

**SHARI'A GUIDE  
FOR  
REAL ESTATE FINANCE**

**Through Murabaha and Ijarah**

**A Guideline for Real Estate Offices and Finance Clients**



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*King Fahd National Library Cataloging-in-Publication Data*

Alrasheed, Majed Abdul Rahman Naser

Shari'a Guide for Real Estate Finance. / Majed Abdul Rahman Naser Alrasheed.-  
Riyadh, 2014

84p ; 24 cm

ISBN: 978-603-8100-83-7

1- Real Estate 2- Real Estate - Saudi Arabia

|- Title

332.32531 dc 1436/966

**L.D. no. 1436/966**

**ISBN: 978-603-8100-83-7**

First Edition 1436 A.H./ 2015 A.D.

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# **SHARI'A GUIDE FOR REAL ESTATE FINANCE**

**Through Murabaha and Ijarah**

**A Guideline for Real Estate Offices and Finance Clients**

**Prepared By**

**Shari'a Board Advisory Department**



**DAR ALMAIMAN**

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# Table of Contents

<b>Shari'a Board Resolution No. (137)</b> .....	<b>10</b>
<b>Preface</b> .....	<b>15</b>
<b>Introduction</b> .....	<b>21</b>
Definition of <i>Murabaha</i> (Installment Sale) .....	23
Definition of Finance <i>Ijarah</i> .....	25
Main Differences Between <i>Murabaha</i> and Finance <i>Ijarah</i> .....	29

## Chapter One

### Common Issues Between Murabaha and Finance Ijarah

<b>First Stage: Before the Bank Purchases the Real Estate</b> .....	<b>33</b>
1) Binding Promise between the Client and the Bank.....	33
2) Preliminary Mutual Agreement between the Client and the Bank prior to the Purchase of the Real Estate.....	34
3) Obtaining Finance under the Name of a Friend or Relative .....	34
4) Setting a Condition to Transfer the Salary before the Bank Purchases the Real Estate.....	36
5) Setting a Condition to Deposit a Specific Amount before the Bank Purchases the Real Estate.....	37

6) Stipulating a Guarantee for the Repayment of the Debt before the Bank Purchases the Real Estate.....	37
7) Stipulating That Evaluation and Administrative Costs Are Borne by the Client ...	38
8) Including the Real Estate Brokerage Fees in the Price of the Real Estate ....	38
9) Offering the Real Estate for a Higher Price .....	38
10) Offering the Real Estate for a Lower Price.....	39
<b>Second Stage: The Bank Purchases the Real Estate and Finances It to the Client.....</b>	<b>41</b>
11) Purchasing the Real Estate by the Bank Based on <i>Khiyarush-Shart</i> .....	41
12) Signing on Behalf of Either Party to the Finance Contract .....	41
13) Selling the Real Estate to More Than One Buyer at the Same Time.....	42
14) Financing the Real Estate for the Client Before the Title Deed Is Registered in the Bank's Name .....	43
15) The Effect of Payment of the Price on Transferring Possession of the Real Estate to the Bank .....	43
16) Setting a Condition That the Client Bears the Costs of Litigation and the Collection of Installments.....	44
17) Setting a Condition That the Deferred Installments Shall Become Due in Case of Any Delay in the Payment of Installments .....	44
18) Setting a Condition for Waiving the Debt in Case of Death.....	45
<b>Third Stage: After the Bank Finances the Real Estate to the Client.....</b>	<b>47</b>
19) Effect of Joint Application on the Finance .....	47

## Chapter Two

### Murabaha (Installment Sale)

<b>First Stage: Before the Bank purchases the Real Estate .....</b>	<b>51</b>
20) <i>Murabaha</i> on a Real Estate Owned by the Client.....	51
21) <i>Murabaha</i> on a Real Estate That the Client Possesses a Share Thereof.....	52

22) Registration of the Title Deed under a Relative/Friend's Name for <i>Murabaha</i> Finance on a Real Estate .....	52
23) <i>Murabaha</i> on a Real Estate for Which the Client Has Bought and Paid Only a Part of Its Price to the Owner.....	53
24) <i>Murabaha</i> on a Real Estate Bought by a Client Who Paid an <i>Urbun</i> to Its Owner.....	54
25) <i>Murabaha</i> on a Real Estate for Which the Client Has Paid a Booking Amount to Its Owner.....	55
26) <i>Murabaha</i> on a Real Estate for Which the Client Has Paid <i>Hamish Jiddiyyah</i> to Its Owner.....	56
27) <i>Murabaha</i> on a Real Estate for Which the Client Has Paid the Real Estate Brokerage Fees.....	56
28) Terminating the Client Contract with the Real Estate Owner for <i>Murabaha</i> on Real Estate.....	57
29) The Client Buys a Real Estate from the Bank by Means of <i>Murabaha</i> before the Bank Buys the Real Estate .....	58
<b>Second Stage: The Bank Purchases the Real Estate and Sells It to the Client .....</b>	<b>61</b>
30) Setting a Condition to Be Discharged of the Responsibility for Any Defects in the Real Estate in <i>Murabaha</i> Contract .....	61
31) Setting a Condition That the Client of <i>Murabaha</i> Contract for a Real Estate Be Liable for Insurance and Maintenance.....	62
32) Stipulating Delay Fines for Payment of <i>Murabaha</i> Debt.....	62
33) The Bank's Commitment to Accept an Early Payment in Return for Deducting a Part of the Remaining Amount of the Price .....	62
<b>Third Stage: After the Bank Sells the Real Estate to the Client .....</b>	<b>65</b>
34) Selling the <i>Marhun</i> (Mortgaged) Real Estate.....	65
35) Transferring the Debt of the <i>Murabaha</i> -Based Real Estate Finance from One Bank to Another.....	66
36) Defects in the <i>Murabaha</i> -Based Real Estate Finance .....	66

## Chapter Three

### Finance Ijarah

<b>First Stage: Before the Bank Purchases the Real Estate .....</b>	<b>71</b>
37) Difference of Rental between Finance <i>Ijarah</i> and Operating <i>Ijarah</i> .....	71
38) Finance <i>Ijarah</i> for a Real Estate Owned by the Client .....	71
39) Finance <i>Ijarah</i> for a Real Estate That the Client Possesses a Share Thereof .....	73
40) Registering the Title Deed of a Real Estate under the Name of a Relative/ Friend for the Purpose of a Finance <i>Ijarah</i> .....	73
41) Finance <i>Ijarah</i> for a Real Estate That the Client Purchased But Paid Only a Part of Its Price .....	73
42) Finance <i>Ijarah</i> for a Real Estate for Which the Client Purchased and Paid an <i>Urbun</i> .....	74
43) Finance <i>Ijarah</i> for a Real Estate for Which the Client Has Paid an Amount to Reserve .....	75
44) Finance Contract for a Real Estate for Which the Client Has Paid a <i>Hamish</i> <i>Jiddiyyah</i> in Order to Purchase .....	75
45) Finance <i>Ijarah</i> for a Real Estate for Which the Client Has Paid the Real Estate Brokerage Fees .....	75
46) Concluding a Finance <i>Ijarah</i> Contract with the Bank for a Real Estate That the Bank Has Not Yet Purchased .....	76
<b>Second Stage: The Bank Purchases the Real Estate and Leases It to the Client .....</b>	<b>77</b>
47) Linking the Rental of a Finance <i>Ijarah</i> to a 'Changing' Rental Index .....	77
48) Setting a Condition to Be Discharged of the Responsibility for Any Defects in the Real Estate in Finance <i>Ijarah</i> .....	78
49) Setting a Condition That the Client Bears the Costs of Insurance and Maintenance in Finance <i>Ijarah</i> .....	78
50) Stipulating Delay Fines for Payment of Finance <i>Ijarah</i> Debt .....	79
51) The Bank's Commitment to Accept Early Transfer of Ownership and Rental Deduction .....	79

**Third Stage: After the Bank Leases the Real Estate to the Client .....81**

52) Transferring the Debt of a Finance *Ijarah* Real Estate from One Bank to Another .....81

53) Defects in the Real Estate During the Period of Finance *Ijarah* .....82

54) Payment of Rental During Suspension of Usufruct in Finance *Ijarah*.....82

55) Modification of the Leased Real Estate by the Client .....83



*In the Name of Allah, the Most Gracious, the Most Merciful*

## **Subject: Shari'a Guide for Real Estate Finance**

### **Shari'a Board Resolution No. (137)**

All Praise is due to Allah, the Lord of the Worlds, and Peace and Blessings be upon our Prophet Muhammad, his Household and his Companions.

In its 449<sup>th</sup> meeting held on Tuesday 16/10/1435 A.H., corresponding to 12/8/2014 A.D., at the bank's headquarters in Riyadh, the Shari'a Board reviewed the *Shari'a Guide for Real Estate Finance* which was submitted by the Shari'a Board Advisory Department. This guide demonstrates the Shari'a rulings pertaining to some frequently asked questions related to real estate finance through *Murabaha* and Finance *Ijarah*, which are of great importance to clients looking for finance, real estate companies and others. The guide has been prepared based on the resolutions issued by the Shari'a Board, paying thorough and precise care to issues for which no resolutions have previously been issued.

Having examined the reports of the meetings held by the Preparatory Committee regarding this guide as well as the amendments to the guide included in these reports,

Having reviewed the recommendations presented by the Preparatory Committee in its 225<sup>th</sup> meeting held on Wednesday 9/6/1435 A.H. corresponding to 9/4/2014 A.D., the Board, after careful deliberation, passed the following resolution:

Approving the guide entitled «*Shari'a Guide for Real Estate Finance*», in its attached form.

Moreover, the Board recommended printing and distributing this guide to achieve greater benefits.

May Allah guide us to the right path. Peace and blessings be upon our Prophet Muhammad, his Household and his Companions.

## The Shari'a Board

Sheikh Abdullah bin Sulaiman bin Manca  
(**Head of the Shari'a Board**)

Prof. Dr. Abdullah bin Muhammad Al-Mutlaq  
(**Deputy Head of the Board**)

Prof. Dr. Abdullah bin Mousa Al-Ammar  
(**Member**)

Dr. Muhammad bin Saud Al-Osaimi  
(**Member**)

Dr. Abdulaziz bin Fawzan Al-Fawzan  
(**Member**)

Prof. Dr. Yusuf bin Abdullah Al-Shubaili  
(**Member**)

الموافقة على "الدليل الشرعي للتمويل العقاري" بالصيغة المرفقة.

هذا، وتوصي الهيئة بطباعته وتوزيعه؛ لتعميم نفعه.

وفق الله الجميع لهداه، وجعل العمل في رضاه، والله أعلم، وصلى الله على نبينا محمد وعلى آله وصحبه وسلم.

#### الهيئة الشرعية

أ. د. عبدالله بن محمد المطلق (نائباً)

عبدالله بن سليمان بن منيع (رئيساً)

د. محمد بن سعود العصيمي (عضواً)

أ. د. عبدالله بن موسى العجار (عضواً)

أ. د. يوسف بن عبدالله الشيبلي (عضواً)

د. عبدالعزيز بن فوزان الفوزان (عضواً)



المرفات: ١

الموضوع: الدليل الشرعي للتمويل العقاري

### قرار الهيئة الشرعية رقم (١٣٧)

الحمد لله رب العالمين، والصلاة والسلام على نبينا محمد وعلى آله وصحبه أجمعين، وبعد:

فإن الهيئة الشرعية لبنك البلاد في اجتماعها التاسع والأربعين بعد الأربعمئة، المنعقد يوم الثلاثاء ١٦/١٠/١٤٣٥ هـ الموافق ١٢/٨/٢٠١٤ م، في مدينة الرياض بالمقر الرئيس للبنك، قد اطلعت على الدليل الشرعي للتمويل العقاري، المعد من أمانة الهيئة الشرعية، وهو دليل يعنى ببيان الأحكام الشرعية لجملة من مسائل التمويل العقاري بالمرابحة والإجارة التمويلية، التي يكثر السؤال عنها، وتمس إليها حاجة المتعاملين من عملاء التمويل والمكاتب العقارية، وغيرهم. وقد أعد الدليل بناء على القرارات الصادرة عن الهيئة الشرعية مع تحرير للمسائل التي لم يصدر قرار بشأنها.

