

**UBUDIYYAH  
BUSINESS  
MODEL (UBM)**

**FINANCE AND ACCOUNTS  
(FIN) GUIDELINES**

**UBM-FIN-002**

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## INTRODUCTION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Al Hamdulillah who has elevated man to the status of “*Ashraf-ul-Mukhluqat*” the most exalted of His creation. And may His salutations and blessings be upon His Slave and Messenger Muhammad (PBUH) whom He sent for the guidance of all mankind and their rectification.

Among the salient features of the distinction of man is the way in which he fulfills his needs and requirements. The entire animal kingdom other than man either find their sustenance and needs readily available, or by aggression of the stronger species over the weak, bereft of any manifestation of justice, equity or mercy.

Man on the other hand, in the amazing scheme engineered by *Rabbul ‘Alameen*, finds his substance and needs fulfilled through interactions with others, generally by means of commercial transactions through *the medium of currency or commodity*. *Shari’ah* has gifted us with the methodology of these transactions replete with justice, equity, and accuracy. Thereafter, Allah *Ta’ala* continues to inspire mankind through the medium of intelligence and experience within the parameters of *Shari’ah*, to adapt to unlimited dynamics of a myriad of circumstances and ever-increasing complexity, operating and transacting in an increasingly excellent manner! Such are the favors of Allah *Ta’ala* upon mankind for which he should reflect and be grateful!

As such, *finance* and *accounts* are not merely operational and academic subjects, but clearly among Allah *Ta’ala*’s major blessings and distinctions that He has granted man, “teaching him what he knew not”<sup>1</sup> by Revelation and inspiration.

Therefore, let us embark on the study and implementation of this module in the light of reflection and gratitude to Almighty Allah who has favored us over much of His creation with such sublime knowledge and practice, *ameen*!

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## SOURCES OF FINANCE

Islam encourages austerity and simplicity in business, in much the same manner that it encourages a Muslim to be austere and simple in his overall life style.

Therefore, business expenditure and budgets should be prepared in a manner that reflects simplicity and avoidance of *Israaf*.<sup>2</sup>

Keeping this in mind, the magnitude of a business and its operations should be planned as per resources available to the owner(s), while maintaining avoidance of debt as far as possible.<sup>3</sup> Initial seed capital should be Halal, and the owners must consult a Mufti or *Dar-ul-Ifta*<sup>4</sup> if there is any doubt. It is vital that the line and nature of the business itself is in accordance with Shari'ah.<sup>5</sup>

## NATURE / TYPES OF BUSINESS

The ownership structure and nature of business must be defined and documented.<sup>6</sup>

There are three basic structures prevalent in contemporary business settings:

- i. **Sole Proprietorship:** Sole proprietorship is a form of business where one person owns all assets of the business.<sup>7</sup>
- ii. **Partnership:** Partnership is an association of two or more persons to engage in a business as co-owners for profit.<sup>8</sup>
- iii. **Limited Liability Company:** Owners may or may not actively participate in the organization's management and are protected against personal liability for the organization's debts and obligations. The matter of Shari'ah status of Limited Liability Company has been under discussion among *Ulama*. Therefore, the concerned organization should consult a Shari'ah advisor or *Dar-ul-Ifta*.

## QARD

Qard (Loan) should only be taken when absolutely needed and with the firm intention of repaying it. A Hadith states:<sup>9</sup> "Whoever takes a loan not intending to return it, is a thief!" (Ibn e Maja / 2/805)

- i. Terms of the loan such as; its amount, date of grant and repayment, should be put into writing and signed by lender and borrower in presence of two witnesses.<sup>10</sup>
- ii. Loan of homogenous (*mithli*) goods is permitted. However, these transactions should be undertaken under the supervision of a Shari'ah Scholar (*Alim / Mufti*).
- iii. Any direct or indirect benefit taken by the one granting loan from the one receiving it is *Riba!*<sup>11</sup>
- iv. Shari'ah considers *Qard* a liability, payable on demand at any time. Hence, the lender may demand the loaned amount even before the agreed date, and the borrower would be liable to pay.<sup>12</sup>
- v. Delaying in returning a loan is prohibited.<sup>13</sup> Abu Hurairah (رضى الله عنه) narrates a hadith: "Delay of payment by a person who has the means to pay is injustice!" (Sahih Bukhari). Abdullah Ibn Umar

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(رضى الله عنه) narrates a hadith: “Every sin of a martyr shall be forgiven except the debt!”<sup>14</sup> However, this does not apply to the defaulter who is without means or genuine excuse.<sup>15</sup>

- a. **According to Quran:** “If there is one in (financial) difficulty, then (the creditor should allow) deferment till (his) ease, and to forgo it as alms is much better for you, if you were to really understand!” (Al Baqarah, 280)
- b. **According to Hadith:** Abu Hurairah (رضى الله عنه) narrates a hadith: “Whosoever gives respite to a borrower who is in difficulty, or forgives him altogether, Allah *Ta’ala* will give such a person refuge under the Shade of His Throne on the day when there will be no shade other than His!” (Sunan Tirmithi # 1306)
- c. A person who is in fact unable to repay a loan is entitled to receive *Zakat* for clearing his debt.<sup>16</sup>

#### **DHAMAAN (GUARANTEE)**

- i. A contract of guarantee is permissible in contracts of exchange, for example a contract of sale, or contract of rights, such as rights of intellectual property.
- ii. Shari’ah recommends documentation of contracts, whether in a simple written form or in the form of official documents, provided all the essential information is documented.<sup>17</sup>
- iii. **Personal guarantee:**
  - a. It is permissible to stipulate that a customer should provide one or more guarantors to secure the debts owed by the customer.
  - b. It is permissible to fix the duration of a personal guarantee.
  - c. It is not permissible to take any remuneration for providing a personal guarantee, or to pay a commission for obtaining such a guarantee. Taking any benefit against a guarantee is not permissible even if it is not in the form of fees.
  - d. A guarantee may be given for debts even if the exact amount of the debt is unknown. Similarly, a guarantee may be given for a debt that will arise in the future.

#### **RAHN (SECURITY DEPOSIT)**

- i. Price of pledged asset should be according to its actual value.
- ii. It is permissible to stipulate that at, or before, the conclusion of a credit transaction, the customer shall provide a security deposit against payment, while possession of the deposited asset will not prevent the demand of payment when it becomes due.
- iii. The contract of security deposit is binding on the debtor who provides it. The debtor cannot revoke the contract even though the said asset is not in possession of the creditor. However, acceptance of the security is not binding on the creditor and he may disclaim his right if he so wishes.
- iv. The death of either the pledger or pledgee of the security will have no effect on the continuity of the pledge, and the heirs shall replace the deceased in giving and receiving the benefit of the

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pledged security. Note: Certain types of securities are formed in financial institutions that do not qualify as pledge (*Rahn*).

#### CONDITIONS RELATING TO A PLEDGED ASSET

- i. The pledged asset must have a monetary value and may be lawfully owned and sold.
- ii. It should be identifiable by some distinguishing mark, name or description, and can be delivered to the creditor.
- iii. The creditor retains a pledged asset on a trust basis.
- iv. **Utilization of pledged asset:**

It is permissible for the pledger to use the pledged asset with the consent of the pledgee. However, the pledgee (creditor) is not permitted to use the pledged asset even if the pledger has given his consent. (Shari'ah Standard 5: Guarantees: Accounting and Auditing Organization for Islamic Financial Institution)

#### CREDIT SALE

- i. Credit transactions are allowed by Shari'ah.
- ii. Credit amount is considered a debt due on the buyer.
- iii. Time of payment must be defined in a credit transaction.
- iv. A higher price may be charged on a credit transaction than charged on a cash transaction on the same item. However, one specific price must be agreed upon at the time of transaction.
- v. Delay in payment with mutual consent is allowed.
- vi. In case of payment before the agreed date, a concession in price with mutual consent is allowed, but it must not be stipulated in the contract.
- vii. To delay payment of a debt without a valid excuse is a sin.

#### MUSHARAKAH (PARTNERSHIP)

- i. **Definition:** The literal meaning of *Musharakah* is sharing. It is defined technically as a joint enterprise formed for conducting a business in which all partners share the profit according to a mutually agreed ratio while the loss is shared according to the ratio of the contribution.<sup>18</sup>
- ii. *Musharakah* is a written contract between partners, and every partner should have a copy thereof. It must be ensured that the contract is free from:
  - a. *Riba*;<sup>19</sup>
  - b. *Qimar*;
  - c. *Gharar*;<sup>20</sup>
  - d. Fraudulent misrepresentation;
  - e. Mistakes.<sup>21</sup>



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- iii. The following are essential elements that must be included in a *Musharakah* contract:
- a. Amount and percentage of capital/ investment.
  - b. Profit / loss ratio should be defined as per Sharia rules. <sup>22</sup>
  - c. A fixed amount of return cannot be guaranteed to any or all of the partners. Returns must be based on profit ratio. <sup>23</sup>
  - d. Profit ratio of active partner can be above his investment ratio. <sup>24</sup>However, loss ratio must be in accordance with investment ratio. <sup>25</sup>
  - e. Sleeping partners are not allowed in the service industry.
  - f. The sleeping partner cannot withdraw more than his investment ratio of profit. <sup>26</sup>
  - g. Roles and responsibilities of partners must be defined in the contract.
  - h. If capital contribution is in kind, valuation of the kind should be based on fair market value agreed among the partners.
  - i. Partner (as a partner) cannot receive any salary or lump sum amount except his/ her profit. However, if the active partner wants a salary, then it should be decided in a separate employment agreement.
  - j. If a partner of a service industry wishes to contribute capital or assets to the company as a sleeping partner, a Shari'ah advisor or *Dar-ul-Ifta* should be consulted.
  - k. The method of dispute dissolution should be defined in the contract.
- iii. In case of death of any partner the partnership is dissolved and the deceased partner's share from the partnership should be distributed to his heirs as per Shari'ah. Alternatively, the heirs may be made partners in place of the deceased person by means of a new agreement with the former partners.
- iv. If a new partner is entering into a running business, the total worth of the business must be evaluated to ascertain the worth of each share. This process will identify the price of the share the entering party intends to purchase, or what percentage of the business will his contribution of capital represent.

