

Instruments of Islamic Investments

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INSTRUMENTS OF ISLAMIC INVESTMENT

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MODES OF TRADING

O Ye who believe! Eat not up your
Property Among yourselves in vanities;
But let there be amongst you traffic
And Trade by mutual goodwill
Nor kill (or destroy)
An-Nisaa 29

The Prophet (Allah's blessings and peace be upon him) says: "May Allah bless a man who is gracious when buying or selling or requiring debt".

Al Bukhari

Characteristic Traits of Modes of Trading

Trading means the operations of buying with the intention of selling through the turn over of capital to make Halal profit from the difference between the sale price and purchase cost.

The most important features of trading are:

- Supplying the goods and services demanded by different individuals.
- Transferring the possession of commodities from the seller to the buyer at contracting.
- The profit mingles with price and becomes inseparable part of the value of the commodity.
- It is either immediate or medium term.

Divisions of Modes of Trading Trading operations include the different types of sales on Islam, which the jurists have divided into four with respect to the items of exchange, the commodity and the price, which can be real or cash. The four divisions are:

- 1.The sale of asset for asset. It is exchanging a commodity for another. It is called barter sale.
- 2.The sale of price for price. It is exchange of money for money. It is called "Sarf" or "Exchange".
- 3.The sale of an asset for a price. It is exchanging a commodity for money. It is called "Absolute Sale". It can be:

- for immediate cash then it is a spot sale.
- for a deferred price then it is sale on credit

4. The sale of a price for an asset. It is a transaction in which the price is paid cash but the delivery of goods is deferred to a specific period of time. In this kind of sale the price can be paid:

- entirely and immediately at drawing the contract. In this case it is called "Salam Sale".
- In installments or deferred. In this case it is called "Istisna'a sale".

Sale on Credit Definition:

The sale on credit is based on the delivery of the commodity by the seller to the buyer and enabling it to possess and benefit from the commodity, with the understanding that the buyer will pay the agreed upon price at a certain future date usually the deferred price is higher than the cash price.

This sale is divided into two:

Deferred Payment: It is paying the price entirely at the end of a specific period (nassia sale).

Installment Sale: It is paying the price in determined installments at specific periods of time agreed upon by the parties.

Evidence of Legality

The sale on credit is permissible for the following legal evidence:

1. Allah says:

But Allah hath permitted trade and forbidden usury.

Al-Baqarah 275

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.

Al-Baqarah 282

2. From Aisha, may Allah be pleased of her, she was reported to have said, "the Prophet, peace and blessing be upon him, bought some foodstuff on credit from a Jewish trader and mortgaged his armor to him".

3. There is consensus (Ijma) from the Ummah on the permissibility of sale on credit if the due date is known.

Legal Rules **1. An increment in the deferred price over the cash price is permissible and that is for the generality of the evidences that adjudge to the permissibility of sale on credit.**

2. It is permissible when bargaining to announce the cash price, the deferred price and the installment price to specific periods. The sale shall be invalid unless the parties at contracting determine one price and a specific due date.

3. It is a condition that both parties to the sale contract should know the due date of payment in case of deferred payment and in case of installment sale they should know the dates of installments to avoid ignorance which leads to dispute and invalidates the contract.

4. If the buyer/debtor defaults in payment, it is impermissible to charge it any increment over the principal to the benefit of the creditor whether it is a previous condition or not. Because it is Riba, hence prohibited. However, it is permissible to impose a condition of penalty in case of default to be expanded on charity so that he may not delay payment.

5. It is legally permissible for the seller on credit to stipulate in the contract that payment of all installments shall be made at once before the due date if the buyer defaults in paying some of them.

6. It is impermissible for the seller to impose a condition withholding the transfer of ownership because of deferment of price, the sold item shall duly be delivered to the buyer without demanding any payment before the date agreed upon is due. However, it is permissible from him to delay registration of ownership till payment is fully made. At the same time the buyer will be given a document showing that the property is owned by him.

7. It is permissible for the seller to impose condition in the sale contract that the buyer shall mortgage the sold item as a guarantee for the payment of the deferred installments.

8. If the commodity is damaged in the hand of the buyer after receipt, it is the liability of the buyer and the buyer cannot retract to seller and shall pay all the installment.