وبعد اطلاع الهيئة على محاضر اجتماعات اللجنة التحضيرية المتعلقة بهذه الدليل، وما تضمنته تلك المحاضر من تعديلات أجزيت عليه.

وبعد اطلاع الهيئة على توصية اللجنة التحضيرية الصادرة عن اجتماعها الخامس والعشرين بعد المئتين، المنعقد يوم الأربعاء ٩/٦/١٤٣٥ هـ الموافق ٩/٤/٢٠١٤ م، وبعد المداولة والمناقشة قررت الهيئة ما يأتي:

القرار (١٣٧)

صفحة ١ من ٢



## Preface

Praise be to Allah, and Peace and Blessings be upon the Messenger of Allah, Muhammad Ibn Abdullah, his Household, his Companions and those who follow him until the Day of Resurrection.

The rules of Islamic Shari'a have been ordained to organize people's affairs concerning worship, business transactions and manners. These rules directly relate to wealth and how it should be earned and spent. In this regard the Prophet (peace be upon him) said:

*"The feet of (any) slave of Allah shall not move on the Day of Judgment until he is asked about five things; about his life and what he did with it, about his knowledge and what he did with it, about his wealth and how he earned it, and where he spent it, and about his body and what he wore it out in."*<sup>(1)</sup>

[Related by At-Tirmidhi and Ad-Darimi]

Simply put, the basic rule of Shari'a concerning transactions is legitimacy and permissibility. This basic rule encompasses the new kinds of contracts that may appear at any time, and it encourages business activity among people. However, the Shari'a has simultaneously forbidden various transactions and sale contracts as they inflict harm and prejudice upon people, such as contracts of *Riba* (usurious transactions), *Gharar* (deceit), and *Jahalah* (ignorance) as well as contracts involving injustice or devouring people's money unjustly.

While applying the rules of Shari'a on contemporary transactions, we come across certain situations which swing between permissibility stated by the basic rule concerning transactions and impermissibility imposed on forbidden

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(1) "*Sunan At-Tirmidhi*" [2417]. At-Tirmidhi deemed this *hadith* as *hasan* (good) *sahih* (authentic); and "*Sunan Ad-Darimi*" [554].

## Shari'a Guide for Real Estate Finance

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transactions. The Shari'a ruling of these variable transactions is scrutinized diligently to determine whether they are permissible or impermissible. Real estate finance falls under this category of transactions.

Realizing the need, the Shari'a Board Advisory of Bank Albilad took the initiative for preparing this book to be a guide for general public with the aim of clarifying the Shari'a ruling on some of the frequently asked real-estate-finance-related issues. We all recognize that there are some real estate practices that are not compliant with Shari'a; a matter which may plunge the transactor into forbidden transactions even unknowingly. In recent times, the probability of non-Shari'a compliance has further increased, and the fact that many people cannot own houses today except through finance highlights the increasing need for such transaction. We thus hope that this guide will serve the requisite purpose.

This guide discusses only two forms of real estate finance as they are most commonly and extensively used by financial institutions; namely *Murabaha* for the purchase orderer (known as installment sale) and finance *Ijarah* (known as *Ijarah* with the promise to transfer the ownership, *Ijarah Muntahia Bittamleek*, and *Ijarah* ending with ownership). Yet, what shall be taken into consideration is the essence and reality of the contracts, and not their terms and clauses. Since both of these two forms result in a debt in the liability of the purchaser or tenant, we shall put great emphasis on the fact that Shari'a discourage piling on unnecessary debts and urges the individual to discharge all liabilities arising from debts. The Prophet (peace be upon him) said:

*"The believer's soul is suspended by his debt until it is settled for him."*<sup>(1)</sup>

[Related by At-Tirmidhi and Ibn Majah]

Moreover, Shari'a has allowed debts to be taken in cases of necessity, and through a Shari'a-compliant mean accompanied with a Shari'a-accepted disposal and with the intention to pay it back. In this regard the Prophet (peace be upon him) brings good tidings of Allah's help for those intending

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(1) *"Sunan At-Tirmidhi"* [1079]. At-Tirmidhi deemed this *hadith* as *hasan* (good); and *"Sunan Ibn Majah"* [2413].

## Preface and Introduction

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to settle their debts, and also warns those who do not intend to settle them by saying:

*“Whoever takes money of people with the intention of repaying it, Allah will repay it on his behalf, and whoever takes it in order to spoil it, then Allah will spoil him.”<sup>(1)</sup>*

[Related by Al-Bukhari]

Basically, this guide addresses real estate offices, brokers, clients of finance, employees of finance institutions and real estate owners. It is concise, clear and direct, and uses the real estate market terminology and takes into consideration scholarly debates of specialized *fiqhi* studies. However, it's worth mentioning that the issues of this guide include some repetition which has been urged by the need to allow the reader to understand each issue separately.

Preparation of this guide required extensive work undertaken by the Shari'a Board Advisory Department which can be summarized as follows:

1. Collecting the most important issues of real estate finance from the issues found in the records of the Shari'a Board Advisory and the Shari'a Audit Departments. Among these issues are fifty issues that have been scrutinized based on direct contact with clients, real estate owners and brokers in order to describe and analyze each issue, find the purpose of each party thereof, clarify the object of disagreement, and finally derive the Shari'a ruling concerning them.
2. Contacting other specialists in other Shari'a boards in order to include the important issues they have encountered.
3. Collecting scholarly materials relating to these issues that have been issued by the Shari'a Board Advisory of Bank Albilad.
4. Preparing the schedule of the guide and the methodology of presenting those issues and their relevant rulings.
5. Entrusting Dr. `Abdullah Ibn Salih As-Sayf, faculty member at King Saud University and a Shari'a specialist in real estate finance, with the preparation of the draft of this guide in the light of the abovementioned points.

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(1) *“Sahih Al-Bukhari”* [2387].

## Shari'a Guide for Real Estate Finance

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6. Holding a discussion session on Wednesday, 3<sup>rd</sup> of Muharram 1435 – 6<sup>th</sup> of November 2013, where the first draft of this guide was discussed, evaluated and finalized. Shari'a scholars, real estate specialists, bankers and many other interested in real estate finance attended the session. Attendants included prominent figures as listed below:

- Sheikh Badr Ibn Muhammad As-Sulayman, Al Soliman Real Estate Co.
- Sheikh Sulayman Ibn Salih Ar-Rashid, Alinma Bank.
- Sheikh `Adil Ibn `Abdur-Rahman Ar-Rumayh, Al Rajhi Bank.
- Mr. `Abd Al-Ilah Ibn Salih Al-Muhaylib, Almohileb Real Estate Co.
- Dr. `Abdul-`Aziz Ibn Muhammad An-Nassir, Higher Judiciary Institute.
- Sheikh `Abdullah Ibn `Abdur-Rahman Aj-Jamhur, Al Rajhi Bank.
- Dr. `Abdullah Ibn Salih As-Sayf, King Saud University.
- Dr. `Abdullah Ibn Ibrahim An-Nassir, King Saud University.
- Dr. `Ali Ibn `Abdur-Rahman As-Sanan, Al Izdihar Real Estate Co.
- Sheikh Faysal Ibn `Abdullah Ash-Sharif, Al Rajhi Bank.

The attendants enriched the session with valuable notes and suggestions. Subsequently, the Shari'a Board Advisory developed the draft in the light of the result of the session.

7. Dividing the issues of the guide into three chapters: a chapter for the common issues between *Murabaha* and finance *Ijarah*, a chapter for *Murabaha*, and a chapter for finance *Ijarah*. Each of these chapters is further divided into three stages: the stage before the bank purchases the real estate, the stage when the bank purchases the real estate and finances it to the client, and the stage after the bank finances the real estate to the client. This division also appears in the guide's table of contents.
8. Presenting the draft of the guide to the Preparatory Committee, who made some amendments to it.
9. Submitting the final work of the guide to the Shari'a Board, who made some amendments to it and gave its approval, recommending that it should be published and distributed.

## Preface and Introduction

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Additionally, we would like to highlight two points:

**First:** Most of the issues of this guide have been approved with the consensus of the Shari'a Board, while some others have been agreed by majority of the members. In such cases, contradictory viewpoints have been recorded and mentioned in the minutes of the meetings.

**Second:** These issues differ regarding clarity and ambiguity, simplicity and complexity, and some of them need more attention from scholars, judges and the organizing authorities so that the Shari'a rules prevail in real estate markets. This will result in controlling the practices of this market and minimizing contradictions. This is because a transactor cannot act alone based on his *Ijtihad* (legal reasoning and discretion) on an issue which directly affects other parties who do not agree with his *Ijtihad*. This is because the client, intermediary, finance institution and judicial, supervisory, and regulatory authorities together constitute the components of one integrated market.

We hope that a common-interest group representing all aforementioned parties will meet soon to form an integrated vision regarding this topic. May this guide be contribute towards this vision.

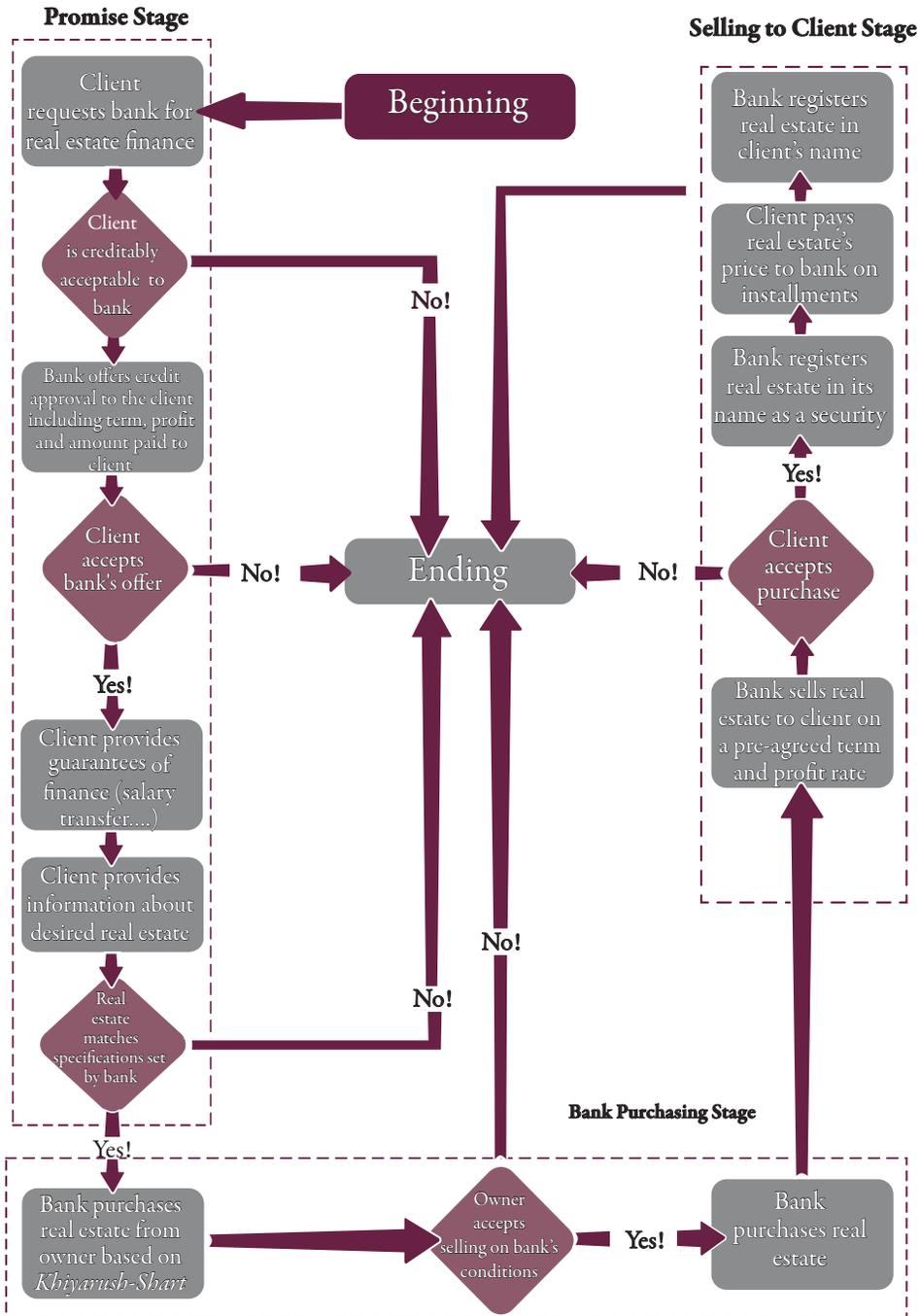
We have exerted efforts hoping that Allah, the Almighty, will guide us. Peace and blessings be upon our Prophet Muhammad, his Household and his Companions.

