

The Role of Islamic Banks in Funding Scientific Research Centres Through the Formulas of Resale for Profit (al-marabaha), Forward Buying (al-salam) and (al-istasna')

Dr Nada Zuhair Sa'id al-Fil
Associate Professor of Commercial Law, Faculty of Law – al Shariqa University

Abstract

Funding this study is to provide a solution proposed to the problem faced by the majority of the centers and scientific research institutions in the Arab countries; it is the necessary funding to carry out research projects that contribute to the development of society and develop a problem, exacerbated this problem before the axioms of great importance; including the requirement of survival and the continuation of the success of these centers in achieving their goals, and that the success of scientific research needs to be huge funding may not be able budgets of the governments of countries from fulfilling it. The proposed solution; lies in hoped the role of Islamic banks in supporting these centers through formulas Islamic and means that posed away from usury, it is time that should these banks check the role Hopefully after announced that it will contribute to the economic and social development service effective community development projects through the formulas and means through murabaha Islamic and Ualslm and Istisna'a which were the subject of our attention in this research funding.

1-Introduction

Scientific research in Arab countries has not reached the level of advancement attained by research in developed countries, and centres of scientific research do not receive the interest they deserve. This is evidenced by UNESCO's announcement that Arab nations dedicate only \$1.7bn dollars, or only 0.4% of their GDP, to scientific research. Meanwhile, funding of non-military scientific research in Israel constitutes approximately \$2.45bn dollars, or 4.7% of their GDP. If we raised the question of the reason for this discrepancy between Arab countries and non-Arab countries in terms of relative interest in scientific research, in the light of UNESCO's statement, then we would find that most researchers attribute it to a number of challenges faced in carrying out scientific research and most of them arise from the problem of a lack of connection between scientific research and the organisations where it is applied. However, the greatest problems facing the advancement and development of scientific research in Arab nations, and which we noticed most of the studies and research reference direct efforts towards solving them, were problems of funding.

Research Hypothesis: Achieving progress in scientific research requires huge funding which perhaps the budgets of Arab governments are unable to meet, and this funding is a condition of the survival, continuation and durability of the journey of scientific research. The diversity and variety of kinds for funding are considered among the most important factors behind the success of scientific research and the achievement of its goals in developed countries, and this is what centres of scientific research in Arab countries are missing.

We found that among researchers there are those who it is necessary that the private sector have a significant role in the expansion and revitalisation of scientific research, and some who point to the institutions and associations which are concerned with the development and improvement of society. There are others who see the necessity of governments allocating a budget in order to support centres of scientific research. However, after reviewing what is available to us in terms of resources and research related to the topic, we did not find anyone calling for the necessity of the participation of Islamic banks in their funding, meaning that it was a topic deserving of research.

Research Issue: We could ask, what is the reason for calling for the selection of non-traditional Islamic banks, in order demand from them the performance of a real and effective role with regard to the problem of funding from which centres of scientific research in the Arab world suffer? The answer lies in the following reasons:

1. The funding provided by traditional banks is only available in exchange for material or personal guarantees, and at relatively high rates of interest, which is not appropriate for the goals scientific research centres wish to achieve, including using the benefits of scientific research in order to develop society. Meanwhile, Islamic banks distance themselves in general from transacting with 'riba' (usury/the lending of money at high rates of interest), instead striving for 'hikal' (permissible under Islamic law) investment in their dealings, and aiming to combine economic progress with social progress.
2. The sense of having a mutual relationship between centres of scientific research and Islamic banks. Centres of scientific research are in dire need of funding in order to execute research and development projects, and Islamic banks have a cultural responsibility which can be achieved through the publishing of books, magazines and research on Islamic culture and rejuvenating its heritage through financial

exchanges, in order to keep up with global developments which can only be achieved through the assistance of centres of scientific research. Mechanisms of modernisation and development in the Islamic banking system can only be achieved through scientific research.¹

3. Since their foundation Islamic banks have made known that they would offer financial services and investment products with no involvement of 'riba' (usury). They promised that they would contribute towards effective economic development for society through the funding of development projects of a prevailing Islamic form. This was the intended goal of these banks.

However, has reality witnessed the implementation of this goal in the sphere of scientific research centres and foundation which want to achieve their research goals to serve the progress and development of society? In truth, we did not find any discussion of this issue in previous studies, which influenced us to make it the subject of this research, and in order to develop a call towards Islamic banks in the United Arab Emirates and in Arab countries in general emphasising the necessity of fulfilling their promise and contributing towards the funding of scientific research projects.²

Methodology of the Research: The research in this study was based on an inductive approach. Due to the fact that problems with the role that Islamic banks must perform in funding centres of scientific research cannot be organised under one title in Arab laws specific to Islamic banks, we tried to bring together the dispersed fragments of this topic through returning to a number of jurisprudential studies – works, research and articles – which were written about Islamic funding and the bases upon which Islamic banks and scientific research centres were founded, and their role in the development of society. We made assumptions based on this that there were no previous studies in this domain. Additionally, we made use of the legal provisions contained in Federal Law No. 6 of 1985 on the issue of Islamic banks, financial institutions and investment companies and Civil Transactions Law No. 5 of 1985 in the UAE, in order to get the definition of legal terminology or in order to determine the position of the Emirati legislator on a number of issues. This is in order to lay down a general principle which enjoins the necessity of banks undertaking to activate their intended role undertaken in fields of social development, and including the funding of research projects. However, before discussing the formulas of resale for profit (al-marabaha), forward buying (al-salam) and (al-istasna') as means which can be used for funding centres of scientific research, we find it necessary to provide a simple introduction in order to clarify a number of technical terms mentioned in this study and which the reader will perhaps need in order to get a full picture of the sense of the research.