9. It is permissible for the bank to reduce part of the price for immediate payment by the buyer. This reduction shall not be stipulated in the contract.

Areas of Application

- People used the sale on credit in the past and are presently using it. In most countries it is more extensively used than the cash sale.
- The sale on credit facilitates transactions between people. It benefits both the seller and the buyer. The seller will get a higher price and the buyer gets the item sold before paying all the price.
- The Islamic banks use the sale on credit to finance many a customers. They purchase the commodity paying cash and then sell it to desirous customers for a deferred price or in installments agreed upon.
- The sale on credit is used mostly to finance expensive consumer goods such as furniture, cars and household appliances. It is also used to finance housing and capital goods such as machines and equipment.

MURABAHA SALE

Definition:

Murabaha sale is one kind of absolute sale (asset for price), which is divided into four kinds in respect to price:

- **Bargain Sale:**
It is selling the commodity for agreed upon price irrespective of its purchase price.
- **Tawlia Sale (Respective sale):**
It is selling the commodity for its purchase price without addition or discount.
- **Discount Sale:**
It is selling the commodity for its purchase price with a certain discount.

Murabaha Sale:

It is selling the commodity for the purchase price plus a certain profit margin agreed upon. This margin can be a percentage of the purchase price or a lump sum.

These last three are called "Amana (honesty) Sales".

Murabaha Sale is divided into two types:

Ordinary Murabaha Sale:

There are two parties to it, the seller and the buyer. The seller is an ordinary trader who buys a commodity without depending on a prior promise of purchase, then he displays it for Murabaha sale for a price and a profit to be agreed upon.

Murabaha Sale connected with a promise:

There are three parties to it. The seller, the buyer and the bank as an intermediary trader between the buyer and the seller. The bank here does not purchase unless the buyer specifies its desire and a prior outstanding promise to purchase.

The mode of Murabaha sale connected to a promise is used by the Islamic banks which undertake the purchase of commodities according to the specifications requested by the customer and then resell them on Murabaha to the one who promised to buy for its cost price plus a margin of profit agreed upon previously by the two parties.

There are different forms to the application of Murabaha sale connected to a promise of purchase. Some of these forms are determined by whether the promise is binding or not. Other forms are determined by how the bank receives the commodity in the case of the first sale. Should the bank receive the commodity directly or through one of its agents or should it authorize the buyer to receive the commodity.

The Practical Steps of the Murabaha Sale

1. The purchaser determines its needs

***The purchaser:* determines the specifications of the commodity he wants and requests the seller to determine the price.**

The seller: sends a quotation valid for a certain period.

2. Signing a promise to purchase agreement

The purchaser: promises to buy the commodity from the bank on Murabaha sale for the cost of the commodity plus the agreed upon profit.

The bank: studies the request and determines the conditions and securities for approval.

3. The first sale contract

The bank: notifies the purchaser of its approval of purchasing the commodity. The bank may pay the price immediately or as per the agreement.

The seller: expresses its approval to the sale and sends the invoice.

4. Delivery and receipt of the commodity

The bank: authorizes the beneficiary to receive the commodity.

The seller: sends the commodity to the place of delivery agreed upon.

The Purchaser: undertakes the receipt of the commodity in its capacity as legal representative and notifies the bank of the execution of the proxy.

5. The Murabaha sale contract

The two parties (the bank and the purchaser) sign the Murabaha sale contract according to the agreement of the promise to purchase.

The Evidence of Legality

1. The legality of Murabaha sale is (obtained) obvious from:

It is no crime in you

If you seek of the bounty

of your Lord

Al-Baqara 198

That is because Murabaha represents looking for more. It is also subsumed under the general rule that legalizes sale Allah sayeth "Allah hath permitted trade".

2. The Prophet (PBUH) permitted the sale of the commodity for more than its purchase price. He said: "if the two commodities are different, buy and sell as you wish.

3. The consensus of the Ummah on the permissibility of the Murabaha sale. The Kassani has pointed out that the people inherited these kinds of sales (Murabaha and other sales) throughout the generations and ages without any protests of non acceptance.

