



Muqāraḍah and Investment Certificates

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In the Name of Allāh,

the Entirely Merciful, the Especially Merciful

Praise is due to Allāh, Lord of the worlds, may the blessings and peace be upon our master Muḥammad, the last of prophets, on his family, and all his companions.

Resolution No. 30 (5/4) Muqāraḍah and Investment Certificates

The Council of the International Islamic Fiqh Academy of the Organization of the Islamic Conference, holding its 4th session in Jeddah, Kingdom of Saudi Arabia, on 18-23 Jumādā al-Akhira 1408h (6-11 February 1988),

Having examined the research papers submitted to the Academy concerning *Muqāraḍah and Investment Certificates*, which were the conclusions of the seminar organized by the Academy, in collaboration with the Islamic Research and Training Institute (IRTI) of the Islamic Development Bank, on 6-9 Muḥarram 1408h (2-5 September 1987), in implementation of the Academy resolution no. 22 (10/3) at the third session, in which several members, experts and researchers from IRTI and other scientific and economic centers participated,

Having considered the importance of this issue and the need to examine it further in all aspects,

Having noted that this formula is instrumental in promoting conditions for increasing public resources through a combination of capital and ventures, Having reviewed and discussed the seminar's 10 recommendations of the seminar in light of the research papers submitted to the this and other seminars,

Resolves

First: Shariah-acceptable Forms of Muqāraḍah BONDS

1. Muqāraḍah Certificates are investment instruments which allocate the Qirad capital (Muḍārabah) by floating certificates, as a proof of the capital's ownership, on the basis of shares of equal value, registered in the name of their owners, as joint owners of shares in the venture capital or whatever shape it may take, in proportion to the each one's share It is preferable to call this investment instrument "Muqāraḍah Bond."
2. The Shariah-acceptable form, in general, for Muqāraḍah certificates, must consist of the following elements:

1. First element

The bond must represent a joint share in the project, for whose establishment or financing it has been issued. Ownership remains valid throughout the project duration from its beginning to

its end. It also confers all rights and privileges provided by Shariah to the owner over its property, e.g. sale, donation, mortgage, inheritance, etc. bearing in mind that such certificates represent the Muḍārabah capital.

1. Second element

With regard to Muqāraḍah certificates, the contract is concluded on the basis of terms defined in the prospectus, that the offer is expressed by subscription and acceptance by approval of the issuing authority.

The prospectus must provide all data required by Shariah for the Qirad contract (Muḍārabah), such as the nature of the capital, profit distribution, and other conditions related to the issue must be compatible with Shariah.

• Third element

Muqāraḍah certificates must be tradable at the end of the subscription period, since the Muḍārib has authorized to do so once the certificates have been issued, taking into consideration the following criteria prescribed by Shariah:

1. If the Qirad capital, collected from subscription prior to its use in the project, is still in cash, trading Muqāraḍah certificates is considered an exchange of money with money, governed by Shariah rules on money exchange.
2. If the Qirad capital turns into debts, Muḍārabah certificates should be traded according to the rules applied to loans.
3. If the Qirad capital is converted into mixed assets, e.g. cash, debts, goods, benefits, Muqāraḍah certificates may be traded at the price agreed upon provided the major part of the capital is in the form of goods and benefits; if it mainly consists of cash and debts, exchanging Muqāraḍah certificates must comply with Shariah rules which will be indicated in an explanatory note to be prepared and submitted to the Academy's next session. In any case, all exchanges must be recorded according to recognized standards in the registers of

the issuing authority.

1. Fourth element

The one who receives the funds collected from the underwriting of **ṣukūk**, for investment in the proposed project, is called the **Muḍārib**; his ownership in the project is limited to the extent of his subscription. Thus, he is a capital contributor in addition to his share in the profit, after it has been generated in accordance with the terms in the prospectus. The **Muḍārib**'s role in handling the underwritten funds and the project property, is that of a trustworthy person, who may not be held liable, unless his liability is permissible under Shariah rules.

3. Taking into account the foregoing rules of exchange, **Muqāraḍah** certificates may be exchanged in stock markets, if they are governed by the rules prescribed by Shariah, in accordance with the principle of supply and demand, and subject to the approval of contracting parties.