**Note:** A formula for dealing with the share of a deceased party must be in place and agreed upon among the partners from the onset of the partnership. This should be undertaken in consultation with a Shari'ah advisor or *Dar-ul-Ifta*. This is an issue of utmost importance in any partnership, particularly a large business. Failure to address this issue obviously can, and usually does, have catastrophic repercussions

## MUDHARABAH

**Definition:** *Mudharabah* is a partnership where one partner contributes capital to another for a commercial enterprise. The investment comes exclusively from the first partner who is called "*Rabb-ul-Maal*" while the management and effort is the exclusive responsibility of the other partner, called "*Mudharib*". The profit generated is shared according to a predetermined ratio. <sup>27</sup>

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## TYPES OF *MUDHARABAH*

- i. There are 2 types of *Mudharabah* namely:
  - a. ***Al-Mudharabah Al-Muqayyadah***: *Rabb-ul-Maal* may specify a particular business, place or time for the *Mudharib*, in which case he shall invest the money as specified by the *Rabb-ul-Maal*. This is called *Al-Mudharabah Al-Muqayyadah* (restricted *Mudharabah*).
  - b. ***Al Mudharabah Al-Mutlaqah***: *Rabb-ul-Maal* gives full freedom to *Mudharib* to undertake whatever business he deems fit, this is called *Al Mudharabah Al-Mutlaqah* (unrestricted *Mudharabah*).<sup>28</sup>
- ii. *Mudharabah* agreement should include all conditions, terms, parties, kind of *Mudharabah*, ratio, duration, and subject of *Mudharabah*, etc.<sup>29</sup>
- iii. *Mudharib* will not share in a loss, as loss sharing is to the extent and ratio of investment and the *Mudharib* does not have an investment in the *Mudharabah*. However, if losses are a direct result of the *Mudharib's* negligence or misconduct, he will be responsible for the loss to the extent of his negligence or misconduct.<sup>30</sup>
- iv. A fee or salary for managing a *Mudharabah* is not allowed. The *Mudharib* however may be allotted a daily allowance for accommodation and travel related to the *Mudharabah* outside his city, or a conveyance allowance in a big city as an expense to the *Mudharabah*.<sup>31</sup>
- v. Profit distribution of a *Mudharabah* with financial institutions should be from the gross profit, whereas the profit distribution of a *Mudharabah* between individuals is from the net profit of the business only.<sup>32</sup>
- vi. The basis for profit distribution in a *Mudharabah* between individuals cannot be based on sales proceeds. Distribution will only be made from the actual net profit of the business.
- vii. *Mudharib* has to maintain books of accounts to determine profit / loss accurately.
- viii. In the case of an unrestricted *Mudharabah*, the *Mudharib* can enter into another *Mudharabah* agreement with the *Ra's Maal* (capital) of the first *Mudharabah*.
- ix. If the agreement between *Rabb-ul-Maal* and Primary *Mudharib* were to share all profits earned by the *Mudharib*, *Rabb-ul-Maal* would be entitled to the share in profit earned by the Primary *Mudharib* after distribution to Secondary *Mudharib*.
- x. If the agreement between *Rabb-ul-Maal* and Primary *Mudharib* were to share any profit earned on the investment, *Rabbul Mal* would be entitled to a share in the whole profit earned by the Primary as well as the Secondary *Mudharib*.
- xi. If a *Mudharabah* is formed in various business units that have their own set of accounts, the profit and distribution of profit of each business unit will be independent of the other business units.
- xii. If the *Mudharabah* is not limited to a specific time period, losses of subsequent months will be compensated with the undistributed profits of previous months, or within the specified time period.

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- xiii. If a company intends to enter into a *Mudharabah* partnership, it must undertake the necessary instruction /training from a competent Shari'ah advisor, *Mufti*, or *Dar-ul-Ifta*.

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#### USES OF *MUSHARAKAH* / *MUDHARABAH*:

- i. These modes can be used in the following areas (or can replace them according to Shari'ah rules).
- ii. **Asset Side Financing:**
  - a. Short/ medium/ long - term financing
  - b. Project financing
  - c. Small and medium enterprises setup financing
  - d. Large enterprise financing
  - e. Import financing
  - f. Import bills drawn under import letters of credit
  - g. Inland bills drawn under inland letters of credit
  - h. Bridge financing
  - i. LC without margin (for *Mudharabah*)
  - j. LC with margin (for *Musharakah*)
  - k. Export financing (Pre-shipment financing)
  - l. Working capital financing
  - m. Running accounts financing / short term advances
- iii. **Liability Side Financing:**
  - a. Current, saving, monthly income investment accounts (deposits giving profit based on *Musharakah* / *Mudharabah* with a predetermined ratio);
  - b. Securitization for large projects (based on *Musharakah*);
  - c. Islamic *Musharakah* bonds.

#### CONTRACT OF *ISTISNA'*

**Definition:** *Istisna'* is technically a sale transaction of a commodity before it comes into existence. This is the form of transaction used when placing an order with a manufacturer to manufacture a specific commodity for the buyer. The manufacturer provides the material needed to manufacture the goods ordered.<sup>33</sup>

- i. Before the actual manufacturing begins, either of the parties may cancel the contract after giving notice to the other.<sup>34</sup>
- ii. Pricing terms must be clear and agreed upon.
- iii. Description of goods must be clearly specified.<sup>35</sup>
- iv. Time period for delivery of goods must be agreed upon, be it a one time delivery or in installments.

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- v. The re-sale of the subject matter of *Istisna'* is not permissible until completion of the manufacturing and actual possession of the buyer.
- vi. *Istisna'* contract is not permissible upon goods already produced.
- vii. There must not be any ambiguity of the nature of the contract, it must be clear to both parties that this is an *Istisna'* contract.
- viii. If the manufacturer is to sell these goods as an agent of the buyer after delivery to the buyer, a separate agreement other than *Istisna'* must be made for this transaction.
- ix. **Uses of *Istisna'*:**
  - a. Home financing
  - b. Financing of a plant, factory or building
  - c. Booking of apartments
  - d. Bill of Trade arrangements
  - e. Construction of buildings, plants, etc.

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## CONTRACT OF SALAM

**Definition:** The undertaking of a seller to supply specific goods to a buyer at a future date in exchange of a fully paid advance payment. So basically it is a sale transaction wherein the payment is made in advance, whereas the delivery of goods purchased is deferred to a later date. <sup>36</sup>

- i. The full price must be paid in advance. The quantity and the quality of the subject matter should be agreed and specified in clear terms.
- ii. The time and place of the delivery of goods must be predetermined whether it be a one time delivery or in installments. <sup>37</sup>
- iii. If the advance payment is in the form of barter, the absence of *Riba* must be ensured. <sup>38</sup>
- iv. The commodity should customarily be available at the delivery time.
- v. The subject matter can be altered before the delivery with mutual consent.
- vi. The re-sale of the subject matter of *Salam* is not permissible until it is in the actual possession of the original buyer.
- vii. The *Salam* contract is not permissible on goods already produced.
- viii. The *Salam* contract must not be ambiguous.
- ix. If the manufacturer is to sell these goods as an agent of the buyer after delivery to the buyer, a separate agreement other than *Salam* must be made for this transaction.
- x. If the subject matter is not delivered on time, the buyer has two options:
  - a. To wait.
  - b. To cancel the transaction and take back the principal amount.
- xi. *Salam* can be made only on fungible, homogenous (*mithli*) goods that the specifications, by which its value varies, can be clearly and accurately defined and measured. <sup>39</sup>
- xii. *Salam* is permissible only in items that are:
  - a. Measured by weight or volume;
  - b. Are continuously and always available in the market. <sup>40</sup>
- xiii. Penalties for late/ non-delivery are not permissible. <sup>41</sup>

## CONTRACT OF MURABAHAH

**Definition:** *Murabahah* is a sale transaction where the seller expressly mentions the incurred cost of the sold commodity, and sells it to another person by adding a specified amount of profit thereupon. <sup>42</sup>

1. As it is a type of sale, there must be a seller and buyer and something that is bought and sold.
2. The parties must agree upon the cost and profit.

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3. Once the sale has been completed, and the price including the profit has been specified, it is not permissible to increase or decrease any terms thereafter.
4. If goods of the *Murabahah* are being stored in a facility where there are other goods being stored not related to the *Murabahah*, goods of the *Murabahah* should be kept separate by means of color schemes, boards, markings or any other effective means of identification and distinction up to the time of delivery.<sup>43</sup>
5. Invoices are to be signed by an authorized representative of the Trader/ Manufacturer.
6. Rescheduling is allowed, but any increase in the original price is not allowed.
7. If the customer fails to pay his dues on a *Murabahah* sale, then it is not permissible to change the price of the goods or to charge any penalty. (Some jurists however, allow a penalty to discourage late payments.<sup>44</sup>
8. If the *Murabahah* involves credit terms, the price and date of maturity must be fixed.
9. Advice from Shari'ah Advisor is essential for goods that cannot be segregated.
10. Traders, manufacturers trade representatives, persons at various levels in finance and relevant persons in procurement and stores should all be trained and educated in *Murabahah* transactions related to their respective fields.

The *Murabahah* model is used extensively in the Islamic finance/banking sector. When entering into such transactions with banks it is very critical to have a competent Shari'ah Advisor/Mufti oversee and audit all such transactions. Some examples of issues that need attention:

1. If a second party makes the purchase on behalf of someone else, a bank for example, the following things should be clear and known:
  - a) Who shall inform the bank at the time the goods are delivered?
  - b) How shall delivery and possession of goods take place?
2. If the original agreement of payment was to be at a particular time, but payment was not possible at that particular time, it is not permissible to initiate a new agreement (rollover).
3. If a rebate has been agreed upon in a credit *Murabahah*, the conditions of the rebate must be documented within the agreement.<sup>45</sup>
4. It cannot be used as a cash facility, which provides cash for fulfilling various needs.
5. *Murabahah* is not permissible on goods already purchased to avoid buyback (Al 'Eenah)
6. Seller should be informed about any advance order made for this *Murabahah*. If the *Murabahah* has appointed a purchasing agent (Wakeel), for whom the purchase is being made for must be clear before any actual purchase.<sup>46</sup>

## CONTRACT OF IJARAH

**Definition:** *Ijarah* is the transfer of the utility of an asset or service, from the *Mu'ajjir* (owner) to the *Musta'jir* (the party renting the asset) for an agreed period, at an agreed compensation.<sup>47</sup>

- i. Subject of *Ijarah* (lease) must be something of value, identified and quantified.