*Shari'a Board Secretary*  
*Majed Bin Abdul-Rahman Al-Rasheed*  
*Shareia@BankAlbilad.com*



# Introduction

- **Definition of *Murabaha* (Installment Sale)**
- **Definition of Finance *Ijarah***
- **Main Differences Between *Murabaha* and Finance *Ijarah***



**Figure (1):** Steps of Executing *Murabaha* on Real estate

## Definition of Murabaha (Installment Sale)

Real estate *Murabaha* for the purchase order is a form of finance consisting of many steps starting with the client making a promise to buy a real estate, after which the bank buys the real estate and sells it to the client on a deferred payment basis. It is also called an installment sale.

### Steps of executing *Murabaha* on real estate:<sup>(1)</sup>

1. The client submits an application to the bank asking for finance to purchase a real estate through *Murabaha*.
2. The bank reviews the client's application.
3. The client gives the bank full description of the desired real estate.
4. The bank purchases the real estate from its owner (vendor).
5. The bank signs a real estate sale contract with the client, in which it determines the price and the term of purchase. The bank may stipulate the *Rahn* (mortgage) of the real estate for its own benefit [by keeping the real estate registered in its own name as a *Rahn* (mortgage)].
6. After paying the full amount of the real estate by the client, the bank registers the real estate in the name of the client.

### Common Shari'a violations in *Murabaha* on real estate:

1. The bank signs the sale contract with the client before it purchases the real estate from its owner. This is a form of selling something that one does not possess, which is forbidden by the Shari'a.

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(1) See: Figure 1 (P. 20).

## Shari'a Guide for Real Estate Finance

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2. The client purchases the real estate from its owner before the bank finances it, either by signing a contract of purchase or by paying an advanced payment or *Urbun* (earnest money), and then the client purchases the real estate from the bank on a deferred payment basis. This is a form of *Inah* sales which are forbidden by the Shari'a.
3. The finance contract includes a condition imposing fines on the client in case of a delay in payment.

Issues and notes can be viewed by referring to the index of this guide.



## Definition of Finance *Ijarah*

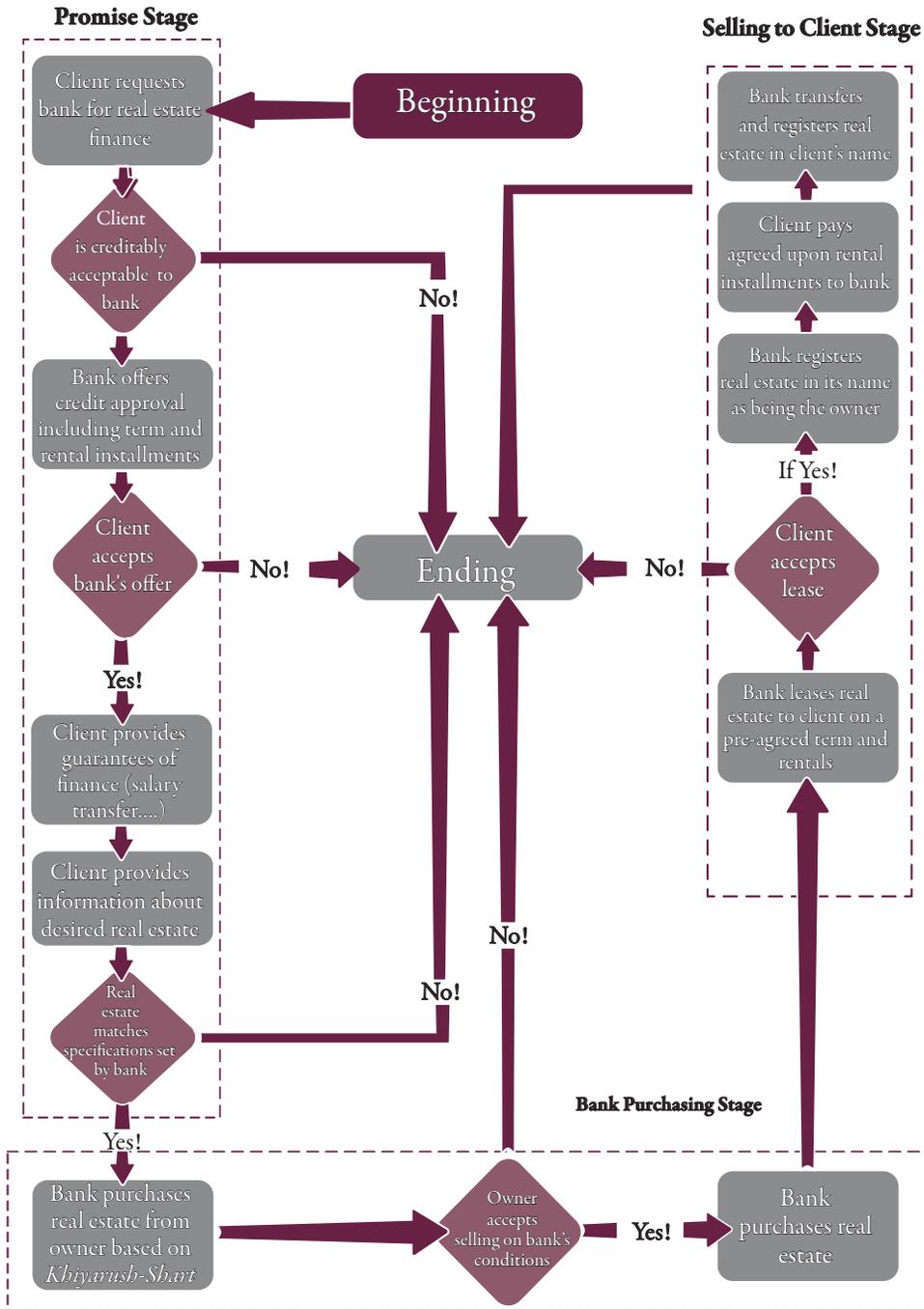
Real estate finance *Ijarah* is a form of finance consisting of a number of steps that start with a promise made by the client to lease a real estate. After that, the bank purchases such a real estate and leases it to the client for a specific rental and term. The rulings pertaining to *Ijarah* are applied during the term of lease. After the client pays the rental installment in full without violating his obligations to the contract, the bank shall then transfer the ownership of the real estate to him through a sale contract based on a prior promise or through a *Hibah* (gift) as stated in the contract. Finance *Ijarah* is called also *Ijarah Muntahia Bittamleek*, *Ijarah* with the promise to transfer the ownership, and *Ijarah* ending with ownership.

### **Steps of executing finance *Ijarah* on real estate:<sup>(1)</sup>**

1. The client submits an application to the bank asking him to finance the purchase of a real estate through a finance *Ijarah* for a fixed or floating rental depending on the mutual consent of the two parties.
2. The bank reviews the client's application.
3. The client gives the bank full description of the desired real estate.
4. The bank purchases the real estate from its owner (vendor).
5. The bank signs a real estate finance *Ijarah* contract with the client in which it determines the rental and the period of the lease. In case the client chooses the floating rental to pay his rental, the contract shall state that the rental will be calculated at the beginning of each rental period in accordance with a certain benchmark index.
6. After the client pays the rental installments in full, the bank registers the real estate in the name of the client, as stated in the contract.

---

(1) See: Figure 2 (P. 24).



**Figure (2):** Steps of Executing Finance *Ijarah* on Real estate

## Preface and Introduction

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### Common Shari'a violations in real estate finance *Ijarah*:

1. The client signs an *Ijarah* contract with the bank for a specific real estate before the bank actually purchases it.
2. Signing an *Ijarah* contract with a transfer of ownership contract for the same real estate at the same time. The two contracts should be separated; thus, the rulings pertaining to *Ijarah* are applied during the *Ijarah* period, and after that the rulings pertaining to ownership are considered.
3. Imposing the guarantee of the real estate on the client, such as the guarantee against destruction, basic maintenance and insurance, while the guarantee should be imposed on the lessee, i.e. the bank. The bank may consider the costs of insurance earlier when determining the rental.
4. Linking the change of rental (floating rent) to an inaccurate index or an index based on a formula used inside the bank which is unknown or unclear to the clients, a matter which includes a significant *Gharar*.

Issues and notes can be viewed by referring to the guide's table of contents.





# Main Differences Between Murabaha and Finance Ijarah

There are many differences between *Murabaha* and finance *Ijarah* related to real estate finance, the most significant of these are:

1. **The ownership of the real estate:** In *Murabaha* the ownership of the real estate is transferred from the bank to the client at the time the contract is signed. Keeping the real estate registered in the name of the bank does not affect the contract, since this is a form of security not ownership. However, in finance *Ijarah* the real estate remains in the bank's acquisition during the period of *Ijarah*, and later its ownership is transferred from the bank to the client in accordance with the conditions agreed upon.
2. **Real estate guarantee:** In *Murabaha*, the client guarantees the real estate after purchasing and taking possession of it. Meanwhile, in finance *Ijarah* the bank guarantees the real estate during the period of *Ijarah* until the client acquires the real estate.
3. **Changing the finance revenues:** In *Murabaha*, it is not permissible to change the price. However, in finance *Ijarah* the rental may be changed (floating) based upon certain conditions.
4. **Amending the finance revenues:** It is not permissible to increase the price after the contract of *Murabaha* is signed because such a price is a debt established in the liability of the client. Nevertheless, the rental may be amended for subsequent periods of *Ijarah* after the contract of finance *Ijarah* has been signed, based on the mutual agreement of the two parties. This is because such rentals are not yet due, and thus they do not constitute a debt in the liability of the client.

5. **Extending the finance contract by increasing the revenues:** It is not permissible to extend the contract of *Murabaha* by increasing the profits because the price is a debt established in the client's liability. Meanwhile, it is permissible to extend the finance *Ijarah* contract after its period terminates for a new rental and term to be agreed upon by the two parties.