4. The Fatwa of the second conference of the Islamic bank: "The promise in the Murabaha sale to he who orders the purchase" is legally permissible after owning and possessing the commodity, only then it is permissible to sell it to the purchaser who requested it for the price specified and mentioned in the previous mutual promise agreement as long as the liability of damage before delivery and the consequences of a return for unseen defect is on the bank.

As to whether the promise is binding to the buyer, the bank or both, it better secures the interests of all parties, the bank and the customer, to have the promise as binding. It is legally acceptable and it is up to each Islamic bank to take either opinion according to what its committee of legal observers decide."

Legal Rules

The stages of promise to purchase:

1. It is permissible for the beneficiary, to offer a promise to purchase a particular commodity deciding its specifications and committing itself to buying it on Murabaha for the cost plus the agreed upon profit.

2. It is permissible that the mutual promise agreement shall contain various conditions agreed upon by the two parties, specially with respect to the place of delivery, the payment of a cash security to guarantee the implementation of the operation and the method of paying the price.

3. It is permissible to stipulate the binding nature of the promise to purchase. The effect of the promise being binding is determined either by the satisfaction of the promise or indemnifying the damages caused by breaking the promise without excuse.

The Phase of the first purchase.

4. It is a condition that the bank purchases the requested commodity (first purchase contract) before selling it on Murabaha to the buyer. The contract in the first purchase must be settled, in principle, between the source seller and the bank.

5. It is permissible for the bank to authorize a second party including the buyer to receive the commodity on its behalf. This authorization must be in a separate contract in case of the buyer for fear of giving false impression of connection between the authorization and the Murabaha sale.

6. After the bank purchases the commodity and before selling it on Murabaha to the buyer, the bank shall bear the consequences of any damages or defects (unless there is an agreement with the customer releasing the bank of the defects). That means if the commodity is damaged the bank is liable and if the commodity is defective (a defect that is not included in the release) the bank bears the responsibility, thus it cannot deliver the commodity to the buyer and the buyer will not bear any risk or responsibility.

The phase of Murabaha sale

7. It is a condition that the Murabaha sale contract be drawn at the last phase. That is after the promise to purchase and the purchase of the commodity in the name of the bank and receipt of the commodity directly by the bank or through an agent.

8. The legal rules of Murabaha must be observed in drawing the contract of Murabaha sale connected with a promise to purchase, specially the conditions of the transparency of the cost of the first purchase and the amount of profit because ignorance leads to dispute and invalidates the contract.

9. It is permissible to document the debt resulting from Murabaha by a guarantor or a mortgage, like any other sale on credit. It is permissible that the mortgage accompanies the contract or be prior to it, because it is possible to take mortgage on actual debt as well as promised debt before it is realized but the mortgage shall only be in effect if the debt goes into effect.

Areas of Application Murabaha is one of the most widely used modes of finance by the Islamic banks. It is suitable for partial financing to the investment activities of the customers, in industry, trade or others. It enables the customer/investor to obtain finished goods, raw material, machines or equipment from the local market or through

Salam

Definition:

Salam in the definition of the jurists, is a sale of a commodity whose delivery will be in a future date for a cash price, which means, it is a financial transaction in which price is advanced in cash to the seller who abides the delivery of commodity of determined specification on a definite due date. The deferred is the commodity sold and described (on liability) and the immediate is the price.

The Salam sale serves the interests of both parties:

The Seller:

The seller gets in advance the money he wants in exchange of his obligation to deliver the commodity later. He benefits from the Salam sale by covering his financial needs whether they are personal expenses, family expenses or expenses for productive activity.

The Purchaser:

Here it is the financing bank. The bank gets the commodity it is planning to trade on in the time it decides. Because the commodity becomes the liability of the seller who meets his obligation. The bank will also benefit from the cheap prices for usually Salam sale is cheaper than a cash sale. This way the bank will be secured against the fluctuations of prices.

The bank can sell on parallel Salam commodity in the same kind as it has previously purchased on first Salam without making one contract depend on the other. The bank also has the option of waiting to receive the commodity and then sell it for cash or deferred payment.

The Practical Steps of the Salam Sale Followed by Cash Sale or Sale on Credit

1. The Salam sale contract

The bank: pays the price in the contract meeting so that the seller makes use of it and covers his financial needs.