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- ii. *Ijarah* of a consumable item is not permissible. <sup>48</sup>
- iii. *Ijarah* can only be contracted for a Halal purpose and for Halal things.
- iv. The period and purpose for which it is being taken on rent must be specified. <sup>49</sup>
- v. At the time of the signing of the contract, the rental amount must be specified for the total period of the *Ijarah*. <sup>50</sup>
- vi. The period of *Ijarah* would start when the *Ijarah* asset is handed over to the *Musta'jir*, or at the start of a service provided. <sup>51</sup>
- vii. Any advance payment must be specified and mentioned in the contract as advance rental, security deposit, etc.
- viii. All expenses related to *operational use* of the asset are borne by *Musta'jir* and *ownership related expenses* (major maintenance, property tax, etc.) are borne by the *Mu'ajjir*. <sup>52</sup>
- ix. In case of loss of the utility of the asset, the *Ijarah* agreement will be terminated. <sup>53</sup>
- x. Once the *Ijarah* terms and compensation are agreed, the *Mu'ajjir* has no right to increase the rent or ask the *Musta'jir* to vacate the property before the stipulated rental period comes to an end. However if an abnormal variance in rent value occurs, the party bearing the loss can terminate the *Ijarah*.
- xi. The *Ijarah* agreement may be cancelled on the basis of *Khiyaar Shart* or '*Aib Ru'yah*'. <sup>54</sup>
- xii. The asset is not to be used for any purpose other than what was stipulated in the agreement. If the asset is damaged while used for any other purpose, compensation for the damage must be borne by the *Musta'jir*.
- xiii. If the *Mu'ajjir* has allowed a sub-*Ijarah*, the sub-*Ijarah* will be permissible, but it must be for the same compensation as the original *Ijarah*, unless the original *Musta'jir* has made some amendments/value addition to the asset. In that case, higher rental compensation is permissible. Otherwise, in the absence of any value addition, any amount above the original amount is impermissible, and if inadvertently taken, should be disposed of in charity without intention of reward. <sup>55</sup>
- xiv. If the asset has been rented on *Ijarah* but the agreement was found to be *Faasid*, the lesser of either; 1. *The agreed amount* or 2. *The prevailing market rate of rent* should be given for the period the asset has already been utilized. <sup>56</sup>
- xv. In the event of death of the *Mu'ajjir* or *Musta'jir*, a new agreement must be made between the new parties (original party and the other party's heirs). <sup>57</sup>
- xvi. Token money received by the *Mu'ajjir* from the *Musta'jir* cannot be retained unless it is in lieu of, and equivalent to, actual damages to the property.
- xvii. Barter of rental is also allowed.
- xviii. Rental must be a fixed amount free from any ambiguity. Fixing a set rate for some portion of an asset and a variable rate for another portion is impermissible.



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## 'AARIYAH

**Definition:** Taking an asset for use free of any rental charge. <sup>58</sup>

- i. Only non-consumable assets can be given on 'Aariyah.
- ii. *Musta'eer* is liable to return the asset to the owner in good / original condition. If the asset was damaged, destroyed or lost due to *Musta'eer's* negligence, he would be liable to compensate for the loss. <sup>59</sup>
- iii. The owner cannot demand its immediate return of the asset if the *Musta'eer* would have to bear a loss in the immediate return. Nevertheless, the *Musta'eer* must return the asset as soon as possible without incurring loss.
- iv. The asset may not be modified without the permission of the owner. The cost of any modification, authorized by the owner, will be borne by *Musta'eer*, unless it has been undertaken by demand or order of the owner, in which case the owner will bear its cost.

## Amanah as a source of finance

- i. There must be a transparent system for safeguarding and recording any *Amanah* received. <sup>60</sup>
- ii. If money received as an *Amanah* were combined with one's own capital (with permission), any loss incurred (if any) would be shared proportionately. <sup>61</sup>
- iii. If the *Amanah* is a physical asset and is used by the *Ameen* with permission of the owner, regulations of *Aariyah* would apply. If permission had not been given this action would be treated as *Ghasb (illegal seizure/extortion)*. <sup>62</sup>
- iv. If *Amanah* is in a monetary form and the owner has given permission for it to be used, this would be considered a loan. Loan and *Amanah* must be kept separate, as exact the same *Amanah* must be returned rather than its equivalent. <sup>63</sup>
- v. If the *Amanah* is used in business with permission of owner then profit/ loss would go to the *Ameen* and he would still be responsible to return the *Amanah* in full.
- vi. If the *Amanah* is being returned to an agent of the owner, it must be ensured that it reaches the actual owner.
- vii. The *Ameen* will not be responsible for the loss of *Amanah*, provided that he has not shown any negligence in respect thereof.

## SUKUK

**Definition:** *Sukuk* are certificates representing the holder's proportionate ownership in an undivided specific asset, while also assuming all rights and obligations related to the same. <sup>64</sup>

### SHARI'AH GUIDELINES

- a. Funds raised must be used for Shari'ah compliant (*halal*) activities.
- b. Funds raised may be used to finance tangible assets. Specification of assets is necessary since *Sukuk*, unlike conventional bonds, cannot be used for general financial needs of the issuer.

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- c. Sukuk holders have a right to the ownership of the underlying asset and its cash flows.
- d. Income received by *Sukuk* holders (investors) must be derived from cash flows generated by the underlying asset.
- e. Rights and obligations of all parties in the transaction (originator and *Sukuk* holders) must be documented.
- f. Returns cannot be fixed.<sup>65</sup>

## DIMINISHING MUSHARAKAH

A financier and his client participate in a joint ownership of a property or commercial enterprise. The financier's share is divided into a number of units and the client purchases these units of the financier's share periodically, thus increasing his own share until he has purchased all the units. Ultimately, this periodic purchasing of the financier's units renders the client the sole owner of the property or commercial enterprise.<sup>66</sup>

### USES OF DIMINISHING *MUSHARAKAH*

- a. Purchase of all fixed assets;
- b. House Financing;
- c. Plant and Factory Financing;
- d. Car/Transport Financing, Trade Financing;
- e. Project financing of fixed assets.

## ISTIJRAR

*Istijrar* is an agreement whereby a buyer undertakes ongoing purchases without a renewed offer / acceptance or negotiation for each new transaction. Rather, one master agreement is set wherein all terms and conditions are fixed for subsequent ongoing purchases.

There are two types of *Istijrar*:

- i. The price is determined in advance but the purchase is executed from time to time.
- ii. The price is determined after all transactions are complete with certain conditions.<sup>67</sup>

## IJARAH WA IQTINA (LEASING AND PROMISE TO GRANT)

The lessor is allowed to sign a separate promise to grant the leased asset to the lessee at the end of the lease period, subject to his payment of all rental dues. This arrangement is called '*Ijarah wa iqtina*'. This arrangement is validity provided it fulfills two basic conditions:

- i. The promise to sell or grant the asset at the end of the lease period should be recorded in a separate document. It is not permissible to include this agreement in the *Ijarah* itself.
- ii. The promise is unilateral and binding on the promisor alone. It cannot be a bilateral promise binding both parties because in that case it would be a complete contract deferred to a future date, which is not permissible in the case of sale or gift.

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## BAI' SARF

*Bai' Sarf* is a contract of exchange of money for money. This contract is tightly regulated under Shari`ah to guard against the entrance of any form of interest/*Riba*.

The rules of *Bai' Sarf* are derived largely from the well-known hadith that mentions that; gold is to be paid for by gold, silver by silver, wheat by wheat, barley by barley, dates by dates, and salt by salt - like for like, equal for equal, hand to hand (exchange being made on the spot).<sup>68</sup>

### Some Basic Conditions of Currency Exchange (non gold or silver):

- a. One of both currencies must be paid at the time of contract and another can be paid later.
- b. Exchange rate must be determined at the time of contract.
- c. Any increase in rate in the event of late payment is prohibited.
- d. If a promise to buy is delayed or not honored or cancelled, no extra charge may be levied even in the event of any gap or loss of opportunity.
- e. Forward sale is not allowed.
- f. Transaction should be made based on the market rate. However, brokers' commission is permissible.

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## FUND MANAGEMENT

When investors have funds available for short or long term investment, such funds should be utilized in a beneficial and profitable manner while retaining easy liquidity so that funds may be withdrawn and utilized in the core business when needed. Islam emphasizes the utilization of funds and dislikes stagnation of wealth, thereby not benefiting anyone.<sup>69</sup>

### Some permissible ways to utilize funds

- a) Investment in any other business;
- b) Current account in any bank;
- c) Saving account in Islamic bank;<sup>70</sup>
- d) Investment in real estate;
- e) Investment in gold.

### FORBIDDEN WAYS OF UTILIZATION OF FUNDS

- a) Saving account in conventional bank;
- b) *Haram* business;
- c) Interest based loan.<sup>71</sup>

Funds must be utilized in a clear and transparent manner with a written agreement covering all conditions, responsibilities and liabilities. It is particularly important to document all related transactions, such as receiving funds from an investor, *Ameen Mudharib* or *Musharik* / partner.<sup>72</sup>

### SHARI'AH STANDARDS FOR INVESTMENT IN STOCK MARKET

- i. The basic business of the company whose shares are being purchased should be halal.
- ii. If the company has taken interest-bearing loans, these loans should not be valued more than 33% of average market capitalization of 12 months.
- iii. At the time of share purchasing, the liquidity fund of the company should not be more than 33% of the average market capitalization within a 12-month period.
- iv. If the company is in debt, then the debt should not be more than 33% of the average market capitalization within a 12-month period.
- v. If the basic business of the company is halal but it is partially involved in interest or any other prohibited business activity, the income of the haram sources must not be more than 5% of the total income of the company.<sup>73</sup>

### USE OF CREDIT CARD

Since the contract for purchase of credit card is interest based, the same is not recommended. If the organization requires online payments, Debit Card is a permissible option. If credit card is the only option as is the same case in some international transactions, then the same may be used on the condition that payments are made before interest is charged.

