
An Introduction to the Selected Prevalent Contracts and Products of Islamic Banks

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ABSTRACT

Islam is a complete code of life, and its teachings encompass all aspects of lifecycle. One essential aspect of human life is economic activities, and Islamic teachings provide guidance on various economic aspects. Agriculture, trade, industry and labor, all have abundant economic teachings from Islam. In the current era, banking has deep connections with economic activities, rather it should be said that banking is an essential part of economics.

Allah has provided a fundamental principle regarding banking, emphasizing that trade is permissible (halal), while usury (riba) is prohibited (haram). This implies that banking based on trade is allowed, but banking activities based on interest are not permitted. Islamic banking industry operates on this principle, incorporating various commercial contracts to develop different products.

In this article, a brief introduction of these contracts and products based on them is presented. First, the meaning and understanding of each contract is explained, followed by a discussion of its permissibility in the light of Islamic teachings. Lastly, details are given regarding how Islamic Banking products have been designed on modern techniques in the present era.

The article employs a qualitative research methodology, drawing information from various books of Islamic jurisprudence, books on Islamic banking, research papers, and the websites of Islamic banks. The findings suggest that designing products based on various contracts and then conducting Sharia-compliant banking is a commendable effort. It is essential to encourage this movement. However, it is also necessary to ensure maximum Shariah compliance in banking based on these products.

Keywords: Musharkah, Mudarbah, Ijrah, Murabha, Salam, Istisna, Islamic Banks

Introduction

Islamic banking is a general term in which all banking services and obligations are carried out, but interest, speculation, gambling, and other unlawful economic activities are avoided. Islamic banking is an institution that adheres to Islamic Sharia in all its transactions, business activities, and purposes, as well as the objectives of the Islamic society internally and externally.

SBP defines Islamic banking and its philosophy in the following:

“Islamic banking is defined as banking system which is in consonance with the spirit, ethos and value system of Islam and governed by the principles laid down by Islamic Shariah. Interest free banking is a narrow concept denoting a number of banking instruments or operations which avoid interest. Islamic banking, the more general term, is based not only to avoid interest-based transactions prohibited in Islamic Shariah but also to avoid unethical and un-social practices. In practical sense, Islamic Banking is the transformation of conventional money lending into transactions based on tangible assets and real services. The model of Islamic banking system leads towards the achievement of a system which helps achieve economic Prosperity.”⁽¹⁾

The Evolution of Islamic banking:

After the Industrial Revolution of the 16th century, there was a rapid development in the interest-based banking system, and large banks emerged, finding new ways to accumulate capital. However, the majority of scholars always rejected this banking system because it was based on interest. However, they began to consider alternative systems. A significant class of people, who adhered to Islamic teachings, was always distant from interest-based banking and still is. However, traders, industrialists, and those who had significant capital found a strong need for banks. Therefore, Muslim economists and bankers accelerated their efforts for an alternative system to interest-based banking.

According to Philip Molyneux and Monzer Kahf, the first experience of Islamic banking was conducted in Egypt, where the establishment of the Mit Ghamr Bank took place in 1963. Initially, the services that this bank provided were that people from rural areas deposited their small savings into savings accounts, but no interest was charged on them. However, they had the facility to obtain interest-free loans for agricultural purposes. They could withdraw their money from the bank whenever they wanted. Later, Profit and Loss Sharing (PLS) accounts were also introduced, in which people invested their money on the basis of profit and loss.⁽²⁾

According to the research of Molyneux and Monzer khaf, it is evident that the role of the Bank Mit-Ghamr was primarily in the context of agriculture, where agricultural loans were provided to the farmers. It seemed to be a commendable effort to elevate the standard of living of the same class, all within the bounds of Sharia.

