



## Qirad or Joint Muḏārabah in Financial Institutions (Investment Accounts)

📅 27 December, 2001 | Fiqh of Financial Transactions, Speculation Provisions

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 Muḏammad, the last of prophets, on his family, and all his companions.

**Resolution No. 123 (5/13) Qirad or Joint Muḏārabah in Financial**

**Institutions (Investment Accounts)**

The Council of the International Islamic Fiqh Academy of the Organization of the Islamic Conference, holding its 13th session in Kuwait City, State of Kuwait, on 7-12 Shawwāl 1422h (22-27 December 2001),

Having examined the research papers submitted to the Academy concerning

*Qirad or Joint Muḍārabah in Financial Institutions (Investment Accounts),*

Having listened to the discussions of the Academy's members and experts on the subject,

Resolves

## **First: Definition of Joint-Muḍārabah**

Joint Muḍārabah is a Muḍārabah in which several investors entrust, together or successively, to a natural or legal person the task of investing their funds. The person thus entrusted (Muḍārib) is, in most cases, left free to undertake investments that he deems suitable for pursuing the parties' interest. His mandate may also be restricted to a particular area of investment. The process entails explicit or implicit permission (to the Muḍārib) by funds' owners to mix their funds together or with his own funds, and sometimes the Muḍārib agrees that funds' owners may withdraw their funds, totally or partially, when they need, subject to certain conditions.

## **Second: Legitimacy of Joint-Muḍārabah**

Joint Muḍārabah is based on what the Fuqāhā have decreed as to permissibility of having several funds owners and participation of the Muḍārib with them in (providing) capital and that such Muḍārabah is not outside the permissible forms of Muḍārabah as long as it adheres to the Shariah known standards of Muḍārabah while considering what is necessitated by the funds mixing so that it is kept within the limits of Shariah requirements.

## **Third: Parties of Muḍārabah**

The investors, all, Arbāb al-Māl and the relation among them, including the Muḍārib when he mixes his funds with their funds, is fund-sharing. The party entrusted with investing their funds is the Muḍārib, whether he is a natural or legal person such as banks, and financial institutions, while the relation between him and the owners of the funds is Muḍārabah (Qirad) since he is entrusted with making the decisions on investment, management and organization. When the Muḍārib assigns a third party to invest, a second Muḍārabah then exists between the first Muḍārib and this third party, rather than an act of brokerage between this third party and the funds' owners (owners of the investment accounts).

### **Fourth: Mixing of Funds in Joint-Muḍārabah**

Nothing prevents the mixing of funds from different funds' owners with each other or with those of the Muḍārib since this is done by explicit or implicit mutual consent. Additionally, when the Muḍārabah and investment arrangement are undertaken by a legal person, there would be no fear that funds owners may be hurt as the respective shares of each of them in the capital is clearly specified while the funds mixing raises the financial capacity to expand activities and increase profits.

### **Fifth: Commitment to Muḍārabah in Specific Period**

In principle, Muḍārabah is a contract that can be terminated by either of its two parties (non-Lāzim contract). However, there are two cases in which a Muḍārabah contract can not be dissolved, namely: (1) If the Muḍārib has already commenced his work, Muḍārabah, in this case, becomes binding till the time of actual or legal liquidation, and (2) When the owner of the funds (the Rabb al-Māl) or the Muḍārib undertakes not to dissolve the contract within a specific period. In this case, he has to honor his pledge to not interrupt the investment process during that period.

### **Sixth: Setting Maturity Date for Muḍārabah**



There is no Shariah restriction on setting a specific maturity date for Muḍārabah by mutual consent of the two parties so that Muḍārabah expires at maturity with no need for termination by any of the two parties. The effect of duration setting is confined to restrict entering into new transactions after the specified time limit without preventing liquidation of the ongoing transactions.

