

# Controls Of Contracts For Banking Transactions Between The Decisions Of The Jurisprudential Councils And The Legal Standards An Applied Electronic Comparative Study

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## **Abstract**

*The Islamic world today is witnessing a wide intellectual movement that aims to devise the thought of Islam in the field of finance and economics, and to bring it to light into scientific existence. To take its natural and avant-garde role in building and reviving the Islamic society. Islamic banks implement financial transactions contracts, and these contracts raise a set of Sharia questions about the extent to which Sharia controls are applied in Islamic banks and their commitment to this, and this requires collecting these controls from the decisions of the Fiqh Councils, and the Sharia standards for these contracts, issued by the Accounting and Auditing Organization for Islamic Financial Institutions. This research will deal with collecting the legal criteria for financial transactions contracts from the decisions of the Fiqh Councils, while comparing them with the Sharia standards. In this research we will limit ourselves to the well-known original contracts, which are: sales, shares and rentals.*

**Keywords:** *Applied Electronic, Banking Transactions, Jurisprudential Councils, The Legal Standards.*

## **1. INTRODUCTION**

It is noticeable that studies in the field of Islamic banking began their natural course with theoretical studies, then came the birth of these financial institutions, and came to the scientific application field to become an existing reality and a tangible reality, and there is no doubt that the success of these institutions is related to the extent of their adherence to Islamic thought with the compatibility with the requirements of the times, and his needs.

Every study that enters a modern banking transaction under the wing of Islamic law without me or a fallacy is a stone added day after day to support and elevate the structure of Islamic banking activity.

Islamic banks implement financial transactions contracts, and these contracts raise a set of Shariah questions about the extent to which Sharia controls are applied in Islamic banks and their commitment to that. This requires collecting these controls from the decisions of the Fiqh Councils, while comparing them with the Sharia standards for these contracts issued by the Accounting and Auditing Organization for Institutions Islamic Finance, then a demonstration of the practical applications of these contracts in Islamic banks.

Moreover, these contracts are carried out by Islamic banks, and constitute a large percentage of their total investments. There is no doubt that every study that produces a doctrinal contract that is suitable for contemporary banking application is a stone in this lofty edifice.

This research aims to: Collect the Sharia controls for financial transactions contracts, from the decisions of the Fiqh Councils and the Sharia standards, and study them to demonstrate the extent of Islamic banks' commitment to them, and through them it is possible to respond to the suspicions raised about the application of Islamic banks to the controls of these contracts, which made some people not differentiate between banks Islamic and traditional banks.

We did not find, within the limits of what we have seen from sources and references, an independent research or letter dealing with the controls of banking transactions contracts through the decisions of the Fiqh Councils and the Sharia standards of the Accounting and Auditing Organization for Islamic Financial Institutions (a comparative applied study). However, there are some researches that can be used when preparing the research in some of its aspects, as this research dealt with a set of banking rules and controls, but it did not address the decisions of the Fiqh Councils and the Sharia standards of the Accounting and Auditing Organization for Islamic Financial Institutions, and this is what we will do in this study, in addition to the application of these controls by Islamic banks, and the extent of their commitment to the decisions of the Fiqh Councils And legitimate standards.

In writing this research we will rely on two approaches: deductive and applied.

The deductive approach is based on studying the controls of banking transactions contracts through the decisions of the Fiqh Councils and comparing them with the Sharia standards of the Accounting and Auditing Organization for Islamic Financial Institutions.

The applied approach is based on studying the application of Islamic banks to financial transactions contracts and the extent of their commitment to Sharia controls.

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We will limit ourselves in this research to the original well-known contracts, which are: sales, companies, and rentals.