# **Chapter One**

## **Common Issues Between Murabaha and Finance Ijarah**



# First Stage

## Before the Bank Purchases the Real Estate

### Issue (1): Binding Promise between the Client and the Bank

When the client applies to the bank for real estate finance, the bank stipulates that the client and the bank shall be bound by the finance process if the bank purchases the real estate from its owner. If the client does not proceed with the finance agreement, he shall bear the losses incurred by the bank. What is the Shari'a ruling regarding this issue?

**Ruling:** The binding promise between the two parties is not permissible, and the bank is not entitled to recover the losses it incurred from the client. This is because a binding promise is considered as a contract, and the contract cannot be concluded for something that is not yet in the possession of the seller, i.e. the bank. This is according to the *marfu'* (traceable) *hadith* narrated by Hakim Ibn Hizam (may Allah be blessed with him) stating:

*"Do not sell what you do not possess."*<sup>(1)</sup>

[Related by Ahmad, Ibn Majah, Abu Dawud, At-Tirmidhi, and An-Nasa'i]

(1) *"Musnad Al-Imam Ahmad"* [15311]; *"Sunan Ibn Majah"* [2187]; *"Musnad Abu Dawud"* [3503]; *"Sunan At-Tirmidhi"* [1232], At-Tirmidhi said; "It is a *hassan* (good) *hadith*."; and *"Sunan An-Nasa'i"* [4613].

Charging the client with the losses incurred by the bank is a clear injustice. This is because the loss and profit are a consequence of the guarantee that is to be borne by the seller, i.e. the bank.

**Note:** The client may sign a promise and a desire-to-purchase document that is not binding on his part. This is because this document is not a contract and does not have the rules thereof. It is just a preliminary agreement.

### **Issue (2): Preliminary Mutual Agreement between the Client and the Bank prior to the Purchase of the Real Estate**

The client applies to the bank for real estate finance before the bank purchases the real estate. The two parties mutually agree on the type of finance, a specific amount of the profit or rental return, and the payment schedule. What is the Shari'a ruling regarding this issue?

**Ruling:** Preliminary agreement between the client and the bank as to the type of finance, the amount of profit or rental return, and the payment schedule before the bank purchases the relevant real estate is permissible. This is because this agreement is neither a contract nor is it governed by the rules of the contract. It is just a preliminary agreement and a non-binding promise on the client's part to enter into the finance process.

### **Issue (3): Obtaining Finance under the Name of a Friend or Relative**

Zayd desires to obtain real estate finance but he is not qualified according to the conditions of the bank. Thus he asked Abdullah (one of his friends or relatives who is qualified, according to the bank's conditions) to apply to the bank for finance. What is the Shari'a ruling regarding this issue?

**Ruling:** This process can be executed in the following two forms:

**First:** The bank finances the real estate for Abdullah, and then Abdullah finances the same real estate for Zayd. This form is permissible as it implies a transaction whereby Abdullah purchases or leases the real estate from the bank, and then finances the real estate for Zayd.

### This constitutes the following:

- The debt Abdullah owes to the bank is independent from the debt Zayd owes to Abdullah. It means, if the bank drops the debt Abdullah owes to it, the debt Zayd owes to Abdullah will not necessarily be dropped, unless otherwise agreed upon. Also, if Abdullah repays his debt to the bank, the debt Zayd owes to Abdullah will still remain unsettled.
- In this case, Abdullah and Zayd may agree that Zayd shall pay an amount to Abdullah higher or less than the amount Abdullah shall pay to the bank.
- Abdullah should possess and take delivery of the real estate from the bank before selling it to Zayd.
- Abdullah and Zayd should conclude a contract stating their rights and obligations with regard to the finance process to avoid any dispute, especially in case of death.

**Second:** Abdullah may act as an agent and guarantor for Zayd in the bank, which is permissible according to the Shari'a. In this case, Zayd will be the actual debtor, while Abdullah will be only an agent and guarantor.

### This constitutes the following:

- Zayd shall observe the finance contract and bear the consequences thereof because he is the actual debtor.
- Abdullah is not obligated to disclose to the bank that the contract actually belongs to Zayd. This is based on the *hadith* stating that:

*“Urwah Al-Bariqi narrated that the Prophet (peace be upon him) gave him one dinar so as to buy a sheep for him (the Prophet). 'Urwah bought two sheep for him with the money. Then he sold one of the sheep for one dinar, and brought one dinar and a sheep to the Prophet.”<sup>(1)</sup>*

[Related by Al-Bukhari]

When the Messenger of Allah (peace be upon him) knew about this, he did not prohibit this transaction.

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(1) *“Sahih Al-Bukhari”* [3642].

- Abdullah is responsible for the contract before the bank and cannot escape his obligations on the pretext that the contract belongs to someone else.
- Abdullah shall not be entitled to any compensation in return for the guarantee in the case he pays the bank from his own money on behalf of Zayd. This is because the guarantee, in this case, changes into a *Qard* (loan), where any compensation will be an interest thereon.
- Abdullah and Zayd shall sign a document stating their rights and obligations. This is because the whole process involves two transactions; the first is between Abdullah and the bank, where Abdullah is regarded as the financed party, and the second is between Abdullah and Zayd, where Abdullah is regarded as an agent for Zayd. The whole process involves two independent transactions. This is why it is necessary to sign a document implying the rights and obligations of the two parties to avoid any dispute, especially in case of death.

**Note:** It is preferable that the finance is requested under the name of the real beneficiary to avoid any possible dispute or disagreement.

### **Issue (4): Setting a Condition to Transfer the Salary before the Bank Purchases the Real Estate**

The client requests the bank to finance a real estate, and the bank sets a condition that the client shall transfer his salary to the bank. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible for the client to enter into a finance contract where the bank stipulates that the salary be transferred as a prerequisite for the finance. This is because the transfer of the salary is meant as a guarantee for repayment on the client's part. However, the bank may not stipulate that the client keeps a certain amount of his salary in the current account which is higher than the monthly installment that is due.

### **Issue (5): Setting a Condition to Deposit a Specific Amount before the Bank Purchases the Real Estate**

The client requests the bank to finance a real state priced at 1,000,000 SAR while the credit limit for the client is less than this (only 800,000 SAR). Thus, the bank stipulates that the client shall deposit 200,000 SAR to make sure of the client's interest in obtaining the finance and his ability to fulfill the remaining amount. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible for the client to enter in a finance contract where the bank stipulates that he deposits a specific amount as a prerequisite for the finance. This is for the bank to make sure that the client can pay the amount which exceeds the credit limit, and that he is interested in proceeding with the contract.

### **Issue (6): Stipulating a Guarantee for the Repayment of the Debt before the Bank Purchases the Real Estate**

When the client applies to the bank for real estate finance, the bank stipulates certain guarantees, such as the mortgage of the real estate, a promissory note<sup>(1)</sup> or surety<sup>(2)</sup> as a prerequisite for the finance to make sure that the client will repay the debt. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible for the client to enter into a finance contract where the bank stipulates certain guarantees, such as the mortgage of the real estate, a promissory note, or surety. This is provided that the bank shall not use these guarantees to obtain the due amounts except in case of default on the client's part and after the bank follows all the ordinary procedures to obtain its right. Also, the bank shall take only the debt which is due from the guarantees, while the extra amount shall be paid back to the client.

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(1) Promissory note is a finance instrument that contains a written promise by one party to pay another party a definite sum of money at a specified date.

(2) Surety is the one who is liable before the creditor to pay the debtor's debts in the event of his default. Accordingly, when the debtor fails to pay the debt which has become due, the creditor may demand the surety to pay the debt, and the surety, then, has the right of recourse to the debtor to obtain the amount paid.

### Issue (7): Stipulating That Evaluation and Administrative Costs Are Borne by the Client

When the client applies to the bank for real estate finance, the bank stipulates that the costs of evaluating the real estate and the administrative costs, such as the costs of credit studies, incurred by the bank shall be borne by the client as unrecovered payments, even if the client revokes the finance contract. What is the Shari'a ruling regarding this issue?

**Ruling:** The client may bear the costs of assessment paid by the bank to a third party, such as a real estate appraiser, as well as the administrative costs paid by the bank for the study of the client's application. This is provided that the bank, in calculating such payments, shall observe the approximate costs and that the revocation of the finance contract is caused by the client, otherwise the client shall not bear such costs.<sup>(1)</sup>

### Issue (8): Including the Real Estate Brokerage Fees in the Price of the Real Estate

The client applies to the bank for real estate finance and wants the real estate owner to include the *Sa'y* fee (brokerage)<sup>(2)</sup> in the price of the real estate offered to the bank. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible to include the fees paid to the broker in the price of the real estate offered to the bank since it constitutes a part of the actual cost of the real estate. It is permissible also not to include such a cost in the price since it is paid to a third party other than the owner.

### Issue (9): Offering the Real Estate for a Higher Price

The client requests the bank to finance a real estate priced at 1,000,000 SAR and the credit limit for the client is more than that (1,300,000

(1) This issue is controversial. The preponderant opinion for the Shari'a Board of Bank AlBilad is the one mentioned above. However, it is recommended that the client shall not bear such costs in the case he does not proceed with the contract.

(2) *Sa'y* is a fee or commission paid to a broker such as the real estate office in return for his intermediation between the buyer and the seller.

SAR). Accordingly, the client agrees with the owner to offer the real estate for a higher price to the bank in order for the client to make use of the whole credit limit. That is, the bank purchases the real estate for 1,300,000 SAR and the owner pays the extra amount, i.e. 300,000 SAR, in cash to the client. What is the Shari'a ruling regarding this issue?

**Ruling:** It is not permissible for the owner to agree with the client to offer the real estate for a price higher than its actual price and pay the difference between the two prices to the client. This is because the client, in this case, will receive an amount of 300,000 SAR in cash while he repays a higher amount on a deferred payment basis, which is a type of the forbidden *Riba*.

**Note:** As a substitute, real estate supplementary items, such as furniture, air conditioners, etc., can be attached to increase the price of the real estate. In this case, the bank may purchase the real estate along with such items and execute the finance contract. By doing so, the client can make use of the credit limit without receiving cash amounts. Also, the extra amount should be equivalent to the value of the supplementary items; otherwise the finance will not be permissible.

Moreover, the client can benefit from the extra amount in the credit limit through another real estate (or another type of) finance from the bank.

### Issue (10): Offering the Real Estate for a Lower Price

The client requests the bank to finance a real estate priced at 1,000,000 SAR and agrees with the owner of the real estate to offer the real estate for less than this (700,000 SAR) to the bank. What is the Shari'a ruling regarding this issue?

**Ruling:** The ruling will differ based on the cause behind the lower price:

If the lower price is the result of an actual reduction made by the owner due to a kinship or a friendship relation between the owner and the client, or because the owner wants to sell the real estate quickly and cannot find another buyer besides the client, then the transaction is permissible.

**Note:** There is a possibility that the bank will not sell the real estate to the client for any reason, which means that the owner will lose 300,000 SAR, i.e. the deduction. While arranging this kind of transaction, the owner should take this possibility into consideration, even if it is a rare possibility.

If the lower price is not real but rather a formal reduction in the offer made to the bank, and the owner will take the difference in the two amounts from the client, then the transaction will not be permissible. The price, however, should be modified to imply the real value of the real estate. In this case, the amount that the client would have paid to the owner will be paid to the bank as an advanced payment.

**Note:** As an alternative in case the price in the offer cannot be modified for any reason, the client should undertake to pay 300,000 SAR to the owner in case the owner sells the real estate to the bank for the discounted price, i.e. 700,000 SAR, and then the client purchases the real estate from the bank. This agreement between the client and the owner shall state that this transaction does not imply a purchase by the client from the owner, and thus the owner will not be entitled to the difference in the two amounts in case the finance contract between the client and the bank is not concluded.