The first Islamic bank in which government took a personal interest to develop was the Naseer Social Bank, established in Egypt in 1971. This bank initiated its activities by providing interest-free loans to the poor and needy, offering employment to students, and providing capital for small projects based on profit and loss sharing. Due to government's involvement and personal interest in the establishment of this bank, it greatly influenced those traders who possessed significant capital. Consequently, as a result of their efforts, the Dubai Islamic Bank was established as a private bank in 1975, with 20% of its total capital contributed by the United Arab Emirates and 10% by the Kuwaiti government.³⁾

According to Dr. Najatullah Siddiqui, the inception of non-interest banking took place in the 1960s, and three banks initiated their operations, namely, the Tabung Haji Bank in Malaysia, the Bank Mit-Ghamr in Egypt, and the non-interest bank in Karachi.⁴⁾

Mufti Muhammad Taqi Usmani states that the initiation of non-interest banking in Karachi was done by Ahmed Irfan, who was a banker.⁵⁾

Ahmed Irfan founded the "The Co-operative Investment and Finance Corporation Limited." Allama Yusuf Banuri encouraged people to withdraw money from their current accounts and deposit it into this corporation.⁶⁾

Significant progress was made in Islamic banking in the 1970s. In a conference of the finance ministers of Islamic countries held in Jeddah, Saudi Arabia in 1973, the establishment of the Islamic Development Bank (IDB) was announced, with the signatures of 23 members of the OIC. ⁷⁾

In August 1974, a meeting of the ministers was held, and essential matters were resolved. The bank was inaugurated in July 1975, and regular operations commenced from 20th October 1975. ⁸⁾

Islamic banking in Pakistan began in the 1980s. The detailed report of the Council of Islamic Ideology, which deals with Islamic banking, is considered an important document in this regard, which benefited many Muslim countries including Pakistan and converted interest banking into Islamic banking. During the tenure of General Zia-ul-Haq, profit and loss-based partnership accounts were also introduced in banks and initially there was great success in this regard, but later this journey stopped. After 2001, this trend started again and full-fledged Islamic banks started to be established in Pakistan. Meezan Bank is at the top. After this, several banks

such as Bank Islami, Bank of Khyber, Al-Burj Bank started functioning as Full Fledge Islami Bank. Great success was achieved in this regard and now windows of conventional banks along with Islamic banks are also providing Islamic banking services.

Contracts and Products of Islamic Banks:

Islamic banks are providing various products based on different contracts in their banking operations to fulfil the customer needs. A brief introduction to these contracts and products is as follows:

Musharakah:

Musharakah is a contract between two or more partners to earn the profit. Al Zubaidi says:

"It is a contract between the partners in capital and profit."⁽⁹⁾

Famous malki jurist Al Dardeer writes:

"Partnership is a contract of ownership between two or more owners, mainly for trade."⁽¹⁰⁾

Permissibility of Musharakah:

The permissibility of Musharakah is established through the Qur'an, Hadith, the consensus of the Ummah, and analogy. The details are mentioned below. Allah Almighty says:

{وَإِنَّ كَثِيرًا مِّنَ الْخُلَطَاءِ لَيَبْغِي بَعْضُهُمْ عَلَىٰ بَعْضٍ إِلَّا الَّذِينَ آمَنُوا وَعَمِلُوا
الصَّالِحَاتِ وَقَلِيلٌ مَّا هُمْ} ⁽¹¹⁾

Many partners oppress one another, except those who believe and do righteous deeds, and very few they are.

In this verse, Allah Almighty has mentioned an ethical shortcoming of partners, that they generally wrong with their partners. However, believers, who are righteous, are exempt from this, but their number is few.⁽¹²⁾

«عَنْ أَبِي هُرَيْرَةَ، رَفَعَهُ قَالَ: " إِنَّ اللَّهَ يَقُولُ: أَنَا ثَالِثُ الشَّرِيكَيْنِ مَا لَمْ يَخُنْ أَحَدُهُمَا صَاحِبَهُ،