## *SALES*

### *a) Selling in installments.*

- According to the majority of scholars, it is permissible to increase the price of a commodity in Nsiyuh (deferred) over its price (cash), and it is not included in the ruling on usury.
- The price of the commodity may be paid in one payment or in installments.
- In the Al'ajal sale, it is not permissible to state the interest in installments in the contract, separated from the current price, so that they are related to the Al'ajal.
- If the debtor buyer is late in paying the installments beyond the specified date, it is not permissible to oblige him to pay any increase in the debt; because that is forbidden usury.
- Guideline for insolvency requiring attention: The debtor should not have money in excess of his original needs to meet his debt in cash or in kind.
- It is forbidden for a full-fledged debtor to procrastinate in the payment of the installments that have fallen, and yet it is not permissible according to Sharia to stipulate compensation in the event of late payment.
- It is permissible for the Al'ajal seller to stipulate that installments be due before their due dates, when the debtor is late in performing some of them.
- It is permissible to claim the payment of the debt before the specified period in case the installments are not paid on the specified date.
- The seller is not entitled to retain ownership of the sold item after the sale, but the seller may stipulate that the buyer mortgage the sold item with him to ensure his right to collect the deferred installments.
- The transaction remains as it is if the debtor (the buyer) dies before paying all the installments, and it also remains with the death of the creditor, provided the seller is satisfied with it.
- Accelerating the debt in return for dropping some of it (put and hasten): it is permissible according to Sharia, it does not enter into the forbidden usury if it is not based on a prior agreement, and as long as the relationship is bilateral, and if a third party enters them, it is not permissible Because it takes the judgment of settling commercial papers.

### *b) Installment sale documentation:*

- Authentication by mortgage:
  - Whoever has a mortgage, so he benefits from it with the mortgage from usury, and it is not permissible at all.
  - After demanding the debt to be repaid repeatedly and the debtor's procrastination is clear, the creditor may sell the pledge and take his debt.

- Documentation with commercial papers:
- Commercial papers (checks - order bonds - withdrawal bonds) are one of the types of legitimate documentation of debt in writing.
- Discounting commercial papers is not legally permissible; because it devolves to usury *Naseeh* forbidden. (The International Fiqh Academy, from the fatwas of the Sudanese Fiqh Academy, pp. 273, 274. The European Council for Fatwa and Research.

### *MURABAHA AND A DEPOSIT*

#### *a) Murabaha:*

- Definition of jurisprudential Murabahah: selling a commodity for the same price that the seller bought it with, with a known and agreed-upon profit increase, a percentage of the price, or a lump sum, if it occurred without a previous promise.
- Banking Murabahah is: for the one who ordered the purchase to ask a bank, organization, or person to buy for him a commodity with specific descriptions, then put his profits on it and present it to the one who ordered the purchase even if the latter accepts it and acknowledges that it is in conformity with the request. To be paid in installments as agreed upon.
- Murabahah is one of the trust sales in which it is based on stating the purchase price or cost (in addition to the usual expenses).
- The majority of scholars have agreed on the legality of the principle of Murabahah, as well as the sale of Murabahah to the one who ordered the purchase (banking) if the conditions of the sale are met, and its prohibitions are eliminated.
- The lesson in contracts is for the purposes and meanings, not for words and constructs, and therefore banking Murabahah is considered in it the reality of Murabahah, not its names.
- The difference between promising and dating:
- A promise (singular) is binding on the one who promises a religion except for an excuse, and it is obligatory to make up, if it is dependent on a reason, and the promise enters into the cost of the promise, and the effect of the obligation in this case is determined either by the implementation of the promise, or by compensation for the harm actually done because of the failure to fulfill the promise without an excuse.
- Dating (from both parties) is permissible in the sale of Murabahah, provided that both or one of the two parties have the option because binding dating in a Murabaha sale is like the sale itself.
- It is not permissible to perform a deferred Murabahah in gold, silver, or currencies, and it is not permissible to issue negotiable instruments with Murabaha debts or anything else, and it is not permissible to renew a Murabaha on the same commodity.

- The principle established by the Sharia texts and rules is leaving people free to sell, buy and dispose of their property and money within the framework of the provisions and controls of Islamic Sharia.
- There is no specification of a specific percentage of profit that merchants adhere to in their dealings, taking into account the provisions of the Sharia morals of kindness, contentment, tolerance and facilitation.
- The texts of Islamic law have combined that the integrity of dealing should be one of the causes and circumstances of the forbidden, which are harmful to the public and the private. (The International Fiqh Academy, Sudanese Fiqh Academy, pp. 274, 275. The Collective Indian Fiqh, Sharia Standards, pp. 199-236. Kuwait Finance House Fatwa, 49).

*b) B- Selling the deposit:*

- Defining it: selling the commodity with the buyer paying a sum of money to the seller, provided that if he takes the commodity, the amount is calculated from the price, and if he leaves it, the amount is for the seller.
- A deposit is also made in leasing. As it is in the sale; because they sell the benefits.
- Excluded from sales: all that is required for its validity to take one of the two alternatives in the contract council (Salam) or to receive the two allowances (usurious money exchange and exchange):
- The corporation may take the deposit after the Murabaha sale contract for the one who ordered the purchase with the customer and this is not permissible during the dating stage.
- The deposit may be sold if the waiting period is restricted to a limited time. (International Fiqh Academy. Sharia standards, pp. 199-236).