The seller: abides the delivery of the commodity on the specific due date.

2. Delivery and receipt of the commodity on the specific due date

The bank: There are several options at the disposal of the bank to choose one of them:

- The bank receives the commodity on the specific due date, and it can sell it and either for cash or on credit.
- The bank can authorize the seller to sell the commodity on its behalf as against fees (or without fees).
- Direct the seller to deliver the commodity to a third party (the buyer) according to a previous promise of purchase, that is at an emphatic demand of purchase.

3. The sale contract

The bank: agrees to sell the commodity for a cash or a deferred price higher than the Salam purchase price

The buyer: agrees to purchase and to pay the price according to the agreement.

The Evidence of Legality

1. 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.

Al-Baqarah 282

Salam is a kind of debt because the subject of the Salam contract is the liability of the seller up to the due date so its allowance is subsumed in the above quoted holy verse.

2. The Prophet (PBUH) said:

"He who sells on Salam must sell a specific volume and a specific weight to a specific due date".

3. There is consensus among Muslims on the permissibility of Salam due to the need for it and because the commodity in the contract is a recompense for the price paid in advance therefore the commodity is similar to the price in the sale on credit so it is considered to be an affirmed liability.

Legal Rules

1. It is a condition that the commodity should be known for ignorance about the commodity leads to dispute which invalidates the contract.

2. It is a condition that the commodity can be monitored by specifications to the maximum possible degree, only negligible variation is tolerated. If the commodity cannot be monitored by specifications Salam is impermissible, because of ignorance that leads to dispute.

3. It is a condition that the commodity is possible to deliver when it is due. That is the probability of its existence at the time of delivery is deemed to be high, if the contrary is the case, Salam is impermissible.

4. It is permissible to draw a Salam sale contract on one whole thing but to be possessed at different times in specific parts.

5. It is a condition that the commodity is a liability debt. The seller is obliged to deliver the commodity when it is due, according to the specifications stipulated in the contract without abiding as to whether it is the product of his factory or the produce of his private farm or from others.

6. Salam sale is impermissible on existing commodities because damage and deterioration cannot be assured before delivery on the due date. Delivery may become impossible, a thing which is risky and aleatory.

7.Salam is impermissible on land lots and real estates because the description of the land lot or the real estate entails the location. If the location is determined then it is specified, which contradicts what the jurists agreed upon, that Salam is a liability debt.

8.Salam is permissible on a commodity of a specific locality if it is assured that it is almost always available in that locality and it rarely becomes unavailable.

9.It is a condition that the purchase price in Salam is specified and advanced to the seller at the contract meeting.

10.It is a condition in Salam sale that the due date is known to avoid ignorance which leads to dispute.

11.It is a condition that the place of delivery is stated in the contract if the commodity needs loading or transportation expenses.

12.It is permissible to take mortgage and guarantor on Salam debt to guarantee that the seller satisfies his obligation by delivering the commodity sold, which is a liability on the due date.

13.It is impermissible for the buyer of a Salam commodity to sell it before receiving it because that is similar to the prohibited sale of debts before holding. It is known that the Salam commodity is a liability debt on the seller and not an existing commodity. Instead of that, it is permissible for the buyer to draw a parallel Salam contract without connecting it to the first Salam contract.

Areas of Application

Salam sale is suitable for the finance of agriculture operations, where the bank can transact with farmers who are expected to have the commodity in plenty during harvest either from their own crops or crops of others, which they can buy and deliver in case their crops fail. Thus the bank renders great services to the farmers in their way to achieve their production targets.

Salam sale is also used to finance the commercial and industrial activities, specially phases prior to production and export of commodities and that is by purchasing it on Salam and marketing them for lucrative prices.

The Salam sale is applied by the bank in financing craftsmen and small producers by supplying them with inputs of production as a Salam capital in exchange of some of their commodities to remarket.

