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THE BASIC RULES , SHARIAH RULINGS AND USE OF THE MUDORABAH AND MUSHORAKAH CONTRACTS IN ISLAMIC FINANCE

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Abstract: This thesis analyzes the essence, application methods, types , shariah rulings and basic rules of Mudarabah (profit-sharing) and Musharakah (profit and loss sharing) contracts which are widely discussed but rarely applied in Islamic finance. The thesis highlights the theoretical advantages of these contracts and their role in the Islamic economy, while exploring the reasons for their limited practical implementation.

Key words: Islamic financial assets, Mudorabah instrument, Musharakah , absolute mudorabah instrument, limited mudorabah, rasul mol, rabbul mol, usurper, ibza, risk sharing, financing shortcomings, asymmetric information, operational costs AAOIFI, legislation

We all know that one of the demands of today's economy, which is developing with a high trend, is Islamic financing tools. The results of surveys conducted in recent years on the existing banking and financial system in our country, including banking products and services, show that most consumers, entrepreneurs and business representatives face some difficulties in conducting economic activities due to their reluctance to take loans from existing commercial banks and not keeping their savings in banks, based on their beliefs. According to the "Islamic Banking and Finance"organization (AlHuda) in Uzbekistan, the growth of the Islamic finance industry in the CIS countries is slower than in other countries, but due to the growing opportunities in this region, it is attracting the attention of the global international banking industry. If the governments of the CIS countries take the initiative to develop this sector, Islamic banking will grow significantly over the next five years.

According to international statistics, in 2024, Islamic financial assets worldwide reached $5.1 trillion. 60% of these assets belong to countries located in the Middle East and South Asia. It is in these regions that the contribution of Islamic banks to economic growth increased by 4.2%.[1]

The development of the Islamic finance sector in Uzbekistan has increased by about 10% per year over the past decade. According to the 2023 State of the Global Islamic Economy report, by 2026, total Sharia-compliant assets may grow to $5.95 trillion.[2]

In Islamic banking practice, the most widely used basic financing instruments, in accordance with international standards, are mainly divided into 3 types:

1. Equity financing based on partnership; Mudarabah and Mushorakahh;
2. Debt-related transactions (trade agreement); murabaha, ijara, escrow, salam;

[1]Islamic Finance Development Report 2024
[2] AAOIFI Official Website. 2024. "Shari'ah Standards on Mudarabah" https://aaoifi.com

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3. Additional instruments; qarddi hasan (interest-free loan), agency fees (wakolat, ju'la), sukuk (directing capital to target securities).

A Mudarabahhh contract is a commercial contract between an investor and an experienced worker who conducts the Mudarabahh business, and the profit at the end of any agreement is divided based on the ratio agreed between them. However, the loss is borne solely by the investor, while the one conducting the Mudarabahh practice is responsible for the work and the activities of the Mudarabah. That is, in this contract, the investment is made on the one hand, and the management of the work and the disposal of the investment are on the other. The permissibility of Mudarabahh in Sharia is evidenced by the general or complete meanings of some Quranic verses that make commerce halal. In Surah An-Nisa, verse 29, it is stated: "O you who have believed! Do not consume each other's wealth unjustly. Only trade by mutual consent is permissible." The Islamic community has always approved partnership in property and financial transactions. In a hadis narrated by Abu Hurairah (may Allah be pleased with him), Allah the Almighty says: "I am the third of two partners, as long as one of them does not betray his partner, and if he betrays him, I withdraw from between them."[3]

Today, we will talk about the forms of Mudarabahh transactions from the perspective of Islamic banks. Mudarabahh transactions in Islamic banks can be divided into 3 main types:

1. According to the freedom of the Mudarabahh in managing the capital

a) Absolute Mudarabahh (Mutlaq Mudarabahh).

In this type of transaction, the Mudarabahh can freely invest the capital (rasul mal) in the field he wants and without any interference from the owner of the capital (rabbul mal). This type of transaction is the predominant form of activity carried out by Islamic banks in attracting funds. Because the bank tries to be completely free so that its depositors (i.e., those who invest in an Islamic bank in order to increase their capital) can use their money in areas that are in accordance with Sharia.

b) Restricted Mudarabahh (Mutaqayyida).

