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The Nature of Islamic Banks and the Agreements Offered by Them

Sobitxonov Joxongir Zunnurxon o'g'li
Tashkent State University of Law The student of Master's degree Business Law

Abstract: This article explains the concept and essence of Islamic banking, its differences from traditional banks and the specifics of the services they provide. Based on the results of the analysis, suggestions and recommendations were made to improve national legislation.
At the same time, it is important to correct the misconceptions and perceptions of Islamic finance among citizens and businesses, in particular, about Islamic banks, to form a reliable fundamental knowledge in this area, as well as to develop a regulatory framework for Islamic banking and it was emphasized that this process should be done in parallel.

Keywords: Islamic bank, shariah, riba, gharar, maisir, murabaha, salam, istisna, ijarah, muzaraba, musharaka.

Introduction

Islamic banks operate as part of Islamic finance in accordance with Shariah law, and ensuring justice and equality in all transactions is a prerequisite.

This is evident in the prohibition of "riba" (usury), "gharar" (the occurrence of uncertainty / ambiguity as a result of a breach of the information balance, i.e. one of the parties to the contract is at great risk or loss as a result of not having complete information on the contract), "maisir" (gambling and speculation / speculation) and in dealing with money.

In addition to the above prohibitions, one of the most important distinctive features of Islamic banks is that they must be secured by assets.

In the traditional form of financing, banks and financial institutions work only with monetary units. Accordingly, it is forbidden for them to trade in goods. For example, according to Article 7 of the Law on Banks and Banking, banks are not allowed to engage in direct production, trade, insurance activities and other activities not related to the implementation of financial transactions under the legislation on banks and banking. [1].

In Islamic banks, however, money is not recognized as an object of trade because it has no intrinsic value, it is merely a medium of exchange.

Islamic banks make money by selling something that has an intrinsic value. Therefore, unlike traditional banks, in Islam, financing is asset-based.

MATERIAL AND METHODS

In the process of analysis, using the methods of systematic analysis, generalization, comparative-legal analysis, logical, sociological, system-structural, formal-legal study, the content and essence of the following issues are revealed, specific aspects to be considered in the development of normative legal documents and suggestions for legislation.

Is there any difference between Islamic banks and traditional banks? Are they simply a

masked form of traditional banks, their usury-based activities?

Do Islamic banks ignore Shariah goals and manipulate Islamic terms and forms of financing to make a profit?

Are Islamic banks the savior of all problems? Are they a charity?

If Islamic banks cannot lend money at interest like traditional banks, then how do Islamic banks make money?

How are the services provided by Islamic banks different from the services provided by traditional banks?

DISCUSSION AND RESULTS

As Islamic banking is a new institution for Uzbekistan, people may have various questions and misconceptions. Initially, it is advisable to clarify these issues.

1. Is there any difference between Islamic banks and traditional banks? Are they simply a masked form of traditional banks, their usury-based activities?

Islamic banks do not engage in “ribo” (usury) or “gharar” (excessive uncertainty) operations, including borrowing and selling illegal (haram) products.

The Islamic Shari'ah considers the income obtained as a result of the above practices to be the consumption of people's wealth in a unfair way.

The scope of Islamic banking is based on financing or investing in areas that are not prohibited by Sharia.

In addition, Islamic banks finance customers not through the money itself, but through financial transactions such as murobaha, rent, salam, turning it into a commodity.

This means that the Islamic banking system differs from traditional banks in the types of contracts, methods of financing, raising and investing money, and other practices.

Because Islamic banks do not lend and borrow at interest, the risks associated with contracts are radically different from the risks of interest-bearing loan agreements with traditional banks [2, P.40-41].

2. Do Islamic banks ignore Sharia goals and manipulate Islamic terms and forms of financing to make a profit?

It is known that the Shari'ah aims at the protection of five things, namely religion, soul, generation, intellect and property. Islamic banks consider the protection and preservation of property, which is one of them, as their priority.

In addition, Islamic banks provide halal food through:

providing Islamic financial services that are far from forbidden (haram) and thus protecting people from sins;

to meet people's needs for housing, cars, household appliances and the like in a lawful way;

to help people invest their free funds in various projects through interest-free and non-gambling means;

Contribute to the development of society by lending to people with limited incomes hasan (interest-free loans), zakat, donations, proceeds from illegal activities and fines levied on customers who do not pay their dues on time.