The Form of the Research: For the purpose of understanding fully the aspects relating to the subject of this research, the research took the following form:

2- Preface

Islamic banks are defined as “financial apparatuses which aim to support development and work on a framework of Islamic Sharia law, and are committed to all of the moral values provided by heavenly laws, and strive towards correcting the role of capital in society.”³ Dr Abd al-Salam Abu Qahaf describes them as “organisations having an economic and social mission working according to the doctrines of Islamic Sharia law, and they are not just devoted to the implementation of an Islamic banking system, but indeed to the building of a complete Islamic society on the basis of dogmatism, ethics and economics.”⁴

The agreement for the founding of the International Banking Federation defined them as: “Those banks and foundations whose founding laws and basic organisation explicitly stipulate a commitment to the principles of Islamic Sharia law and not working with interest, whether in give or take.”⁵

As for the Emirati legislator, it defines [Islamic banks] as: “Islamic banks, financial organisations,

¹ Dr Abd al-Raheem al-Almi, article entitled “The Role of Scientific Research in the Advancement of Banking Work”, p1, <http://infpedia.com/arab/wp-content>.

² However, this does not deny recognition of the advantages achieved by Islamic banks in Arab states, where they have been able to keep pace with the age in offering electronic trade services and numerous social and environmental services, Dr Hussein Hussein Shehata, “Monitoring and Evaluating the Advantages Achieved by Islamic Banks for the States in Which They Operate” [expectation – reality – prospects], research presented to the symposium established by the Islamic Universities League with the participation of the Islamic Development Bank in Jeddah and the Dubai Islamic Bank with the title “Towards the Rationalisation of the Progression of Islamic Banks”, October 2005, p18-19, as well as the case for a number of Islamic banks in the UAE... Islamic Bank of Abu Dhabi Emirates <http://www.soualmal.com/ae-ar>.

³ Dr Ahmed al-Najar, Curriculum of the Islamic Awakening, “Banks Without Interest” cited by Mohammad Taher Hashimi, “Islamic Banks and Traditional Banks – Theoretical Bases and Real Practices, and Their Role in Economic and Social Development with an Applied Studies of Working Banks in the Kingdom of Bahrain”, Second Edition, published by Seventh of October University, Misurata, al-Jamahiria al-Athma, 2010, p123.

⁴ Cited by Nasima Hashof, “The Nature of Islamic Banks”, the Islamic Business Research Centre, www.kantakji.com/media/1354/34106.cloc, accessed: 30/11/2015.

⁵ Dr Samir Ramadan al-Sheikh, “Islamic Banking”, International Federation of Islamic Banks, <http://kenanaonline.com/users/AL-Resalah/post/404>, accessed: 01/12/2015.

investment companies, in which the constituent contracts and basic systems include a commitment to apply the provisions of the Islamic Sharia and commence their activities in accordance with these provisions.”¹

The preceding confirms that Islamic Banks emerged in order to satisfy the desire of Islamic societies to find a formula for financial transactions that does not involve any suspicion of ‘riba’ (usury). They took their basis in a different manner to traditional banks and the most important of these bases are as follows:

- Commitment to the rule of Sharia law: an Islamic bank takes its legitimacy from embodying the principles of Islamic Sharia. This is what the Emirati legislator decided in articles 1 and 5 of Federal Law No.6 of 1985, and the content of this commitment is: **firstly, distancing usurious interest from all of their transactions, give or take. This constitutes the firm rule upon which these banks are based, otherwise they will become exactly like banks that operate using usurious interest.** This is because Islam prohibited any transaction using ‘riba’ (usury), and instituted instead the principle of ‘musharika’ (partnership or collaboration), which brought about a positive development in banking work.² Building on this, a recent study demonstrated that the motivation of 86-96% of clients for using these banks is that they are Islamic and prohibit ‘riba’ (usury).³ **Secondly, the investment of funds in projects that are ‘halal’ (permissible under Islamic law).** On this basis the Emirati legislator gave Islamic banks the right to enter into all or some banking, commercial, financial and investment services and transactions on the condition that their activities be concurrent with the rule of Islamic Sharia.⁴ This investment can only take place through directing and focusing it towards the realm of the production of goods and services which fulfil the rightful needs of a Muslim person and the investigation of whether the production of goods and services, and all stages of the production operation, and the intentions of the production, fall within the ‘halal’ (permissible) realm.⁵ **Thirdly, the existence of a Sharia authority** consisting of a group of jurisprudential scholars who follow up and examine the actions and transactions carried out by the Islamic Bank to ensure that they are conducted in accordance with the provisions of Islamic Sharia law.⁶

It is necessary that this authority enjoy a high level of independence in its objectives and jurisdiction because of the importance of this in the evaluation and examination of the banking transactions.⁷

- **The necessity of joining economic and social development**⁸, and in order to achieve that Islamic banks proceed to offer interest-free loans for specific groups, and within specific restrictions, and for humanitarian goals like helping those in need during disasters,⁹ supporting awareness of saving among individuals,¹⁰ working towards rejuvenating the system of ‘zakaat’ (alms), and this through the foundation of a fund collecting money gained in order to undertake their spending in Sharia banks and finally contribution to social projects which aim not to receive profit but rather to present social services with no recompense.¹¹

As for funding, it is the provision of funds (cash flow) in order to fund investments and form fixed

¹ Article I of the Federal Law No.6 for the year 1985 on the matter of Islamic Emirati banks, financial institutions and investment companies.

² Dr Abd al-Razzaq Jaddi al-Hiti, “Islamic Banks: Between Theory and Practice”, First Edition, Dar Asama for Distribution and Publishing, Amman, Jordan, 1998, 191-192. Salih al-Hussein, “Islamic Banks: their Money and What is Required of It”, “Hawliyat al-Barakah” Magazine, Majmu‘at Dallat al-Barakah, the General Secretariat of the Sharia Commission, No. 6, 2004, p46-7.

³ Dr Abd al-Hafiz al-Sawi, article entitled “Islamic Banks and Poverty, What Role Awaits?”, <http://www.kantakji.com/economics>, accessed: 4/12/2015.

⁴ Article (3 / P 1 of 2) of the Federal Law No. 6 for the year 1985.

⁵ Dr Abd al-Razzaq Jaddi al-Hiti, *ibid.*, p193.