In this type of contract, the owner of the capital (the investor) sets certain conditions and restrictions for the investor. These requirements can be imposed on the area of investment, the method of managing funds, the term of investment, as well as the place where the investment is made and the people who will benefit from it. Such conditions must be clearly agreed upon between the parties before concluding the Mudarabahh contract or at least before investing in the project. In Islamic banks, such a Mudarabahh agreement is called Specified Investment Accounts or Restricted Accounts.

2. According to how the Mudarabah agreement is concluded

a) Mudarabah ending with ownership (Mudarabah muntahiyya bit-tamlik).

In this type of Mudarabah agreement, the investor sells his share in the land to the Mudarabah in stages or for a lump sum payment. This is similar to the Mushorakah agreement ending with ownership.

[3] Muhammad Sodiq Muhammad Yusuf. 2022. "Bozor va unga oid masalalar." 84-87 pp.

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b) Mudarabah not ending with ownership.

This is a typical agreement, which provides for the return of the investment to its owner, i.e. the owner, after the investment period has expired and the profits have been distributed in an agreed ratio between the parties.

3. According to the number of participants

a) Bilateral or simple Mudorabah to

In this agreement, one person invests, and the second person manages the work, manages the project, that is, the agreement is signed only between two parties. Islamic banks and Islamic banks also use Mudorabah to attract financial funds from individuals and legal entities and various investors (including foreign ones). operates. These funds can be attracted on demand or in the form of a term deposit, as in traditional banking. In the following diagram, we can see how the mechanism of term deposits is organized in Islamic banking, including Islamic banks:

The conditions of Mudorabah are as follows:

1. The capital must be cash.

2. The amount of the capital must be recorded at the time of conclusion of the contract or this value must be known before it is distributed among the beneficiaries.

3. The capital must not be a debt owed by someone else or a hidden amount that the employee cannot recover.

4. The two parties must agree on a ratio of half or one third, regardless of whether the profit in the contract is small or large. This is based on a partnership in profit. However, the loss is the sole responsibility of the investor, and the worker is not charged with anything from it. Because the loss is the loss of the investment. Accordingly, it is not permissible for the investor to add a certain amount or interest to the worker along with the investment.

5. The amount of profit must also be known. The uncertainty of the profit invalidates the contract.

Rulings and qualities of Mudarabah

1. Partnership is permissible in Mudarabah. In this case, the worker also adds his goods to the Mudarabah goods. As a result, he becomes a partner and can receive profit on a proportional basis

2. It is also permissible to have several workers.

3. In order for the investor to achieve the goal he has set for Mudarabah and to generate profit, he can add some useful notes without making the practice difficult. In this case, if the worker does not follow the conditions, he becomes a usurper, that is, one who forcibly seizes someone else's property and suffers a loss, he is liable for the investment - he will pay.

4. The Mudarabah property in the hands of the worker is considered a deposit. If this property is lost, the worker does not pay. But if it is due to the fault of the worker, he will pay.

5. The muzarib does not have the right to lend or donate anything from the muzarib property. It is permissible if the investor gives permission.

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6. The muzarib can make an "ibza" from the muzarib property. Ibza is giving someone goods to buy goods from a certain city. In this case, the muzarib does not receive any compensation for his work.

7. The muzarib can only receive his share of the profit (ribo) with the permission of the investor. He cannot receive the profit until the capital is replenished. If there is a loss, the capital is paid out of the profit.

8. If the muzarib trade incurs a loss, the loss can be compensated by a third party. In this case, only the messenger is paid in cash. Not profit.

9. The share of the profit assigned to the investor can change with the increase in the capital[4].

From the above information, it is clear that the Mudorabah trade is a type of trade based on very specific conditions, and this trade is fully based on Islamic law. The purpose of this is to ensure that the interests of the two trading parties are not violated and to prevent the accumulation of wealth in an unlawful way.

The following main factors are responsible for the low applicability of these contracts in practice:

- Low share;
- Interbank policy;
- Risk level;
- Asymmetric data and moral hazard (Moral Hazard) ;
- Complex management and monitoring ;
- Lack of regulatory restrictions and standards;
- Revenue uncertainty ;
- Market demand.

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