# 2

# Musharakah

'*Musharakah*' is a word of Arabic origin which literally means sharing. In the context of business and trade it means a joint enterprise in which all the partners share the profit or loss of the joint venture. It is an ideal alternative for the interest-based financing with far reaching effects on both production and distribution. In the modern capitalist economy, interest is the sole instrument indiscriminately used in financing of every type. Since Islam has prohibited interest, this instrument cannot be used for providing funds of any kind. Therefore, musharakah can play a vital role in an economy based on Islamic principles.

'Interest' predetermines a fixed rate of return on a loan advanced by the financier irrespective of the profit earned or loss suffered by the debtor, while musharakah does not envisage a fixed rate of return. Rather, the return in musharakah is based on the actual profit earned by the joint venture. The financier in an interest-bearing loan cannot suffer loss while the financier in musharakah can suffer loss, if the joint venture fails to produce fruits. Islam has termed interest as an unjust instrument of financing because it results in injustice either to the creditor or to the debtor. If the debtor suffers a loss, it is unjust on the part of the creditor to claim a fixed rate of return; and if the debtor earns a very high rate of profit, it is injustice to the creditor to give him only a small proportion of the profit leaving the rest for the debtor.

In the modern economic system, it is the banks which advance depositors' money as loans to industrialists and traders. If industrialists having only ten million of their own, acquire 90 million from the banks and embark on a huge profitable project, it means that 90% of the project has been created by the money of the depositors while only 10% has been created by their own capital. If this huge project brings enormous profits, only a small proportion i.e. 14 or 15% will go to the depositors through the bank, while all the rest will be gained by the industrialists whose real contribution to the project is not more than 10%. Even this small proportion of 14 or 15% is taken back by the industrialists, because this proportion is included by them in the cost of their production. The net result is that all the profit of the enterprise is earned by the persons whose own capital does not exceed 10% of the total investment, while the people owning 90% of the investment get no more than the fixed rate of interest which is often repaid by them through the increased prices of the products. On the contrary, if in an extreme situation, the industrialists go insolvent, their own loss is no more than 10%, while the rest of 90% is totally borne by the bank, and in some cases, by the depositors. In this way, the rate of interest is the main cause for imbalances in the system of distribution, which has a constant tendency in favor of the rich and against the interests of the poor.

Conversely, Islam has a clear cut principle for the financier. According to Islamic principles, a financier must determine whether he is advancing a loan to assist the debtor on humanitarian grounds or he desires to share his profits. If he wants to assist the debtor, he should resist from claiming any excess on the principal of his loan, because his aim is to assist him. However, if he wants to have a share in the profits of his debtor, it is necessary that he should also share him in his losses. Thus the returns of the financier in musharakah have been tied up with the actual profits accrued through the enterprise. The greater the profits of the enterprise, the higher the rate of return to the financier. If the enterprise earns enormous profits, all of it cannot be secured by the industrialist exclusively, but they will be shared by the common people as depositors in the bank. In this way, musharakah has a tendency to favor the common people rather than the rich only.

This is the basic philosophy which explains why Islam has suggested musharakah as an alternative to the interest based financing. No doubt, musharakah embodies a number of practical problems in its full implementation as a universal mode of financing. It is sometimes presumed that musharakah is an old instrument which cannot keep pace with the ever-advancing need for speedy transactions. However, this presumption is due to the lack of proper knowledge concerning the principles of musharakah. In fact, Islam has not prescribed a specific form or procedure for musharakah. Rather, it has set some broad principles which can accommodate numerous forms and procedures. A new form or procedure in musharakah cannot be rejected merely because it has no precedent in the past. In fact, every new form can be acceptable to the Shari'ah in so far as it does not violate any basic principle laid down by the Holy Qur'an, the Sunnah or the consensus of the Muslim jurists. Therefore, it is not necessary that musharakah be implemented only in its traditional old form.