Also all the terminology of Islamic banks and funding is derived from books on Islamic

jurisprudence, fatwas and decisions of Islamic jurisprudence academies, sharia conclusions of sharia supervisory boards, and sharia standards approved by the AAOIFI (Accounting and Auditing Organization for Islamic Financial Institutions). [3, P.41-44].

In the above two situations, we discussed the views put forward by those who are skeptical of Islamic banks, and found that such views are unfounded.

Contrary to these views, there are those who see Islamic banks as charitable organizations, who see them as the solution to all problems.

3. Are Islamic banks the savior who solves all problems? Are they a charity?

One of the misconceptions about Islamic banks is that Islam has completely forbidden usury, which means that Islamic banks should give money for free.

In fact, lending money at interest is strictly forbidden in our religion, which means that if an Islamic bank lends and takes something in return, then it is usury. However, if an Islamic bank lends and does not receive any payment in return, then it is clear that such (commercially) useless practice is not of interest to any entrepreneur.

If there are those who say that Islamic banks should operate as a charity, then if they imagine it a little, they will realize that the money raised for charity will run out in a short time and will not be recycled until someone else donates.

It should be noted that Islamic banks are also commercial organizations and are established for financial gain. It should not be forgotten that they, like traditional banks, have their own shareholders, investors.

4. A legitimate question arises here, if Islamic banks cannot lend money at the same interest rate as traditional banks, then how will Islamic banks earn?

On the one hand, the Islamic Bank manages the funds of investors on the basis of trust and partnership, on the other hand, it directs these funds to finance various business projects of individuals and legal entities, and thus earns income. The income benefits both the bank's shareholders (in the form of dividends), investors (in the form of profits), the state (in the form of taxes) and people in need of social assistance (in the form of zakat).

The Islamic Bank finances its activities from the following sources:

1) At the expense of own shareholders.
2) By issuing and selling securities (sukuk).
3) At the expense of accepting capital deposits (mudoraba).
4) At the expense of accepting trust-based deposits (wakala).
5) At the expense of time deposits.

The Islamic Bank earns income through the provision of certain traditional banking services (e.g., retail services such as money transfers, payments, currency exchange) that are not in accordance with Sharia, as well as through various financ

1) By financing the purchase of property (assets) (for example, a litigation agreement).
2) Through the practice of rent (Islamic leasing).
3) Investment activity, ie through direct investment in various enterprises (joint ventures).
4) Financing large projects, such as construction-related projects, through an exclusion contract.

5) By financing projects in the field of agriculture (salam agreement).
6) Through other types of financial transactions (for example, financing through the use of complex products consisting of a set of different Islamic financial products).[4].

It should be noted that Islamic banks, like traditional banks, carry out their activities through the conclusion of certain types of contracts and agreements. In the Qur'an, Allah says:

"O believers! Honour your obligations!" (Surat Al-Ma'idah 1.) This verse of the Qur'an can be considered the basis for agreements in Islam. The contract is called "aqd" in Arabic, which means "to tie", "knot" or "join". In Islam, contracts are given special importance, so all contracts in the field of finance must be concluded in accordance with the rules of Sharia.

In turn, the question arises as to what requirements a contract must meet in order for it to be in accordance with Sharia.

In general, there must be 6 basic conditions for any contract to be in accordance with Sharia law:

1. Mutual consent (consensus).
   Consensus means that the parties have reached a mutual agreement. In this case, the parties will have to agree on the type of contract and its main terms.
2. Competence.

   The person entering into the contract must have the right to enter into the contract. Minors and incapacitated persons do not have the ability to enter into civil law relations, and therefore the transactions concluded by them are not valid.
3. The ability of both parties to comply with the terms of the contract.
   If a person is unable to fulfill his obligation under the contract, the contract will not be concluded. For example, it is not possible to sell fish in the river because the seller is not able to present the fish to the buyer after it has been sold. However, it is permissible to sell fish in the aquarium, because the seller has a commercial product (fish) and has the opportunity to present it to the buyer.
4. The performance and purpose of the contract must be in accordance with the Shari'ah.

It is against the Shari'ah to make an agreement on the basis of usury. Also, a contract to hire someone to steal someone's property would be illegal because the purpose of the contract is unreasonable.

Through the above brief analysis, we have gained an understanding of the nature and purpose of Islamic banks and their differences from traditional banks. Below, we will focus on the services they provide, that is, the specifics of the contracts offered.