*SALAM AND ISTISNA'A*

*a) Salam and parallel Salam:*

- Salam: it is a deferred sale, and it is a type of sale in which the price is paid immediately, and it is called the capital of Salam, and the sale described in the zimma is deferred, and it is called "the Muslam in it", and the seller is called "the Muslam to him" and the buyer is called the "Muslam", or "the Salam lord", And it may be called the ladder (in advance).
- The legitimacy of Salam is proven by the Qur'an, Sunnah and consensus.
- Salam may be used in all areas of investment: such as agriculture, industry and trade.
- Whatever may be sold is permissible for Salam, so it is permissible for the capital of the Salam to be a sample of lesbians, such as agricultural grains, or value items, such as animals, or a public benefit for a specific object; because "the receipt of the first, the receipt of the latter," does not then; become a sale of a debt for a debt.
- Debt may not be made capital for Salam, like cash loans; because it is from selling the debt with debt, and it is forbidden according to the Sunnah and consensus.

- It is required that the Muslam be known in him a knowledge that precludes ignorance, and the reference in the characteristic that distinguish a Muslam in him and know him is the knowledge of people, and the experience of experts.
- The basic principle is to expedite the receipt of the Salam capital in the contract council, and it may be delayed for two or three days, even if provided that the delay period is not equal to or more than the time specified for Salam.
- It is legally permissible for the Muslim (the buyer) to take a mortgage or a guarantor from the recipient (the seller).
- A penalty clause is not permissible for the delay in the delivery of a Muslam in it; because it is a debt, and it is not permissible to stipulate an increase in debts upon delay; because that is from usury.
- It is permissible for the Muslam (the buyer) to exchange the Muslam for something other than cash after the time has come; because there was no fixed text or unanimity to prevent that.

b) *Parallel Salam:*

- If the Muslam enters into an independent Salam contract with a third person, to obtain a commodity of specifications identical to the commodity contracted for delivery in the first Salam; In order to be able to fulfill his commitment to it, this contract is called in contemporary convention: the parallel Salam.
- It is permissible for a Muslam to conclude an independent parallel Salam with a third person. Parallel Salam consists of two Salam deals, each one separates from the other, so this does not lead to two sales in the sale of the forbidden one.
- It is not permissible to tie a Salam contract to another Salam contract, rather each one of them must be independent of the other in all of his rights and obligations.
- It is not permissible to sell a commodity purchased by Salam before its receipt.
- All Salam contract provisions apply to parallel Salam. (The International Fiqh Academy, From the Fatwas of the Islamic Fiqh Academy, Sudan, pg. 289. Sharia standards with 10, pp. 271-292).

c) *Istisna'a and parallel Istisna'a:*

- The Istisna'a contract has a major role in revitalizing industry, opening wide areas for financing and advancing the Islamic economy.
- Istisna: A contract for the sale of Sample described in a zimma, to be made.
- Istisna is legitimate according to most of the Hanafis, and the Maliki, Shafi'i and Hanbali attach it to salam, and they stipulate what is stipulated in salam.
- Its legitimacy was proven by making the ring and the pulpit, and with approval, and practical consensus, and general rules in contracts, actions and legal purposes.
- The Istisna'a contract is a contract included in the work and the eye in the zimma.
- Istisna'a: A contract of sale that is binding on both parties, and not just a promise, if the elements and conditions are met.