⁶ Abd al-Hamid Mahmoud al-Ba’li, “Effective Sharia Monitoring of Islamic Financial Organisations”, Third International Conference on Islamic Economics, Um al-Qura University, Saudi Arabia, 2005, p165. Dr Muhammad Mahmoud al-Aljouni, “Islamic Banks: their Adjudication, Principles and Enforcement”, First Edition, Dar al-Masira for Publishing and Distribution, Amman, Jordan, p151.

⁷ See Dr Ahmed Abdallah, “Activating the Sharia Monitoring of Islamic Banks”, Research Published in “Hawliyat al-Barakah” Magazine, Majmu‘at Dallat al-Barakah, the General Secretariat of the Sharia Commission, No.3, 2001, p4.

⁸ It is worth noting that all Islamic banks aim for both economic and social development, however only one Islamic bank has emerged dedicated purely to development, the Islamic Development Bank, founded in 1974 by government parties of the member states of the Organisation of the Islamic Conference, whose headquarters are in Jeddah, in the Kingdom of Saudi Arabia, Dr Tawfiq Muhammad al-Shawi, Islamic Development Bank, First Edition, al-Zahra’ lili’lam al-‘aali, Cairo, p118.

⁹ Dr Muhammad al-Taher al-Hashmi, *ibid.*, p152.

¹⁰ Dr Abd al-Razzaq Jaddi al-Hiti, *ibid.*, p216-217. For further details on this topic see Dr Shawqi bu Ruqba, “Funding in Traditional Banks and Islamic Banks (a comparative study in terms of concepts, procedures and costs)”, First Edition, World of Modern Books for Publishing and Distribution, Irbid, Jordan, 2012, p41-42.

¹¹ Dr Muhammad al-Taher al-Hashmi, *ibid.*, p102-103 and also <http://www.alukah.net/cultur>

capital, with the aim of increasing production and consumption.¹ It is based on an economic relationship between two parties, one of them has a surplus balance of money and the other suffers from a deficit, and in some cases there is a third party called the financial intermediary which usually consists of banks or other financial institutions.² This is the traditional definition of funding, however the merits and distinctive qualities of Islamic funding have made it a striking power in the banking business, and the most important of these merits, it is the convincing of many Muslims and others of the futility of dealing in 'riba' (usury), and that the system of transactions with interest has led to the existence of people who are in need of funding, but they abstain from choosing to borrow due to the decline of the means available in the interest system.³

The sources of Islamic funding, like the sources of traditional funding, can be divided into internal and external sources, however there are two differences between them:

- External sources belonging to Islamic banks take the form of deposits of all kinds (current and investment accounts for different cases, dedicated investment accounts, fixed term deposit accounts, other lending accounts), whereas traditional banks combine deposits plus loans.
- Deposits are considered among the main sources for traditional banks – as economic wisdom describes it is their life blood. Current accounts occupy the number one position, while in the external sources for Islamic banks deposits of an investment nature occupy the number one position.⁴ This was stated by the Emirati legislator in m / 3 P-2 the second paragraph of the Federal Law No. 6 of 1985, which says "...receive cash deposits for their investment in accordance with the provisions of Islamic Sharia."

As for centres of scientific research, their definition continues to be divisive, as most foundations and their centres for the field of research do not consider themselves to be part of the classification 'think tanks', which proclaim themselves to be non-governmental or non-profit organisations. In this context Howard Wiarda, professor of international relations at the University of Georgia describes them as: "centres for research and learning not like universities and colleges, as they do not offer courses of study, but rather are non-profit organisation, even though this might have a product, which is the research. Its primary goal is discussion of the general policies of the state, as well as focusing on a concern for economic and social development. They are not satisfied by the provision of superficial ideas for such matters when they are able to conduct deep research into them and draw the public's attention to them."

However, one researcher used this term synonymously with the term "thought centres" and said that "the primary role of research centres is the production of research and studies in various fields to serve the public policy of the state and provide future insights concerning the individual, society and decision-makers."⁵

Scientific research centres have not assumed the same role in the Arab world as in the developed world, meaning that their role has seemed lacklustre and ineffective in the operation of society formation in all its aspects. This is not because of their deficiency in performing this role, but rather because of the many restrictions surrounding them, and the limited number of scientific papers they have presented to decision makers who find that the Western studies and centres are more useful, preferring to contract with international research centres to conduct studies on the local state of affairs. Not to mention the most significant challenges facing the scientific research centres, which take the form of funding and spending problems for scientific research – the subject of study.⁶ This challenge is for the following reasons:

1. Not allocating budgets to ambitious and independent scientific research, the weakness of the involvement of the private sector in supporting scientific research, and the dependence on abroad to import technology. Additionally, there is a lack of cooperation and coordination between research centres and production sectors in these states.⁷ Based on the above it was necessary to search for alternatives from which to confront this challenge and its causes. We have found that it is high time that Islamic banks should have an effective role in achieving social development objectives and activities, whose undertaking was announced at their foundation in order to contribute to alleviating the financing problem experienced by scientific research centres that serve the development and progress of society,

¹ Dr Haythm 'Ajab, "International Funding", Dar Zahran for Printing and Distribution, 2006, p23.

² Dr Shawqi Bu Ruqba, *ibid.*, p11-12.

³ Dr Muhammad Mahmoud al-Makawi, "Foundations of Islamic Bank Funding, Between Risk and Control," First Edition, The Modern Library for Publishing and Distribution, Egypt, 2009, p12-14.

⁴ Dr Quhtan Raheem Waheeb, "Sources of Funding and their Usage in the Islamic Banking Business (a Comparative Analytical Study)", Baghdad, 2006, p14, www.iasj.net/iasj?fn=fulltext, accessed 17/12/2015.

⁵ Khaled Walid Mahmoud "The Role of Research Centres in the Arab Nation: Current Reality and Conditions of the Transition to a Greater Effectiveness."

⁶ Khalid Walid Mahmoud, *ibid.*, p4.

