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<u>Q NO.4 (PART A)</u>

Basic rules of MUSHARAKAH?

<u>Basic Rules Of MUSHARAKAH:</u>

MUSHARAKAH or SHIRAKAT - UL AMWAL is a Relationship established by the parties through a mutual contract. Therefore, it goes without saying that all the necessary ingredients of a valid contract must be present. For example, parties should be capable entering into a contract; the contract must take place with free consent of the parties without any duress, fraud or misrepresentation, etc.

But there are some ingredients, which are peculiar to the contract of "MUSHARAKAH". They are summarized here:

<u>Basic Rules Of Capital:</u>

The capital in a MUSHARAKAH agreement should be:

A) ***<u>Quantified (MA'LOOM)</u>:*** *Meaning how much etc.*

B) ***<u>Specified (MUTA'AIYAN)</u>:*** *Meaning specified currency etc.*

C) ***<u>Not necessary be merged:</u>*** *the mixing of capital is not required.*

D) ***<u>Not necessary be liquid form:</u>*** *Capital share may be contributed either in cash or liquid or in the form of commodities. In case of a commodity, the market value of the commodity shall determined the share of partner.*

Management Of MUSHARAKAH:

The normal principle of MUSHARAKAH is that every partner has a right to take part in its management and to work for it. However, the partners may agree upon a condition that the management shall be carried out by one of them, and no other partner shall work for the MUSHARAKAH. But in this case the sleeping partner shall be entitled to the profit only to the extent of his investment.

However, if all the partner agree to work for the joint venture, each one of them shall be treated as the agent of the other in all matter of business.

Basic Rules Of Distribution Of Profit:

1. *The ratio of profit for each partner must be determined in proportion to the actual profit accrued to the business and not in proportion to the capital investment.*
2. *It is not allowed to fix a lump sum amount for anyone of the partner or any rate of profit tied up with his investment.*
3. *If both partners agree that each will get percentage of profit based on his capital percentage, whether both work or not, it is allowed.*
4. *It is allowed that if a partner is not working, his profit share can be Established as less than his capital share.*

Basic Rules Of Distribution Of Loss:

All scholars are unanimous on the principle of loss sharing in SHARAIH based on the saying of SYEDNA IBN TALIB that is follows:

*"**Loss is distributed exactly to the ratio of investment and the profit is divided according to the agreement of the partners."***

Therefore, the loss is always subject to the ratio of investment e.g. if 'A' has invested 40% of the capital and 'B' 60%, they must suffer the loss in the same ratio, not more, not less.

Q NO.4 (PARRT B)

List Elements Of A Valid Sale:

A valid sale has four big elements.

1. ***Contract or Transaction (adq)***
2. ***Sold Goods or Subject Matter (Mube'e)***
3. ***Price (Thaman)***
4. ***Delivery or Possession (Qabza)***

Q NO.3 (PART A)

Comparing Condition Of A Valid Sale And ISTISNA:

ISTISNA CONDITION = VALID SALE CONDITION

1. The subject of ISTISNA is =1.sale must be non - contingent: the

always a thing which needs = delivery of a product to the buyer must

manufacturing =be certain and should not depend on a

2. Manufacturer use his own =contingency or chance.

material =2. Unconditonal contract; the sale must be

3. Quality and quantity should =unconditional e.g 'A' buys a car from 'B'

be agreed in absolute term =with a condition that B will employ his

4. Purchase price should be fixed=son in his firm

with mutual consent =3. Under reasonable condition; the

5. The place of delivery is stated =condition which do not go against the

if the commodity needs loading =contract e.g 'A' tells 'B' to deliver the

Or transportation expenses =goods within a month,the sale is valid

6. The material should be supplied=4.Under unreasonable condition but

by makers, if they are supplied by =in a market practice; if a sale is under

The buyer, the contract is regarded =unreasonable condition but is in

as AL IJARAH and not ISTISNA =market practice, the sale is valid.

=5.sale must be immediate. The sale must be instant and absolute. Thus a sale attributed to a future date or a sale contingent on a future event is void. If the parties wish to effect a valid sale.

<u>Q NO.3 (PART B)</u>

<u>Parallel ISTISNA:</u>

An ISTISNA contract in which the buyer (manufacture ordered, or ALMUSTASNI) doesn't set a condition in the contract obliging the seller(AL - SANI) to undertake manufacturing the subject matter (commodity, asset, item, etc) by himself. In this sense, the seller is legally or contractually allowed to fulfill his contractual obligations by entering into a second ISTISNA contract with third party Seller, in which he becomes a buyer. The second contract is referred to as ***<u>PARALLEL ISTISNA.</u>*** *The paralleling practice is similar to offsetting in conventional transactions.*

Parallel ISTISNA is also known as ***<u>Back - to Back ISTISNA</u>***

<u>Example Of Parallel ISTISNA.</u>

Infrastructure projects are the main example of parallel ISTISNA contract which includes construction pf power plants.,

Factories, roads, schools, hospitals, buildings,and residential developments.