[Reference Fatwa Fin-006]

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## DEBIT CARD – DISCOUNT OFFERS

Discount offers through debit cards are only permissible if:

1. The discount is given by the vendor and not the (conventional) bank
2. The discount is given by an Islamic bank

[Reference Fatwa Fin-004]

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## SOME GUIDELINES FOR ACCOUNTING MATTERS AND BOOK KEEPING

- i. *Bismillah* may be written at the onset of a document, however only reciting *Bismillah* will not only be sufficient but preferred in the likelihood of disrespect to the sacred name of Allah by improper disposal etc. (Ma'arif ul Quran 6/597). <sup>74</sup>
- ii. There should be an efficient system of accounting and reporting. Reports should include all details required by directors and executives. This is aligned with Shari'ah as meticulous documentation is encouraged. <sup>75</sup>
- iii. Effective and efficient accounting methods (FIFO, LIFO, etc.) should be employed to ensure against any misreporting or misrepresentation in any statements, reports, etc. reflecting the state of affairs of the business.
- iv. Necessary monitoring should be in place to safeguard against prohibited and unnecessary expenditures.
- v. Internal check and balance (audit) systems should be in place to ensure the proper and Halal use of resources to the best advantage to the organization. <sup>76</sup>
- vi. All staff must be honest and competent in their fields, having acquired basic knowledge of Shari'ah relevant to their activities. <sup>77</sup>

### ZAKAH

- i. Conventional accounting should be adjusted to accommodate Islamic financial transactions.
- ii. Accounting statements should be prepared as per the Islamic calendar. If the solar calendar is used, the rate of *Zakah* should be adjusted accordingly (as the solar year is longer than the lunar year).
- iii. *Zakah* should be paid timely and accurately. <sup>78</sup>
- iv. All partners should be informed of *Zakah* status; amount payable, when payable, eligible recipients, etc. (all relevant information), as well as the basic knowledge pertinent to them.
- v. Some rulings on Zakat are given below:

#### a) Gratuity

Employee is only entitled to Gratuity amount once he leaves the organization. The whole gratuity fund thus remains in the ownership of the employer \*. Accordingly, zakat will have to be paid by the employer.

If zakat of previous years was not paid then that will also have to be paid.

[Reference Fatwa Fin-003]

#### b) Pension Fund

If no deductions were made from employee's salary then it is not part of compensation (ujrat). The employer will have to pay zakat on pension fund. If any deduction was made then that part will be subtracted by the employer while calculating zakat.

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c) Registered Provident Fund

The ownership of this fund is of employees. They will pay zakat once the amount is disbursed to them.

d) Unregistered Provident Fund

The employer will have to pay zakat. However deductions made from employee's salary will be subtracted by the employer while calculating zakat.

Zakat details for other matters such as loans, accounts payable, accrued liability, WPPF, Murabaha payable, merchandize etc. are available with UBM Advisory Services.

[Reference Fatwa Fin-002]

- vi. It is recommended that Zakat be calculated and paid under the supervision of Ulama.

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## SHARIAH AUDIT

- i. Internal check and balance (audit) systems should be in place to ensure the proper and Halal use of resources to the best advantage to the organization.<sup>79</sup>
- ii. Deployment of a fully qualified, competent full time *Mufti* / Shari'ah Advisor is highly recommended in larger organizations. For smaller less complex organizations, at least an annual Shari'ah audit should be conducted. The following should be audited along with the required documentation:
  - a. All dealings;
  - b. Contracts;
  - c. Agreements;
  - d. Marketing practices;
  - e. All departments' operations with all relevant documents, evidence and reports, ensuring that nature of business and subject of business are Shari'ah compliant;
  - f. Audit transactions and dealings with the help of an expert accountant and auditor;
  - g. *The Mufti* should ensure that all payables are made on their actual time on agreed terms and conditions.
- iii. The Shari'ah auditor should report directly to the highest level of management. All issues identified by the Shari'ah auditor, including his comments and recommendations should be taken up with them in the form of formal reports.
- iv. The owners / shareholders should ensure that recommendations of Shari'ah auditors are implemented and monitored in letter and spirit.
- v. The owners should ensure that appropriate assistance is provided to the Shari'ah team.



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## DISPUTE RESOLUTION

Partners should consult a qualified competent *Alim* in the advent of any dispute. Issues and questions should be mutually drafted by all the disputing parties then forwarded to a recognized *Dar-ul-Ifta*. An appropriate follow up of the advice / fatwas received from the Darul Ifta should follow.<sup>80</sup> It is advisable that partners, after mutual consent, appoint an arbitrator (*Muslih*) in the advent of a dispute.

## DIVISION/ DISSOLUTION

If an asset belongs to more than one individual or organization, the following principles must be adhered to for division/dissolution:

- i. Each person's share must be documented and only those assets may be divided which do not lose their value after division.<sup>81</sup>
- ii. Assets that cannot be divided must be liquidated and the proceeds distributed accordingly.<sup>82</sup>
- iii. An asset may be divided amongst partners by request of all or one.<sup>83</sup>
- iv. It is conditional that an asset must retain its value/benefit after the division even if it is made by force i.e. through a court.<sup>84</sup>
- v. Homogenous assets (مثليات) will be divided on the basis by measure, count, or weight.<sup>85</sup>
- vi. Individuals assigned the task of dividing assets must be experts in this field. They must also be honest, ensuring careful and complete accountability for all assets.<sup>86</sup>
  - a. Either partners or a Court of Law may appoint these experts.<sup>87</sup>
  - b. Fee of an arbitrator, liquidator or divider must be agreed upon.<sup>88</sup>
- vii. It is compulsory to cancel a division if a divisible asset is valued unfairly. Acceptable evidence and two witnesses must back any claim of a partner.<sup>89</sup>
- viii. Drawing lots is the preferred method of distribution of the divided portions.<sup>90</sup>
- ix. The required outcomes of a proper and complete division are:
  - a. Every partner becomes an independent owner of his share.
  - b. Every partner has full, independent right to sell/rent out his allotted share of asset.
- x. In the case of inheritance, it is compulsory to cancel a division if:
  - a. Any further liability/obligation of the deceased becomes known
  - b. Any new heir becomes known
  - c. The deceased had made a will to another person, which was unknown at the time of division.

## DIVISION OF BENEFITS (NON-ASSET)

Partners may agree to divide an asset's benefits rather than dividing the asset itself. In *Fiqh*, this is known as *Muhayah*.<sup>91</sup> For instance, partners sharing a room may agree to divide its benefits by assigning certain days to partner A, and other days for partner B. Similarly, if the partners jointly own

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two floors in the same building of equal area, *Muhayah* can be on the basis of each partner retaining one floor.<sup>92</sup>

If a partner dies, the *Qadhi* (judge) must obtain witnesses for the following:

- a. That the owner of the asset has actually died;
- b. That the information regarding the number and details of heirs is correct;
- c. That all beneficiaries and heirs are present at the time of division;
- d. If there are minor partners (*ghair baligh*), the division must be made with the consent of his/ her *Wali*.

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## TAKAFUL

*Takaful* is a modern alternative to conventional insurance. *Takaful* is an Arabic word meaning "guaranteeing each other" or "joint guarantee".

Tabarru' (donation, gift, contribution) being the basis of the *Takaful* system renders it free from uncertainty and gambling.

Theoretically, *Takaful* is basically a cooperative insurance, members contributing a certain sum to a common pool. The objective of this system is not profit, rather it is a cooperative system to assist those within the cooperative at the time of need.

Salient features of *Takaful* are as follows:

- a. Contributors cooperate with one other for their common welfare.
- b. Every policyholder pays his subscription to help those that need assistance.
- c. Losses are divided and liabilities spread according to the community pooling system.
- d. Subscription and compensation does not contain the element of *Gharar* (Uncertainty) unlike conventional insurance.
- e. It does not derive advantage at the cost of others.

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## PAYMENTS TO SUPPLIERS, EMPLOYEES ETC.

Finance department must ensure that payments to suppliers are made on time, as per the terms agreed. Similarly employee salaries, other entitlements, final dues etc. must be paid on time.<sup>93</sup>

Finance department should ensure that internal procedures are not too bureaucratic – so that delays can be prevented. A monthly report should be generated to monitor the status of payments.

Further, new projects or expansion of business may be carried out only if it can be ensured that the cash flows will remain steady and will facilitate timely payments to all.

## PENALTY ON LATE PAYMENTS BY CUSTOMERS

Financial penalties on late payments by the customer are not permissible. If there is no other solution to the problem, then one option is to inform the customer in advance that in case of late payment a certain percentage of the fee shall be deducted and given as charity. The customer will have to sign an undertaking that such amounts be given to charity on his behalf.

It should therefore be noted that it is not permissible to include the deducted amount in income. It is also not permissible to use the charity in brand building activities (in the name of CSR). [Reference: Fatwa Fin-005]

## FIXED ASSET MANAGEMENT

Organizations should have a system for recording, adding, deleting and transfer of fixed assets.

## GENERAL GUIDELINES OF FINANCE

- i. A budget should be prepared for any business or project.
- ii. Guidelines for permissible and impermissible usage of resources must be made available to employees managing.
- iii. SOPs/ policies should be documented and easily accessible to all employees.

## GUIDELINES FOR DEALING WITH ISLAMIC BANKS

- i. Whenever undertaking any transaction with a bank claiming to be non-interest based, one should ensure the Shari'ah compliance of such transactions through a (*Mufti / Shari'ah Advisor*) independent of the compliance checks made by the bank itself.
- ii. Intention (*Niyah*) should be renewed at all steps to ensure that the company is not merely giving Islamic names to conventional un-Islamic products. The decision makers should remember that they will be held accountable individually on the Day of Judgment, the day when we all will return to The Knower of the Seen and Hidden and will be informed of all that we have done!