- The Istisna'a contract combines the property of Salam in the permissibility of receiving a sale that is not sold at the time of the contract, and the property of the absolute sale in terms of the permissibility of the price being a credit that should not be accelerated.
- In the Istisna'a contract, it is permissible to postpone the entire price, or to divide it into known installments for specific periods.
- The Istisna'a contract may include a penalty clause to compensate for the delay in delivery, and the penalty clause is not permissible for the delay in paying the price.
- Provides the manufacturer with the option if the product comes against the stipulated specification.
- It is not permissible for Istisna'a to be a specific thing; rather, the Istisna'a is what is specified by specifications, not by appointment.
- It is not permissible to perform an Istisna'a contract except for what is included in the workmanship and takes it out of its natural state, so as long as the manufacturer adheres to the manufactured eye, Istisna is valid.
- It is not permissible to make a murabahah in Istisna'a, by fixing the price at the cost, and increasing a known amount, because the place of the murabahah must be an existing, owned thing and the price is known before the murabahah.
- The price may not be increased to extend the payment period. Because that is usury. As for reducing the price upon expediting payment, it is permissible, if it is not stipulated in the contract.
- It is not permissible to sell the product before receiving it from the manufacturer, whether real or judiciously, because that is like selling what is missing and selling what he does not possess. But it is permissible to make another Istisna'a contract on something described in the zimma, similar to what was bought from the manufacturers, and this is called parallel Istisna'a.
- It is not permissible to link the Istisna'a contract and the parallel Istisna'a contract, and it is not permissible to dissolve from the delivery in one of them, if the delivery does not take place in the other, as well as the delay or increase in costs.
- There is no objection to the establishment requiring the manufacturer in parallel Istisna'a conditions (including the penalty clause) similar to or different from the conditions that it committed to with the customer in the first Istisna'a. (The International Fiqh Academy, The Indian Fiqh Academy. Sharia standards with 11, pp. 293-320).

## *POSTS*

### *a) Modern companies:*

Modern companies' provisions:

- Modern companies include: money companies, which are: joint-stock companies, limited liability shares, and limited liability companies. It also includes individual companies, namely: solidarity and limited partnerships, in addition to holding and subsidiary companies, and multinational companies.

- The basic principle in companies is that it is permissible, if they are free from the forbidden and legal prohibitions in their activities, and if the origin of their activity is forbidden, then they are forbidden companies that it is not permissible to own their shares or to trade in them.
- Companies must be free of Algharar and ignorance that lead to conflict, and any other reasons that lead to the company's nullity or corruption in Sharia.
- The company is prohibited from issuing equity shares, concession shares, or loan bonds.
- Profits are distributed according to shares, or according to the agreement, but in the event of a loss of capital, each partner must bear his share of the loss in proportion to his contribution to the capital.
- It is not permissible to stipulate profits as a percentage of the capital, or in a lump sum, to the partner; because that leads to the possibility of cutting the participation in profit, and because there is no profit until after the capital is protected.
- The shareholder in the company owns a common share of its assets, in the amount of the shares he owns, and the ownership of remains with him until it is transferred to another for any reason, from outside or otherwise. (The International Fiqh Academy, (130, 4/14), (136, 2/15) (Sudanese Fiqh Academy, 271, 272) Sharia standards, (12 / 321-364).

#### Decreasing participation and its Sharia controls:

- Decreasing participation: a new transaction involving a company between two parties in an income project, in which one of them undertakes to gradually buy the other party's share, whether the purchase is from the buyer's share of income or from other resources.
- The basis for establishing diminishing participation: is the contract concluded by the two parties, in which each of them contributes a share in the capital of the company, with an indication of how the profit will be distributed, provided that each of them bears the loss - if any - to the extent of his share in the company.
- Diminishing participation is concerned with the existence of a binding promise from one of the two parties to own the share of the other party, provided that the other party has the option, by concluding sales contracts when each part of the share is acquired, even by exchanging two notices of affirmative and acceptance.
- One of the parties to the participation may lease his partner's share at a known fee and for a specified period, and each of the two partners remains responsible for the basic maintenance of the amount of his share.
- The diminishing participation is legitimate if it complies with the general provisions of the companies, and the following controls are observed:
  - Not undertaking to purchase the share of the other party by one of the parties, equal to the value of the share upon the establishment of the company; because that includes the guarantee of the partner's share, the price of selling the share should be determined at the market value on the day of the sale, or by what is agreed upon sale.

- Not requiring one of the parties to bear insurance or maintenance expenses, and all other expenses, but rather that they are charged to the pool of participation in proportion to the shares; because this condition is contrary to the provisions of the partnership contract.
- Determine the profits of the parties to the participation in common rates, and it is not permissible to stipulate a lump sum from the profits or a percentage of the contribution amount.
- Separation of contracts and obligations related to participation.
- Prohibition of stipulating the right of one of the parties to recover its contribution (financing). (International Fiqh Academy, (130, 4/14), (136, 2/15) Sharia standards (12/321 - 364) Fatwas of Kuwait Finance House, (219).