### **Precautions needed when applying this alternative:**

1. The client shall give the difference in the two amounts (in cash or by check) to a third party regarded as trustworthy by the client and the owner, and the third party will give this amount to the owner only after the condition has been met. The third party may be an intermediary between the two parties or anyone else.
2. The owner sets a condition that the bank shall sell the real estate to the client, otherwise the contract will be nullified.



## Second Stage

# The Bank Purchases the Real Estate and Finances It to the Client

### Issue (11): Purchasing the Real Estate by the Bank Based on *Khiyarush-Shart*

When the client applies to the bank for real estate finance, the bank concludes a purchase contract with the owner based on *Khiyarush-Shart* (sale with termination option)<sup>(1)</sup> for a period of one month as a precaution against the client revoking the finance contract. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible for the client to enter into a finance contract whereby the bank and the owner conclude a purchase contract based on *Khiyarush-Shart* (sale with termination option). This is because the ownership of the real estate will be transferred to the bank despite the *Khiyarush-Shart*. In this case, the bank may offer the real estate to the client while the *Khiyarush-Shart* still remains effective. However, *Khiyarush-Shart* expires upon selling the real estate to the client.

### Issue (12): Signing on Behalf of Either Party to the Finance Contract

In a finance process, a person may sign a document or a contract on behalf of one of the parties to the finance contract (the client, the bank, or the owner). For example, the real estate office may sign the

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(1) *Khiyarush-Shart* (sale with termination option) is a condition that gives either or both of the contracting parties the right to cancel the contract during the option period.

sale contract with the bank on behalf of the owner. What is the Shari'a ruling regarding this issue?

**Ruling:** A third party may sign on behalf of any party to the finance contract based on the following two conditions:

1. The third party that will sign the contract has been delegated by the original party and has a valid agency or authorization to sign the contract.
2. The third party that will sign the contract does not act as a deputy for both parties to the contract. That is, the third party himself should not sign on behalf of the seller and the buyer, or on behalf of the lessor and the lessee.

**Note:** In many cases the real estate office signs the sale contract with the bank without the permission of the owner, which is forbidden. In this case, the sale will not actually be executed unless the owner permits it.

### **Issue (13): Selling the Real Estate to More Than One Buyer at the Same Time**

The bank may discover upon concluding the purchase contract with the owner for the purpose of finance that the owner has sold the same real estate to more than one buyer on the basis that the first buyer who registers<sup>(1)</sup> the contract and pays the price will actually take possession of the real estate.

**Ruling:** It is not permissible to sell the real estate to more than one buyer at the same time. This is because the ownership of the real estate has been transferred from the seller to the first buyer. Accordingly, it will not be permissible for the client to enter into a finance contract if he comes to know that the real estate has been sold in this way.

**Note:**

1. Registration or price payment is not a prerequisite for transferring the ownership of a real estate. This is because the ownership can be transferred by *Ijab* (offer) and *Qabul* (acceptance) stated in the sale contract.

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(1) This registration is called *Ifragh* which is an official document certifying the transfer of the title deed from one person to another.

2. In case the sale contract is canceled and the ownership of the real estate is re-transferred to its original owner, as in the case of exercising *Khiyarush-Shart* (sale with termination option)<sup>(1)</sup> by the buyer, the owner may then sell the real estate to another buyer.

### Issue (14): Financing the Real Estate for the Client Before the Title Deed Is Registered in the Bank's Name

When the client applies to the bank for real estate finance, the bank signs a purchase contract with the owner and then offers to sign a finance contract with the client before the title deed has been registered<sup>(2)</sup> in its name. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible for the client to enter into a finance contract whereby the bank signs a purchase contract with the owner of the real estate, even if the title deed has not been registered in the bank's name. This is because the real estate has been sold to the bank under the *Ijab* (offer) and *Qabul* (acceptance) stated in the purchase contract. As for the transfer of the title deed, it is just a procedure for registration, not an actual completion of transaction.

### Issue (15): The Effect of Payment of the Price on Transferring Possession of the Real Estate to the Bank

When the client applies to the bank for real estate finance, the bank signs a purchase contract with the owner of the real estate and then offers to sign a finance contract with the client before it pays the price to the owner. What is the Shari'a ruling regarding this issue?

It is permissible for the client to enter into a finance contract for real estate in which the bank has signed a purchase contract with the owner but has not yet paid him the price. This is because the purchase of the real estate by the bank is executed under the *Ijab* (offer) and *Qabul* (acceptance) stated in the purchase contract. Thus, paying or deferring the whole price or a part thereof does not affect the transfer of the possession of the real estate to the bank.

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(1) *Khiyarush-Shart* (sale with termination option) is a condition that gives either or both of the contracting parties the right to cancel the contract during the option period.

(2) This registration is called *Ifrah* which is an official document certifying the transfer of the title deed from one person to another.

### **Issue (16): Setting a Condition That the Client Bears the Costs of Litigation and the Collection of Installments**

When the client applies to the bank for real estate finance, the bank stipulates in the finance contract that the client, in case of delay of payment of all or some of the installments, shall bear the costs of litigation and the collection of installments if the bank sues him or appoints a third party to collect the due installments. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible for the client to enter into a finance contract whereby the bank sets a condition that the client, in case of delay of payment, shall bear the actual costs of litigation and the collection of installments incurred by the bank. Such costs are not regarded as a delay penalty or usurious interest because they are not paid for the delay of payment, but rather for the litigation and collection procedures.

### **Issue (17): Setting a Condition That the Deferred Installments Shall Become Due in Case of Any Delay in the Payment of Installments**

When the client applies to the bank for real estate finance, the bank sets a condition in the finance contract that the client, in case of default in payment of due installments, shall pay all or some of the deferred installments. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible for the client to enter into a finance contract whereby the bank sets a condition that the deferred installments shall become due upon default in the payment.

**Note:** The bank should adopt a just procedure for collecting the deferred installments from the client, such as:

1. Demanding the client to pay a number of deferred installments equal to the number of due installments he has defaulted on.
2. Decreasing the deferred profit in proportion to the deferred installments the client pays due to his default in the payment of the due installments.

### Issue (18): Setting a Condition for Waiving the Debt in Case of Death

When the client applies to the bank for real estate finance, the bank undertakes to waive the debt (i.e. unpaid installments) of the finance in case of the client's death and so will not demand payment of the unpaid installments from his heirs. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible for the client to enter into a finance contract whereby the bank undertakes to waive the debt in case of the client's death and not to ask for payment from his heirs.

**Note:**

1. The bank should make sure that the insurance is compliant with the Shari'a regulations for Islamic insurance if it desires to set insurance plans for such cases.
2. The methods adopted by the bank to hedge against such risks, whether through Islamic or commercial insurance or through techniques other than insurance, do not affect the Shari'a ruling for the client regarding this transaction.





## Third Stage

# After the Bank Finances the Real Estate to the Client

### Issue (19): Effect of Joint Application on the Finance

After the client enters into a joint application with other client/clients in the real estate finance so as to increase the amount of finance or to secure a share for each client or for any other reason, one of the clients breaches the contract. What is the Shari'a ruling regarding this issue?

**Ruling:** The ruling and its consequences will differ according to the conditions and terms agreed upon in the finance contract, whether the breach of the contract is the result of default, insolvency or death of one of the partners. This is why the partners should faithfully observe the conditions and terms of the finance contracts to be aware of their duties towards each other and towards the bank. The following points should be considered:

1. **The type of the contract:** *Murabaha* or *Ijarah* contract?
2. **The default:** Does the default of one partner affect the rights and obligations of other partners as to the transfer of ownership, acceleration of payment or enforcement of the *Rahn* (mortgage) of the real estate?
3. **Waiving the debt:** Is the bank obligated to waive the debt (unpaid installments) in case of death of one or all partners? And is it a complete or partial waiving?

4. **The ownership:** Will the ownership be transferred to one or all the partners? If to all the partners, are the shares of ownership specified or not?
5. **The guarantee:** Who is responsible for the guarantee, is it one or all partners?

Since the bank deals only with the conditions of the contract relevant to its affairs, the partners should sign a separate contract between themselves stating their rights and obligations in case the contract with the bank does not cover all points. This is to avoid dispute between the partners or their heirs.



# **Chapter Two**

## **Murabaha (Installment Sale)**



# First Stage

## Before the Bank Purchases the Real Estate

### Issue (20): *Murabaha* on a Real Estate Owned by the Client

The client requests the bank for *Murabaha*-based real estate finance and chooses a real estate which is fully owned by him in order for the bank to buy it for a spot price and then resell it to the same client on a deferred payment basis. What is the Shari'a ruling regarding this issue?

**Ruling:** It is not permissible to conclude a *Murabaha* contract for a real estate which is fully owned by the client; this is because if the bank buys the real estate from the client for a spot price and then resells it to the same client on a deferred payment basis, the transaction will imply a reverse *Inah*,<sup>(1)</sup> which is prohibited.

**Note:** It does not make any difference if the title deed is registered under the name of any person other than the client as long as the client is the real owner of the real estate.

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(1) Reverse *Inah* is to buy a commodity for a spot price and then resell it to the former owner (from whom he has just bought the commodity) for a higher price on a deferred payment basis. An example is when one buys a real estate from its owner for 100,000 riyals paid on the spot, and then resells it to him (the former owner) for 120,000 riyals payable one year later. This transaction is prohibited, just like *Inah*, because it is an illegal *heela* (trick) to practice *Riba*.

### Issue (21): *Murabaha* on a Real Estate That the Client Possesses a Share Thereof

The client requests the bank for *Murabaha*-based real estate finance and chooses a real estate he possesses a share thereof in order for the bank to buy it for a spot price and then resell it to the same client on a deferred payment basis. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible to conclude a *Murabaha* contract for a real estate that the client possesses a share thereof which is less than 50%.<sup>(1)</sup> However, if the client's share in the real estate is 50% or more, it will not be permissible to conclude the *Murabaha* contract.

**Note:** To avoid controversy, there are other safer alternatives for such transactions from the viewpoint of the Shari'a, such as:

1. The client pays a spot amount equivalent to his share in the real estate, and then the bank defers the payment of the price of the share which is not possessed by the client.
2. The bank buys the share which is not possessed by the client and then resells it by means of *Murabaha* to the same client. Accordingly the finance operation involves only the share which is not possessed by the client.

### Issue (22): Registration of the Title Deed under a Relative/Friend's Name for *Murabaha* Finance on a Real Estate

The client requests the bank for *Murabaha*-based real estate finance after choosing a real estate which he possesses and registering its title deed<sup>(2)</sup> under the name of his relative or friend (Abdullah) in order for the bank to buy it from Abdullah, as the title deed states that he is the real owner. The bank then resells it to the client.

(1) This issue is controversial. Other *fiqhi* opinions do not permit this kind of transaction if the client's share exceeds one-third of the real estate. This is why it is not recommended to enter into such a transaction if the client's share exceeds one-third, so as to avoid controversy.

(2) This registration is called *Ifragh* which is an official document certifying the transfer of the title deed from one person to another.

Or the client requests the finance after the real estate has been sold to him by his employer, while the title deed is still under the employer's name as a type of *Rahn* (mortgage). The client then requests the bank to buy the real estate from his employer, as the title deed states that the employer is the real owner of the real estate, and later sells it to him by means of *Murabaha*. What is the Shari'a ruling regarding this issue?

**Ruling:** It is not permissible to make a nominal registration of the title deed for a real estate in order to execute a *Murabaha* contract with the bank for such a real estate. At the same time, if the title deed is registered under the name of a party other than the owner, it is not permissible for the real owner to buy the real estate by means of *Murabaha* through the bank; this is because such a finance operation would be a reverse *Inah*,<sup>(1)</sup> which is prohibited.

