements.

Multi-Creditor debt restructuring would normally involve the use of common Conventional techniques like amongst others, extension of maturity dates, setting up of escrow accounts and other cash or account control arrangements, provision of additional collateral and/or guarantees, exchange of debts to equity, payment modifications, structural changes and sale of non-core assets. However, the use of these predominantly conventional techniques adds complexity in an Islamic debt restructuring situation due to *Shari'ah* compliance requirements (Baker, Bannister and Vogel, 2011).

The researcher is of the view that the mentioned techniques above maybe unavoidable in a Multi-Creditor situation as creditors are required to converge to similar debt restructuring techniques to the best possible to ensure equitable treatment of all creditors. The familiar Conventional techniques as stated by Baker et al., (2011) above have been applied by conventional creditors in majority of debt restructuring cases and successfully proven and tested in court cases. Therefore, in the researcher's view, the conventional restructuring techniques serves as precedence and an industry practice benchmark of debt restructuring. Islamic financing being new in the area of debt restructuring may have an uphill task of introducing new and different techniques and thus may be bound to use similar conventional benchmarks.

In the researcher's opinion, these techniques per se are not non-*Shari'ah* compliant, except that conventional creditors have implemented them in a conventional manner. Hence, the challenge is how to adopt the techniques in a *Shari'ah* compliant manner. It is challenging for an Islamic creditor to come up with alternative debt restructuring techniques such as profit and loss sharing, rental arrangement and other *Shari'ah* compliant mode in a Multi-Creditor debt restructuring in order to fit into the 'equitable' treatment definition with conventional creditors. This is so as the techniques may be new in the context of debt restructuring and hence, not familiar particularly to the conventional creditors.

Finding an Islamic equivalent of a conventional restructuring technique can be complex especially in finding a right *Shari'ah* compliant structure. Even though such structure is deemed as *Shari'ah* compliant, there still remain the risk of whether there will be challenge when the need for enforcement arise later, more so when the structure has not been tested in court before.

5. Methodology

This research adopts qualitative method by reviewing the literatures written by international scholars and practitioners and local corporate solicitors and interviews with local Islamic debt restructuring practitioners. Whilst a direct interview with the scholars and legal practitioners would be commendable, the researchers are of the opinion that the literatures by the scholars and practitioners sufficiently reflect the issues and challenges based on the scope of this research. Multi-Creditor debt restructuring normally entails multi-million dollars of corporate financing that cuts across several countries over various jurisdictions. As such, the subject matter is not so much at a local front but more so at an international or global level. For this reason, the scholars and practitioners with multi-jurisdiction exposures will have significant experience and knowledge on the issues and challenges in Multi-creditor Islamic debt restructuring across multi jurisdictions. The following is the list of the respondents.

Table 2: List of respondents

	Practitioner/Scholar	Position	Organization/Firm
1	Hessam Kalantar	Counsel	Vinson and Elkins, Dubai
	Owen Delaney	Lawyer	
2	Mohd Daud Bakar	Founder and Group Chairman	Amanie Business Solutions SB
3	Mohammad Delwar Hossain	Associate	Baker and McKenzie LLP, Bahrain
4	Muddassir Siddiqui	Partner, Head of Islamic Finance Middle East	SNR Denton
5	Jeyathini Kannaperan	Partner	Shearn Delamore and Co
6	Jay Baker	Partner	Patton Boggs LLP
	John Vogel	Partner	
	Joel Bannister	Associate	
8	Mak Lin Kum	Partner	Kadir, Andri and Partners

As for the local debt restructuring practitioners, the interview was conducted with three (3) experts who have experience and knowledge in terms of the subject matter or issues concerned. The local practitioners are as follows:

Table 3: List of local respondents

Respondent	Organization attached to during career in debt restructuring	Years of experience in debt restructuring
Respondent 1	Local Islamic Bank	8 years
Respondent 2	Local Conventional Bank with Islamic window	7 years
Respondent 3	Local Islamic Bank	10 years

The Questionnaires are structured and designed to reflect depth of the issues covered under the scope of this research, in particular, the key areas where issues and challenges could arise during debt restructuring. Questions are categorized into eight areas of challenges as follows:

(1) The Restructuring Process: this area is to determine the industry practice by creditors in terms of process undertaken when managing a Multi-Creditor debt restructuring. The purpose is to ascertain whether Islamic creditors go through some form of similar process of debt restructuring.