The Salam sale has the advantage of elasticity to cover the needs of various sectors of people such as farmers, industrialists, contractors or traders. It can cover the finance of operation costs and capital goods

ISTISNA'A SALE

Definition:

The majority of the jurists consider Istisna'a as one of the divisions of Salam, therefore it is subsumed under the definition of Salam. But the Hanafite school of jurisprudence makes Istisna'a an independent and distinct contract. The jurists of the Hanafite school have given various definitions to Istisna'a, some of which are: "That it is a contract with a manufacturer to make something" and "It is a contract on a commodity on liability with the proviso of work".

The purchaser is called "mustasnia" contractor and the seller is called "sania" maker or manufacturer and the thing is called "masnooa" "manufactured, built, made".

Istisna'a combines two distinctive traits:

- The distinctive trait of Salam as to its permissibility even though the subject of the contract is not existing at the time of contract.
- And the distinctive trait of the ordinary absolute sale whereby the price is fiduciary not necessarily be advanced as in Salam. Because Istisna'a involves labour besides the materials, it becomes akin to "Ijara" in which deferment of payment is permissible.

The bank can utilize Istisna'a in two ways:

- It is permissible for the bank to buy a commodity on Istisna'a contract then sell it after receipt for cash installed or deferred price.
- It is also permissible for the bank to enter into Istisna'a contract in the capacity of seller to those who demand a purchase of a particular commodity and then draw a parallel Istisna'a contract in the capacity of a buyer with another party to make manufacture - the commodity agreed upon in the first contract.

The first Istisna'a can be immediate or deferred (the payment). The payment in the second Istisna'a can be cash or deferred.

Stated below are the practical steps which the bank applies in the modes of Istisna'a sale, parallel Istisna'a with reference to the non-existence of any legal relation or financial obligation between:

- The purchaser requesting Istisna'a (the end user) in the first contract.
- The (maker), manufacturer, (builder) (the seller) who manufactures the article in accordance to the parallel Istisna'a contract.

So any disagreements that may arise are settled under each contract separately according to the provision therein.

The Practical Steps of the Istisna'a Sale and the Parallel Istisna'a

1. Istisna'a sale contract

The buyer: expresses his desire to buy a commodity and tables Istisna'a request to the bank with a specific price. The line of payment whether cash or deferred shall be subject to agreement.

The bank: puts itself under obligation to manufacture a certain commodity and to deliver it in a specific period subject to agreement (the bank puts into consideration that the due date is the same as or after the due date of its receipt to the commodity in the parallel contract).

2. The parallel Istisna'a contract

The bank: expresses its desire in ordering the manufacture of the commodity it has undertaken to manufacture in the first Istisna'a contract (with the same specification as in the first contract) and agrees with the maker on the price and the date of delivery.

The seller: puts himself under obligation to manufacture the specific commodity and to its delivery on the due date agreed upon.

3. Delivery and receipt of commodity

The seller: delivers the manufactured commodity to the bank directly or to any part in the place decided by the bank in the contract.

The bank: delivers the manufactured commodity directly by itself to the purchaser or authorizes any party to deliver the commodity to the purchaser who has the right to make sure that the commodity satisfies the specification he has demanded in the contract. But still each party is responsible to the party it contracted with.

Legal Rules

1. It is a condition in the Istisna'a contract to state in the clearest of terms, the type, dimensions and all the specifications required because it is a condition in all commutative contracts the sold commodity must be known to avoid ignorance which leads to dispute.

2. Istisna'a contract is valid for objects that can be made. It is invalid for corn, wheat, barley or fruit, and all natural products whose sale on liability is a Salam and not Istisna'a.

3. The object sold in Istisna'a is a fixed liability debt therefore it is permissible to be a valuable asset made according to special specification - nothing like it - as the customer wishes with the proviso that it can be monitored by description. For this feature Istisna'a is different from Salam which is permissible only in similar "assets".

4. The materials should be supplied by the maker. If they are supplied by the buyer, the contract is Ijara and not Istisna'a.

5. The Istisna'a is not confined to what the seller makes after he contracts, but the maker will be satisfying his obligation if he brings in an article conforming to all the specifications whether it is his make before the contract or the make of some one else. The specifications demanded by the buyer are the most important as the commodity subject of contract is a liability debt.

6. The Istisna'a contract is binding to the two parties, and no party has the right to retract; only if the commodity does not conform to the specifications demanded, can the buyer have the option.