The present chapter contains a discussion of the basic principles of musharakah and the way in which it can be implemented in the context of modern business and trade. This discussion is aimed at introducing musharakah as a modern mode of financing without violating its basic principles in any way. Musharakah has been introduced with reference to the books of Islamic jurisprudence, and basic problems which may be faced in implementing it in a modern situation. It is hoped that this brief discussion will open new horizons for the thinking of Muslim jurists and economists and may help implementing a true Islamic economy.

## The Concept of Musharakah

'Musharakah' is a term frequently referred to in the context of Islamic modes of financing. The connotation of this term is a little limited than the term "*shirkah*" more commonly used in the Islamic jurisprudence. For the purpose of clarity in the basic concepts, it will be pertinent at the outset to explain the meaning of each term, as distinguished from the other.

"Shirkah" means "sharing" and in the terminology of Islamic Fiqh, it has been divided into two kinds:

(1) ***Shirkat-ul-Milk***: It means joint ownership of two or more persons in a particular property. This kind of "shirkah" may come into existence in two different ways: Sometimes it comes into operation at the option of the parties. For example, if two or more persons purchase an equipment, it will be owned jointly by both of them and the relationship between them with regard to that

property is called "shirkat-ul-milk." Here this relationship has come into existence at their own option, as they themselves elected to purchase the equipment jointly.

But there are cases where this kind of "shirkah" comes to operate automatically without any action taken by the parties. For example, after the death of a person, all his heirs inherit his property which comes into their joint ownership as an automatic consequence of the death of that person.

(2) ***Shirkat-ul-'Aqd:*** This is the second type of Shirkah which means "a partnership effected by a mutual contract". For the purpose of brevity it may also be translated as "joint commercial enterprise."

Shirkat-ul-'aqd is further divided into three kinds:

(i) *Shirkat-ul-Amwal* where all the partners invest some capital into a commercial enterprise.

(ii) *Shirkat-ul-A'mal* where all the partners jointly undertake to render some services for their customers, and the fee charged from them is distributed among them according to an agreed ratio. For example, if two persons agree to undertake tailoring services for their customers on the condition that the wages so earned will go to a joint pool which shall be distributed between them irrespective of the size of work each partner has actually done, this partnership will be a shirkat-ul-a'mal which is also called Shirkat-ut-taqabbul or Shirkat-us-sana'i' or Shirkat-ul-abdan.