(2) Restructuring Guidelines: this question is to determine whether creditors adopt some form of guidelines common to all creditors. The research ascertains to what extent standard informal restructuring guidelines are adopted, such as the CDRC guideline (applicable in Malaysia only) as articulated in this research.

(3) *Determination of amount of claims to be filed (proof of debt) and creditor's ranking*: this area is to determine how Islamic contracts are interpreted with respect to classification as secured or unsecured creditors, especially in an asset-based versus asset-backed contracts. The research ascertains how an asset-based transaction is recognized, as to whether it is deemed as a financing that is unsecured (since the legal rights over the assets are not perfected) or whether it is recognized as a secured transaction (since there is an underlying asset, even though legal rights over the asset is not perfected).

(4) Transaction Structuring Issues: This area is to determine the treatment of issues relating to specific contracts at transaction level. The issues identified relate to treatment of haircut under various Islamic contracts, treatment of penalties and additional charges, treatment of financial guarantee and finally, how various types of Islamic contracts are restructured. These issues are picked up as they are quite commonly raised in various literatures relating to debt restructuring.

*(5) Governing Jurisdiction: t*his is to determine how multi jurisdictions are dealt with when creditors are from various jurisdictions and to determine whether there are complications in handling multi-jurisdictions.

(6) Adequacy of Human Capital: This is to determine skillsets and competency required for a debt restructuring practitioner as a Multi-Creditor debt restructuring is often complex, given that it has to satisfy many creditors of different backgrounds and requirements.

(7) *Divergence in Shari'ah decisions*: this is to determine how differences in *Shari'ah* decisions amongst Multi-Creditors are dealt with and how it impacts the completion of the debt restructuring process. This issue is relevant as there can be complications when many different Islamic creditors are involved and where the *Shari'ah* decisions of the respective Islamic creditors are not in harmony.

(8) Recommendations on Going Forward Position: This is to establish enhancements and improvements towards reducing the challenges and issues for Islamic debt restructuring.

6. Results and Findings

Based on the research undertaken, it is observed that a Multi-Creditor debt restructuring has so far been undertaken quite successfully. This is on the basis there is no marked failure mentioned indicated by the respondents or from the identified publications. However, what comes clearly out of the research is that there remain many areas that need to be addressed when dealing with Multi-Creditor debt restructuring. While there may be some quick fixes for certain areas of concerns, there is a need for more robust and established ways of handling Islamic debt restructuring, particularly in light of the fact that the insolvency regime for Islamic finance has yet to be fully developed as compared to the Conventional financial industry. The summary of findings is discussed in eight areas as identified in this research as follows:

1) Restructuring Process

In a Multi-Creditor context, while each creditor has their own restructuring process, there are generic stages that all creditors go through which can form as a benchmark of industry practice. Based on the consolidated findings, the generic stages can be explained by stages as follows :