⁷ See Dr Rabi' Qasim Thajil and Dr Adnan Farhan al-Jawarin, "Elements of Scientific Research at the Center for Studies and Research at the University of Basra (Case Study), p12, www.uokufa.edu.iq/journals/index.php/ghjec/article, accessed on 22/12/2015.

and this through the activating of formats and the financing products offered by Islamic banks. This call might seem a little belated at a time when Islamic finance in non-Arab countries has become a solution for the financial problems faced by their way of operating. The evidence for this is that the Association of Russian banks asked the Central Bank to adopt Islamic financing to cope with economic sanctions.¹ Similarly, the manager of the Perth Estates Fund for Asset Management acknowledged that Islamic finance could restore discipline to the system in the wake of the financial crisis. Additionally, the Japanese parliament passed legislation allowing banks to open branches for Islamic finance after the collapse of 'riba' (usury) organisations.² Among the Islamic formulas that can be used for the funding of centres of scientific research there is 'futures contracts' which are expressed as: "All contracts in which recompense is postponed whether the delay is in the price or the appraiser". Elsewhere it has been described as "contracts where the item is present and the price is deferred," and is known in alternative Islamic Economics as "contracts of delayed financial recompense in which one or both of the recompenses are used as a source of funding and a legitimate alternative to usurious transactions."³ The most prominent of the contracts used by Islamic banks as an alternative to interest-based financing which has introduced changes them to suit the intended financing task are resale for profit (al-marabaha), forward buying (al-salam), (al-istasna'), protection (Ijara), partnership (al-masharika), speculation (al-mudhariba) and entrepreneurship (al-maqawila) and securitisation (al-tawriq) and credit cards.⁴

We will limit the scope of this study to resale for profit (al-marabaha), forward buying (al-salam) and (al-istasna') only. Our goal in this is to benefit from the matter of the containment of these formulas within postponement/futures contracts, whose legitimacy was confirmed by Islamic Sharia for several purposes: the expansion and upgrading critical for both the seller and the buyer; the provision of an alternative to usurious transactions and increase the volume of trade in order to that available liquidity does not remain limited. However, as has been observed, there is a difference between these three versions: a delay in a 'murabaha' sale focuses on the price, and in 'al-salam' it focuses on the appraiser - whether a yield or a commodity. The delay focuses on both the recompense of the price and the appraiser, in the sale of 'istasna'a'.⁵

3- Resale for Profit (al-marabaha)

It is one of the forms of sales of trust which is permitted by Sharia law, and it takes its basis from the disclosure by the seller of the price at which he purchased the commodity. The commodity is then resold for the price at which it was originally purchased with an increase in terms of specified profit. Or, it is the selling of something at its original price with the addition of an increase known to the purchaser, which forms the profit margin for the seller.⁶ We will deal with the resale for profit ('marabaha') formula as a means for contributing to the funding of centres of scientific research through the following issues:

A- The Conditions and Form of Resale for Profit

Resale for profit has certain public conditions and certain private ones. As for the public ones, some elements of the contract are determined by Islamic jurisprudence:

First: The formula of the contract – i.e. offer and consent.

Secondly: The two parties of the contract (the buyer and the seller in a contract of purchase)

Third: The object of the contract (the commodity)⁷

The private conditions for resale for profit are as follows:

First: That the first value be declared. Resale for profit is sale at the original price with accepted costs, so if the original value was not known during the contract meeting, then the sale is spoiled, because ignorance leads to the corruption of the sale contract.⁸

¹ www.zawya.com/ar/strong accessed 20/08/2016.

² Ibrahim Khalil 'Alian, "In concepts: investment, conventional finance, Islamic finance", the fifth Jerusalem Conference, p19, <http://www.qou.edu/arabic/researchprogram/research>.

³ For more definitions see Osama Yusuf al-Jazar, "Future Contracts in Alternative Islamic Economics", Master's Thesis, Faculty of Sharia and Law, Islamic University, Gaza, 2009, p8-14.

⁴ Article on the formulas of funding in Islamic banks, Wikipedia: The Free Encyclopaedia, <https://ar.wikipedia.org> تاريخ الزيارة 2016/8/15.

⁵ Osama Yusuf Al-Jazar, *ibid.*, p35-36.

⁶ Dr Muhammad Mahmoud al-Ajlouni, *ibid.*, p237, "Funding Formulas Advocated by Islamic Banks", al-Riyadh, <http://www.alriyadh.com>. The Emirati legislator organised al-murabaha, 14566, 11/05/2008, under the title "Delayed Sales", Article 583 of the UAE Civil Transactions Law No. 5 of 1985.

⁷ Mahmoud Hussein al-Wadi, "Islamic Banks, Foundations and Theory, Practical Applications", Dar al-Masira for publication and distribution, first edition, Oman, 2007, p127-128.

⁸ Aladdin Kasaani, "Wonders of Industry in the Structure of Religious Law", the Arab Book House, Beirut, 1982, p220.

Second: That the profit to be known, because it is part of the price and knowledge of the price is a requirement in the health of the sales, whether that profit was a certain amount or a certain percentage of the price.

Third: That the first contract to be free from usury; that is to say that the first price not correspond to the same type of wealth from usury funds; because resale for profit is selling according to the first price with an increase, but if they increase is of the same kind (money for money) it is usury, not profit.