In such a case, the bank would buy the real estate from the client for a spot price and then resell it to the same client on a deferred payment basis. Hence, the registration of title deed under the name of another party is only a *heela* (trick) to receive a spot amount against a higher amount that is to be paid in the future.

**Note:** However, if the registration of the title deed under the name of a third party takes place as a consequence of a real sale transaction, and then the client wants to buy the real estate by means of *Murabaha*, the transaction would be permissible.

### **Issue (23): *Murabaha* on a Real Estate for Which the Client Has Bought and Paid Only a Part of Its Price to the Owner**

The client requests the bank for *Murabaha*-based real estate finance, and chooses a real estate he has bought from its owner and for which he has paid an advanced payment<sup>(2)</sup> or a part of its price, but he has failed to pay the remaining part of the price. The finance is for the bank

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(1) Reverse *Inah* is to buy a commodity for a spot price and then resell it to the former owner (from whom he has just bought the commodity) for a higher price on a deferred payment basis. An example is when one buys a real estate from its owner for 100,000 riyals paid on the spot, and then resells it to him (the former owner) for 120,000 riyals payable one year later. This transaction is prohibited, just like *Inah*, because it is an illegal *heela* (trick) to practice *Riba*.

(2) Advanced payment is a part of the real estate price paid by the buyer to the seller in a final purchase contract.

to buy it for a spot price and then resell it to the client on a deferred payment basis. What is the Shari'a ruling regarding this issue?

**Ruling:** It is not permissible to conclude a *Murabaha* contract for a real estate for which the client has bought and paid an advanced payment or a part of its price. This is because the real estate, in such a case, is already owned by the client, regardless of the remaining part of the price he has not paid. Thus, the contract here implies a transaction whereby the bank will buy the real estate from the client for a spot price and then resell it to him on a deferred payment basis, which is a form of the prohibited reverse *Inah*.<sup>(1)</sup>

**Note:**

1. It does not make any difference if the client has not paid anything for the real estate to the owner as long as the purchase transaction has been carried out.
2. The transaction may become acceptable according to the Shari'a if the client agreed with the real estate owner to terminate the contract. Accordingly, the ownership of the real estate goes back to the seller, and the bank enters into a new transaction directly with the real estate owner. [See: Issue (28)]

**Issue (24): *Murabaha* on a Real Estate Bought by a Client Who Paid an *Urbun* to Its Owner**

The client requests the bank for *Murabaha*-based real estate finance, choosing a real estate he bought from its owner and for which he paid a purchase *Urbun* (earnest money),<sup>(2)</sup> in order for the bank to buy the real estate and then resell it to him on a deferred payment basis. What is the ruling regarding this issue?

- (1) Reverse *Inah* is to buy a commodity for a spot price and then resell it to the former owner (from whom he has just bought the commodity) for a higher price on a deferred payment basis. An example is when one buys a real estate from its owner for 100,000 riyals paid on the spot, and then resells it to him (the former owner) for 120,000 riyals payable one year later. This transaction is prohibited, just like *Inah*, because it is an illegal *heela* (trick) to practice *Riba*.
- (2) *Urbun* (earnest money) is an amount in a purchase contract which is paid as part of the real estate price where the buyer has the option - within an agreed-upon period - to complete the contract by paying the remaining part of the price or to terminate it (if he decides to terminate the contract, the seller has the right to keep the *Urbun*).

**Ruling:** It is not permissible to conclude a *Murabaha* contract for a real estate that the client bought and for which he paid *Urbun* (earnest money) to its owner. This is because the client's purchase of the real estate and paying of the *Urbun* (earnest money) transfers its ownership to him. This is despite the fact that he still has the option to either complete or terminate the contract. Thus, the contract here implies a transaction whereby the bank will buy the real estate from the client for a spot price and then resell it to him on a deferred payment basis, which is a form of the prohibited reverse *Inah*.<sup>(1)</sup>

**Note:** This transaction may become acceptable according to the Shari'a by one of the following two options:

1. The client chooses to terminate the contract during the period of option, and accordingly the real estate owner is entitled to the *Urbun* (earnest money) and to retain the ownership of the real estate. However, it is recommended that the real estate owner accepts to refund the *Urbun* to the client. The bank then enters into a contract directly with the real estate owner.
2. The client agrees with the real estate owner to terminate the contract and the seller retains ownership of the real estate. The bank then enters into a transaction directly with the real estate owner. [See: Issue (28)]

### **Issue (25): *Murabaha* on a Real Estate for Which the Client Has Paid a Booking Amount to Its Owner**

The client requests the bank for *Murabaha*-based real estate finance, choosing a real estate for which he has paid a booking amount to its owner,<sup>(2)</sup> in order for the bank to buy the real estate and then resell it

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- (1) Reverse *Inah* is to buy a commodity for a spot price and then resell it to the former owner (who he has just bought the commodity from) for a higher price on a deferred payment basis. An example is when one buys a real estate from its owner for 100,000 riyals paid on the spot, and then resells it to him (the former owner) for 120,000 riyals payable one year later. This transaction is prohibited, just like *Inah*, because it is an illegal *beela* (trick) to practice *Riba*.
  - (2) The booking amount for a real estate is a sum of money paid by the client to the real estate owner for a specified period within which the real estate remains unsold, without any conclusion of a purchase contract between them. This is based on a condition that the client himself, or someone else he chooses, is entitled to buy the real estate at a specified price under a resumed contract during this period.

to the client on a deferred payment basis. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible to conclude a *Murabaha* contract for a real estate for which the client has paid a booking amount to its owner. This is because the client has not yet bought the real estate; rather he prevented the owner from selling it to another party for an agreed-upon period. Thus, the essence of the contract here implies that the bank, upon a request from the client, will buy the real estate from its owner for a spot price and then resell it to the client on a deferred payment basis, which is permissible.

**Issue (26): *Murabaha* on a Real Estate for Which the Client Has Paid *Hamish Jiddiyyah* to Its Owner**

The client requests the bank for *Murabaha*-based real estate finance, choosing a real estate for which he has paid *Hamish Jiddiyyah* (security deposit) to its owner;<sup>(1)</sup> in order for the bank to buy the real estate and then resell it to the client on a deferred payment basis. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible to conclude a *Murabaha* contract on a real estate for which the client has paid *Hamish Jiddiyyah* (security deposit) to its owner. This is because the client has not yet bought the real estate, but rather he has paid an advanced payment indicating his intent and financial ability to execute the agreement.

**Issue (27): *Murabaha* on a Real Estate for Which the Client Has Paid the Real Estate Brokerage Fees**

The client requests the bank for *Murabaha*-based real estate finance, choosing a real estate for which he has paid the real estate brokerage fees,<sup>(2)</sup> in order for the bank to purchase it and then resell it to the client on a deferred payment basis. What is the Shari'a ruling regarding this issue?

(1) *Hamish Jiddiyyah* (security deposit) is an amount the client pays in advance prior to the contract to indicate his intent and financial ability to execute the agreement.

(2) *Sa'y* is a fee or commission paid to a broker such as the real estate office in return for his intermediation between the buyer and the seller.

**Ruling:** It is permissible to conclude a *Murabaha* contract on a real estate for which the client has paid brokerage/commission to the real estate office. This is because the client has not yet bought the real estate, but rather he has just paid the fees to the real estate office. No purchase contract has been concluded yet.

**Note:** If the client writes a cheque to the real estate office as a purchase *Urbun* (earnest money) and the office is the seller's agent, or the seller accepts to sell to the client, then a *Murabaha* transaction will not be permissible in such a case. [See: Issue (24)]

### Issue (28): Terminating the Client Contract with the Real Estate Owner for *Murabaha* on Real Estate

The client buys a real estate from its owner, but does not pay him the price, advanced payment<sup>(1)</sup> or a purchase *Urbun* (earnest money)<sup>(2)</sup> [See: Issues (23) and (24)].

When he requests the bank for *Murabaha*-based real estate finance, he finds that a prerequisite for the finance stipulates that no contract should be in effect between him and the owner. Therefore, he asks the owner to cancel the contract. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible for the client and the real estate owner to terminate the contract sale in order for the bank to buy the real estate and then resell it to the client on a deferred payment basis provided that the termination should be real, and the duration between the date of the previous contract with the real estate owner and the date of the client's request for *Murabaha*-based real estate finance from the bank should not be a long period of time.

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(1) Advanced payment is a part of the real estate price paid by the buyer to the seller in a final purchase contract.

(2) *Urbun* (earnest money) is an amount in a purchase contract which is paid as part of the real estate price where the buyer has the option - within an agreed-upon period - to complete the contract by paying the remaining part of the price or to terminate it (if he decides to terminate the contract, the seller has the right to keep the *Urbun*).

### Note:

1. The cancellation process can take effect even if the amount paid by the client has not been returned yet, as long as such an amount is a debt established in the owner's liability.
2. Contracts should not be canceled for the purpose of making them compliant with the Shari'a except in specific cases. That is, it is not permissible for a party to terminate a contract if he had the intention to do so at the time he concluded the contract. It is permissible only if the intention comes after concluding the contract for any reason.
3. After termination, the amount paid may be settled by one of the following ways:
  - a) The real estate owner pays back to the client the amount the client paid; either after or before the bank purchases the real estate from the owner. The bank then buys the real estate, pays the full price, and then resells it to the client by means of *Murabaha*.
  - b) The bank buys the real estate and pays the price to the owner minus the amount that was paid by the client, and then resells it to the client by means of *Murabaha*. In this case, the amount can be regarded as an advanced payment paid by the client to the bank.
  - c) The bank enters into a partnership with the client to purchase the real estate from its owner in order for the bank to own a share corresponding to the amount it will pay and the client owns a share corresponding to what he has paid, and then the bank resells its share to the client by means of *Murabaha*.

### **Issue (29): The Client Buys a Real Estate from the Bank by Means of *Murabaha* before the Bank Buys the Real Estate**

The client requests the bank for *Murabaha*-based real estate finance, and the bank offers to sign the *Murabaha* contract before the bank buys the real estate from its owner. What is the Shari'a ruling regarding this issue?

## Murabaha (Installment Sale)

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**Ruling:** It is not permissible for the client to conclude a *Murabaha* contract for a real estate the bank has not yet purchased. This is because it implies selling an item before taking possession thereof, or receiving a profit from an item which is not guaranteed, i.e. by the party making the profit, which is prohibited.

**Note:** This ruling differs from the ruling concerning the case where the bank purchases a real estate without registering its title deed under its name.<sup>(1)</sup>  
[See: Issue (14)]



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(1) This registration is called *Ifragh* which is an official document certifying the transfer of the title deed from one person to another.



## Second Stage

# The Bank Purchases the Real Estate and Sells It to the Client

### **Issue (30): Setting a Condition to Be Discharged of the Responsibility for Any Defects in the Real Estate in *Murabaha* Contract**

The client requests the bank for *Murabaha*-based real estate finance, and the bank stipulates that it shall not be liable for any defects hidden in the real estate. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible to conclude *Murabaha*-based real estate finance contract under the condition that the bank shall not be liable for any hidden defects which are unknown to the bank at the time of the sale contract.

**Note:**

1. The bank, under any circumstances, shall not be liable for any defects that occur after the date of the sale contract. Such a defect shall be borne by the client because of his ownership of the real estate.
2. The bank shall be liable for any defects occurring before the date of the sale contract, even if the first seller does not bear the cost of reparation, unless a condition with the client is set that discharges the bank from the defects which are unknown to it.
3. The bank shall be liable for any hidden defects that it is aware of, even if it sets a condition discharging it from such defects.