Table 4: Steps in Multi-Creditor debt restructuring

Stage 1	• customer obtains loans from Conventional lender(s) and Islamic financier(s) (collectively referred to as creditors) under separate agreements and different terms
Stage 2	• customer defaults in its' payment obligations to one or all of its' creditors
Stage 3	• customer unable to honour payment in full, calls for meeting with all creditors and request for a Multi-Creditor debt restructuring
Stage 4	• creditors agree to discuss and consider Multi-Creditor debt restructuring, meanwhile, creditors and customer execute Standstill Agreement
Stage 5	• Process of debt restructuring commences: ➢ Customer submits a debt restructuring proposal to creditors. ➢ Due Diligence conducted on customer's financial position ➢ Financial Advisor may be appointed by either customer or creditors or both
Stage 6	• All creditors discuss and negotiate terms with customer and amongst creditors • While all creditors seek to maximize their respective recoveries, all creditors must be guided by the key principles of debt restructuring
Stage 7	Decision made by creditors to accept or reject debt restructuring proposal by customer. Decision to accept must include approval by respective creditor's *Shari'ah* Committee. Debt restructuring is successful if : ➢ Unanimous approval by all creditors obtained; or ➢ In Malaysia, approval obtained via court sanctioned scheme based on majority creditors voting in favour of the debt restructuring proposal. The court-sanctioned scheme is governed under Section 176 of Companies Act 1965 Debt restructuring fails if : ➢ Unanimous rejection by all creditors ➢ Majority creditors approval is not obtained, hence debt restructuring scheme cannot be sanctioned by court under Section 176 of Companies Act 1965
Stage 8	• If debt restructuring is successful, implementation will be done • If debt restructuring fails, possibility of litigation and insolvency proceedings

2)Restructuring Guidelines

There are two types of restructuring guidelines, one that is issued by the regulatory authorities and another that is issued by informal bodies. From the research, the finding indicates that regulatory guidelines are binding in law and must be complied. Informal guidelines, though not binding in law, are also complied as such guidelines serve as a unified standard for creditors of differing backgrounds to conform to. Without a common unified standard, each creditor may insist on their own way of managing the task which can result in a dysfunctional Multi-Creditor debt restructuring position.

The findings also indicate that many informal debt restructuring guidelines are similar in the main areas despite being issued by different bodies in different countries. It is also noted that the informal debt restructuring guidelines are structured based on Conventional financial set-up. There is so far no similar guidelines for Islamic debt restructuring.

3) Determination of claims to be filed and creditor's ranking

It is noted from the responses of the local respondents that while there is no contention in the status of creditor as being secured in an asset-backed financing, there are some differences in views where asset-based financing is concerned. Some creditors will still defend asset-based financing as secured financing on the basis that the financing is granted based on an identified.

The fact that the legal rights over the is not perfected is only from the civil law perspective, but if the same is based on intention of the contract, then the asset should rightfully belong to the creditor. Despite the differing views, based on writings by international practitioners, the current position is quite clear in that the legal rights must be perfected before one can claim rights over the asset, and that intention alone as stipulated in the contract is not a sufficient basis to have a legal claim over the assets.

4) Transaction Structuring Issues

Within the transaction structuring, there are many issues to be considered. The finding is that for murabahah contract, there is a risk in restructuring if it entails creation of a new contract as the same can be voidable if challenged within a certain period after its' creation. Based on one of the local respondent's input, the same can be mitigated by having a Master Facility Agreement upfront that include new murabahah contracts instead of covering specific murabahah contract only. The security should be created to secure the Master Facility Agreement instead of a specific murabahah contract. With this, any subsequent new murabahah contract created, so long as they are within the terms defined in the Master Faclility Agreement, will be secured by the same security, thus doing away with the need to create new security.

Notwithstanding the above, while creditors try to preserve existing contracts to avoid the risks faced by creation of new contracts, the researcher's view is that debt restructuring is also an opportune time for creditors to improve their position, and not just to maintain existing position. In a situation where the current contract maybe weak or lacking, improvement can be done as the debt restructuring is a platform to make the variation, subject of course to the principle of equitability to all other creditors.