فَإِذَا خَانَهُ خَرَجْتُ مِنْ بَيْنِهِمَا »⁽¹³⁾

It is narrated from Hazrat Abu Hurairah (may Allah be pleased with him) that the Noble Prophet (peace be upon him) said, "Allah the Almighty says, 'I am the third of the two partners as long as they do not deceive each other. But when one of them betrays the other, then I depart from them'".⁽¹⁴⁾

Musharakah Products in Islamic Banks

Meezan Bank is facilitating of home purchasing through the mechanism of Diminishing Musharakah. Diminishing Musharakah refers to a form of property agreement in which the bank and the customer jointly participate in ownership of the house, instead of the customer paying interest on the loan amount. Both parties make payments for their respective shares

of ownership. Subsequently, the customer rents the bank's share, paying monthly rent, and gradually continues to buy the bank's share until they become the complete owner of the house. This facility has been articulated on the Meezan Bank website under the title of **easy home** which explains that:

“Easy Home is a completely interest (Riba) free solution to your home financing needs. Unlike a conventional house loan, Meezan Bank’s Easy Home works through the Diminishing Musharakah where you participate with Meezan Bank in joint ownership of your property. The nature of the contract is co-ownership and not a loan. This is because the transaction is not based on lending and borrowing of money but on joint ownership of a house. Meezan Bank, thus shares the cost of the house being purchased. Creating joint ownership and then gradually transferring ownership to the consumer instead of simply lending money is the major factor that makes Easy Home Shariah-compliant. With Easy Home you participate with Meezan Bank in joint ownership of your property, where the Bank will provide a certain amount of financing. You agree to a monthly payment to the Bank of which one component is rent for the home, and another for your equity share. In fact, the total monthly payment is reduced regularly as your share in the property grows. When you have made the full investment, which had been agreed upon, you become the sole owner with a clear title to the property”.⁽¹⁵⁾

Bank Islami provides car financing on the basis of diminishing musharakah. DM is commonly used to finance fixed, movable assets and long term projects, etc.⁽¹⁶⁾ The model of Dubai Islamic Bank's car financing is also similar to this.⁽¹⁷⁾

Mudarabah

It is a form of partnership where one party provides the capital while the other party utilizes their skills to conduct business. The profits are divided between the parties as per a pre-agreed ratio, but the capital provider bears the losses, provided there is no negligence or misconduct on the part of the *mudarib*/working partner.⁽¹⁸⁾ Hazrat Nafi narrated that Abdullah bin Umar (may Allah be pleased with him) used to have the wealth of an orphan. He used to pay its Zakat and would invest the wealth, obtaining the profits generated from it.⁽¹⁹⁾

Hazrat Ibn Abbas narrates from his father, Abbas bin Abdul Muttalib, that when he would give his investment to *mudarib*, he would impose conditions, such as that the *mudarib* would not take the investment of *mudarbah* to the sea (meaning not engage in maritime trade) and would not pass through the valley. And if he did so (and incurred a loss), he would pay

the loss. When they asked to the Prophet (peace be upon him) regarding these conditions, he deemed them permissible.⁽²⁰⁾

The aforementioned conditions of Hazrat Abbas regarding his investment were for the purpose of safeguarding his wealth from any risks. Two things can be inferred from this: firstly, that *mudarbah* contract, is entirely permissible, and secondly, that such conditions related to risks do not become a cause of invalid contract.

Mudarba Practices in Islamic Banks

Islamic bank's savings accounts are based on the principle of *Mudarabah*. The account opening form of an Islamic bank explains that the depositors are the providers of the funds (*Rabb-ul-Maal*), and the bank acts as the *mudarib* (Working partner), with the absolute discretion to invest the funds of the depositors in various businesses.⁽²¹⁾

Ijarah

Ijarah (Leasing) is a contract in which a person gives his specified property for specific rent. In a *ijarah* (lease) the *Mustajir* (lessee) obtains the right to use the thing, but the ownership remains with the owner by default.⁽²²⁾ As long as the thing or property is on lease, all risks and benefits are borne by the person giving it on lease.