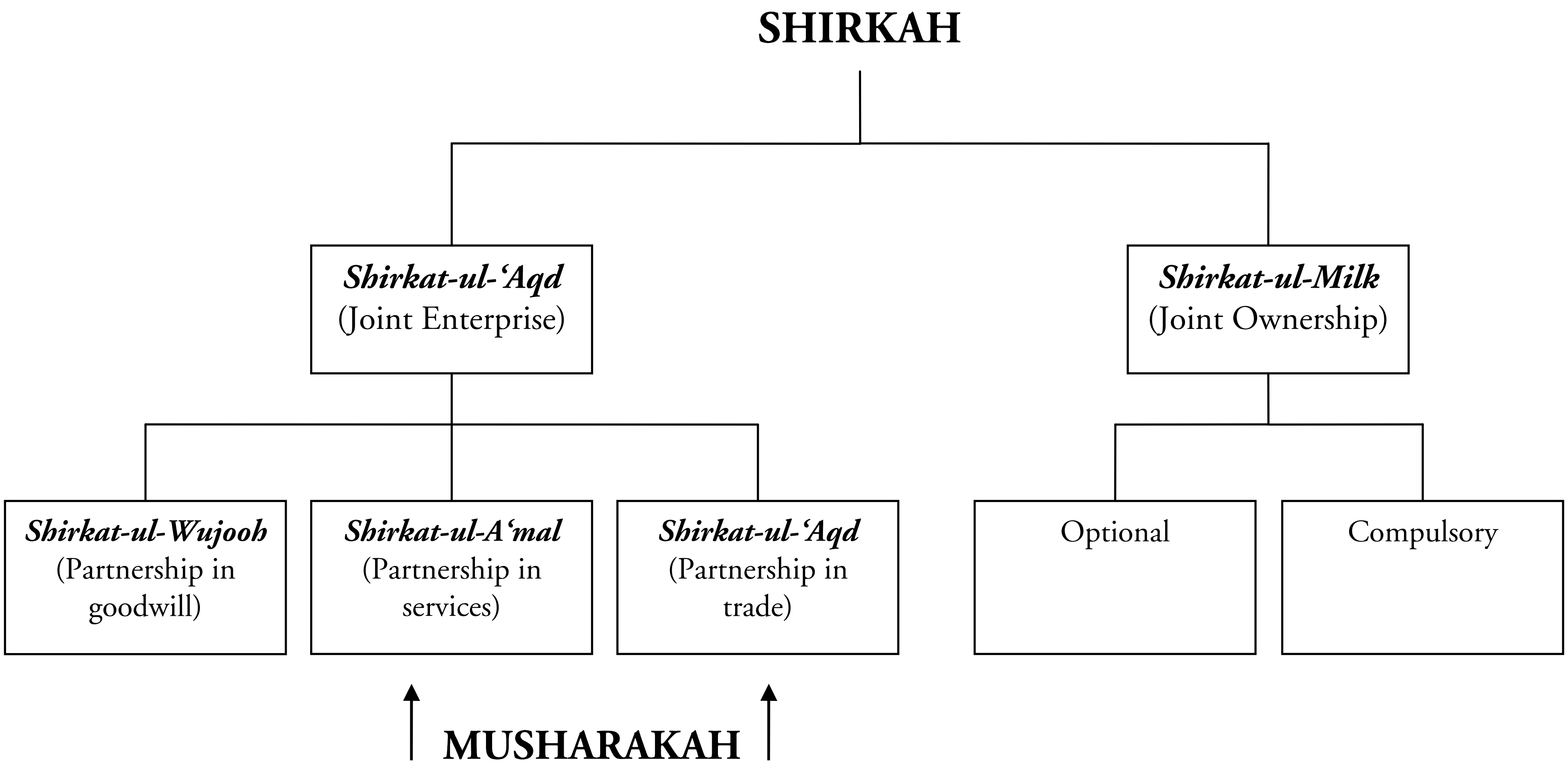
(iii) The third kind of Shirkat-ul-'aqd is Shirkat-ul-wujooh. Here the partners have no investment at all. All they do is that they purchase the commodities on a deferred price and sell them at spot. The profit so earned is distributed between them at an agreed ratio.

All these modes of "Sharing" or partnership are termed as "shirkah" in the terminology of Islamic Fiqh, while the term "musharakah" is not found in the books of Fiqh. This term (i.e. musharakah) has been introduced recently by those who have written on the subject of Islamic modes of financing and it is normally restricted to a particular type of "Shirkah", that is, the Shirkat-ul-amwal, where two or more persons invest some of their capital in a joint commercial venture. However, sometimes it includes Shirkat-ul-a'mal also where partnership takes place in the business of services.

It is evident from this discussion that the term “Shirkah” has a much wider sense than the term “musharakah” as is being used today. The latter is limited to the “Shirkat-ul-amwal” only, while the former includes all types of joint ownership and those of partnership. Table 1 will show the different kinds of “Shirkah” and the two kinds which are called “musharakah” in the modern terminology.

Since “musharakah” is more relevant for the purpose of our discussion, and it is almost analogous to “Shirkat-ul-amwal”, we shall now dwell upon it, explaining at the first instance, the traditional concept of this type of Shirkah, then giving a brief account of its application to the concept of financing in the modern context.