7. Once the contract is drawn the ownership of the asset is affirmed to the buyer and the ownership of the price is affirmed to the maker.

8. It is not a condition in the Istisna'a contract to advance the price, though it is permissible to do so, to defer or install it. Usually part of the price is paid in advance and the remainder will be withheld to the time of delivery and receipt of the commodity.

9. It is a condition that the period of delivery is specified whether it is short or long so as to avoid ignorance which leads to conflict between the two parties.

10. It is a condition that the place of delivery is (specified) stated if the commodity needs loading or transportation expenses.

11. The buyer may stipulate in the Istisna'a contract that the commodity shall be manufactured or produced by a specific manufacturer, or manufactured from specific materials. This is not permitted in the case of Salam sale.

Areas of Application

Istisna'a contract opens wide fields of application for the Islamic banks to finance the public needs and the vital interests of the society to develop the Islamic economy.

Istisna'a contract is applied in high technology industries such as aircraft industry, locomotive and ship building industries, in addition to the different types of machines produced in the big factories or workshops.

The Istisna'a contract is also applied in the construction industry such as apartment buildings, hospitals, schools, universities to whatever that makes the network of modern life.

Istisna'a contract is applicable to the various industries as long as one can be monitored by measurement and specifications such as the food processing industry.

MODES OF LEASING

Said one of the (damsels)

"O my (dear) father! Engage Him on wages:

truly the best of men for thee to employ is

The (man) who is strong and trusty

Al-Gasas 26

The Prophet (PBUH) said:

"Whoever hires a worker must inform him of his wage".

Bayhaghi

Characteristic Traits of Modes of Leasing

Lease is the employment of money in operations other than sale and purchase operations. That is the subject if the operation is the sale of the benefit of the asset not the asset itself. These operations aim at obtaining the rentals and the proceeds by receiving the benefits of the asset through time.

The most important traits of lease operations:

- They basically enable the lessee to possess and use the assets it needs without pumping large amounts of money.
- Lease operations do not transfer the ownership of the assets, they only transfer the ownership of the benefits.
- Profit is independent from the corresponding value of the asset it is a rental that accrues from the renewal of benefit.
- Lease operations are usually not immediate but medium term operations.

Divisions of Modes of Leasing

The jurists divide Lease operations into two kinds:

Lease for the benefits:

It is a contract on assets. That is to deliver an asset under possession to whoever can use it for a specific recompense. This type of lease contract can be drawn on two kinds of assets.

- Lease of movable assets, such as clothes, jewelry or appliances.
- Lease of fixed assets such as houses, office buildings, etc.

"Ijara" for labour:

The subject of the contract is a specific piece of work for a certain wage. This kind of Ijara takes two forms:

- Private worker: It is he who works with one person for a specific wage and he is not allowed to work for others.
- Public worker: It is he who works for the public.

The Islamic banks use the lease for the benefits as an instrument of financing. they purchase possessions and fixed assets to let, where the assets are put at the disposal of the customer to utilize in return of rental.

The banks use the two modes of Ijara.

- Operation Lease
- Lease - Purchase

OPERATION LEASE

Definition:

According to this mode the Islamic bank maintains a number of various assets to respond to the needs of different customers. These assets usually have a high degree of marketability. The bank lets these assets to any party so desirous to utilize for a term to be agreed upon. After the termination of the lease period the assets return to the bank, on its part the bank looks for a new lessee.

The distinguishing feature of this mode is that the assets remain the property of the Islamic bank to put them up for rent every time the lease period terminates so as not to remain unutilized for long periods of time.

Under this mode the bank bears the risk of recession or diminishing demand for these assets.

The operation lease divides into:

Specific or determined lease: It is the lease of real property or other assets that one can point to.

Lease described on liability: It is the lease of benefit determined by specifications agreed upon to be on liability such as a car or a ship, not particular but precisely described to forbid dispute.

The Practical Steps of Operation Lease

1. Equipment Purchase Contract

The bank: After studying and evaluating the market, the bank purchases the equipment and pays the seller immediately or defers the payment.

The seller: Agrees on the sale and delivers the equipment to the bank.

2. The First Lease Contract

The bank: The bank looks for a lessee to the equipment in exchange of a recompense.