The two basic types of *Ijarah* are: *Ijara-tul-Ashkhas* (hiring of persons) and *Ijara-tul-Ayan* (hiring of things). In *Ijara-tul-Ashkhas* a person provides his services and receives compensation in return, while in *Ijara-tul-Ayan* something is given on rent, and its rent is received. *Ijarah* is established from the Quran and Sunnah. Hazrat Shoaib (peace be upon him) said, "O Musa, I want to marry my daughter to you, but the condition is that you will work for me for eight years." Allah Almighty said:

قَالَ إِنِّي أُرِيدُ أَنْ أَنْكِحَكَ إِخْدَى ابْنَتِي هَاتَيْنِ عَلَى أَنْ تَأْجُرَنِي ثَمَانِي حَجَّجٍ فَإِنْ أَتَمَمْتَ عَشْرًا
فَمِنْ عِنْدِكَ وَمَا أُرِيدُ أَنْ أَشُقَّ عَلَيْكَ سَتَجِدُنِي إِنْ شَاءَ اللَّهُ مِنَ الصَّالِحِينَ⁽²³⁾

He (the father) said (to Musa),:I wish to marry to you one of these two daughters of mine on condition that you act as my employee for eight years. Then if you complete ten (years) it will be of your own accord. And I do not want to put you in any trouble; you will find me, Insha'allah (God-willing) one of the righteous.

There is consensus of scholars regarding *Ijara-tul-Ashkhas* (hiring of persons) and *Ijara-tul-Ayan* (hiring of things). No one has denied about both types of *Ijarah*.⁽²⁴⁾

Ijarah in Islamic Banks

Islamic banks are providing to their customers with the facility of cars based on the principle of Ijarah/leasing, wherein firstly, there is a contract of lease in which the ownership of the car remains with the Islamic bank, while the right of usage remains with the customer. Then, through a separate contract, the car is given to the customer.⁽²⁵⁾

This type of Ijarah contract is called Ijarah Ending with Ownership Transfer (*Ijara Muntahia Bittamleek*). Some times ijarah contract is used in combination of two contracts. For example *shirkat ul milk cum ijarah*. As per this contract, bank and customers establish *shirkat ul milk* contract to purchase an asset. After that the bank leases his share to customer and he pays rent to bank. DIB's customers utilize this facility to meet their capital expenditures, plant expansion etc.⁽²⁶⁾

Murabha

Murabha is Selling something in such a way that both the seller and the buyer are aware of the actual cost and the predetermined benefits on it. Miki scholar Inb e Rush explains:

وَأَنَّ الْمُرَابِحَةَ هِيَ أَنْ يَذْكَرَ الْبَائِعُ لِلْمَشْتَرِي الثَّمَنَ الَّذِي اشْتَرَى بِهِ السَّلْعَةَ وَيَشْتَرِطُ عَلَيْهِ رِبْحًا مَالِ الدِّينَارِ
أَوِ الدِّرْهَامِ⁽²⁷⁾

“And murabha is that the seller informs the buyer about the price at which he purchased the item, and then keeps a profit on it in term of dinar or dirham”.

Murabha is type of sale in which seller declare the cost and profit of salable item and trade is permissible whereas usuary(Interest) is impermissible. Almighty says:

وَإِحْلَاءَ اللَّهِ الْبَيْعَ وَحَرَّمَ الرِّبَا⁽²⁸⁾

while Allah has permitted sale, and prohibited riba .

Al-Kasani said,

النَّاسُ تَوَارَثُوا هَذِهِ الْبَيْعَاتِ الْمُرَابِحَةَ وَغَيْرَهَا فِي سَائِرِ الْأَعْصَارِ مِنْ غَيْرِ نَكِيرٍ⁽²⁹⁾

People have inherited these Murabha sales and others throughout various eras without objection.

It is necessary for the seller to inform the buyer about the actual price. The contract of Mudarabah can be based on both cash and credit, but in the present era, Islamic banks are also entering into the contract of Mudarabah based on deferred sales.