Fourth: the first contract must be correct, as if it is corrupt, the transaction is not permissible because what is built on corruption is also corrupt.¹

Resale for profit has two forms, simple and complex:

Simple Murabaha/resale for profit is conducted between two parties, one has the commodity and wants to sell it to another at a price greater than the direct price, like the sales usually carried out by all traders. They buy goods and keep them until someone who would like to purchase them comes along, and then they sell them at a profit.²

As for complex Murabaha, it is based on the foundation of the previous form, but it differs in terms of the contractual relationship. The previous form is bilateral, but this form must be the session of three parties. This is what takes place in the Islamic Banks as one face of the face of the investment project, and is also called 'al-Murabaha' to buy something.³

The content of this kind of Murabaha is that someone asks someone else to buy him a certain commodity and promises him that he will buy it from him for a certain profit. This 'Murabaha' is carried out by Islamic banks and makes up a large proportion of its investments. It has been able to dominate the other modes of financing in some countries, where in Pakistan it reached 90% in the year 1984 and 50% in Sudan in 1995.⁴

B- Resale for Profit as a Means of Funding Scientific Research Centres

'Al-Murabaha' to buy something is the formula developed and followed in Islamic banks. It is a means which has enabled these banks to advance ahead of the traditional banks because they have contributed to meeting the needs of merchants and manufacturers who do not wish to engage with banks in partnership with all that entails in terms of revealing secrets and information. This formula has met the needs of different sectors including the craft and professional, commercial, industrial, agricultural and construction sectors.⁵

It is started by the client who requests from the bank the financing of the purchase of a particular commodity which is not found in the possession of the bank and on the basis that he promises to buy the commodity from the bank at cost plus an agreed-upon profit.⁶ After that the bank will buy the commodity and own it, and then they present it to the client that requested its purchase. The customer has a commitment to purchase it based on his previous promise, but equally he has the right to reject it and give it up if there is some deficiency in it or non-compliance with the specifications agreed upon. If the client refuses the commodity, the bank sells it just like any other property.⁷

Resale for profit in Islamic banks takes place on the basis of a promise to buy in three forms. The first is on the basis of non-compliance with the promise of both the bank and the client. The second is based on the binding promise of one of the parties, the bank or the client. The third form is on the basis of a binding promise for both parties and is the most applicable in Islamic banks such as Kuwait Finance House and Faisal Islamic Bank of Egypt, the International Islamic Bank and the Dubai Islamic Bank.⁸

The Second Conference of the Islamic Bank of Kuwait approved in March 1983 the promise to buy in resale for profit and its compulsory nature by saying: "The promising of the resale for profit to the requester of the purchase after the taking possession of the item purchased, its acquirement and then sale to whoever ordered its purchase with a profit mentioned in the previous agreement is a permissible sale, as long as the responsibility for loss is located with the bank, including a necessary response following a hidden defect."⁹

Therefore, if a specialized centre for planning and architectural studies needs a piece of land with specifications suitable for undertaking of a project for tourist villages and hotels but does not have a full price or possesses it but is not willing to pay in instalments, they can request from the Dubai Islamic Bank, for example, the purchase of this land. So they purchase it based on the promise by the said place to buy it, and they [the bank] sell it to them [the centre] through resale for profit after they disclose to them about the cost of everything related

¹ Dr. Saad Abdul Mohammed, Mai Hammoudi, "Contract of the Sale of Murabaha in Islamic Banks", Journal of Baghdad College of Economic Sciences, No. 31, 2012, p. 6.

² Dr. Ahmed Safar, *ibid.*, p124, Mahmoud Hussein al-Wadi, *ibid.*, p5.

³ Dr Abd al-Razaq Jaddi al-Hiti, *ibid.*, p508.

⁴ Dr. Khalid Trawla, Islamic banking: Security of the Theory, the Health of Practice and the Error of the Task, part 3, <http://www.liqaa.net/article.php?>

⁵ "Modes of Financing in Islamic Banking", <http://wikipedia.org>, accessed 15/08/2016.

⁶ "Funding Formulas Followed by Islamic Banks", the Riyadh Economic, *ibid.*

⁷ Dr. Ahmed Suleiman Khasawneh, *ibid.*, p88-89.

⁸ Dr. Abdul-Razaq Jaddi al-Hiti, *ibid.*, p517-518, Dr. Ahmed Suleiman Khasawneh, *ibid.*, p89.

⁹ Decision published on Islam FN page that, "Fatwas about al-Murabaha", <http://islamifn.com/fatwa/murabaha.htm>, accessed 12/02/2015.

to it, especially the way that it was purchased, either present price or deferred. Any reduction obtained by the party requested to purchase it (the bank) when buying the land which applies and moves to the research centre (who requested the purchase) is calculated as profit which the bank will take based on the reduced price of the land and not on what the research centre (who requested the purchase) claims. The research centre has certainly achieved special security when buying the land through resale for profit as they are unaware of the land market and how to handle it which is known by the bank as a result of its experience and its information in this respect.

4- Forward Buying (as-salam)

This is considered a form of religiously legitimate sales, and represents one of the Islamic modes of financing that can be used with those of contemporary economic activities. It is delayed sale in the present. Through this, Islamic banks can fund companies that produce goods and commodities. They settle contracts when the banks buy a share of the production of these companies of specified quantity and specifications in a concrete time in which delivery is agreed. The banks pay for these goods in full in cash, and the company is committed in return to deliver goods within the agreed period.¹ We recognize the future sales formula for funding in the following two sections:

A- The Definition of Forward Buying and Conditions of its Fulfilment

Forward buying (al-salam) and advances (al-salf) have the same meaning: selling something at the present price which will be provided later. Imam Nawawi (God's mercy upon him) defined that this contract is purchasing something in the present that will be provided later or that the purchased commodity is the debt which is not held by the purchaser. He pays the price to the seller before receiving the good. Jurisprudential scholars call it delayed delivery ('al-mahawij') because it is the selling of something that is not present.² He also defined: "a contract which necessitates payment for a particular commodity in the present which the item is received later, on a particular date, and then the price paid sooner and the item is received later, or is the sale described in the disclosure allowance is paid immediately."³

The following elements of the forward buying contract have been specified:

First: the formula. Offer and consent - Where most of the jurisprudence agrees that a condition of forward buying is that its wording must be general without any options, because giving up the money is a requirement of the contract, as in the exchange contract. There are those who consider flexibility permissible, and that any condition can be added with the consent of both parties as well in order to avoid duplicity or disputes between the parties as in the case of specifications and quality.⁴ It is necessary that the contract for forward buying contain the place of contractual obligation, that is the place where the money is paid, and the commodity is handed over at a later date, unless otherwise agreed. The date of the contract, the two parties (contractor and contracted) and their qualifications to contract must be specified. The contract formula must be implemented (offer and acceptance) and the type, kind, amount and specifications of the commodity sold must be specified, as well as its delayed delivery, the price, the nature of its delivery, place of fulfilment and delivery method, whether at once or in instalments. Also specified should be how to deal with disagreements in this, like increases or deficiencies, and the consequences of non-performance of the obligations contained in the contract.⁵

Two: the two contracting parties. Islamic banks require that the contracted (the seller) to be highly reputed, follow ethical conduct and be known to fulfil their commitments, meaning that they are sure of the integrity of transactions on the basis of the information on previous dealings with the bank or with third parties that deal with them, and the extent of their commitment the provisions of Islamic Sharia laws and rules.