A Lessee: Pays the agreed upon rental on the specified periods and returns the equipment to the bank at the end of the lease period.

3. The following lease contract

The bank: After the bank recovers the asset, it looks for a new lessee to let the equipment for a new lease period.

New Lessee: Pays the agreed upon rental in the specified periods then returns the asset to the bank at the end of the lease term.

Note: At the end of each lease period the bank looks for a new lessee, at times the bank may choose to scrap or dispose of the assets finally.

The Evidence of Legality

1. Allah says:

....and if they suckle your (offspring) give them their recompense.

Al-Talaq 6

Said one of the (damsels)

"O my (dear) father! Engage Him on wages:

truly the best of men for thee to employ is

The (man) who is strong and trusty

Al-Gasas 26

2. Abu Said Al-Khudari related that, the Messenger of Allah (PBUH) said, "He who hires a worker must inform him of his wage."

Related by Albyhaghi through Abu Huraira and His saying (PBUH) "Give the worker his wage before his sweat dries."

Ibn Maja

3. There is consensus among the Ummah from the time of Sahaba "Companions" up to this day because people need benefits as their need to assets.

Legal Rules

1. It is a condition that the subject of the contract 'benefit' is known comprehensively to avoid conflict. If the subject of the contract is unknown or unspecific the lease contract is invalid, to avoid dispute.

2. It is a condition that the object leased must not be perishable or consumable. The asset must

remain because the lease is for the utilization not the consumption of the asset.

3. It is a condition that the subject of the contract must actually and legally be attainable. It is impermissible to lease something impossible to deliver. If the asset subject to lease is a pro rata property, it is permissible for a partner to lease its share to the other partner via an agreement. However, the majority of jurists permit the partner to let his share to others.

4. It is a condition that the lessee shall ensure that the asset is used for the purpose it is made for and shall comply with the provisions of the contract or the norms if there is no provision. The lessee also shall not benefit from the asset in a way more than what has been agreed upon.

5. It is permissible to draw a contract on lawful (licit) benefits but as for prohibited benefits, Ijarah (lease) is impermissible. It is impermissible to lease real estate to be used as an interest based bank or a bar. However it is permissible to lease property to whose major activities are allowed even if they include some secondary prohibited practices.

6. The lessor is under obligation to enable the lessee to benefit from the asset, by delivering the asset at the commencement of the lease period, this includes the accessories of the asset necessary to benefit from the asset according to the norms.

7. It is a condition in the benefit lease contract to state the lease period clearly, if otherwise dispute will arise.

8. It is a condition that the rental must be money and the letting begins at the time of receipt of the asset because lease contract is a temporal contract the rental falls due from the receipt of the asset not the contract.

9. It is permissible to advance, defer or install the rental in both the asset lease and the lease described on liability in accordance with the agreement.

10. It is permissible for the rental to be a benefit similar or different from the one contracted on such a letting a house for living in another, it is also permissible for the rental to be a certain amount of money which increases gradually in ratio with the increase in the output provided that the ratio of increase in the rental and the increase in profit are unambiguously stated.

11. It is permissible for the two parties to agree during the lease period to review the lease period or the rental or both. That is because the lease contract occurs periodically unlike the sale contract where the transfer of ownership is immediate.

12. The leased asset is a trust in the hands of the lessee, so if the asset is damaged or destroyed without transgression, default or negligence from the lessee, it does not guarantee the asset because the lease hold is a permissible hold so it is not guaranteed.

13. It is a condition that the lessor bears the liabilities of the owner when leasing the asset such as damage liabilities, payment of premium cost and basic maintenance. There is no objection to authorizing the lessee to undertake all the above but must be at the expense of the lessor/owner.

14. The lessor/owner bears all the costs of the legally binding basic maintenance and these are operations on which the permanence and suitability of the leased object depend. The lessor also bears the cost of the replacement of durable parts. It is permissible to make the lessee bear the cost of ordinary routine maintenance, because this cost is normally known and can be considered as part of the rental.

15. It is permissible for one who purchases an asset and owns that asset legally and entirely to give it on lease to the seller according to the legal rules of Ijarah.

16. It is permissible for the lessee to let to the third party during the lease period whether for the

same rental or more as long as the asset is not affected by the change of user.