Q NO.2 (PART B)

Scope And Potential Of MUDARABAH:

ANSWER:

Scope Of MUDARABAH For Banking System:

MUDARABAH as a mode of finance used by the Islamic Banks for the following purpose.

Relationship With Depositors:

.The depositors provide moneys to the banks as RABB - UL MAL to be invested by the Banks as MUDARIB on the basis of profit and loss sharing on pre agreed specific ratio;

Islamic Banks can also use this mode through providing capital in a business and sharing in the profit with pre - agreed ratio;

. Large enterprise financing;

. project finance

. Business ventures

. private equity

. Depositor And Islamic Bank Relationship:

MUDARABAH is used by Islamic

Banks for taking deposit from depositors;

The depositors provide moneys to the Banks as

RABB - UL MAL to be invested by the Bank as MUDARIB on the basis of profit and loss sharing on pre agreed specific ratios:

Q NO.2 (PART A)

Mudarabah is a sort of partnership. Both parties participate in the profit that is going to be generated by the financed activity. The parties are free to agree on the ratio of profit distribution (70% - 30% or 50% - 50% or any other). However, unless they agree at the initiation of the contract, the latter is, from Shari'ah point of view void. Furthermore, it is a Shari'ah requirement in mudarabah that all of the capital has to be paid at the signing of the contract. It is not allowed to pay it later or on installments basis. Rub-ul-mal can impose any (reasonable) instructions and conditions on the agent, if they are acceptable to the latter they become part of that contract. Once operation starts, the financier has no right to interfere in the day to day business. If agent fails to follow the instructions and satisfy the conditions, then he is liable for loss of capital. The mudarib don't guarantee capital nor profit to the financier. Rather he or promises good conducted honesty. This is the source of moral hazard and *adverse selection in mudarabah. The agent in Mudarabah is entitled to nothing but his share of profits. If he (or the financier) receives any income before liquidation, it is always subject to adjustment when financial results are declared. Both parties are required to avoid any conditions in the contract that can fade away the particular nature of the mudarabah being a "company in profit". For example, if one requested that he gets the first $ 500.00 of profits and the rest is for his partner then the contract is void. This is because it is quite possible that the whole profit will only be $ 500.00.*

Q NO.1 (PART A)

how can modern banks use Salam to offer products to a wide range of customers in different fields? Briefly explain and give examples of actual banks and products in Pakistan who are offering Salam based financing

ANSWER:

In sharia it has been allowed to full fill the needs of the traders. Its is basically the mode of financing for the small traders and customers. This mode of financing can be used by the *modern banks and institution to offer a products to a wide range of customers in different fields such a Farmers etc. the bank will advance the cash to their customers on the conclusion of the contract of delivery of goods in during the harvest period (which is known as future date). It is a structured financing that can help customers to move away from informal financing means such as money lender, whereby they are charged with a heavy interest on a compounding basis. As pointed out earlier, the price in Salam may be fixed at a lower rate than the price of those commodities delivered at the spot. In this way, the difference between the two prices may be a valid profit for the banks or financial institutions.*

Following are the points shows how banks uses Salam to offer a product to ide customers

Step 1: Submission of application form with necessary documents i.e. identification credential, land ownership, other sources of income and past production volume to the bank for credit screening.

Step 2: The bank will offer a purchase price to the customers based on the credit worthiness evaluation, crop quality, delivery date, etc.

Step 3: The client accepts the offer and sign a bai Salam contract *stating the predefined products, delivery date, product quality between the customer and the bank*

Step 4: The bank pays the settlement price on the spot as defined in the contract

Step 5: The client deliver the product to the bank on the agreed specification and pre-defined delivery date and venue

Step 6: The bank sells the product matter in the market at the selling price

Note:- the selling price will be higher than the purchase price in which the difference will be the bank's

In the original mode of Salam financing, the bank will receive commodity

from the client and not money. Being conversant with dealing in money only, it seems to be cumbersome for them to receive different commodities from different client and to sell them in the market. They cannot sell those commodities before they are actually delivered to them,

because it is prohibited in Shariah. Besides, the banks will also facing a problem of storage and maintaining the commodity.

<u>Q NO.1 (PART B)</u>

Briefly explain and give examples of actual banks and products in

Pakistan who are offering Salam based financing

ANSWER: Seller agrees to supply specific goods to the buyer at a future date in exchange of an advanced price fully paid at spot. Price is in cash but the supply of goods is deferred. ***Salam*** *is a sale whereby the seller undertakes to supply some specific goods to the buyer at a future date in exchange of an advanced price fully paid at spot. The contract of Salam creates a moral obligation on the Salam seller to deliver the goods. The best examples of banks and product that are using Salam based financing HBL BANKS MEEZAN BANKS UBL and the products that are used for the Salam based financing are machinery , cars etc.*