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May Allah Ta'aala out of His infinite Mercy makes us all among those who hear diligently and by His Tawfiq obey, and make our 'account' with Him an easy one, and save us from the calamities on that formidable Day! Ameen

## APPENDIX

1

### Introduction

عَلَّمَ الْإِنْسَانَ مَا لَمْ يَعْلَمْ [العلق/5]

2

### SOURCES of finance

وَلَا تُبَدِّرْ تَبْدِيرًا (الإسراء: 26)  
«لَيْسَ الْغِنَىٰ عَنْ كَثْرَةِ الْعَرَضِ، وَلَكِنَّ الْغِنَىٰ غِنَى النَّفْسِ» ..... «قَدْ أَفْلَحَ مَنْ هَدِيَ إِلَى الْإِسْلَامِ، وَرُزِقَ الْكَفَافَ، وَقَنَعَ بِهِ»  
قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «انظُرُوا إِلَى مَنْ هُوَ أَسْفَلَ مِنْكُمْ، وَلَا تَنْظُرُوا إِلَى مَنْ هُوَ فَوْقَكُمْ، فَإِنَّهُ أَجْدَرُ أَنْ لَا تَزِدُوا نِعْمَةَ اللَّهِ (سنن ابن ماجه 1387/2, 1386)

3

### SOURCES of finance

وَلَا تَجْعَلْ يَدَكَ مَغْلُولَةً إِلَىٰ عُنُقِكَ وَلَا تَبْسُطْهَا كُلَّ الْبَسْطِ فَتَقْعُدَ مَلُومًا مَّحْسُورًا (الإسراء: 29)

4

### SOURCES of finance

يَا أَيُّهَا الرُّسُلُ كُلُّو مِنَ الطَّيِّبَاتِ وَاعْمَلُوا صَالِحًا (المؤمنون: 51)

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ [النساء: 29]

5

### SOURCES of finance

«الْحَلَالُ بَيْنٌ، وَالْحَرَامُ بَيْنٌ، وَبَيْنَهُمَا مَشْتَبِهَاتٌ لَا يَعْلَمُهَا كَثِيرٌ مِنَ النَّاسِ، فَمَنْ اتَّقَى الشُّبُهَاتِ اسْتَبْرَأَ دِينَهُ وَعِرْضَهُ، وَمَنْ وَقَعَ فِي الشُّبُهَاتِ وَقَعَ فِي الْحَرَامِ، (صحيح مسلم 3/ 1219)

6

This should also be noticed that matter of legal status of Limited Liability Company has been under discussion among Muftis and Ulama. Therefore the concerned organization should consult this with concerned Shar'ee advisor or Dar-ul-Ifta.

7

<http://legal-dictionary.thefreedictionary.com>

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<http://legal-dictionary.thefreedictionary.com>

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### Qard

عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، قَالَ: «أَيُّمَارُ جُلِّ نَدَيْنًا، وَهُوَ مُجْمَعٌ أَنْ لَا يُؤْفِقِيَهُ إِيَّاهُ، لَقِيَ اللَّهُ سَارِقًا» (سنن ابن ماجه 2 / 805)

10

### Qard

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسْ مِنْهُ شَيْئًا فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمْلَأَ هُوَ فَلْيَمْلِكْ وَلِيَّهُ بِالْعَدْلِ وَاسْتَشْهَدُوا شَهِيدَيْنِ مِنْ رَجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الْأُخْرَى [البقرة: 282]

11

### Qard

وقد «نهى الرسول عليه السلام – عن قرض جر نفعاً» (البنية شرح الهداية 8 / 493)

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### Qard

(وَكُلُّ دَيْنٍ حَالٍ إِذَا أَجَلُهُ صَاحِبُهُ صَارَ مُوجَّلاً إِلَّا الْفَرْضَ فَإِنْ تَأَجَّلَ لَا يَصِحُّ) لِأَنَّهُ اصْطِنَاعٌ مَعْرُوفٌ ، وَفِي جَوَازِ تَأْجِيلِهِ جَبْرٌ عَلَى اصْطِنَاعِ الْمَعْرُوفِ وَلِأَنَّهُ إِعَارَةٌ وَصَلَةٌ فِي الْإِبْتِدَاءِ حَتَّى تَصِحَّ بِلَفْظِ الْإِعَارَةِ وَلَا يَمْلِكُهُ مَنْ لَا يَمْلِكُ النَّبْرُوعَ كَالصَّبِيِّ ، وَالْوَصِيِّ وَمُعَاوَضَةٌ فِي الْإِنْتِهَاءِ فَعَلَى اعْتِبَارِ الْإِبْتِدَاءِ لَا يَلْزَمُ التَّأْجِيلُ فِيهِ أَيُّ لَمَنْ أَجَلُهُ يُبْطَلُ كَمَا فِي الْإِعَارَةِ ؛ إِذْ لَا إِجْبَارَ فِي النَّبْرُوعِ وَعَلَى اعْتِبَارِ الْإِنْتِهَاءِ لَا يَصِحُّ تَأْجِيلُهُ ؛ لِأَنَّهُ يَصِيرُ بَيْعَ الدَّرَاهِمِ بِالدَّرَاهِمِ نَسْبِيَةً وَهُوَ رَبًّا وَاللَّهُ أَعْلَمُ. (الجوهرة النيرة شرح مختصر القورني ج 3 / ص 56)

13

### Qard

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَطْلُ الْغَنِيِّ ظُلْمٌ» (صحيح البخاري 3 / 118)

14

### Qard

«يغفر للشهيد كل ذنب إلا الدين» (صحيح مسلم 3 / 1502)

15

### Qard

وَإِن كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَى مَيْسَرَةٍ وَأَنْ تَصَدَّقُوا خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ [البقرة: 280] قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ أَنْظَرَ مُعْسِرًا، أَوْ وَضَعَ لَهُ، أَظْلَمَهُ اللَّهُ يَوْمَ الْقِيَامَةِ تَحْتَ ظِلِّ عَرْشِهِ يَوْمَ لَا ظِلَّ إِلَّا لِظِلِّهِ» (سنن الترمذي تذاكر 3 / 591)

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### Guarantee

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبِهِمْ وَفِي الرِّقَابِ وَالْغُرَمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ (التوبة: ٦٠)

17

### Guarantee

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدِينٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ [البقرة: 282]

18

### Musharakah( PARTNERSHIP)

وَالشَّرِكَةُ لَعْنَةٌ : خَلَطُ النَّصِيبِينَ بِحَيْثُ لَا يَتَمَيَّزُ أَحَدُهُمَا..الي...وَأَمَّا الإِخْتِلَاطُ فَصَفَقَةٌ تَنْبُتُ لِلْمَالِ عَنِ فِعْلِهِمَا لَيْسَ لَهُ اسْمٌ مِنَ الْمَادَّةِ ، وَلَا يُظَنُّ أَنَّ اسْمَهُ الإِشْتِرَاكُ لِأَنَّ الإِشْتِرَاكَ فِعْلُهُمَا أَيْضًا مَصْدَرُ اشْتِرَاكِ الرَّجُلَانِ افْتِعَالٌ مِنَ الشَّرِكَةِ ، وَبُعْدَى إِلَى الْمَالِ بِحَرْفٍ " فِي " فَيُقَالُ اشْتَرَكَا فِي الْمَالِ : أَي حَقَّقَا الْخَلَطَ فِيهِ ، فَالْمَالُ مُشْتَرِكٌ فِيهِ : أَي تَعَلَّقَ بِهِ اشْتِرَاكُهُمَا : أَي خَلَطُهُمَا . ( فتح القدير - ج 13 / ص 445 )

19

### Musharakah( PARTNERSHIP)

وَأَحْلَالُهَا لِيَبْعَوْ حَرَ مَالِ رَبِّبَا {سورة البقرة / 275}

20

### Musharakah( PARTNERSHIP)

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ [المائدة: 90]

21

### Musharakah( PARTNERSHIP)

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا [الأحزاب: 70]

22

### Musharakah( PARTNERSHIP)

( وَمِنْهَا ) : أَنْ يَكُونَ الرَّبْحُ مَعْلُومٌ الْقَدْرُ ، فَإِنْ كَانَ مَجْهُولًا تَفْسُدُ الشَّرِكَةُ ؛ لِأَنَّ الرَّبْحَ هُوَ الْمَعْقُودُ عَلَيْهِ ، ----(بدائع الصنائع 6 / 59 ط المكنبة العلمية بيروت) ----  
( وَتَتَعَقَدُ ) الشَّرِكَةُ ( بِمَا يَدُلُّ عَلَى الرِّضَى ) مِنْ قَوْلِ أَوْ فِعْلٍ يَدُلُّ عَلَى إِذْنِ كُلِّ مِنْهُمَا أَوْ مِنْهُمْ لِلاخْتِلافِ فِي التَّصَرُّفِ ، ----( مطالب أولي النهي في شرح غاية المنتهى 3 / 501 ط بيروت ) ----

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### Musharakah( PARTNERSHIP)

وَلَا تَجُوزُ الشَّرِكَةُ إِذَا شَرِطَ لِأَحَدِهِمَا دَرَاهِمُ مُسَمَّاءَ مِنَ الرَّبْحِ. (فتح القدير 5 / 25)

24

### Musharakah( PARTNERSHIP)

وَإِنْ شَرِطَ الرَّبْحَ لِلْعَامِلِ – أَكْثَرَ مِنْ رَأْسِ مَالِهِ – جَازَ. (بدائع الصنائع 6 / 62)  
وَلَا تَجُوزُ الشَّرِكَةُ إِذَا شَرِطَ لِأَحَدِهِمَا دَرَاهِمُ مُسَمَّاءَ مِنَ الرَّبْحِ. (فتح القدير 5 / 25)

25

### Musharakah( PARTNERSHIP)

وَالْوَضِيعَةُ عَلَى قَدْرِ الْمَالَيْنِ مُتَسَاوِيًا وَمُتَفَاضِلًا; (بدائع الصنائع 6 / 62)

26

### Musharakah( PARTNERSHIP)

وَإِنْ شَرِطَاهُ عَلَى أَقْلِهِمَا بِحَالٍ يَجُزُّ; لِأَنَّ الَّذِي شَرِطَ لَهُ الزِّيَادَةَ لَيْسَ لَهُ فِي الزِّيَادَةِ مَالٌ. وَلَا عَمَلٌ  
وَلَا ضَمَانٌ; (بدائع الصنائع 6 / 62)

27

### MUDARABA

الْمُضَارَبَةُ فَهِيَ دَفْعُ الْمَالِ إِلَى غَيْرِهِ لِيَتَصَرَّفَ فِيهِ وَيَكُونَ الرَّبْحُ بَيْنَهُمَا عَلَى مَا شَرِطَا (تحفة الفقهاء 3 / 19)

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### MUDARABA

المضاربة نوعان: مطلقة ومقيدة، فالمطلقة أن يدفع المال مضاربة من غير تعيين العمل والمكان والزمان وصفة العمل ومن يعامله  
والمقيدة أن يعين شيئا من ذلك، (بدائع الصنائع في ترتيب الشرائع 6 / 87)

29

### MUDARABA

ذَهَبَ جُمْهُورُ الْفُقَهَاءِ إِلَى أَنَّهُ لَا يُدْفَى الْمُضَارَبَةُ مِنَ الصِّغَةِ، وَهِيَ الْإِيجَابُ وَالْقَبُولُ، وَتَنْعَقِدُ بِلَفْظٍ يَدُلُّ عَلَى الْمُضَارَبَةِ، (الدر المختار  
4 / 484 ، 485)