Table 1


SHIRKAH
Shirkat-ul-'Aqd
(Joint Enterprise)
Shirkat-ul-Milk
(Joint Ownership)
Shirkat-ul-Wujooh
(Partnership in goodwill)
Shirkat-ul-A'mal
(Partnership in services)
Shirkat-ul-'Aqd
(Partnership in trade)
Optional
Compulsory
MUSHARAKAH

## The Basic Rules of Musharakah

1. Musharakah or Shirkat-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 here also. For example, the parties should be capable of entering into a contract; the contract must take place with free consent of the parties without any duress, fraud or misrepresentation, etc., etc.

But there are certain ingredients which are peculiar to the contract of "musharakah". They are summarized here:

### Distribution of Profit

2. The proportion of profit to be distributed between the partners must be agreed upon at the time of effecting the contract. If no such proportion has been determined, the contract is not valid in Shari'ah.

3. 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 invested by him. It is not allowed to fix a lump sum amount for any one of the partners, or any rate of profit tied up with his investment.

Therefore, if A and B enter into a partnership and it is agreed between them that A shall be given Rs 10,000/- per month as his share in the profit, and the rest will go to B, the partnership is invalid. Similarly, if it is agreed between them that A will get 15% of his investment, the contract is not valid. The correct basis for distribution would be an agreed percentage of the actual profit accrued to the business.

If a lump sum amount or a certain percentage of the investment has been agreed for any one of the partners, it must be expressly mentioned in the agreement that it will be subject to the final settlement at the end of the term, meaning thereby that any amount so drawn by any partner shall be treated as 'on account payment' and will be adjusted to the actual profit he may deserve at the end of the term. But if no profit is actually earned or is less than anticipated, the amount drawn by the partner shall have to be returned.

## Ratio of Profit

**4.** Is it necessary that the ratio of profit of each partner conforms to the ratio of capital invested by him? There is a difference of opinion among the Muslim jurists about this question.

In the view of Imam Malik and Imam Shafi'i, it is necessary for the validity of musharakah that each partner gets the profit exactly in the proportion of his investment. Therefore, if A has invested 40% of the total capital, he must get 40% of the profit. Any agreement to the contrary which makes him entitled to get more or less than 40% will render the musharakah invalid in Shari'ah.

On the contrary, the view of Imam Ahmad is that the ratio of profit may differ from the ratio of investment if it is agreed between the partners with their free consent. Therefore, it is permissible that a partner with 40% of investment gets 60% or 70% of the profit, while the other partner with 60% of investment gets only 40% or 30%.[1]

The third view is presented by Imam Abu Hanifah which can be taken as a via media between the two opinions mentioned above. He says that the ratio of profit may differ from the ratio of investment in normal conditions. However, if a partner has put an express condition in the agreement that he will never work for the musharakah and will remain a sleeping partner throughout the term of musharakah, then his share of profit cannot be more than the ratio of his investment.[2]

## Sharing of Loss

But in the case of loss, all the Muslim jurists are unanimous on the point that each partner shall suffer the loss exactly according to the ratio of his investment. Therefore, if a partner has invested 40% of the capital, he must suffer 40% of the loss, not more, not less, and any condition to the contrary shall render the contract invalid. There is a complete consensus of jurists on this principle.[3]

Therefore, according to Imam Shafi'i, the ratio of the share of a partner in profit and loss both must conform to the ratio of his

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[1] Ibn Qudamah, *Al-Mughni*, (Beirut: Dar al-Kitab al-Arabi, 1972), 5:140.

[2] Al-Kasani, *Bada'i' al-Sana'i'*, 6:162–63.

[3] Ibn Qudamah, *Al-Mughni*, 5:147.

investment. But according to Imam Abu Hanifah and Imam Ahmad, the ratio of the profit may differ from the ratio of investment according to the agreement of the partners, but the loss must be divided between them exactly in accordance with the ratio of capital invested by each one of them. It is this principle that has been mentioned in the famous maxim:

الربح على ما اصطلحا عليه والوضيعة على قدر المال

> Profit is based on the agreement of the parties, but loss is always subject to the ratio of investment.