Three: the object of the contract. Capital (the price), and the contracted item (the commodity) must be known at the time of the contract meeting, and the money must be provided at this meeting, i.e. the price of the goods is paid early. As for the contracted item it must be known and described accurately including the weight and number, but is not present at the time of contracting. The later date must be specified, and delivery must be possible in that place, and the contracted item must be provided at this point.⁶

Forward buying began in the agricultural field and those related to it, and then Islamic banks and financial institutions applied it to the needs of people; so the place of the contract in these commodity sales can usually be described as strategy, like food, industrial tools and even the provision of housing and real estate.⁷

¹ Dr. Mohamed Mahmoud al-Makawi, *ibid.*, p192, Ahmed Suleiman Khasawneh, *ibid.*, p90 and the Emirati legislator organised the provisions of future sale in the of materials (568-579) of the UAE Civil Transactions Law No. 5 of 1985.

² Modes of Financing in Islamic Banking, <https://ar.wikipedia.org>.

³ Dr Fleih Hassan Khalaf, "Islamic Banks", First Edition, Jadar for International Books and Books of the Modern World for Publication and Distribution, Amman, Jordan, 2006, p. 331, Mohamed Mahmoud al-Makawi, "Bank Financing", *ibid.*, p192.

⁴ Ahmed Safar, *ibid.*, p153.

⁵ Dr Fleih Hassan Khalaf, *ibid.*, p339.

⁶ Dr. Mohammed Mahmoud Al-Ajlouni, *ibid.*, p259, Ahmad Safar, *ibid.*, p155. In this vague, Dr. Ahmed Suleiman Khasawneh, *ibid.*, p90.

⁷ Dr Al-Sadiq Talha Muhammad Rahma, "The Role of Forward Buying in the Financing of Rural Development in

However, does forward buying remain an appropriate means in the hands of Islamic banks to use their resources to achieve their objectives related to economic and social development, including the financing of scientific research centres?

Some researchers are that forward buying can occupy, as a formula for funding, a status greater than resale for profit (al-marabaha) if its operations are managed efficiently. This with the observation that maximizing profit of forward buying operations for the bank will be achieved more the greater the difference between the price of purchase from producers and the sale price of the goods in the futures market, and the smaller the time difference between the date of receipt of the goods from the producer and the date of the final delivery to the buyer. But what about the risk involved in forward buying formats? These researchers continue to say that the degree of risk grows the less the confidence in the ability of the seller to deliver the goods to the required specifications or on the specified date, or whenever the bank cannot make the necessary coverage in the futures market for the goods they are contracted with, so the successful management of the forward buying through the bank requires reducing this risk to a minimum. It is better to draw on the bank of experts or companies specializing in sales and future delivery.¹

5- Forward Buying as a Means of Funding Scientific Research Centres

Islamic banks apply the so-called parallel forward buying ('salam'); a bank sells a commodity that it has been contracted to provide, but they bought this commodity in a separate contract, with no connection between the two. That is to say, the contracted fulfils a business deal for purchase, through forward buying ('salam') and then fulfils a business deal for sale, through forward buying, with no connection between the two, and he fulfils the second deal with what was delivered to him through the first deal.² The motivation of the client to make a parallel forward buying ('as-salam al-mawazi') contract with the bank is different from in any other financing contracts as it requires that the customer pays the bank the price in advance, according to the forward buying terms, therefore his motive is the credibility of the bank and the increased reliability of obtaining the goods needed at the appropriate time. As for the motivation of the bank it is to arrive at the profit margin between the two forward buying contracts.³

On the legality of parallel forward buying Dr. Ali Salous says "Parallel forward buying is permissible, as it contains two separate contracts and it is not a contemporary invention, as many think, as the Imam Shafei mentioned it when he said: "Whoever pays an advance for food and then sells that particular food before taking possession of it, this is not permissible, but if food is sold according to its description and it was intended to take possession of that food then that is not a problem."

It stated in the sharia standard no. (10) of the standards of the Accounting and Auditing Organisation for Islamic Financial Institutions about the forms of parallel forward buying that in accordance with the following: "1-6 It is permissible for the contracted party to contract independent parallel delivery to a third party to get the commodity specifications matching the commodity contracted to be delivered in the first contract in order to fulfil its commitments in this matter. In this case, he is a buyer in the first 'salam' or contract and in the second a purchaser, 2-6 it is permissible for the contracted to contract an independent parallel 'salam' with a third party for the sale of a commodity matching the specifications of the product purchased for the first 'salam' exchange. 3-6 In this case, he would be the buyer in the first 'salam' and the seller in the second 'salam'. In both cases, the aforementioned may not be linked by contracts to one another, but must each be independent of one another in all their rights and obligations.⁴

Given the above, is it possible for scientific research centres to utilise forward buying contracts to activate any of the activities that contribute to the development of society, so that they will provide liquidity to these centres through the Islamic bank in exchange for the latter buying their products and paying for it immediately, and delivery be at a later agreed date?

Let's suppose that it is the intention of an agricultural research centre to launch a research campaign for the afforestation of agricultural fields with vine trees, with the implementation of agricultural scientific research presented by academics specializing in this aspect. However, they do not have the necessary funding to do so, so they may contract forward buying or 'salam' with an Islamic bank and get a price now for what will be produced by the research farm fields in spite of their delivery at a later date. So, it will possible for that centre to use that money ('salam' money) to buy raw materials needed in the reforestation process and harvest according to the specifications agreed with the bank. Of course, the provided (the price) will be the research centre's debt and the

Developing Countries", the General Council for Islamic Banks and Financial Institutions, Khartoum Forum on Financial Industry, p4-6, www.kamtakji.com/media/175603, accessed 12/30/2015.