ولو قال: خذ هذه الألف مضاربة أو مقارضة لم يذكر بحافه مضاربة فاسدة؛ لأن المضارب شريك في الربح، (المبسوط  
للسرخسي 22 / 25)

30

### MUDARABA

عَنْ ابْنِ سَبْرِينَ، وَأَبِي قَلَابَةَ، قَالَا فِي الْمُضَارَبَةِ: «الْوَضِيعَةُ عَلَى الْمَالِ، وَالرَّبْحُ عَلَى مَا اصْطَلَحُوا عَلَيْهِ»: (مصنف عبد الرزاق  
الصنعاني 8 / 248)

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## MUDARABA

، وإذادفع الرجل إلى رجل مالا مضاربة بالنصف، فعمل به في مصره، أوفي أهله، فلانفقة له في مال المضاربة، ولاعلى رب المال؛ فأما إذا خرج بالمال إلى مصر يتجر فيه، كانت نفقته في مال المضاربة في طريقه، وفي المصر الذي يأتيه لأجل العادة، وهذا لأن خروجه وسفره لأجل مال المضاربة، (المبسوط للسخسي 62,63/22) وله أن يستأجر معه الأجراء يشترون ويبيعون ويستأجر البيوت والدواب لأمتعته التي يشتريها؛ لأن ذلك من صنع التجار. (المبسوط للسخسي 3,839/22)

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## MUDARABA

( Ghair Soodi Bankari, by Mufti Taqi Usmani sb pg. 301)

33

هُوَ عَقْدٌ عَلَى مَبِيعٍ فِي الذِّمَّةِ , ----(بدائع الصنائع 9/ 4348 ط العاصمة) ----

34

فهي أنه عقد غير لازم قبل العمل في الجانبين جميعا، بلا خلاف، حتى كان لكل واحد منهما خيار الامتناع قبل العمل. ( بدائع الصنائع في ترتيب الشرائع 3/ 5)

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(فمنها) : بيان جنس المصنوع، ونوعه وقدره وصفته؛ لأنه لا يصير معلوما بدونه. ( بدائع الصنائع في ترتيب الشرائع 3/ 5)

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## SALAM

اعلم بأن السلم أخذ عاجل بأجل وهو نوع بيع لمبادلة المال بالمال اختص باسم أما الكتاب فقوله: - تعالى - يا أيها الذين آمنوا إذا تداينتم بدين إلى أجل مسمى فاكتبوه [البقرة: 282] والسنة ماروي أن النبي صلى الله عليه وسلم - «نهى عن بيع ماليس عند الإنسان ورخص في السلم» (المبسوط للسخسي 12/ 124)

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## SALAM

عَنْ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ تَعَالَى عَنْهُ - أَنَّ «النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ الْمَدِينَةَ فَوَجَدَهُمْ يُسَلِّفُونَ فِي الثَّمَارِ السَّنَةَ وَالسَّنَتَيْنِ فَقَالَ: - صَلَوَاتُ اللَّهِ تَعَالَى عَلَيْهِ - مَنْ أَسْلَمَ فَلْيُسَلِّمْ فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ» فَقَدْ قَرَّرَهُمْ عَلَى أَصْلِ الْعَقْدِ. [شَرَايِطُ السَّلْمِ]-عِنْدَ أَبِي حَنِيفَةَ سَبْعَةٌ (إِعْلَامُ الْجُنْسِ) فِي الْمُسَلَّمِ فِيهِ (وَإِعْلَامُ النَّوْعِ) (وَإِعْلَامُ الْقَدْرِ) وَ (إِعْلَامُ الصِّفَةِ) وَ (إِعْلَامُ الْأَجَلِ) وَ (إِعْلَامُ الْمَكَانِ) الَّذِي يُؤَفَّقُ فِيهِ فِيمَا لَهُ حَمْلٌ وَمُؤَنَةٌ (وَإِعْلَامُ قَدْرِ رَأْسِ الْمَالِ) فِيمَا يَتَعَلَّقُ الْعَقْدُ. (المبسوط للسخسي 124 /12)

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## SALAM

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66 - وَإِنْ كَانَ شَيْئًا مِمَّا يُكَالُ أَوْ يُوزَنُ فَاتَّاهُ بِمِثْلِ ذَلِكَ الْكَيْلِ الَّذِي عَلَيْهِ غَيْرَ أَنَّهُ أَجُودُ مِمَّا اشْتَرَطَ فَقَالَ خُذْ هَذَا وَزِدْنِي دَرَاهِمًا لَمْ يَكُن فِي هَذَا خَيْرٌ وَلَا يَجُوزُ إِلَّا تَرَى أَنَّهُ لَا يَصْلِحُ مَخْتَوْمَ جَنْطَةٍ بِمَخْتَوْمِ جَنْطَةٍ وَزِيَادَةَ دِرْهَمٍ وَكَذَلِكَ كُلُّ مَا يُكَالُ أَوْ يُوزَنُ فَأَمَّا الثِّيَابَ فَلَا بَأْسَ أَنْ يَأْخُذَ ثَوْبًا وَيُعْطِيَ مِثْلَهُ وَزِيَادَةَ دِرْهَمٍ - (الأصل المعروف بالمبسوط للشيباني 20 / 5)

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### SALAM

فالسلم في جميع مايكال وجميع ما يوزن مما لا ينقطع من أيدي الناس جائز (الأصل المعروف بالمبسوط للشيباني 3 / 5)

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### SALAM

(وَالسَّلْمُ جَائِزٌ فِيمَا يُكَالُ أَوْ يُوزَنُ مِمَّا لَا يَنْقَطِعُ مِنْ أَيْدِي النَّاسِ) وَالْأَصْلُ فِيهِ أَنَّ كُلَّ مَا كَانَ مَضْبُوطًا بِوَصْفِهِ مَعْلُومًا بِقَدْرِهِ مَوْجُودًا مِنْ وَقْتِ عَقْدِهِ إِلَى جِبِنِ أَجَلِهِ جُوزُ السَّلْمِ فِيهِ وَمَا لَا فَالْأصل (المبسوط للسرخسي 131 / 12)

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### SALAM

وقد «نهى الرسول عليه السلام – عن فرض جرنفعا» (البنية شرح الهداية 493 / 8)

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### MURABAHA

(قال) ش: أي القدوري م: (المرابحة: نقل ما ملكه بالعقد الأول بالثمن الأول مع زيادة ربح) (البنية شرح الهداية 8 / 231)

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### MURABAHA

لِأَنَّ التَّخْلِيَةَ قَبْضٌ، وَحُكْمُ الْبَيْعِ بَيْتٌ وَبَيْنَاهُمَا بِالْقَبْضِ وَالنَّمْرَةِ تَكُونُ بَيْنَهُمَا لِاخْتِلَافِ مِلْكِ أَحَدِهِمَا بِالْآخِرِ اخْتِلَافًا لَا يُمَكِّنُ التَّغْيِيرَ بَيْنَهُمَا فَكَانَ الْكُلُّ مُشْتَرَكًا بَيْنَهُمَا. (بدائع الصنائع في ترتيب الشرائع 173 / 5)

وَأَمَّا أَنْ يَكُونَ مِمَّا لَا مِثْلَ لَهُ فَإِنْ كَانَ مِمَّا لَا مِثْلَ لَهُ مِنَ الْمُدْرُوعَاتِ، وَالْمَعْدُودَاتِ الْمُتَفَاوِتَةِ فَالتَّخْلِيَةُ فِيهَا قَبْضٌ تَامٌ بِلَا خِلَافٍ، (بدائع الصنائع في ترتيب الشرائع 244 / 5)

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### AAOIFI Murabaha Standards

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(فمنها) ما ذكرنا وهو أن يكون الثمن الأول معلوما للمشتري الثاني؛ لأن المرابحة يبيع بالثمن الأول مع زيادة ربح، والعلم بالثمن الأول شرط صحة البياعات كلها. ( بدائع الصنائع في ترتيب الشرائع 220 / 5) - وإذا اشترى الرجل متاعا فله أن يجعل عليه من الخياطة والقصارة والكراء ويقول قام على بكذا وكذا ولا يقول اشتريته بكذا وكذا فإن ذلك كذب لأنه لم يأخذه به إنما قام. (الأصل المعروف بالمبسوط للشيباني 15 / 7) - وإذا باع الرجل متاعا مرابحة فخانته في المرابحة ودلس له فإن المشتري بالخيار إذا اطلع على ذلك إن شاء رد المتاع وإن شاء أخذه بالثمن الذي اشتراه به لا ينقص منه شيئا فإن كان المشتري قد أهلك المتاع أو بعضه فالثمن له لازم ولا يحط عنه منه شيء. (الأصل المعروف بالمبسوط للشيباني 165 / 5)

### IJARAH

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ومنها) أن يكون الربح معلوما لأنه بعض الثمن والعلم بالثمن شرط صحة البياعات (ومنها) أن يكون رأس المال من ذوات الأمثال. (ومنها) أن لا يكون الثمن في العقد الأول مقابلا بجنسه من أموال الربا، فإن كان بأن اشترى المكيل أو الموزون بجنسه مثلا بمثل لم يجز له أن يبيعه مرابحة؛ لأن المرابحة بيع بالثمن الأول وزيادة، والزيادة في أموال الربا تكون ربا لا ربحا. (بدائع الصنائع في ترتيب الشرائع 5/ 221)

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(هي بَيْعٌ مُنْفَعَةٌ مَعْلُومَةٌ بِأَجْرٍ مَعْلُومٍ) وَقِيلَ هِيَ تَمْلِيكُ الْمَنَافِعِ بِعَوَضٍ. (تبيين الحقائق شرح كنز الدقائق وحاشية الشلبي 5 / 105)