In respect of haircut, the researcher summarizes a haircut as the portion of the debt that a creditor has agreed to waive. Due to such waiver, the hairuct portion is no longer legally claimable and is therefore forgiven by the creditor. How much haircut is given depends on how the creditors assess and agree as the recoverable portion of the debt in a Multi-Creditor situation, It is normally is a commercial decision. However, how such haircut is treated very much depends on the type of financing contract entered into based on *Shari'ah* principles. As indicated in the findings, a haircut under a murabahah contract can be treated as a discount to the Selling Price, while an ijarah contract can treat the haircut as a reduction in rental amount. Haircut, however, is not normally applicable in an equity-based contract as there is no element of debt, unless there are instruments that create an obligation of payment such as the Purchase Undertaking.

In so far as penalty and additional charges are concerned, the same is not permissible for an Islamic creditor. Therefore, if conventional can charge a customer more due to penalty interest, the Islamic creditor needs to find a *Shari'ah* compliant mechanism that allows Islamic creditor to have a higher share of the customer's funds in order to be equitable with conventional. Otherwise, in a Multi-Creditor situation, conventional will be able to take a bigger share of the customer's funds due to it's higher claim on the debt.

In respect to a customer providing a financial guarantee for the restructured debt, the same is acceptable for a murabahah or ijarah contract. However, a guarantee by the customer who is the partner cannot be provided in an equity-based contract. To resolve this, a third party guarantee or a Purchase Undertaking can be provided.

5) Governing Jurisdiction

The finding indicates that where many creditors are involved and when they come from different backgrounds and countries, a common juridiction has to be selected for the governing law in the Multi-Creditor debt restructuring. One of the factors affecting the choice would be the location of the asset.

The findings also show that the Islamic insolvency law is still not well developed and on most occassions, practitioners will fall back on established western Conventional insolvency law regime. This can lead to many complications, especially with respect to how Islamic contracts are interpreted and decided on, and to what extent *Shari'ah* laws are given precedence.

Due to the above, out of court settlement is a more preferred mechanism of dispute resolution. Arbitration is also recommended as an alternative dispute resolution mechanism.

6) Human Capital

The competency requirement of a debt restructuring practitioner varies depending on how debt restructuring task is segregated within the creditor's organization. It can be segregated by areas of expertise, where credit, legal and *Shari'ah* are assessed and handled separately by the relevant departments.

Alternatively, there can be a multi-skilled debt restructuring practitioner who has competency in all the required areas. The latter will augur well when it comes to the negotiation aspect as the debt restructuring practitioner can handle issues on the spot without having to keep referring to other departments.

Additionally, a knowledgeable debt restructuring practitioner will certainly value-add to the development of highly skilled debt restructuring practitioners in the Islamic finance industry. Therefore, investment should be made in human capital development in the area of Islamic debt restructuring so that more experts can be created in this complex area. This in turn can contribute towards bringing up the level of Islamic insolvency regime and dispute resolution mechanisms to a higher level, comparable to or better than the established western standards.

7) Divergences in Shari'ah decisions

Generally, all respondents agree there must be a consensus amongst the *Shari'ah* bodies before a debt restructuring can be concluded. *Shari'ah* permissibility needs to be sought in areas which are not clear-cut. Essentially, an Islamic creditor will not proceed with the debt restructuring if *Shari'ah* approval is not obtained.