¹ Nawaf Yousef Abu Hijleh, study "'Istisna'a, Forward Buying and Speculation' Financial Instruments that Contribute to Achieving the Goals of Islamic Banks, Middle East Journal, Issue 11606, archive.aawsat.com, accessed 7/9/2010.

² Hossam Eddin Afanah, "Forward Buying and Parallel Forward Buying", <http://ar.islamway.net/fatawa>, accessed 08/22/2016.

³ Osama Youssef al-Jazar, *ibid.*, p95.

⁴ Hossam Eddin Afanah, *ibid.*

delivery of these crops (the provided) should be postponed. So forward buying would be a very suitable funding formula for research centres as it conforms to the nature of its activities with the requirements and considerations of this kind of sale. In addition to being a means financing without usury, it is a very easy way to market what is produced in research fields.

6- Industrialization (al-istasna'a)

The Istisna'a Contract is permitted under Sharia law although it is the sale of something non-existent and not present in order to facilitate the people in the collection of their livelihoods, and achieve their interests, the financing of each other and investing their money. It increases the clarity of what has been assessed in the foregoing in terms of the contemporary needs of people and their necessary interests like making cars, aircraft and construction of schools.¹

We will go into more detail about the formula of this kind of funding in the following two sections:

A- The Definition of (al-istasna'a) and Conditions of its Fulfilment

Istisna'a means "the contract for the sale of a commodity described in the disclosure which binds the seller to its manufacture with material from him for a price paid by the buyer immediately or deferred or in instalments. It can be seen from this definition that this sale is a contract, not a promise, and that what is sold is not certain precisely but rather is a debt owed by the seller according to certain limited descriptions. Equally, the raw material, which the sold product is made from are the responsibility of the manufacturer, whether from him or he purchases them. And equally the work on the manufacturer, whether done by himself or commissioned to another who he pays, because the sold product should be characterized in disclosure, without the requirement for appointing a worker or materials for making the goods, and it is permitted to pay the price immediately or deferred or in instalments."²

- Formula; meaning offer and acceptance
- The contracting parties; the purchaser who requests the product and the manufacturer seller who offers this item.
- The object of the contract; any place or manufactured item and the price paid.³

The validity of the Istisna'a contract demands the following:

- That the manufactured product be made known; and that it be a loyal manufacture according to the requested specifications which prevents any dispute at the time of delivery.
- That the manufactured product is what is being dealt with, because Istisna'a is permitted as appropriate so whatever does not deal with it is not correct.
- The materials used in the thing are made by the manufacturer, as if it came from the person who is purchasing the project then it becomes a leasing contract.
- A statement guaranteeing the price.
- A statement of the location for the sales delivery.
- That it not be delayed.⁴

The bank in the Istisna'a contract; either it is a manufacturer so it is able to provide the necessary under in terms of the world of industry and contracting to the expanse of the horizons. So, the bank undertakes this through managerial apparatus specialising in manufactural work in order to produce the needs required by the purchasers. Or it [the bank] can be the purchaser/the person who demands the manufacturer and in this case it provides what the manufacturers need in terms of providing advanced funding to them and ensuring the marketing for their products. Or it [the bank] can be both a manufacturer and a purchaser at the same time and this is what is described as parallel Istisna'a,⁵ which what we will discuss in the following section.

B- (al-istasna'a) as a Means of Funding Scientific Research Centres

The Istisna'a contract has become one of the contracts of great importance for banks to meet the needs and desires of individuals that cannot be funded by other sales contracts through the manufacture of goods and the payment of the price deferred or in instalments. As the bank does not have the industrial tools therefore the parallel Istisna'a contract takes place from the side of the manufacturer. If the manufacture was completed and received by the bank, and handed over to the client, then it takes into account that the bank has a reasonable profit margin. The client resorts to making an Istisna'a contract with the bank without the direct involvement of

¹ Dr Hassan Abdel Ghani Abu Ghada, "Istisna'a Contract and its Importance in Today's Economic Activity", <http://alwaei.gov.kw>.

² Dr. Mohamed Mahmoud al-Makawa, *ibid.*, p197-198, and in this vague see also, Dr. Ahmed Suleiman Khasawneh, *ibid.*, p91.

³ Journal of the Islamic Fiqh Academy, Shamela Public Library, <http://shamela.ws/browse>.

⁴ Bakr Abu Zayd, "Istisna'a Contract", www.alkutubcafe.com, Dr Hamed bin Hassan bin Mohammed Ali Mira, "Emerging Financing Contracts in Islamic Banks (A Consolidatory Empirical Study)", first edition, Dar Al Maiman Publishing and Distribution, Saudi Arabia, 2011, p487-488.

⁵ Dr Hassan Abdel Ghani Abu Ghada, *ibid.*

the manufacturer for the benefit of the postponement of the price and its division into comfortable instalments.¹ This means that the form of the parallel Istisna'a contract is realised through the bank entering into the Istisna'a contract as a manufacturer with a customer who wants to manufacturer something in particular. The contract is formed according to this and the bank is contracted with another client as the manufacturer, and demands from him the same manufacture descriptions as the first client.²

The scholars of the legality of parallel Istisna'a contracts have prescribed that - in addition to the terms of Istisna'a - lest there be a trick involving usury: 1. That the contract of the bank with the person who has requested the manufacture be separated from their contract with the manufacturer.

2. That the bank truly takes possession of the commodities before selling them on to the purchaser. 3. That the bank bear the consequences of the the conclusion of the Istisna'a contract in their role as manufacturer with all the liability as an owner, if they cannot transfer it to a different client in parallel Istisna'a.³

The Islamic Fiqh Council approved at its seventh session held in Jeddah on 9-14/May/1992 the role of this contract in the revitalization of industry and in wide fields for the funding and advancement of the Islamic economy.