#### Companies stocks and Islamic financial institutions:

- Islamic financial institutions are obliged, according to banking laws, to deposit five percent (5%) of their funds in government documents (Govt. Securities), and the government gives them usurious interest, and it is permissible to accumulate interest on the original funds in the documents gradually, and withdraw capital from them.
- It is permissible for Islamic financial institutions, as well as for any Muslim, to purchase shares of a company that engages in non-usurious transactions.
- It is not permissible to buy shares in companies for which interest-based dealing is one of the main activities. (International Fiqh Academy, (37, 1/9) Indian Fiqh Academy, (6/30).

#### Contributing to a company with non-Muslims by way of Alfaranshayz:

- There is no objection to participating in a company whose purpose is commercial, even if the sources of the partners' funds are different, between money acquired in a lawful manner or borrowed with interest. Because the responsibility of the unlawful borrowing is on those partners.
- The Muslim partner should have the authority to manage the company, or to control its dealings to be in accordance with Islamic Sharia.
- Entering into the Faranshayz process (transferring the franchise license for a fee) is not prohibited by Sharia; because it is like renting a moral right.
- The commitment of the committed partner to correct the conditions of the company's dealings by canceling the benefits of delay and the like is from changing the evil, and it is enjoined. (International Fiqh Academy, (43, 5/5), (32, 7/4) European Council for Fatwa and Research, (1/16).

#### b) *Common Al Mudaraba in financial institutions: (investment accounts)*

- Common Al Mudaraba: It is Al Mudaraba in which many investors, together or in succession, entrust a natural or legal person to invest their money.

- The Al Mudarab is often allowed to invest in what he deems to achieve the interest, and he may be restricted to a special type of investment, with permission explicitly or implicitly to mix their money together, or with his money, and sometimes his agreement to withdraw their money in whole or in part when needed under certain conditions.
- Common Al Mudaraba is based on what the jurists have decided regarding the permissibility of multiple owners of funds, and the permissibility of the Al Mudarab with them in the capital.
- There is no objection to mixing the money of the owners of the money with each other or with the money of the Al Mudarab; because that is with their consent explicitly or implicitly, and this mixing increases the financial energy to expand the activity and increase profits.
- The basic principle is that Mudarabah is a non-binding contract, and either party has the right to cancel it. There are two cases in which the right of annulment is not proven, namely: if the Mudarab starts working, and if the owner of the money or the Mudarab undertakes not to annul it within a certain period.
- There is no legal objection to timing Al Mudarabah with the agreement of the two parties. The effect of timing is limited to preventing entry into new operations after the specified time, and this does not preclude the liquidation of existing operations.
- There is no legal objection to using the Nimr method when distributing profits, which is based on taking into account the amount of each investor and the duration of his stay in the investment.
- There is no legal objection to forming a voluntary committee to protect rights, and to monitor the implementation of the agreed upon Al Mudaraba terms without interfering with investment decisions.
- There is no legal objection to agreeing on the existence of a trustee for investment, but his work is limited to preservation and verification of observance of legal and technical investment restrictions, without interference in decisions.
- There is no objection in Sharia from setting an expected rate of profit, and stipulating incentives for the Mudarb if it exceeds that.
- Mudaraba is only responsible for the direct expenses that it pertains to, as well as the expenses of what the Mudarb is not obligated to do.
- The Mudarb is trustworthy, and he does not guarantee the loss or damage that occurs except by infringement, default, or violation of the Sharia conditions, such as investment restrictions, and there is no objection to the third party's guarantee.
- It is not permissible in Mudarba for the Mudarb to specify to the owner of the money a specific amount of money. Because this contradicts the reality of Mudarba, and because it makes it a loan with interest, and because the profit may not exceed what was given to the owner of the money, so he takes advantage of it all, and the Mudaraba may lose, or the profit is less than what is made for the owner of money, so the Mudaraba is fined.
- The essential difference, which separates Mudaraba and interest-bearing loans - which is practiced by interest-based banks – is: That money is in the hands of the Mudarb as a trust, and he cannot guarantee it unless he transgresses or minors, and the profit is divided into a

common percentage agreed upon between the Mudarb and the owner of the money, according to scholarly consensus.