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أَمَّا الْكِتَابُ فَمِنْهُ قَوْلُهُ تَعَالَى {فَإِنْ أَرْضَعْنَ لَكُمْ فَارْتُدُّنَّ عَنْكُمْ فَارْتَدُّوا عَنْكُمْ} [الطلاق: 6] ورفعنا بعضهم فوق بعض درجات ليتخذ بعضهم بعضا سخريا [الزخرف: 32] أي في العمل بآجر على أن تاجرني ثمانين حجج فإن أتممت عشرا فمن عندك [القصص: 27] وَمِنْ السُّنَّةِ مَا رَوَاهُ أَبُو سَعِيدٍ الْخُدْرِيُّ رَضِيَ اللَّهُ عَنْهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: مَنْ اسْتَأْجَرَ أَجِيرًا فَلْيُعْلِمْهُ أَجْرَهُ، (3) وَقَوْلُهُ: أَعْطُوا الْأَجِيرَ أَجْرَهُ قَبْلَ أَنْ يَجِفَّ عَرْفُهُ، (4) وَقَوْلُهُ: ثَلَاثَةٌ أَنَا خَصْمُهُمْ يَوْمَ الْقِيَامَةِ وَعَدَّ مِنْهُمْ رَجُلًا اسْتَأْجَرَ (الموسوعة الفقهية الكويتية 1 / 254)

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وعلى هذا يخرج الاستئجار على المعاصي أنه لا يصح لأنه استئجار على منفعة غير مقدورة الاستيفاء شرعا كاستئجار الإنسان للعب واللهو، وكاستئجار المغنية، والنانحة للغناء، والنوح. (بدائع الصنائع في ترتيب الشرائع 4 / 189) وأما الذي يرجع إلى ما يقابل المعقود عليه وهو الأجرة والأجرة في الإجازات معتبرة بالثمن في البياعات لأن كل واحد من العتدين معاوضة المال بالمال فما يصلح ثمنا في البياعات يصلح أجرة في الإجازات وما لا فلا وهو أن تكون الأجرة مالا متقوما معلوما وغير ذلك. (بدائع الصنائع في ترتيب الشرائع 4 / 193)

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وشرط جوازه أن تكون العين المستأجرة معلومة والأجرة معلومة والمدة معلومة بيوم أو شهر أو سنة لأنه عقد معاوضة كالبيع وإعلام المبيع والثمن شرط في البيع كذلك ههنا إلا أن المعقود عليه ههنا هو المنافع فلا بد من إعلامها بالمدة والعين والذي عقدت الإجارة على منافعه. (تحفة الفقهاء 2 / 347)

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فالحاصل أن الأجرة لا تملك عندنا إلا بأحد معان ثلاثة: أحدها: شرط التعجيل في نفس العقد، والثاني: التعجيل من غير شرط: والثالث: استيفاء المعقود عليه. (بدائع الصنائع في ترتيب الشرائع 4 / 202) فإن عقد مطلقا؛ فالحكم يثبت في العوضين في وقت واحد، فيثبت الملك للمؤاجر في الأجرة وقت ثبوت الملك للمستأجر في المنفعة، (بدائع الصنائع في ترتيب الشرائع 4 / 201)..... ومنها تسليم المستأجر في إجارة المنازل، (بدائع الصنائع في ترتيب الشرائع 4 / 179) وأما أحكام هذا النوع من الإجارة فكثيرة منها أنه يجب على الأجر تسليم المستأجر عقيب العقد، وليس له أن يحبس المستأجر لاستيفاء الأجرة كما في باب البيع لأن الأجرة لا تحب بنفس العقد عندنا لكون المعقود عليه وهو المنافع معدومة وإذا لم يجب الأجر فليس له حق حبس المستأجر لأخذ الأجرة. (تحفة الفقهاء 2 / 347)

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وتعيين الدار، وإصلاح ميزابها، وما وهى من بنائها على رب الدار دون المستأجر، لأن الدار ملكه وإصلاح الملك على المالك، (بدائع الصنائع في ترتيب الشرائع 4 / 208)

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ومنها هلاك المستأجر، (بدائع الصنائع في ترتيب الشرائع 4 / 223) "وإذا خربت الدار أو انقطع شرب الضيعة أو انقطع الماء عن الرحي انفسخت الإجارة"؛ لأن المعقود عليه قد فات، وهي المنافع المخصوصة. (الهداية في شرح بداية المبتدي 3 / 247)

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فإن كان به عيب يضر بالانتفاع فالمستأجر بالخيار إن شاء فسخ الإجارة وإن شاء مضى عليها. (تحفة الفقهاء 2 / 349)

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ولو أجزها المستأجر بأكثر من الأجرة الأولى فإن كانت الثانية من خلاف جنس الأولى طابت له الزيادة، وإن كانت من جنس الأولى لا تطيب له حتى يزيد في الدار زيادة من بناء أو حفر أو تطيين أو تجصيص. (بدائع الصنائع في ترتيب الشرائع 4 / 206)

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فإذا فسدت وجب المصير إلى الموجب الأصلي، وهو أجر المثل ههنا؛ لأنه قيمة المنافع المستوفاة، إلا أنه لا يزداد على المسمى في عقد فيه تسمية عند أصحابنا الثلاثة، (بدائع الصنائع في ترتيب الشرائع 4 / 218)

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لأن العقد انفسخ حقيقة بالموت، (بدائع الصنائع في ترتيب الشرائع 4 / 223)

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### Ariyah

تمليك المنفعة بغير عوض، (المبسوط للسرخسي 11 / 133)

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### Ariyah

(وَالثَّلَاثُ) أَنْ يُخَالَفَ إِلَى مَا هُوَ أَضْرُّ عَلَى الدَّابَّةِ بِأَنْ اسْتَعَارَهَا لِیَحْمِلَ عَلَيْهَا حِنْطَةً فَحَمَلَ عَلَيْهَا حديدًا أَوْ أَجْرًا مِثْلَ وَزْنِ الحِنْطَةِ فَهُوَ ضَامِنٌ لَهَا؛  
(وَالرَّابِعُ) أَنْ يُخَالَفَ فِي الْمِقْدَارِ بِأَنْ اسْتَعَارَهَا لِیَحْمِلَ عَلَيْهَا عَشْرَةَ مَخَاتِيمِ حِنْطَةٍ فَحَمَلَ عَلَيْهَا خَمْسَةَ عَشَرَ مَخْنُومًا فَهَلَكَتْ فَهُوَ ضَامِنٌ ثَلَاثَ قِيَمَتِهَا؛ (المبسوط للسرخسي 11 / 138)  
والثاني العدد في العاقد فلا يصلح الواحد عاقد من الجانبين في باب البيع. (بدائع الصنائع في ترتيب الشرائع 5 / 135)

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### Amanah

وَلَا تَسْأَمُوا أَنْ تُكْتَبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَى أَجَلِهِ ذَلِكَمْ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَى أَلَّا تَرْتَابُوا [البقرة: 282]

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### Amanah

وَلِكِنَّ الْمُخْتَلَطَ مُشْتَرِكٌ بَيْنَهُمَا بِقَدْرِ مَلِكِهِمَا، فَإِنْ هَلَكَ بَعْضُهَا هَلَكَ مِنْ مَالِهَا جَمِيعًا وَيُقَسَّمُ الْبَاقِي بَيْنَهُمَا عَلَى قَدْرِ مَا كَانَ لِكُلِّ وَاحِدٍ مِنْهُمَا؛ لِأَنَّهُ لَيْسَ أَحَدُهُمَا بِأَنْ يَجْعَلَ الْهَالِكِ مِنْ نَصِيبِهِ بِأَوْلَى مِنَ الْآخَرِ، وَالْأَصْلُ فِي الْمَالِ الْمُسْتَرَكِ إِذَا هَلَكَ شَيْءٌ مِنْهُ: أَنَّ مَا هَلَكَ عَلَى الشَّرْكَةِ، وَمَا بَقِيَ عَلَى الشَّرْكَةِ بِاعْتِبَارِ أَنَّ الْهَالِكِ يُجْعَلُ كَأَنَّ لَمْ يَكُنْ. (المبسوط للسرخسي 11 / 110)

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### Amanah

فإذا تراضيا على شيء عصح ذلك في حقهما، (المبسوط للسرخسي. 11 / 111)

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## Amanah

فإن كانت دراهم: فالدراهم يشتري بها، ثم ينظر: إن اشترى بها عينها ونقدها، لا يطيب له الفصل أيضاً، وإن اشترى بها، ونقد غيرها، أو اشترى بدراهم مطلقاً، ثم نقدها: يطيب له الربح هنا؛ لأن الدراهم لا تتعين بنفس العقد، ما لم ينضم إليها التسليم. المبسوط للسرخسي 11 / 112)

وَقَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - : «عَلَامَةُ الْمُنَافِقِ ثَلَاثٌ: إِذَا حَدَّثَ كَذَبًا، وَإِذَا وَعَدَ أَخْلَفَ، وَإِذَا اتَّخَمَ خَانَ.»  
فَإِنْ وَضَعَهَا فِي بَيْتِهِ أَوْ صُنْدُوقِهِ، فَهَلَكَتْ: لَمْ يَضْمَنْهُ؛ لِحَدِيثِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَوْدَعَ وَدِيعَةً فَهَلَكَتْ: فَلَا ضَمَانَ عَلَيْهِ.» وَلِحَدِيثِ ابْنِ الزُّبَيْرِ عَنْ جَابِرٍ - رَضِيَ اللَّهُ عَنْهُ - أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَيْسَ عَلَى الْمُسْتَعِيرِ غَيْرِ الْمَغْلِ ضَمَانٌ، وَلَا عَلَى الْمُودِعِ غَيْرِ الْمَغْلِ ضَمَانٌ.» فَأَمَرَ أَدْبَالَ مَغْلٍ: الْخَائِنُ. (المبسوط للسرخسي 11 / 109):

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Sukuk: Shari'ah Guidelines for Islamic Bonds

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## Sukuk

(www.bankislam.com.my/en/Documents/.../Sukuk\_ShariahGuidelines)

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## DIMINISHING MUSHARAKAH

مروجه اسلامی بنکوں کے ذرائع تمویل مفتی محمد تقی عثمانی۔ (ص-185)

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## Istijrar

بيع الاستجرار : أخذ الحوائج من البياح شيئاً فشيئاً ، ودفع ثمنها بعد ذلك (الموسوعة الفقهية الكويتية الجزء التاسع)