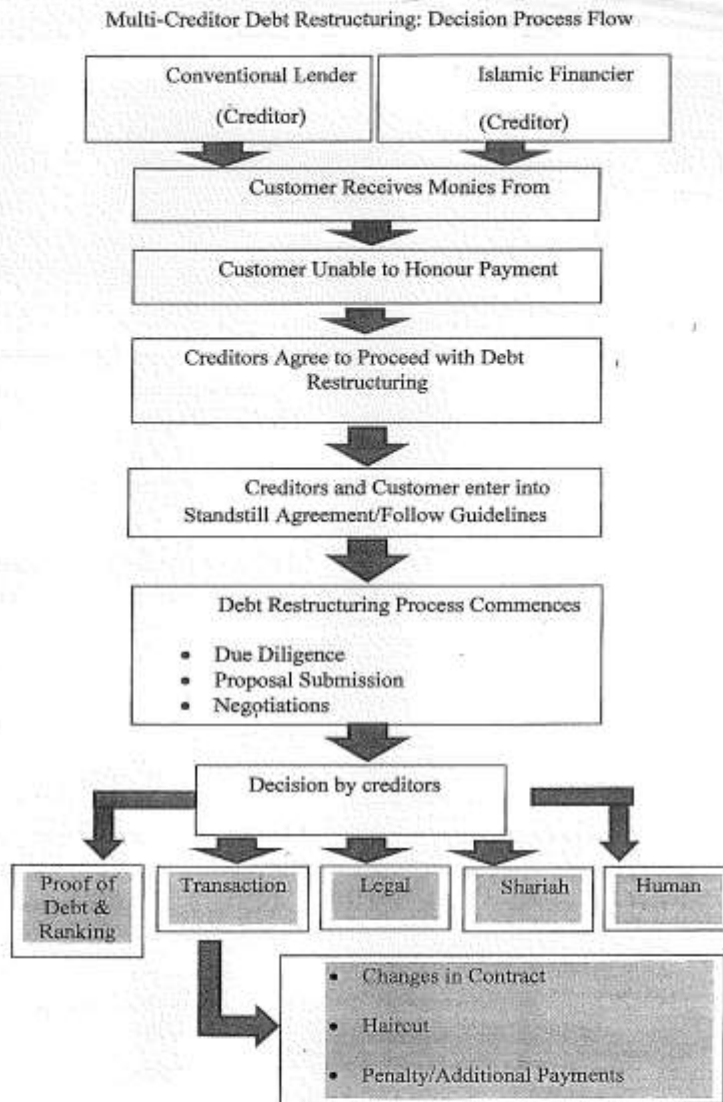
What remains unaddressed in the finding is a situation where there is multiple *Shari'ah* interpretation and how such divergence can be harmonized. While unanimous decision is certainly preferred, the researcher is of the view that perhaps a majority ruling amongst *Shari'ah* committtees of different creditors can be considered when a unanimous decision cannot be obtained. Majority ruling can be structured by way of simple majority. Alternatively, to be more specific, the majority ruling can be by way of 75 percent majority in value and 51 percent in number as defined under Section 176 of Companies Act 1965 for Malaysia.

7. Recommendations on Going Forward Position

There is consensus amongst all respondents and further supported by various writings by scholars and practitioners, that there should be enhancements and improvements towards reducing the challenges and issues for Islamic debt restructuring. This is especially so in a Multi-Creditor situation.

The researcher consolidates all the findings above to depict the issues at hand in perspective by way of a flow-chart as exhibited in Figure 2 at the next page. The figure also shows that at the stage of decision-making, other than the commercial terms to be decided by the creditors, there are other factors that have an impact on the decision of the Islamic creditors as depicted in the shaded boxed at the decision stage.

Figure 1



Based on the findings of the research, some of the recommendations for the improvement of Islamic debt restructuring process in a Multi-Creditor situation are as follows :

i) Separation of Islamic creditors from Conventional creditors in a debt restructuring process via a different class of creditors.

A separate track should be created for Islamic creditors where there should be separate class of creditors comprising Islamic creditors only. With that, there is no pressure to conform to Conventional practices as the Islamic and Conventional creditors proceed with their own set of principles.

ii) Majority decision ruling for divergences in *Shari'ah* decisions.

In order to resolves gaps resulting from differences in *Shari'ah* decisions of various Islamic creditors, the principle of majority ruling can be applied where the majority can be by way of simple majority. Otherwise, to be more equitable, 75% majority in terms of value and 51% majority in terms of numbers can be the principle applied for majority decision to prevail. In this manner, Islamic creditors with larger

stake in the debt restructuring will have a bigger say in the decision when there are *Shari'ah* divergences in opinions and decisions.

iii) Improvement in contract and security documentation of Islamic financing, taking into accounts lessons learnt from problems faced in debt restructuring.
The complications of entering into a new contract pursuant to a debt restructuring has been discussed at length in this research. How fool-proof a contract document is will not be known until the same is enforced and tested in court of law.