The contracts offered by Islamic banks are mainly divided into three major groups. These are trade-based agreements (murobaha, salam, istisna), skepticism-based agreements (mushoraka, muzoraba) and lease agreements. There are also other types of contracts as well as complex contracts with a combined view of different contracts, and the article only discusses the specifics of contracts that are often used by Islamic banks.

1. *Murobaha (purchase and sale at an agreed price).* Murobaha is an agreement between one party (seller) and another party (buyer) that reflects the purchase and sale of goods, taking into account the seller's premium on the price of the goods at the agreed price. Murobaha is broadly defined as the financing of assets through the purchase and sale of assets.

Under the terms of the lottery agreement, one of the parties, the bank, at its own expense, but

acting on behalf of the buyer, purchases a particular commodity as described in the order submitted by the buyer. The buyer also provides the bank with the price of the goods, their availability in the market and other information. With the purchase of the goods ordered by the bank by a buyer from a third party, the settlement agreement enters into force. The main condition for the conclusion of the contract and the subsequent transfer of ownership of the subject of the contract is the actual ownership of the goods by the seller. [5, P.134].

These types of contracts also have the following specific features.

Murobaha is not an interest-bearing loan, but the sale of a product at a premium by agreement with the customer by extending the payment period (in which case the premium agreed with the customer, ie the profit of the financial institution is added to the price of the product).

Murobaha is used only to purchase a specific product (including spare parts or raw materials needed for production) that the customer needs. Muroba cannot be used to pay for the price of a product that the customer has previously purchased, to pay the worker / employees monthly, or to make utility payments.

The financial institution must have the product being sold to the customer, i.e. it cannot sell the product that it does not have. The ownership of the product by the financial institution means that the financial institution is at risk for a short period of time before the product is purchased and delivered to the customer, ie the financial institution bears the risk of any loss of the product during this period. [6].

According to the above analysis, one of the main requirements for the correctness of the purchase in this case is that the goods must be at the disposal of the seller. So there must be commercial goods. It is not possible to sell a product that is not available.

The seller must have ownership of that product. Also, a product is available and cannot be traded even if the seller owns the product but is unable to dispose of it (e.g. deliver the goods to the buyer).

As an exception to the above general rules, the Shari'ah allows two types of trade, namely salam and exception contracts. Both of these are specific trade agreements, and some of the above terms may or may not be found.

2. Salam (pre-financing). Salam refuses to sell the goods by paying the value of the goods in cash and delaying its delivery. Under the salam contract, one party (bank) gives the other party (executor) a certain amount equal to the value of the goods, which in turn undertakes to deliver the goods within a certain period, according to a detailed list agreed by the parties.

Why does a bank that is not a trading or manufacturing enterprise and is essentially a financial intermediary need this commodity?

It is known that it is impossible to sell this commodity at once, because the commodity itself is not yet available.

In this case, the executor has only a debt obligation, and according to Muslim jurisprudence, the debt can not be the subject of trade.

As with the murabba, the solution to such a situation is to enter into another contract called a similar salami, in which the bank participates as a supplier of the goods. The bank's claim to the customer in the salam contract may be an obligation under any other transaction, such as a murabbaha obligation.

The interest of the bank in concluding a salam contract is that the bank can buy the goods it buys at a lower price than in the market. The bank assumes the risk that the goods will fall in

price in the market until the customer fulfills his obligations under the contract. [7, P.137-138].

The conditions governing the sale of salami are quite strict and imply the following peculiarities.

1) For the contract to be valid, the buyer must pay the seller in full the price of the goods at the time of signing the purchase agreement. Because if the buyer doesn't pay for the product, it's as if the borrower is selling the item on credit. Such trade is forbidden in our Shari'ah. In addition, the main wisdom of allowing a salute is to satisfy the seller's need for money at the time of sale. If payment for the product is not made in full, the transaction loses its substance.
2) Salam sale can only be applied to products whose quality and are accurately measured. Items that cannot be accurately measured in quality and quantity cannot be purchased with salami.

5. Salam do not apply to items that must be delivered immediately upon signing the contract. For example, if gold is being purchased in exchange for silver, both must be delivered at the same time as required by Shariah.

In this case, the sale of salami does not work. Also, if wheat is being exchanged for barley, both products must be delivered at the same time for the trade to be fair. Here, too, the sale of salam is not allowed.