### **Issue (31): Setting a Condition That the Client of *Murabaha* Contract for a Real Estate Be Liable for Insurance and Maintenance**

The client requests the bank for *Murabaha*-based real estate finance, and the bank stipulates that the client should conclude an insurance or maintenance contract for the *Marhun* (mortgaged) real estate. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible for the client to conclude *Murabaha*-based real estate finance whereby the bank sets a condition that the client should conclude an insurance or maintenance contract for the real estate. This is because the real estate is *Marhun* (mortgaged) to the bank against the debt the client owes the bank, and the bank has the right to be sure that the *Rahn* (mortgage) is safe during the period of debt repayment.

**Note:** The liability for guarantee and damage of the real estate is borne by the client after the purchase contract has been signed with the bank, whether the insurance contract was made or not. This is because of his ownership of the real estate.

### **Issue (32): Stipulating Delay Fines for Payment of *Murabaha* Debt**

The client requests the bank for *Murabaha*-based real estate finance, and the bank stipulates in the contract that if the client delays the payment of the installments, he shall pay a fine. What is the Shari'a ruling regarding this issue?

**Ruling:** It is not permissible for the client to conclude a *Murabaha*-based real estate finance contract where the bank sets a condition that the client shall pay a fine if he delays the payment of the installments, even if the bank intends to pay these fines to charitable channels.

### **Issue (33): The Bank's Commitment to Accept an Early Payment in Return for Deducting a Part of the Remaining Amount of the Price**

When a client requests the bank for *Murabaha*-based real estate finance, the bank undertakes before the client to accept an early payment in return for deducting a part of the remaining amount, providing the client with a monthly schedule determining the early payment amount. What is the Shari'a ruling regarding this issue?

## Murabaha (Installment Sale)

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**Ruling:** It is permissible for the client to obtain *Murabaha*-based real estate finance whereby the bank undertakes before the client to accept an early payment in return for deducting a part of the remaining amount during the period of payment. The bank should inform the client with the method used to determine the early payment and the amount of deduction, and whether the deduction implies the remaining amount as a whole or a part thereof.





# Third Stage

## After the Bank Sells the Real Estate to the Client

### Issue (34): Selling the *Marhun* (Mortgaged) Real Estate

The client receives *Murabaha*-based real estate finance from the bank and then mortgages the real estate to the bank, but when the debt in liability of the client becomes due he defaults on the payment. Therefore, the bank wants to sell the *Marhun* (mortgaged) real estate in order to recover its debt from the price of the real estate. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible for the bank to sell the *Marhun* (mortgaged) real estate if the client defaulted in the repayment in order to recover its debt from the selling price of the real estate. In this case, if the selling price of the *Marhun* (mortgaged) real estate is higher than the amount of debt due to the bank from the client, the bank is required to pay back the amount that exceeds the principal. But if the selling price is less than the amount of debt due to the bank from the client, the bank requests the client to pay the remaining part of the debt.

**Note:** Before selling the *Marhun* (mortgaged) real estate, the following actions should be taken:

1. The client should be informed before the maturity date, and should be given a suitable period after its maturity. All possible solutions should be considered before selling the *Marhun* (mortgaged) real estate.

2. An amount should be deducted from the deferred profits against the early payment, in case only a part of the debt is deferred.
3. The regulatory requirements needed to dispose of the *Marhun* (mortgaged) item should be fulfilled.

### Issue (35): Transferring the Debt of the *Murabaha*-Based Real Estate Finance from One Bank to Another

The client obtains *Murabaha*-based real estate finance from bank (A), and the debt established in his liability is to be paid to the bank in installments. Later on, the client found that bank (B) is better than bank (A) for any reason, for example it takes a lower profit or is more flexible in some services. Therefore the client requests bank (B) to transfer his debt which is due to bank (A) by buying the real estate from it, and later selling it to the client for a new price on a deferred payment basis. What is the Shari'a ruling regarding this issue?

**Ruling:** It is not permissible for the client to request bank (B) for a *Murabaha* contract on a real estate financed by bank (A); because the essence of this contract is that bank (B) will buy the real estate from the client for a spot price, and then sell it to him on a deferred payment basis; it is a reverse *Inah*<sup>(1)</sup> which is prohibited, whether the title deed is registered in the name of bank (A) or not; because this registration is by way of *Rahn* (mortgage) and not ownership.

**Note:** If the new transaction involves *Ijarah*-based real estate finance from bank (B), please, refer to Issue (38).

### Issue (36): Defects in the *Murabaha*-Based Real Estate Finance

The client requests the bank to fix the defects that appeared in the *Murabaha*-based real estate finance after selling the real estate to him, such as cracks in the walls and water leakage from the ceiling. What is the Shari'a ruling regarding this issue?

- (1) Reverse *Inah* is to buy a commodity for a spot price and then resell it to the former owner (from whom he has just bought the commodity) for a higher price on a deferred payment basis. An example is when one buys a real estate from its owner for 100,000 riyals paid on the spot, and then resells it to him (the former owner) for 120,000 riyals payable one year later. This transaction is prohibited, just like *Inah*, because it is an illegal *heela* (trick) to practice *Riba*.

## Murabaha (Installment Sale)

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**Ruling:** If the defect was for a reason that occurred before the date of the sale contract, then the bank should be liable to fix it, and the bank may refer to the first owner of the real estate to claim the costs paid; an example of this is when the wall of a real estate falls down as a result of a violation in the basic standards of construction.

But if the defect was for a reason that occurred after the date of the sale contract, the bank should not be liable to fix it, because the client is the real estate owner and he is liable for its guarantee and damages.

**Note:** The client should observe that if the bank sets a condition in the sale contract that it is not liable for the hidden defects which it is not aware of, then the bank will not be liable for such defects. [See: Issue (30)]





# **Chapter Three**

## **Finance Ijarah**



# First Stage

## Before the Bank Purchases the Real Estate

### **Issue (37): Difference of Rental between Finance *Ijarah* and Operating *Ijarah***

When a client applies to the bank for real estate finance by means of *Ijarah* (lease), the bank offers a rental different from the rental of the real estate in the operating *Ijarah* (lease). What is the Shari'a ruling regarding this issue?

**Ruling:** The rental of the finance *Ijarah* may differ from the rental of the operating *Ijarah*.<sup>(1)</sup> This is because the transfer of ownership is taken into consideration in the rental of the finance *Ijarah*, and because the two parties have the right to determine the rental.

### **Issue (38): Finance *Ijarah* for a Real Estate Owned by the Client**

When the client applies to the bank for real estate finance by means of *Ijarah* (lease), he chooses a certain real estate that he possesses for the bank to purchase so that the bank may lease it to him later on by means of finance *Ijarah*. What is the Shari'a ruling regarding this issue?

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(1) Operating *Ijarah* is the usual form of *Ijarah* (lease) where the lessee makes use of the leased asset for a certain period. It does not end with the transfer of ownership to the lessee.

**Ruling:** It is permissible for the client to sell the real estate to the bank on a spot payment basis and then lease it from the bank by means of finance *Ijarah*<sup>(1)</sup> whenever the following conditions are met:

1. *Ijarah* (lease) should not be stipulated in the sale contract.
2. Transfer of the ownership in the finance *Ijarah* should take place after a sufficient period of time during which the original state or the value of the real estate may change. That is, the period of *Ijarah* (lease) prior to the transfer of ownership should not be less than one year, whether the transfer of ownership takes place during the period of *Ijarah* (lease) or after the end of the *Ijarah*. This is because the real estate does not usually change within a period of less than one year.
3. The land should not be unconstructed land. An example of leasing unconstructed land is when the client sells the bank a land which has no building thereon, and then leases it from the bank by means of a finance *Ijarah* while the land is still in its original condition (i.e. without any buildings). This form of finance *Ijarah* is not permissible, regardless of the period of *Ijarah* (lease).
4. The price for which the bank purchases the building from the client should be determined based on the fair value, which may be 15% less or more than the market value. A difference of more than 15% implies that the price of the real estate is not an actual price.

**Note:** The client, i.e. the owner of the real estate, should take into consideration the possibility that he may not regain possession of the real estate if he violates one or more of the conditions of the finance *Ijarah* contract. The problem becomes even more complicated if he sells it for a lower price. In this case, he will lose the difference.

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(1) This issue is controversial. The preponderant opinion for the Shari'a Board of Bank Albilad is the one mentioned above. However, it is recommended that the client shall not sell the real estate to the bank on a spot payment basis and then lease it from the bank by means of finance *Ijarah*. This is to avoid the controversy concerning this issue.

**Issue (39): Finance *Ijarah* for a Real Estate That the Client Possesses a Share Thereof**

The client applies to the bank for real estate finance by means of *Ijarah* (lease) and chooses a real estate he possesses a share thereof for the bank to purchase in order for the bank to lease it to him by means of a finance *Ijarah*. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible to conclude a finance *Ijarah* contract for a real estate that the client possesses a share thereof which is less than 50%. In this case, the bank purchases the real estate from the client on a spot payment basis and then leases it to him by means of a finance *Ijarah*. However, if the client's share is 50% or more, the transaction will be governed by the Shari'a ruling stated in Issue (38).

**Issue (40): Registering the Title Deed of a Real Estate under the Name of a Relative/Friend for the Purpose of a Finance *Ijarah***

The client applies to the bank for real estate finance by means of *Ijarah* (lease) for a real estate that he possesses. He then registers the title deed of such a real estate under the name of Abdullah (one of his relatives or friends) in order for the bank to purchase the real estate from Abdullah, i.e. the nominal owner, and lease it to the client by means of a finance *Ijarah*.

**Ruling:** Nominal registration of the title deed for the purpose of regular or procedural requirements or for any other reason has no effect on the Shari'a rulings. That is, since the client is the actual owner of the real estate, then the transaction will be governed by the same ruling applied before the registration of the title deed. [See: Issues (38 and 39)]

**Issue (41): Finance *Ijarah* for a Real Estate That the Client Purchased But Paid Only a Part of Its Price**

The client applies to the bank for real estate finance by means of *Ijarah* (lease) and chooses a real estate that he had purchased from its owner

and for which he had paid an advanced payment<sup>(1)</sup> or a part of the price, but defaulted on the remaining part of the price. The bank then purchases the real estate on a spot payment basis and then leases it to the client by means of finance *Ijarah*. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible to conclude a finance *Ijarah* contract for a real estate that the client purchased from its owner and paid a part of its price, where the bank purchases it and then leases it to the client by means of finance *Ijarah*. This should be according to certain conditions<sup>(2)</sup> [See: Issue (38)]. Also, the contracts should be canceled, and the bank will then purchase the real estate. [See: Issue (28)]

### **Issue (42): Finance *Ijarah* for a Real Estate for Which the Client Purchased and Paid an *Urbun***

The client applies to the bank for real estate finance by means of *Ijarah* (lease), choosing a real estate that he purchased from its owner and for which he paid an *Urbun* (earnest money),<sup>(3)</sup> in order for the bank to purchase the real estate and then lease it to the client by means of a finance *Ijarah*. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible to conclude a finance *Ijarah* for a real estate that the client purchased from its owner and for which he paid an *Urbun* (earnest money). This should be according to certain conditions [See: Issue (38)]. Also the earlier contracts should be canceled, and the bank will then purchase the real estate [See: Issue (28)].

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(1) Advanced payment is a part of the real estate price paid by the buyer to the seller in a final purchase contract.

(2) This issue is controversial. The preponderant opinion for the Shari'a Board of Bank Albilad is the one mentioned above. However, it is recommended that the finance *Ijarah* should not be concluded for a real estate that the client purchased and paid a part of its price, where the bank purchases and then leases the real estate to the client by means of a finance *Ijarah*. This is to avoid the controversy concerning this issue.