- Loss of Mudaraba money on the owner of the money in his money, and the Mudarb is not to be asked about it, unless he trespassed on the money or failed to keep it. Because the Mudaraba money is owned by its owner.
- The Mudarb is a trustee of the speculative money as long as he is in his possession, and an agent is in charge of disposing of it, and the agent and trustee are not guaranteed, except in the case of infringement or default.
- The person responsible for what happens in banks and financial institutions with legal personality is the board of directors. Because it is the agent for the shareholders in the management of the company, and the representative of the legal person. (The International Fiqh Academy, (5/13 123), (5/4/30) The Fiqh Academy, (5, 6/14) The European Council for Fatwa and Research (2/16)).

### *THE THIRD TOPIC: RENTS RECEIVED ON BENEFITS*

Al'aeyan benefits: The lease contract received on the benefits of Al'ayna (houses, stores, equipment, and means of transportation) can be used through:

- Operating leasing.
- Financial leasing, through a lease contract with a promise to own (lease ending with ownership).
- Islamic leasing Sukuk, which is considered one of the most flexible and controlled types of Sukuk.

Personnel Benefits: The lease contract received on work and services (people rent) can be used through:

- Financing educational services, through Murabahah in benefits.
- Financing health services in one of the two previous ways.
- It is permissible for the rental to be related to a specific eye, or described in the liability, and for a specific service or described in the liability, as long as the descriptions lead to control and non-conflict and disagreement.
- It is permissible to conclude lease contracts for several people on a specific benefit for one thing, and for a specific period, without assigning a specific time to a specific person. Rather, each of them is entitled to collect the benefit in the time that is allocated to him when using it according to custom (Time Sharing), this situation is due in Islamic jurisprudence to the temporal adaptation of fulfilling the benefit of the leased property.

- Subletting is permissible if the tenant does not prevent that contract or the law prevailing in the country.
- It is permissible to link the fare to a known index (such as Libor) that the two parties agree that the variable fare is linked to (Blayibur) plus or minus.
- It is permissible to determine the wages in the rent received for work in a daily, monthly or annual amount, and link it to a standard link with the inflation index issued by the state in each period.
- The rental may be determined by time, or by the completion of the work.
- There is no legal objection to leasing the communal rent to the partner, and from the rent being with the result of the work of the wage earner, such as renting a car for half of the sum paid.
- There is no legal objection to the timing of the lease contract, by concluding the contract and linking the lease to a later period in the future.
- There is no legal objection to suspending the lease according to the period of completion of the work and according to the quality of its specifications.
- Sharia obliges the employer to have obligations on the worker, such as wages and finishing the work.
- The lease contract is binding on both parties, and it is not terminated except in specific cases such as dismissal or difficult circumstances.
- The lease contract ends with the end of the period, the death of the designated worker, and the loss of the benefit.
- (European Council, (3/18) Sharia standards, (9 / 237-270, 34 / 848-874).

Deferral of the rent in the described lease in the liability:

- In renting out the benefits described in the liability, it is permissible to accelerate the rent, install it, and postpone it.
- The fee for renting the described usufruct in the liability is not due unless the tenant enables the usufruct. If the tenant is not able to collect the benefit within the agreed period, the rent is not due.
- It is permissible to rent services (in which there is work) to accelerate the rent, install it, and postpone it.
- The foregoing must not lead to the sale of the debt for debt, or to a profit that is not guaranteed, or to the sale of what is not with the seller, which is forbidden by Sharia. (The International Fiqh Academy, (2/21/196) Sharia Standards, (9 / 237-270, 34 / 848-874).

Selling or renting with variable price:

- Variable Price Sale: A forward compensation contract on fixed installments, in which the two contracting parties agree on the principal of the debt, and upon the settlement of each installment a profit is added to the unpaid amount of the principal debt, and that profit is determined based on an agreed upon disciplined indicator.
- Leasing at a variable rate is: a long-term lease contract, in which the rent is determined at the time of the contract for the first period, and the remainder of the rent is linked to an agreed-upon index, so that it is determined at the end of each rental period for the next period.
- There is no disagreement among scholars that one of the conditions of the validity of the contract is: knowledge at the time of the contract with a price, a knowledge that precludes ignorance and is safe from Alghurr.
- A contract of sale at a variable forward rate that is not valid; Because of the great ignorance of the price at the time of the contract, and because the increase in the index means an increase in the debt after it is required, which falls into the suspicion of usury.
- It is permissible to contract a lease with a variable rent linked to a controlled index known to both parties, to which a maximum and a minimum shall be set.
- The difference between the lease contract and the sales contract is that the lease contract is forgiven for Alghurr that cannot be excused in the sale. (The Fiqh Academy, (2/22) Sharia Standards, (9 / 237-270, 34 / 848-874).