6) It is not permissible to apply a salam contract to products that are currently available. Because by the end of the specified period, these products may be destroyed. The sale of salami is permissible for products that are not currently available, but will be available in the future, with certain qualities. [8, P.129-130].

One thing to note here is that salam contracts are used by Islamic banks mainly to pre-finance crops in agriculture. Therefore, some people may think that the salam contract is the same as the traditionally applied futures contract. However, at the time of the transaction in the salami trade, the price will have to be clearly defined. In a futures contract, the price can be linked to future market prices.

3. Istisna (construction or production financing). The Istisna is a construction or manufacturing agreement, which is a type of contract in which a product is purchased and sold before the appearance of a product, such as a salam contract. In this case, the customer gives the customer / buyer an order to the manufacturer (or builder) to produce a specific product (or build a structure).

An istisna agreement arises if the manufacturer undertakes to produce the ordered product from its own raw materials. In order for an istisna to be made, the price of the product to be produced must be agreed upon by the parties, and an agreement must be reached on all the features of the product.

An istisna contract imposes liability on the manufacturer to produce the product, but may terminate the contract if one of the parties notifies the other party before it commences production. However, the contract cannot be unilaterally terminated once the manufacturer has started production of the product. [9].

Istisna can also be used as a means of financing (e.g. when purchasing real estate). If the client owns his own land and is looking for funds to build housing, the financial institution can build housing on that land under an istisna agreement. If the client does not own the land and he also wants to buy the land, the financial institution can also build and sell a house on a

certain plot of land.

In the istisna contract, the price does not have to be paid in advance or even at the time of delivery. The payment period may be determined by agreement of the parties. The parties may draw up a payment schedule and the buyer may pay in installments according to that schedule.

The bank does not have to build the house itself. It may build a dwelling by entering into a parallel istisna contract with a third party or by ordering another contracting organization. In both cases, the entity can calculate the cost of the exclusion contract, calculating all costs and retaining sufficient profits.

The client can start paying from the date of signing the istisna contract and can continue to pay both during the construction process and after the accommodation is completed and handed over to the client. In order to guarantee the execution of payments, the right of ownership of the dwelling or land plot or the right of ownership of another property of the client may be pledged to the financial institution until the final payment is made.

The istisna agreement can also be used in the field of project financing. For example, a customer may want to set up a telephone production line at his or her own company, and the financial institution or bank may be obliged to provide the equipment needed for this. The istisna agreement can also be used to finance bridges, roads and similar construction projects [10, P.138-139].

4. Rent. (leasing).

In Islamic jurisprudence, the term rent is used in two cases. The first means “using the services of a hired person for a fee”. This type of lease includes any transaction in which one party hires the other party (i.e. its service).

The second type of lease concerns property, not people’s services. Lease in this sense means “transferring a property to another person in exchange for rent”.

This article discusses the second type of lease because this type of lease is more about investing and financing.

The rules of lease, in the sense of leasing, are very similar to the rules of trade, because in both cases something is given to another person for a certain value. The main difference between a lease and a sale is that in a lease the ownership of the property passes to the buyer, while in a lease only the right to use the property passes to the lessee [11, P.110-111].

By the time interest-free financial institutions began operating, leasing was widely used as a method of financing around the world. Initially, Islamic leasing was adopted and used by traditional banks, but most of them did not pay attention to the fact that “financial leasing” has more similarities to the practice of interest-bearing finance than practical (real) leasing. Therefore, they began to use the lease agreements samples used by traditional financial institutions without any changes, even though some of their terms were not in accordance with Sharia.

Below we show the main differences between modern financial leasing and rent allowed in Islam.

Unlike a sales agreement, a lease agreement can also be entered into on the condition that it starts on a specific date in the future. This means that even though the Shari'ah forbids the pre-sale of something, it is permissible in the lease, in which case the payment of the rent also begins after the leased property has been handed over to the lessee.

In most types of financial leasing, the lessor's financial institution purchases the leased property through the lessee himself. In this case, the lessee buys the property on behalf of the lessor, and the lessor transfers the value of the property to the seller (i.e. supplier) directly or through the lessee.

Some lease agreements are effective from the date the lessor makes the payment, regardless of whether the lessee has accepted the property or not. This means that the lessee's liability begins before the lessee accepts the leased property. However, this is not allowed in the Shari'ah, because it is like taking rent for the money given to a customer, which is the same as usury.