17. It is permissible to purchase an asset bearing a lease contract. The lease contract may continue since the purchaser agrees to its continuity up to the end of the lease term. All rights and liabilities emanating from the lease contract will transfer to the new owner. But if the sale-contract is drawn and the purchaser is oblivious of the lease contract, he has the right to rescind the contract and the lease continues.

18. It is a condition that the asset is in good working condition and in case of defect the lessee has the option to retract or to continue the lease and pay the rental.

19. As soon as the lease period terminates the lessee is under obligation to return the asset to the owner.

20. The lease contract is binding, and no one party shall unilaterally rescind except for compelling reasons that abrogate binding contracts such as appearance of defects, damage or destruction.

21. If the asset to be leased in the lease described on liability contract is damaged, the contract does not terminate if the lessor offers a substitute with the same specifications agreed upon in the lease contract.

22. The lessee in the method of lease described on liability (the leased object is not particular but described and agreed on) is permitted to lease to others in the same manner in a way that coincides with the specifications of the first lease. Then when it delivers the asset to the new lessee it is parallel leasing. According to the Hanbali, it is permissible to pay immediately or to defer the payment of rental, the Shafites have the same view.

Areas of Application

- The operation lease transactions are suitable for high cost expensive assets, that demand large amounts of money in order to possess, in addition to the long time necessary for its production.
- To mention but a few of these assets, aircrafts and ships for which the demand on operation lease is increasing because of high cost and long period of construction.
- The Islamic banks can carry business in the line of operation lease in many assets such as industrial equipment and agricultural machinery as well as the means of transportation. All these can satisfy the immediate needs of different parties.
- The bank benefits from this mode by retaining the assets in its possession and at the same time receives returns from leasing. The lessee also benefits by covering its immediate demand and achieving its objectives at the appropriate time without bearing large capital cost.

MODES OF PARTNERSHIP

....Truly many are the partners (in business) who wrong each other: Not so do those who believe And work deeds of righteousness.

Saae 24

The Holy Hadith:

I am the third partner to the two partners unless either of them betrays his friend. If either betrays his friend, I quit from betwixt them.

Related by Abu Daoud.

The Characteristic Traits of Modes of Partnership

The partnership operation means two or more parties draw a contract to work together by the capital they contribute in condition of dividing the accruing profit between them.

The most important traits of these operations are:

- The participation in capital whether it is an asset, labour or liability.
- The partnership in work, management and disposal where the right of ownership and disposal remains to each partners.
- The partnership in the results of the operations whether profit or loss.
- The continuity in the partnership, usually to long terms.

Divisions of the Modes of Partnership

Partnership operations embrace all kinds of contract companies which the Islamic Figh divides into three kinds:

Labour Company

It is a contract in accordance to which two or more parties agree on accepting to do a job (such as trade, construction, etc.) together and to divide the accruing profit among themselves in specific percentage.

Character Company

It is a contract in accordance to which two or more parties agree on purchasing with their characters and reputation goods and commodities on credit for trading in condition of distributing the accruing profit, or loss among themselves in ratios proportionate to what each one of them bears of the debt guarantee or security.

Asset Company

It is a contract in accordance to which two or more parties agree on participating in the contribution of capital for investment and the accruing profit shall be divided among themselves in specific percentages agreed upon and they bear losses in ratio proportionate to their (contributions) shares in capital. But, profit may be distributed separate from the debt guarantee borne by each, whereas loss shall be proportional to debt guarantee.

In Asset Companies

The two partners may be equal in capital and power of disposal, this sort of asset companies is called "Mufawada Company"

The two partners may neither be equal in capital nor in power of disposal. In other words, one of the partners has more capital than the other or one partner is responsible for the company and the other is not. This kind is called "Ainan company".

It is notable that the rein companies are the most appropriate companies for the business of the Islamic banks. The other kinds of companies rarely suite the nature of business in the Islamic banks. That is because the rein company enables the Islamic bank to contribute in established or proposed projects and to authorize the other partners in all the concerns of investment and the bank contents with the role of general supervision and follow up and the right to intrude when necessary.

In the following pages we shall study two modes of partnerships which are applied by the Islamic banks. They are