Alkhlu allowance:

- If the owner and the tenant agree that the tenant will pay the landlord a lump sum in excess of the periodic rent - which is called khlwaan in some countries - then there is no objection in Sharia.
- If it is agreed between the owner and the tenant during the period of the lease that the owner will pay the lessee an amount in exchange for relinquishing his fixed right to the contract to own the usufruct for the remainder of the period, then it is legally permissible. Because it is compensation for the tenant giving up his right to the benefit that he sold to the owner.
- If the lease term has expired, and the contract has not been renewed, explicitly or implicitly, by automatic renewal according to the formula that is beneficial to it, then the vacancy allowance is not permissible Because the landlord is more entitled to his property after the tenant's right has expired.
- If it is agreed between the first tenant and the new tenant, during the period of the lease, to waive the remainder of the contract period, in exchange for an amount in excess of the periodic rent, then this alkhalw allowance is legally permissible. If, however, after the expiry of the period, the vacancy allowance is not permissible, due to the expiration of the right of the first tenant to the benefit of the property.
- In long-term leases, contrary to the text of the lease contract according to what is justified by some laws, the lessee may not lease the property to another tenant, nor take the Alkhalw allowance in it without the consent of the owner.

- It is better for the owner to keep the Alkhalw allowance and not spend it, so if he spends it, then he guarantees that it will be returned to the tenant upon the expiry of the lease period.
- When the Alkhalw allowance is not taken, and the lease term is not specified, the landlord has the right to demand eviction at any time he wishes, taking into account local conditions, and the tenant's initiative to evacuate.
- The lessee may not request Alkhalw allowance, if he has not paid it before that.
- Observing the provisions of the lease contract concluded between the owner and the first tenant, and taking into account what is required by the laws in force in accordance with the Sharia provisions. (International Fiqh Academy, (4/31/4)) Sudanese Fiqh Academy (178, 179). Indian Fiqh Academy, (1/2)).

Lease-to-own:

- Suffering from the forms of lease-to-owning, with other alternatives, including the following two:
  - Selling in installments with adequate guarantees.
  - A lease contract with the owner giving the tenant the option after completing the fulfillment of all rental installments due during the period in extending the lease term, or terminating the lease contract, returning the leased property to its owner, or buying the leased property at the market price at the end of the lease term.
- Permissible and prohibited image controls include a guideline the following:
  - Guideline of prohibition: That two different contracts be placed at the same time on one eye at the same time.
  - Guideline for permissibility: The existence of two separate contracts that are independent of each other, for a time, so that the conclusion of the sale contract is after the lease contract, or the presence of a promise of ownership at the end of the lease term. And the choice is equal to the promise in the provisions.
- Among the forms of prohibited contracts:
  - The lease contract ends with the ownership of the leased property, in return for the rent paid by the lessee during the specified period, without concluding a new contract, so that the lease is reversed at the end of the period by selling automatically.
  - Renting an asset to a person for a known fee, and for a specified period, with a sale contract for him pending the payment of all the agreed rent during the known period, or added to a time in the future.
  - A real lease contract, coupled with a conditional sale in favor of the lessor, which is deferred to a specified long term (the last term of the lease contract).
- Examples of permissible contracts:
  - A lease contract that enables the lessee to use the leased property, for a fee for a specified period of time, it was accompanied by Hibat contract to the lessee, commenting on

the payment of the full rent, by a separate contract, or he promised Hibat after paying the full rent.

- A lease contract with the owner giving the tenant the option after completing the fulfillment of all the rental installments due during the period in purchasing the leased property at the market price at the end of the lease period.
- A lease contract accompanied by a promise to sell after paying the full rent at a price agreed upon by the two parties, or giving the option to own the leased property at any time he wishes, with a new contract at the market price, or according to the agreement at his time.

Provisions for rent ending with ownership:

- That the rental is actual, not a cover for sale.
- The lease-to-owning contract shall be subject to the provisions of leasing for the duration of the lease, and the provisions for sale upon ownership of the property.
- That the guarantee of the leased property be with the landlord, not the lessee. Thus, the lessor shall bear what is inflicted on the property without damage arising from the tenant's encroachment or negligence, the tenant is not obligated to do anything if the benefit is lost.
- If the contract includes insurance of the leased property: the insurance must be cooperative, Islamic, not commercial, and it is borne by the leased owner, not the lessee.
- The non-operating maintenance expenses shall be on the lessor and not the lessee throughout the period of the lease. (The International Fiqh Academy, (1/3/13), (6/5/44), (4/12/110) Al-Jeraisy, (1223, 1224)).