Murabha Products in Islamic Banks

Meezan Bank, along with other methods, also uses the method of Murabah for the purchase of raw materials. This method is also used in

import financing. The process of *murabha* which is described by Meezan Bank is as follows:

“Meezan Bank offers flexible and convenient import financing facility on the basis of Musawammah/ Murabaha. If the customer wants to finance its letter of credit, the Bank appoints the customer as its agent to import the goods and customer establishes the LC as an agent of the Bank. Upon receiving possession of the goods, the Bank sells the goods to the customer on a deferred payment bases.”⁽³⁰⁾ Almost same procedure is applied in Dubai Islamic Bank’s import *murabha* product.⁽³¹⁾

Dubai Islamic Bank provides raw material procurement requirements on *murabha* basis where bank purchases an item, requested by customer, from supplier and sells it to customer after taking possession.⁽³²⁾ Usually customer is appointed as an agent to purchase the items and he informs to bank that he has purchased the asset on bank’s behalf. After that he(customer) offers to purchase the same item and banks accepts it. Finally ownership, risk and reward transfers to customer. In the context of above mentioned services, it is essential that the bank, instead of appointing the customer as his agent, takes responsibility for all matters itself.

Musawamah

Musawama is transaction where buyer doesn’t know the price paid by the seller to obtain the goods and buyer and seller agree the price with mutual understanding.⁽³³⁾

Meezan Bank, based on the principle of Musawma, provides its customers with the facility to purchase various items such as mobile phones, laptops, air conditioners, refrigerators, generators, solar panels, and so on. The bank initially approves an overall limit for its customers. Within this limit, various items can be purchased based on the installment plan.⁽³⁴⁾

Based on the principle of *Musawama*, the bank purchases the motorcycle from the market and subsequently sells it to the consumer at an agreed-upon mutual price in installments.⁽³⁵⁾

Dubai Islamic bank is also using *musawama* and *murabha* contract for commercial and personal finance in which goods/commodities are purchased from supplier on spot payment and then these are sold on deferred payment. It will be better to quote the fatwa of DIB in this regard. It will help to elaborate the procedure of personal and commercial finance on *musawama* and *murabha* basis.

Shari’a Compliance Certificate Dubai Islamic Personal Finance

DIBPL is offering Personal Finance Facility based on Sale Structure (Musawama/Murabaha) for commercial and personal needs of individuals,

where the goods will be initially procured from a commodity seller and sold to the customer on deferred basis. The product comprises the following basic features:

- After evaluating the application from PF(personal finance) Customer, the bank will purchase specified goods (e.g. cotton) from a commodity seller on spot payment basis.
- The goods will be identified (i.e. the location and warehouse details) and will be disclosed to bank.
- The Bank, after getting the title to and possession of the goods, will sell the goods to PF Customer on deferred payment basis.
- The possession (constructive) of goods will be given through a DO(Delivery order) in favor of PF customer.
- The DO(Delivery order) issued will give complete right to the beneficiary to possess the goods or to liquidate the same by selling it to the ultimate buyer.
- Special Sharia Controls have been added to ensure Sharia compliance of the product at various stages, so there's no possibility /chance of returning goods to the original seller (directly or indirectly) and it will be strictly monitored on continuous basis. We have reviewed the structure of the product along with its documentation and would like to confirm that it is in accordance with Sharia principles.”

The above mentioned Fatwa has written by:

- Mufti Muhammad Hassan Kaleem(Resident Shariah Board Member)
- Dr. Husain Hamid Hassan(Chairman Shariah Board)
- Mian Muhammad Nazeer(Member Shariah Board) ⁽³⁶⁾

Bai Salam

The agreement of purchasing something in the future at an advance price is called Bai' Salam, even though the sale of such a thing that is not present with the seller is prohibited in the Shariah. However, the permission for Salam was granted by the Prophet Muhammad (peace be upon him) himself. When the Prophet (peace be upon him) migrated from Makkah to Madinah, he observed that people were paying the advance price for dates, and in return, they would receive dates after two or three years.