However, Dr. Mohamed Sulaiman Al-Ashqar warns of two things: -

1. The connection between two contracts, or that the buyer requesting an item be authorised to enter into a contract to call for its manufacture, take possession of it, supervise its manufacture or any roles which reduce the role of the bank, and which transforms the process into a loan with interest.

2. The transformation of this Istisna'a to loans with interest, where the bank waits until two parties have agreed, one a manufacturer and the other the purchaser who wants funding to pay for the maker advance, and so enters the bank between them as a lender with interest wrapped in the cloak of parallel Istisna'a.⁴

However, how can Islamic banks play their funding role through Istisna'a held with regard to scientific research centres?

We believe that the scientific research centres can benefit from Istisna'a as a means of financing on two assumptions, namely:

- First assumption - that the centre of scientific research request the manufacture or be the buyer asking for the item. Consequently, they contact an Islamic bank and ask them to agree with a manufacturer to manufacture the commodity and make it available to them [the scientific research centre]. For example, if the a research centre specialising in media documentation requested from an Islamic bank that it undertake the financing of the printing and publishing process which the centre does through printing and publishing official and local newspapers, media publications, documents, laws and regulations on media institutions, research and scientific studies. They do so through an Istisna'a contract with the printing and publishing company to act as a mediator between the author and publisher, here the latter will support the printing of the publications of this research centre through materials from him and will commit to provide those publications with the specifications set out, and on the delivery date. The Islamic bank here has the role of mediator between the authentic manufacturer (Arab authors gallery) and the ultimate beneficiary (the research centre) and the profit margin is the difference between the price paid for the maker and the price you sell it to the final buyer.

- The second assumption: The research centre will be a manufacturer who asks an Islamic bank to request a commodity model of certain specifications in accordance with the scientific specialisation of the research centre. So the latter then manufactures this model from their materials and with the experience of its members in terms of professors and researchers. The bank undertakes its industrial application through specialised companies that, for example, an Islamic bank requires from a specialised research centre of genetic engineering and biotechnology the development of a dynamic system model to get rid of environmental pollutants, then the research centre will receive the money, either sooner or later, or in batches, according to the type Istisna'a it was agreed would be available to him in order for the application of his research scientific in this regard. Therefore, the results have been transformed from the working level to a semi-industrial level.

7-Conclusion

We will conclude this study by offering the following conclusions and recommendations: -

First: results.

1. Islamic banks, despite only recently achieving effective execution in the early seventies of the last century, the foundations upon which they are based, the exclusion of interest from financial transactions, their keenness to connect with economic development, social development and to invest its funds in 'halal' [permissible under

¹ Osama Youssef al-Jazar, *ibid.*, p49.

² For more detail see Dr Wahbah al-Zahili, "Istisna'a", *Specialized Legal Encyclopedia*, vol 1, Syrian Arab Republic, the presidency, the Authority of the Arab Encyclopedia, p206-207.

³ Abdul Karim al-Shaibani, "Istisna'a Contract for one of the Modern Islamic Modes of Financing, 9-11 www.kantakji.com/media, accessed 20/08/2016.

⁴ Website "Islam Message", Fiqh forum, <http://fiqh.islammessage.com>.

Islamic law] projects mean that they compete efficiently and effectively against the traditional banks in the area of project funding.

2. Islamic modes of financing are characterised by flexibility and suitability to finance most of the projects that contribute to the development of society, including the projects offered by scientific research centres; and this demonstrated by the benefits brought by each of these formulas respectively:

- Murabaha or Resale for Profit allows different kinds of scientific research centres to take refuge in credit and security, as the credit is checked when an Islamic bank undertakes the purchase of an item which had been identified by the centre's specifications, without paying for it in advance, due to the lack of sufficient funds for it or the desire to pay in instalments. Meanwhile safety is achieved when the centre for scientific research is given the option to buy this item from the bank which was requested to buy or not. Here, the bank will ensure payment of the remainder of its possessions first of all and when it buys a product according to its expertise and experience if they did not know the hidden nature of the item or how to deal with its issue secondly.

- Similarly it is possible for 'salam' or forward buying to achieve for the scientific research centres a very suitable way to provide liquidity to the centres for scientific research through the Islamic bank in exchange for the undertaking of the latter to buy their products and pay for it immediately, and delivery be later at a known time, especially, if the activity that you want to these centres implement is related to transformative industries or having a productive nature.

- Since Istisna'a features liberation from upfront payment it contributes as a means of funding to expand the scale of the sales of what scientific research produce in terms products and goods based on scientific and technical innovations in an era when industry is stunningly progressing, especially as Istisna'a allows the centre of scientific research to be either a manufacturer or a requester of the manufactured goods. It takes place on a large scale in the areas of commercial, industrial, agricultural, tourism and educational development.

Second: Recommendations.

1. We recommend that Islamic banks - following what has been proclaimed since their inception that they contribute to the economic and social development through means derived from Islamic thought excluding from usury - fulfil their promises now and achieve their desired objectives on the ground by undertaking the provision of all the means that would lead to the success and implementation of research projects. These are considered one of the most important and prominent projects that contribute to the development of society, and among these means, for example, is the setting up of a special investment fund for scientific research and seeing that the fund specialises from the start as an experiment to encourage innovative research focused on Islamic financial and banking studies.

2. We hope that the legislature of the UAE has an active role in encouraging the Islamic banks to do their part for economic and social development through intervening to provide the financial liquidity for it, and this by including text in the Central Bank Act No. 10 of 1980 allowing the Central Bank that opens his accounts with Islamic banks in local and foreign currencies like commercial banks. Or that they undertake the granting of short or medium-term loans means and methods do not conflict with the provisions of Islamic Sharia, because it will help Islamic banks from our point of view in activating the financing formulas and means to achieve their objectives.

3. We hope that the universities and specialized institutes of Islamic economics expand the holding of courses and workshops that will explain the real and effective role that needs to be played by the Islamic banks in terms of linking economic development and social development to changing mindsets that consider that the role of Islamic banks remains anticipated rather than practical.

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