They may also be traded if, at a given period of time, the issuing authority makes an announcement or an offer to the public, by virtue of which it pledges to purchase the said certificates, operation to be funded by the profits yielded by the **Muḍārabah** at fixed price set by qualified experts in the light of conditions prevailing in the stock market and the financial situation of the project. A party other than the issuing authority, indicating its commitment to purchase the certificates using its own funds, may also make an announcement.

4. Neither the prospectus nor the **Muqāraḍah** bonds should contain a guarantee, from the fund manager, for the capital or a fixed profit or a profit based on a percentage of the If such clause is implied explicitly or implicitly, the guarantee condition is voided, and the **Muḍārib** is entitled to a profit equal to that of a similar **Muḍārabah**.
5. The prospectus or the **Muqāraḍah** bond issued pursuant to it, should not contain any statement obligating a sale, even if conditional or related to However, the **Muqāraḍah** bond may include a promise to sell and, in such case, sale is effected only on a contract basis, at a price fixed by qualified experts and agreed upon by the two parties.
6. The prospectus or **Muqāraḍah** bond issued pursuant to it, should not contain any statement that the company has fixed in If such

clause exists, the contract is null and void. Consequently,

1. The prospectus or **Muqāraḍah** bond issued pursuant to it, may not stipulate payment of a specific amount to the shareholder or to the owner of the project.

2. Only the profit is to be divided, as determined by applying rules of Shariah; that is, an amount in excess of the capital, and not the revenue or the yield. Tandeed (liquidation) or evaluation of the project in monetary terms determines the extent of profit. What is in excess of the capital after Tandeed or evaluation is the profit to be divided between the shareholders and the Muḍārib, in accordance with the terms of the contract.
3. The profit and loss account of the project must be published and under the control of shareholders.
7. Profits are due when realized and owned by liquidation or evaluation and become payable only upon If the project produces revenues or yields, its yields may be distributed. What is paid to the two parties to the contract before Tandeed (liquidation) or evaluation is considered a payment on account on the dividend.
8. There is no Shariah prohibition to include, in the prospectus or the Muqāraḍah certificates, a clause stating that at the end of each period, a certain percentage shall be deducted either from the share of the share- holder in the dividend - if periodic Tandeed is carried out - or from their share in revenue or yields distributed on account, and deposited as special reserve for contingencies, such as loss of capital.
9. There is no Shariah prohibition to include a statement in the prospectus or the Muqāraḍah certificates, about a promise made by a third party, to- tally unrelated to the two parties to the contract, in terms of legal person- ality or financial status, to donate a specific amount, without any counter benefit, to meet losses in a given project, provided such commitment is an independent one, not related to the Muḍārabah contract, in the sense that the enforcement of the contract is not conditional to the fulfillment of the promise, or that the promise underlines the terms of the contract. Hence, neither the shareholder nor the Muḍārib may invoke this clause to avoid the contract or renege on his commitment, alleging that said commitment made by the third party had been duly taken into consid- eration in the contract.

Second: The Council of the Academy considered four other formula pro- posed in the recommendations of the aforementioned seminar. They are listed as suggestions to benefit from the creation of Awqāf and their use for investment, without prejudice to the conditions related to the continuity of the Waqf. The proposed formula are as follows:

1. Establish a partnership between Waqf institutions, contributing with their real estate, and financial contributors, bringing in their money to strengthen the
2. Propose Waqf real estate as assets to businessmen using their own financial resources to develop the Waqf, for a share in the
3. Establish Awqāf (pl. of Waqf) through manufacturing contracts, concluded with Islamic Banks in return for profit sharing.
4. Rent the Waqf premises for a rental in kind, such as construction on the site only, or in addition to a small

The Council of the Academy approved this recommendation and concurred with the seminar on the need for further research and studies. It requested the Secretariat General to look into the matter and identify other forms of investment acceptable by Shariah and organize a seminar to examine the proposed forms of investment and report to the Council on its findings at its next session.

Indeed, Allāh is All-Knowing.