According to Sharia, the payment of rent begins after the lessee receives the property, not from the date of payment for the leased property. If the supplier delays the delivery of the goods after receiving full payment, the lessee will not be liable for this period. This is the right way. [12].

5. Muzoraba (reliable financing).

Muzoraba implies in the active operations of Islamic banks that the bank will invest in any investment projects. In accordance with the principles underlying this method of financing, the financing of the project, its implementation and profitability is the responsibility of the financier, i.e. the bank [13, P.130].

In Islamic finance, an agreement aimed at benefiting from the investment of one party and the entrepreneurial ability and experience of the other party is called muzaraba. The agreement in Islamic banks can be divided into 3 main parts:

1. According to the freedom of the negotiator in the management of capital

a) Absolute muzaraba.

   In this type of agreement, the borrower will be able to invest freely in the desired field and without any intervention of the owner of the capital. These types of transactions are a dominant form of Islamic banking. Because the bank tries to be completely free for its depositors to use their money in areas that are in line with Sharia law.

b) Limited muzaraba.

   In these types of contracts, the investor sets certain conditions and restrictions on the lease. These requirements may also apply to the area in which the investment is made, the method of asset management, the term of the investment, as well as the place where the investment is made and the persons who benefit from it.

2. Depending on how the contract is concluded

a) A muzaraba ending in possession.

   In this type of negotiation agreement, the investor sells his share in the project to the negotiator in installments or for a one-time payment. It's like a musharaka agreement that ends with ownership.

b) A muzaraba that does not end with possession.

   This is a common agreement, which provides for the return of the investment to its owner at the end of the investment period and after the profits are distributed among the parties in the agreed ratio.

3. According to the number of participants

a) Two-sided or simple muzaraba.

In this contract, one person makes the investment and the other person manages / manages the project, i.e. the agreement is only signed between the two parties. But the use of this type of negotiation deal in Islamic banks is a bit of a challenge. Because in most cases, the funds of a single investor are not enough to fully finance a large project.

b) Collective or joint bargaining muzaraba agreement.

This agreement is one of the most common in Islamic banks. In this case, the Islamic bank (as a muzorib) invites the fund owners to invest their capital, and then the Islamic bank (as an investment owner or as a representative of the fund owners) states that it intends to invest in other entrepreneurs. The profit is distributed among the three parties in an agreed ratio. Losses and losses will be borne by the owners of the funds. [14].

6. Mushoraka (partnership).

A partnership is a joint business / property partnership between two or more parties. In this case, the partners invest a certain amount of money or property in the form of a common business, and the benefits of this business are distributed by agreement of the parties, and the losses are distributed in proportion to the share of each partner in the total capital.

In shariah interest financing is a violation of the principle of fairness, which is unfair to one of the parties, because it is unfair to demand a predetermined income even if the borrower loses, and it is unfair for the lender to give a predetermined income even if the borrower earns more than expected. In mushoraka, the financing party is directly dependent on the business in which the money is invested, and the more financially successful the business, the more income the financing party receives. So is the damage. This is a fair deal for both parties.

The share of the parties in the profit must be agreed at the time of concluding the contract, otherwise the contract will not be legally valid. The profit share for each partner is distributed according to the actual profit received, not in proportion to the investment he has made in the business (i.e., if a profit is made, he is given a pre-agreed share of the profit, if no profit is made, the share is not distributed). It is also not possible to agree on a fixed amount of payments to any partner or to pre-determine the amount of profit based on his investment in the business.

If one of the partners is required to make a fixed payment or a payment based on the investment made in the business, then at the end of the partnership agreement, these payments are deducted from the partner's share of profits, or if no profit is made, the payments are made by that partner. a clause on compensation should be included in the contract [15].

CONCLUSION

In conclusion, Uzbekistan needs not only to develop a regulatory framework governing the activities of Islamic banks, but also to promote the formation of a correct understanding of the essence of Islamic finance, Islamic banking among the citizens and businesses.

Also, in order to regulate the establishment, operation, liquidation, control and taxation of Islamic banks,Is is necessary to amend the Law “On the Central Bank”, the Law “On Banks and Banking", the Tax Code and making the new Law “On Islamic Banks”.

In addition, it is proposed to amend the Civil Code to regulate contractual and legal issues related to Islamic finance, to establish the basis for new obligations, as well as to develop a draft law “On Islamic Financial Services”.

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