## **Seventh: Distribution of Profits using Numar Traditional Calculation Method in Joint-Muḍārabah**

It is all right for profit (calculation and) distribution to use the *numar* traditional method, which is based on considering the principal of each investor and its period of stay in the investment (pool). This is because all the investors' funds have jointly contributed to realizing the earning according to their respective amounts and periods. Hence the entitlement of each of these funds to a share of the profit commensurate to its respective amount and period of stay is the fairest way of remunerating the investors.

This is so because the mere acceptance of partners to take part in mixed-funds or joint Muḍārabah indicates their implicit consent to forgive trivial inequities, which is difficult to account for; besides, the very nature of sharing accommodates a partner benefiting from the profits earned by the funds of his co-partner. This calculation method does not make any interruption in the (principle) sharing the profit, and it is well covered by the partners' consent of resulting proportionate shares.

## **Eighth: Forming a Voluntary Committee to Protect Rights of Funds' Owners (Shareholders Committee)**

Since the investors (funds' owners) have rights on the Muḍārib to ensure that the declared investment conditions on whose basis they entered in the mixed-fund Muḍārabah, it is not restricted in Sharia to form a voluntary committee selected from among them to safeguard these rights and observe the implementation of the agreed-upon Muḍārabah conditions without interference in the Muḍārib's investment decisions except by offering non-binding advices.



## **Ninth: Investment Trustee**

Investment trustee in this context refers to any bank or financial institution of a high financial rating, experience and solvency, entrusted with receiving the funds and the documents that represent the assets so as to keep them in its custody and prevent the Muḍārib from disposing of them contrary to the Muḍārabah conditions. Such arrangement encounters no Shariah restriction, provided that it is mentioned in the articles of incorporation or the manual (of the institution and the Muḍārabah) so that investors will have full transparency and provided that the investment trustee would not interfere in the investment decisions. His involvement will remain confined to custodianship and verification of adherence to the Shariah and technical requirements of the investment.

247

## **Tenth: Specification of a Hurdle Rate of Profit and a Muḍārib Incentive**

It is permissible in Shariah to set up a rate of expected profit and stipulate that if realized profit exceeds that rate, the Muḍārib shall be entitled to a specific share of this increment. This is to be done after specifying (in the contract) each party's share in the profit regardless of its amount.

## **Eleventh: Identification of the Muḍārib in case Muḍārabah is administered by a Legal Person (Bank or Financial Institution)**

When a legal person, such as banks and financial institutions, manages the Muḍārabah that legal person is the Muḍārib, regardless of any change that might take place in the general assembly, board of directors, or the executive management. The relationship between the owners of the funds and the Muḍārib will not be affected by such changes as long as they conform with the declared governing rules on whose basis the mixed-fund Muḍārabah is accepted (by investors). Also, the Muḍārabah should not be affected by the merger between

the legal person who manages it and another legal person. However, if one branch of the institution that manages the Muḍārabah becomes independent and obtains its own legal personality, the funds' owners will have the right to exit from the

Muḍārabah, even if the contract period has not yet expired.

Since the institution manages the Muḍārabah through its employees and workers, it should bear their expenses and all other indirect expenses because such expenses are supposed to be covered from the profit share earmarked for the Muḍārib. The Muḍārabah should not bear anything other than direct expenses that belong to it. The same applies to the expenses of tasks that are not required to be done by the Muḍārib, such as help it solicits outside the Muḍārib's staff.

## **Twelfth: Guarantee in Muḍārabah and Shariah Ruling regarding the Muḍārib's Guarantee**

The Muḍārib is a trustee, and therefore he should not guarantee any loss or damage unless such loss or damage is due to misconduct or negligence, which include violation of Shariah requirements or the terms and conditions of the investment contract, which are the basis of entering into the Muḍārabah.

This ruling holds true for the individual as well as mixed-funds Muḍārabah and does not change under a claim that it is similar to common Ijārah, or by stipulating and pledging such a guarantee in the contract. On the other hand, provision of a guarantee by a third party is permissible, in accordance with the Academy resolution no. 30 (4/5) paragraph (9).

***Indeed, Allāh is All-Knowing.***