The Prophet (peace be upon him) gave the instruction that whoever enters into a transaction based on the advance price must specify the quantity, weight, and period of the goods to be delivered. ⁽³⁷⁾

AAOIFI has also clarified that in Salam, both parties should clearly define all aspects related to the quantity, quality, specifications of the goods, method of delivery, and price. Additionally, for the completion of Salam,

various additional agreements such as guarantees, etc., can also be implemented.⁽³⁸⁾

Salam Concept in Practice

Commodity salam is a product of meezan bank in which Meezan bank purchases the commodities/goods in advance from the customer to finance him and he delivers the commodities/goods on deferred basis. Upon delivery, bank sells it in the market.⁽³⁹⁾

Istisna

Istisna is a contract in which the buyer orders the seller to manufacture a specific item for them. The price between the parties is mutually determined, and the delivery of the item is obligatory on a specific future date. Scholars have deemed the contract of Istisna as permissible. Because of considering the needs of the general public, its permissibility has been issued and there is also consensus on its permissibility.⁽⁴⁰⁾

Secondly, there was buying and selling on the basis of istisna and no one has refused from it since prophetic period, also proves its permissibility.

Moreover, jurists themselves continue to have goods produced on order, which also indicates the permissibility of *Istisna*.

Meezan banks establish a contract of *Istisna* with the customer who needs to manufacture products. It provides funds for production of goods and then acquires the goods. It may be constructive possession. Subsequently, it sells these goods. The bank bears all the risks of goods until their sale. DIB's corporate customers who are in manufacturing businesses, are enjoying this facility to meet working capital requirements.⁽⁴¹⁾

In *istisna* based financing, usually constructive possession is taken and then customer is appointed to sell the goods in market. However, Islamic bank bears all the risk of produced goods until their sale.

Wakalah

In any permissible transaction, delegating one's authority to someone else or entrusting the handling of a matter to an attorney is called *Wakalah*.

The justification for *Wakalah* is found in the Quran and Hadith. The Ashab e Khaf sent a person with money to bring food from the market, which was an example of *Wakalah*.⁽⁴²⁾ Zakat collector is also appointed as an agent for the collection of Zakat. The Prophet Muhammad (peace be upon him) appointed Hazrat Ali as his representative on the night of migration to distribute the trusts among the people in the morning.⁽⁴³⁾ In all matters that a person can handle by himself, *Wakalah* is also permissible.

Islamic banks appoint agent to purchase assets during the acquisition of assets, so that they can purchase the assets on behalf of the bank.

Generally, the customer is appointed as the attorney, but in some cases, the bank itself makes the purchase. Meezan Bank also provides services of Letter of Credit based on agency. ⁽⁴⁴⁾

Findings and Recommendations

1. Islamic banking began in the seventies and has now gained a special position in the banking industry.
2. Islamic banking products are based on contracts of Islamic commercial law.
3. Various products are not based on a single contract but different contracts, car leasing involves shirkat ul milk and ijarah where asset is purchased on shirkat ul milk basis, while Ijarah involves the leasing of bank's share from customer and also buying a portion.
4. Savings accounts in Islamic banks are based on Mudarabah, where depositors are the capital providers (Rabb ul amwal) and the bank is the entrepreneur (mudarib).
5. In prevalent Islamic banking practices, murabha (cost plus profit sale) is often based on deferred payment terms.
6. In Islamic banks, clients are often made agents for the purchase of assets. The bank should change these practices and should engage in trade on their own. The bank needs to actively participate in business independently.
7. Commodity Salam, a form of sale based on deferred delivery, is an excellent method in Islamic banking that needs to be further developed.
8. Financing on the basis of istisna for manufacturing is a commendable step of Islamic banks. It is necessary that the bank takes possession of prepared goods and independently conducts the sale of goods.

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