However, having now known the complications and risks that can arise, for instance, in the creation of a new contract or security when a customer is insolvent, it is timely to revisit how financing documents are legally structured at the point of granting the financing and not at point of restructuring.

Further, given the weak status of creditor ranking for asset-based contracts where the same is treated as unsecured, avenues should be taken to improve the legal rights, including registering the legal interest over the assets as required under civil law.

iv) Creation of an out of court alternatives for resolution of insolvency issues by way of an arbitration or mediation platform that is recognized by the govening law.
From the research findings, there can be many complications faced when Islamic insolvency matters are decided in civil court. As mentioned in the findings, one of the reason is that Islamic insolvency laws have yet to be fully developed, hence the reliance on civil insolvency laws for such insolvency cases.

Creation of an out-of- court dispute resolution bodies can assist to improve the process of debt restructuring and its' enforcement. One of the possible option is to set up dedicated Islamic mediation and/or arbitration body for dispute resolution comprising Islamic scholars, Islamic experts and experienced Islamic practitioners. Unresolved issues in debt restructuring can be brought up to the mediation or arbitration body for deliberation, guidance and/or decision.

Some form of mandate needs to be given to the mediation and/or arbitration body to enable decisions made as a result of the arbitration to be recognized and adopted. One way is to give such bodies a legally binding decision making authority.

v) Establishing Islamic International Debt Restructuring Guidelines.
Setting up separate standards and guidelines for Islamic debt restructuring would protect Islamic creditors from the challenge of undertaking a different manner of restructuring as compared to Conventional in a Multi-Creditor situation. This will also avoid a situation where compromises may have to be made in order to be equitable to conventional creditors. A pressure to conform can therefore be removed.

The Islamic debt restructuring guidelines can also incorporate various issues of concern which have yet to be resolved todate. For instance, if there is a need to enter into a new contract which results in creation of new legal charge over an asset, the guideline can stipulate that there must be a recognition that such new legal charge be accorded the same ranking as it was with the previous legal charge that it has superceded. This is on the basis that there is no new financing given, as the new legal charge originates from a restructured debt. The introduction of an Islamic debt restructuring guideline will resolve many issues as it sets the standards and accepted practice which is fair and impartial to Islamic creditors.

vi) Creating a talent pool of international Islamic debt restructuring experts.
Investments should be made by public and private institutions to invest in training and creation of a large and strong talent pool of international debt restructuring experts. As Islamic finance is new relative to Conventional banking, the pool of experts in Islamic financing distress resolution is lacking since the focus on the last few decades has been on new growth of the Islamic finance industry.

From lessons learnt during the last global crisis, what comes out clearly is the need to ensure any financial distress is handled by highly competent insolvency and debt restructuring experts. With such strong ability and skill to handle complexity of any distressed Islamic financing cases, the sustainability of Islamic finance can be more assured. This is so as such competency in handling the complex situation can help prevent major defaults which can cause erosion of Islamic finance's growth. This will also assure Islamic finance assets are of high quality at all times.

8. Conclusion

In conclusion, the research has provided relevant findings that can guide the future process of Islamic debt restructuring. Resolutions to some of the challenges are also recommended where some can be implemented on immediate basis, while others are more long term basis.

Nevertheless, there is a need for continuous improvement in the debt restructuring process, especially in the context of Multi-Creditors so as to ensure the position of Islamic creditors are rightly assessed. This will augur well for the growth and sustainability of Islamic finance industry.

Lastly, the above recommendations can serve as areas of further research. With further and more research conducted on the areas above, the chances of successful implementation in the near future will be more achievable.

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