(3) *Urbun* (earnest money) is a part of the price paid in a purchase contract under which the buyer has the option for a specific period of time to proceed with the contract and pay the rest of the price or revoke the contract, in which case the seller becomes entitled to the *Urbun* (earnest money).

**Issue (43): Finance *Ijarah* for a Real Estate for Which the Client Has Paid an Amount to Reserve<sup>(1)</sup>**

The client applies to the bank for real estate finance by means of *Ijarah* (lease), choosing a real estate for which he has paid an amount to reserve in order for the bank to purchase it and then leases it to him by means of a finance *Ijarah*. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible to conclude a finance *Ijarah* contract for a real estate for which the client has paid its owner an amount to reserve it. The amount paid does not constitute a sale transaction but rather it is meant to reserve the real estate for a specified period.

**Issue (44): Finance Contract for a Real Estate for Which the Client Has Paid a *Hamish Jiddiyyah* in Order to Purchase**

The client applies to the bank for real estate finance by means of *Ijarah* (lease), choosing a real estate for which he has paid *Hamish Jiddiyyah* (security deposit)<sup>(2)</sup> to purchase it, in order for the bank to purchase it and then lease it to the client by means of a finance *Ijarah*. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible to conclude a finance *Ijarah* contract for a real estate for which the client has paid *Hamish Jiddiyyah* (security deposit) to its owner. The amount paid here does not constitute a purchase contract, but rather it is meant to indicate the financial ability of the client.

**Issue (45): Finance *Ijarah* for a Real Estate for Which the Client Has Paid the Real Estate Brokerage Fees**

The client applies to the bank for real estate finance by means of *Ijarah* (lease), choosing a real estate for which he has paid the fees of the real estate broker, in order for the bank to purchase the real estate and then

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(1) It is an amount the client pays to the owner of the real estate so that the owner does not sell the real estate to someone else, for a specific period. This is done without concluding a contract between the two parties, where the client is given the option to purchase the real estate for a specific price under a purchase contract during this period.

(2) *Hamish Jiddiyyah* (security deposit) is an amount the client pays in advance prior to the contract to indicate his intent and financial ability to execute the agreement.

lease it to the client by means of a finance *Ijarah*. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible to conclude a finance *Ijarah* on a real estate for which the client has paid the real estate brokerage fees. The amount paid does not constitute a purchase transaction, but rather it is paid to the real estate broker as fees for his work.

### **Issue (46): Concluding a Finance *Ijarah* Contract with the Bank for a Real Estate That the Bank Has Not Yet Purchased**

When the client applies to the bank for real estate finance by means of *Ijarah* (lease), the bank offers to sign an *Ijarah* contract with the client for a real estate the bank has not yet purchased. What is the Shari'a ruling regarding this issue?

**Ruling:** The ruling differs according to the following:

1. In case the real estate to be leased is a specific and determined asset, it will not be permissible to conclude an *Ijarah* (lease) contract for such a real estate except after the bank takes possession and delivery thereof. This is because *Ijarah* implies the sale of the usufructs of the real estate to the lessee. However the bank, in this case, has not yet possessed these usufructs. Meanwhile, registering the title deed under the bank's name is not a condition for the validity of such an *Ijarah* contract. [See: Issue (14)]
2. In case the real estate to be leased is not a specific but rather described asset, an *Ijarah* (lease) contract would be permissible only if the real estate is precisely described.
3. If the real estate is a specific piece of land owned by the bank and it has no building thereon, and the client agrees with the bank to lease a described building which is to be built later on that piece of land, *Ijarah* (lease) would be permissible provided that the building to be leased is precisely described.



## Second Stage

# The Bank Purchases the Real Estate and Leases It to the Client

### Issue (47): Linking the Rental of a Finance *Ijarah* to a 'Changing' Rental Index

When the client applies to the bank for real estate finance by means of *Ijarah* (lease), the banks sets a condition that the rental may change during the period of the finance *Ijarah* based on agreed parameters. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible to stipulate changeable<sup>(1)</sup> rental based on the following conditions:

1. The rental of the first period of *Ijarah* (lease) should be determined and unchangeable.
2. Changing the rental during the subsequent periods should be according to specific indexes known by the contracting parties in a way that does not lead to any dispute. It means that the change of rental should not be based on an internal formula which the client does not know, or based on other indexes that can be changed according to the future desire of either party to the contract.

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(1) This issue is controversial. The preponderant opinion for the Shari'a Board of Bank Albilad is the one mentioned above. However, it is recommended to set a fixed rental to avoid controversy regarding this issue.

3. The rental of each period should be determined before the period commences. That is, shortly before the end of one period the rental for the next period should be determined if the rental is to be changed based on agreed indexes.
4. The rental of a period should not be changed during such a period even if the rental index changes. Rather, the change should be applied to the next period.

**Note:** It is recommended to set minimum and maximum rates for the changing rental to make less space for *Gharar* (uncertainty) and ignorance.

### **Issue (48): Setting a Condition to Be Discharged of the Responsibility for Any Defects in the Real Estate in Finance *Ijarah***

When the client applies to the bank for real estate finance by means of *Ijarah* (lease), the bank stipulates that it shall not be responsible for any defects in the real estate. What is the Shari'a ruling regarding this issue?

**Ruling:** It is not permissible for the client to enter into a finance *Ijarah* contract whereby the bank is not to be regarded liable for any defects in the real estate that prevent or diminish its use, or any defects that appear later that prevent the lessee from making use of the real estate for the purposes it was leased for.

### **Issue (49): Setting a Condition That the Client Bears the Costs of Insurance and Maintenance in Finance *Ijarah***

When the client applies to the bank for real estate finance by means of *Ijarah* (lease), the banks sets a condition that the client shall conclude an insurance or maintenance contract for the real estate. What is the Shari'a ruling regarding this issue?

**Ruling:** It is not permissible for the client to enter into a finance *Ijarah* contract whereby the bank sets a condition that the client shall conclude an insurance or maintenance contract for the real estate. This is because the guarantee, consequences of destruction and major maintenance<sup>(1)</sup>

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(1) Major maintenance is the work required to keep the continuity of the leased asset itself according to accepted customs, such as repairing cracked walls, ceiling leak...etc. This maintenance is borne by the lessor.

should be borne by the bank as it is the owner of the real estate. The client, however, is liable for the operating maintenance<sup>(1)</sup> or other damages caused by negligence or any violation on his part.

The bank may authorize the client to conclude an insurance or maintenance contract on its behalf, wherein the responsibility for the real estate and the consequences of its damages will still be borne by the bank.

### **Issue (50): Stipulating Delay Fines for Payment of Finance *Ijarah* Debt**

When a client applies to the bank for real estate finance by means of *Ijarah* (lease), the bank stipulates that the client shall pay fines in case of any delay in the payment of the rental installments. What is the Shari'a ruling regarding this issue?

**Ruling:** It is not permissible for the client to enter into a finance *Ijarah* contract whereby the bank stipulates that the client shall pay fines in case of any delay in the payment of the rental installments for previous periods, even if the bank will distribute these fines to charitable channels.

The bank, however, may set a condition for the right to cancel the contract or to increase the rental according to an agreed rate in case of any delay in the payment of future rental installments. This is not regarded as fines due to a delay, but rather a renewal of the *Ijarah* (lease) contract for another period that has not commenced yet or for which its rental has become due.

### **Issue (51): The Bank's Commitment to Accept Early Transfer of Ownership and Rental Deduction**

When the client applies to the bank for real estate finance by means of *Ijarah* (lease), the bank undertakes before the client to accept an early transfer of ownership and to deduct a part of the rental, while providing a monthly schedule determining the transfer of ownership. What is the Shari'a ruling regarding this issue?

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(1) Operating maintenance is the work required to keep the leased asset in the condition necessary to provide the contractual benefits under *Ijarah* (lease) according to custom, such as repairing lights, etc... it is borne by the lessee.

**Ruling:** It is permissible for the client to enter into a finance *Ijarah* contract whereby the bank undertakes to accept an early transfer of ownership and to deduct a part of the rental during the period of the contract. The bank should declare the method for determining the amount that should be paid to transfer the ownership and the deduction rate for the client, whether the deduction implies all the remaining rental or a part thereof.



## Third Stage

# After the Bank Leases the Real Estate to the Client

### **Issue (52): Transferring the Debt of a Finance *Ijarah* Real Estate from One Bank to Another**

The client leased a real estate by means of finance *Ijarah* from bank (A). Later on, the client discovered that bank (B) is better than bank (A) for any reason, for example it takes a lower rental or has more flexible services. Therefore, the client applies to bank (B) for it to purchase the real estate from bank (A) and move the finance *Ijarah* contract of the client to it [bank (B)]. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible for the client to request bank (B) to offer to purchase the real estate from bank (A) in return for the remaining part of the finance, and to keep the finance *Ijarah* contract along with its terms and conditions thereof.

**Note:** After purchasing the real estate, bank (B) may finance the client by one of the following ways:

1. Proceeding with the previous *Ijarah* (lease) contract as it is.
2. Canceling the previous *Ijarah* (lease) contract by mutual agreement and signing a new contract with different terms.
3. Signing a *Murabaha* contract for the real estate.

### Issue (53): Defects in the Real Estate During the Period of Finance *Ijarah*

After concluding the finance *Ijarah* contract between the client and the bank, some defects arise in the real estate, such as cracks in the walls and ceiling leak, and thus the client requestes the bank to repair such damages. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible for the client to request the bank to repair the defects that appeared after concluding the contract, and the bank should bear the costs of repair. This is because the bank is the owner of the real estate and accordingly it is liable for any damages. Also, the bank may not decline to repair such damages or hold the client liable thereof unless they had been caused by the client.

The bank may obligate the insurance company to fix such damages if they are covered by insurance. Regardless of the response of the insurance company, the bank is liable before the client for the costs of repairing these damages.

### Issue (54): Payment of Rental During Suspension of Usufruct in Finance *Ijarah*

After concluding the finance *Ijarah* contract, the real estate required major maintenance<sup>(1)</sup> which was borne by the bank. The work of repair took a period of time during which the client was not able to make use of the usufruct thereof. Accordingly, the client requested the bank to drop the rental for the period of maintenance. What is the Shari'a ruling regarding this issue?

**Ruling:** The bank shall not be entitled to the rental during the period the usufruct was not available for a reason that is not attributed to the client.

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(1) Major maintenance is the work required to keep the continuity of the leased asset itself, according to accepted customs, such as repairing cracked walls, ceiling leak...etc. This maintenance is borne by the lessor.

**Note:** For accounting purposes, the client may pay the rental for the period during which he did not make use of the usufruct provided that such an amount is repaid to the client upon the cancellation of the contract. Also, such an amount can be treated in case of continuation of the contract by mutual agreement between the bank and client using one of the following options:

1. Extending the period of *Ijarah* (lease) for an equivalent period, for no return.
2. Waiving the transfer of ownership and repaying the amount paid for the period during which the usufruct was unavailable to the client.
3. Transferring the ownership of the real estate and including such rental in the price of the real estate.

### **Issue (55): Modification of the Leased Real Estate by the Client**

After concluding the finance *Ijarah* contract, the client desires to modify the real estate by adding or removing buildings. What is the Shari'a ruling regarding this issue?

**Ruling:** It is permissible for the client, after obtaining the consent of the bank, to modify the leased real estate by adding, removing or modifying buildings.

**Note:** If the client made modifications to the real estate beyond the commonly-accepted modifications without the consent of the bank, the bank may hold him liable for the consequences of such modifications, and the client will not have the right to claim for his modification costs from bank.

*The End of the Book*