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## Bay al-Sarf

فَقَالَ: " نَهَانَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْوَرَقِ بِالْوَرَقِ، وَالذَّهَبِ بِالذَّهَبِ، وَالنَّبْرَ بِالنَّبْرِ، وَالشَّعِيرَ بِالشَّعِيرِ، وَالنَّمْرَ بِالنَّمْرِ - قَالَ أَحَدُهُمَا: وَالْمَلْحُ بِالْمَلْحِ، وَلَمْ يَفْلُهُ الْآخَرُ - وَأَمَرْنَا أَنْ نَبِيعَ النَّبْرَ بِالشَّعِيرِ، وَالشَّعِيرَ بِالنَّبْرِ، يَدًا بِيَدٍ، كَيْفَ شِئْنَا " (سنن ابن ماجه 2 / 757):

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## FUND MANAGEMENT

وَأَمَّا يَنْفَعُ النَّاسَ فَيَمُكْتُ فِي الْأَرْضِ (الرعد: 17)  
فيمكث في الأرض: أي يبقى في الأرض زمناً ينفع به الناس. (أيسر التفاسير للجزائري، 20 / 3)  
قَالَ تَزْرَعُونَ سَبْعَ سِنِينَ دَابًّا فَمَا حَصَدْتُمْ فَذَرُوهُ فِي سُنْبُلِهِ إِلَّا قَلِيلًا مِمَّا تَأْكُلُونَ (47) ثُمَّ يَأْتِي مِنْ بَعْدِ ذَلِكَ سَبْعٌ شِدَادٌ يَأْكُلْنَ مَا قَدَّمْتُمْ لَهُنَّ إِلَّا قَلِيلًا مِمَّا تَحْصِنُونَ: [يوسف: 47، 48]  
قالاقرطبي: آية تزرعون سبع سنين. أصل في القول بالمصالح الشرعية التي هي حفظ الأديان والنفوس والعقول والأنساب والأموال فكلما تضمن تحصيل شيء من هذه الأمور فهو مصلحة، وكلما يفوت شيئاً منها فهو مفسدة، ودفعه مصلحة ولاخلاف في

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أن مقصود الشرائع إرشاد الناس إلى مصالحهم الدنيوية ليحصل لهم التمكن من معرفة الله تعالى وعبادته الموصلتين إلى السعادة الأخرية. (التفسير المنير للزحيلي، 12/ 279)

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## FUND MANAGEMENT

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا {سورة البقرة / 275}

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## FUND MANAGEMENT

لَعَنَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَكِلَ الرِّبَا وَمُوكَلَّهُ وَكَاتِبَهُ وَشَاهِدِيهِ، وَقَالَ : هُمْ سَوَاءٌ " (أخرجه مسلم، 3 / 1219 - الحلبي)

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## FUND MANAGEMENT

وَلَا تَسْأَمُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَىٰ أَجَلِهِ ذَلِكُمْ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَىٰ أَلَا تَرْتَابُوا [البقرة: 282]

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## FUND MANAGEMENT

[http://twocircles.net/2011jan19/ulema\\_announce\\_shariah\\_standards\\_investment\\_stock\\_market.h](http://twocircles.net/2011jan19/ulema_announce_shariah_standards_investment_stock_market.h)  
(<http://islamitijara.com/>.)

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## FUND MANAGEMENT

إِنَّهُ مِنْ سُلَيْمَانَ وَإِنَّهُ بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ [النمل: 30]

" كُلُّ أَمْرٍ ذِي بَالٍ لَا يُبْدَأُ فِيهِ بِاسْمِ اللَّهِ فَهُوَ ابْتَرُ " ، وَفِي رَوَايَةٍ فَهُوَ أَقْطَعُ وَفِي أُخْرَى فَهُوَ أَجْدَمُ > (1) ( طبقات الشافعية 1 / 6 ط دار المعرفة )

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## FUND MANAGEMENT

لقد حرص الإسلام على إرساء المحبة والألفة بين المسلمين، وسد كل باب يفضي إلى النزاع والفرقة، ولذلك نهى عن بيوع ومعاملات تفضي إلى الفرقة والنزاع، وتفسد المحبة والألفة بين المسلمين. (شرح بلوغ المرام لعطية سالم)

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## FUND MANAGEMENT

كُلُّكُمْ رَاعٍ، وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ، (صحيح البخاري 2 / 5)

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## FUND MANAGEMENT

إِنَّ خَيْرَ مَنْ اسْتَأْجَرْتَ الْقَوِيَّ الْأَمِينُ [القصص: 26]  
 قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «طَلَبُ الْعِلْمِ فَرِيضَةٌ عَلَى كُلِّ مُسْلِمٍ، (سنن ابن ماجه (81 / 1)  
 " آيَةُ الْمَنَافِقِ ثَلَاثٌ: إِذَا حَدَّثَ كَذَبَ، وَإِذَا وَعَدَ أَخْلَفَ، وَإِذَا أُؤْتِمِنَ خَانَ " (صحيح مسلم 78 / 1)

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## FUND MANAGEMENT

وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ (سورة النور 56)  
 <بُنِيَ الْإِسْلَامُ عَلَى خَمْسٍ> وَذَكَرَ مِنْهَا ابْنُ تَيْمِيَّةٍ (5) " (أخرجه البخاري الفتح 1 / 49 ط السلفية >

79

## Dispute resolution

كُلُّكُمْ رَاعٍ، وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ، (صحيح البخاري 5 / 2)

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## Dispute resolution

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَعُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ  
 وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا [النساء: 59]

81

## Division/ Dissolution

وَلَوْ تَهَايَأَ فِي دَارٍ وَاحِدَةٍ عَلَى أَنْ يَسْكُنَ هَذَانِ فَهَذَا طَائِفَةٌ وَهَذَا طَائِفَةٌ أَوْ هَذَا عُلُوٌّ وَهَذَا سُفْلٌ فَاجَازَ -- (تكملة فتح القدير على الهداية 8 / 378 ط  
 إحياء التراث)

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## Division/ Dissolution

وَفِي قِسْمَةِ الْقِيمِيِّ يُغْلَبُ مَعْنَى الْبَيْعِ، وَهَذَا هُوَ مَذْهَبُ الْحَنْفِيَّةِ --- (بدائع الصنائع 7 / 17 ط المكتبة العلمية بيروت) ---

83

## Division/ Dissolution

فَإِذَا طَلَبَ الْمُهَيَّأَةُ أَحَدُ الشَّرِيكَيْنِ أُجِبَ الْآخَرُ عَلَيْهَا إِلَّا أَنْ يَكُونَ الْمَحَلُّ قَابِلًا لِلْقِسْمَةِ الْعَيْنِيَّةِ -- (تكملة فتح القدير على الهداية 8 / 378 ط  
 إحياء التراث) ---

84

## Division/ Dissolution

وَشَرَطُهَا عَدَمُ قُوَّةِ الْمُنْفَعَةِ بِالْقِسْمَةِ --- (رد المحتار على الدر المختار 5 / 161 ط إحياء التراث) ---

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## Division/ Dissolution

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يَحْصُلُ بِهَا الْإِفْرَازُ وَالتَّمْيِيزُ بَيْنَ النَّصِيبَيْنِ كَالْكَيْلِ فِي الْمَكِيلَاتِ وَالْوَزْنِ فِي الْمَوْزُونَاتِ وَالذَّرْعِ فِي الْمَذْرُوعَاتِ وَالْعَدِّ فِي الْمَعْدُودَاتِ وَشَرَطُهَا أَنْ لَا تَقُوتَ الْمُنْفَعَةُ بِالسُّمَةِ -- (تكملة فتح القدير على الهداية 8 / 349 ط إحياء التراث) —

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#### Division/ Dissolution

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذْ كَلَّمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ [النساء: 58]

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#### Division/ Dissolution

لَا فَرْقَ بَيْنَ كَوْنِ الْقَاسِمِ الْقَاضِيِ أَوْ مَنْصُوبِهِ --- (ردالمحتار على الدرالمختار 5 / 162 ط إحياء التراث) ---

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#### Division/ Dissolution

وَيَقْدَرُ أَجْرُ مِثْلِهِ كَيْلًا يَتَحَكَّمُ بِالزِّيَادَةِ , وَالْأَفْضَلُ أَنْ يَرزُقَهُ مِنْ بَيْتِ الْمَالِ لِأَنَّهُ أَرْفَقَ بِالنَّاسِ وَأَبْعَدُ عَنْ التُّهْمَةِ . (تكملة فتح القدير على الهداية 8 / 349 ط إحياء التراث) —

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#### Division/ Dissolution

وَاسْتَشْهَرُوا شَهِيدَيْنِ مِنْ رَجَالِكُمْ [البقرة: 282]

أَنَّ الْبَيْتَةَ عَلَى الْمُدَّعَى، وَالْبَيْمِينَ عَلَى الْمُدَّعَى عَلَيْهِ: (سنن الترمذي ت شاكر 3 / 619):

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#### Division/ Dissolution

استعمال القرعة لتعيين المستحق أصل في الشرع كما في قسمة المال المشترك . (المبسوط للسرخسي 17 / 41)

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#### Division of benefits (not asset)

هَذِهِ نَاقَةٌ لَهَا شِرْبٌ وَلَكُمْ شِرْبٌ يَوْمَ مَعْلُومٍ . (سورة الشعراء 155 / 155)  
" كَانُوا يَوْمَ بَدْرٍ بَيْنَ ثَلَاثَةِ نَفَرٍ بَعِيرٍ يَتَهَيَّأُونَ فِي رُكُوبِهِ " - (مسند أحمد 1 / 218)

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#### Division of benefits (not asset)

وَلَوْ تَهَايَا فِي سُكْنَى دَارٍ , أَوْ دَارَيْنِ أَوْ خِدْمَةِ عَبْدٍ أَوْ عَبْدَيْنِ , أَوْ غَلَّةِ دَارٍ أَوْ دَارَيْنِ صَحَّ . -- (تبيين الحقائق شرح كنز الدقائق 5 / 275 ط دار الكتاب الإسلامي) —

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#### Payments to Suppliers, Employees



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والاجرة تستحق باستيفاء المعقود عليه او باشتراط التعجيل او تعجيلها] لان الاجرة لا تجب بنفس العقد لقوله عليه الصلوة والسلام: اعطوا الاجير اجره قبل ان يجف عرقه (الاختيار 66/2)

....(إخوانكم خولكم، جعلهم الله تحت أيديكم، فمن كان أخوه تحت يده، فليطعمه مما يأكل، وليلبسه مما يلبس، ولا تكلفوهم ما يغلبهم، فإن كلفتموهم فأعينوهم.) (صحيح البخاري(1/ 15)) [دار طوق النجاة]