Temporal appropriation (TIME SHARING):

- Definition of joint temporary possession:
  - It is a contract to own common shares, either as a purchase of a commonly known Eayn, or as a lease of a known Eayn benefit for successive periods, or a lease of a known property Eayn for a period, so that the owned Eayn or the leased benefit is used by the spatial adapter, with the application of the appointment option in Some cases, for each of them to a specific period of time.
- Types of joint temporary possession:
  - Full ownership (Eayn and benefit): by purchasing a common share in a sale contract for joint use in successive periods.
  - Deficient ownership (for usufruct only): by renting a common share of the usufruct of the lease contract for mutual benefit in successive periods.
- Sharia provisions for the principle of (joint temporal ownership):
  - It is permissible under Sharia to buy a common share in Eayn, and lease a common share in a specific benefit for a period of time, with an agreement between the owners of the asset or the benefit to use it by means of adaptation (dividing the benefits) in time or space.

- There is nothing wrong with trading the common share by sale, purchase, Hiba, inheritance, mortgage, and other legitimate acts of what the disposer owns, because there is no legal impediment.
- In order to implement the trading, the Sharia requirements of the contract must be fulfilled, be it a sale or a lease.
- In the case of the lease, the lessor must be committed to the basic maintenance costs on which the use depends. As for the operational and periodic maintenance, it may be stipulated on the lessee, and if the lessor does it, the lessee bears only the same cost, or what the two parties agree upon.
- In the event of sale, the owner bears the maintenance costs as a burden of ownership, in proportion to his temporal and spatial share in the common ownership.
- There is no objection to the exchange of shares in the joint temporal ownership between the owners of the eye or the common interest, whether the exchange takes place directly between the owners, or through companies specialized in the exchange. (The International Fiqh Academy, (18/8/170) Sharia Standards, (9 / 237-270).

## **2. RESULTS AND RECOMMENDATIONS:**

- Calling on the supervisory bodies in Islamic financial institutions to work on implementing the correct image of Islamic financial practices.
- Emphasis on Islamic banks and financial institutions using legitimate investment and financing formulas in all their activities.
- Avoiding forbidden and suspicious formulas in compliance with Sharia controls, in order to achieve the objectives of Sharia, and to demonstrate the virtue of the Islamic economy to the world that suffers from economic fluctuations and disasters time after time.
- Encouraging the good loan to spare those in need to resort to Tawarruq, and the establishment of Islamic financial institutions funds for the good loan.
- We recommend Muslims to act according to what God Almighty has prescribed to his servants of a good loan of the goodness of their money, and the borrower must also be loyal, good judgment and not procrastinate.
- All banks should avoid forbidden transactions, and for that reason, they should use real legitimate transactions without resorting to fake transactions, which result in being pure financing with an increase attributed to the financier.
- The texts of Islamic law cooperated on the necessity of safe dealing among the causes and circumstances of the forbidden, which are harmful to the public and the private.
- The bidding contract is one of the common contracts at the present time, and its implementation has been accompanied in some cases by excesses that called for controlling the method of dealing with it with a control that preserves the rights of contractors in accordance with the provisions of Islamic Sharia law, as well as approved by institutions and governments, and set it under administrative arrangements, and this is a statement of the

provisions. We recommend the expansion of the activity of all Islamic banks in various Methods of developing the economy, especially the establishment of industrial or commercial projects with special efforts, or through participation and speculation with other parties.

- Study the practical cases of applying (murabahah to the one who ordered the purchase) in Islamic banks, in order to set principles that protect against the occurrence of defects in the application, and help in observing the general and private Sharia provisions.
- Recommending Muslims to apply Islamic law in all their affairs and dealings.
- The necessity of the agreement and frankness of the contracting parties to agree on all matters and the necessary specifications related to contracts, in order to avoid conflict and harm.
- Determining the period of the lease upon the establishment of the contract, and if the owner wants to waive his right to recover the house in exchange for compensation, then the validity of the lease is required to declare this between the two parties when establishing the contract.

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