## The Nature of the Capital

Most of the Muslim jurists are of the opinion that the capital invested by each partner must be in liquid form. It means that the contract of musharakah can be based only on money, and not on commodities. In other words, the share capital of a joint venture must be in monetary form. No part of it can be contributed in kind. However, there are different views in this respect.

1. Imam Malik is of the view that the liquidity of capital is not a condition for the validity of musharakah, therefore, it is permissible that a partner contributes to the musharakah in kind, but his share shall be determined on the basis of evaluation according to the market price prevalent at the date of the contract. This view is also adopted by some Hanbali jurists.[4]

2. Imam Abu Hanifah and Imam Ahmad are of the view that no contribution in kind is acceptable in a musharakah. Their standpoint is based on two reasons:

Firstly, they say that the commodities of each partner are always distinguishable from the commodities of the other. For example, if A has contributed one motor car to the business, and B has come with another motor car, each one of the two cars is the exclusive property of its original owner. Now, if the car of A is sold, its sale-proceeds should go to A. B has no right to claim a share in its price. Therefore, so far as the property of each partner is distinguished from the property of the other, no partnership can take place. On the contrary, if the capital invested by every partner is in the form of

[4] Ibn Qudamah, *Al-Mughni*, 5:125.

money, the share capital of each partner cannot be distinguished from that of the other, because the units of money are not distinguishable, therefore, they will be deemed to form a common pool, and thus the partnership comes into existence.[5]

Secondly, they say, there are a number of situations in a contract of musharakah where the partners have to resort to redistribution of the share-capital to each partner. If the share-capital was in the form of commodities, such redistribution cannot take place, because the commodities may have been sold at that time. If the capital is repaid on the basis of its value, the value may have increased, and there is a possibility that a partner gets all the profit of the business, because of the appreciation in the value of the commodities he has invested, leaving nothing for the other partner. Conversely, if the value of those commodities decreases, there is a possibility that one partner secures some part of the original price of the commodity of the other partner in addition to his own investment.[6]

3. Imam al-Shafi'i has come with a via media between the two points of view explained above. He says that the commodities are of two kinds:

(i) ***Dhawat-ul-amthal*** (ذوات الأمثال) i.e. the commodities which, if destroyed, can be compensated by the similar commodities in quality and quantity e.g. wheat, rice etc. If 100 kilograms of wheat are destroyed, they can easily be replaced by another 100 kg. of wheat of the same quality.

(ii) ***Dhawat-ul-qeemah*** (ذوات القيمة) i.e. the commodities which cannot be compensated by the similar commodities, like the cattle. Each head of sheep, for example, has its own characteristics which cannot be found in any other head. Therefore, if somebody kills the sheep of a person, he cannot compensate him by giving him similar sheep. Rather, he is required to pay their price.

Now, Imam al-Shafi'i says that the commodities of the first kind (i.e. dhawat-ul-amthal) may be contributed to the musharakah as the share of a partner in the capital, while the commodities of the

[5] Al-Kasani, *Bada'i' al-Sana'i'*, 6:59.
[6] Ibn Qudamah, *Al-Mughni*, 5:124–25.

second kind (i.e. the dhawat-ul-qeemah) cannot form part of the share capital.[7]

By this distinction between dhawat-ul-amthal and dhawat-ul-qeemah, Imam al-Shafi'i has met the second objection on 'participation by commodities' as was raised by Imam Ahmad. For in the case of dhawat-ul-amthal, redistribution of capital may take place by giving to each partner the similar commodities he had invested. However, the first objection remains still unanswered by Imam al-Shafi'i.

In order to meet this objection also, Imam Abu Hanifah says that the commodities falling under the category of dhawat-ul-amthal can form part of the share capital only if the commodities contributed by each partner have been mixed together, in such a way that the commodity of one partner cannot be distinguished from that of the other.[8]

In short, if a partner wants to participate in a musharakah by contributing some commodities to it, he can do so according to Imam Malik without any restriction, and his share in the musharakah shall be determined on the basis of the current market value of the commodities, prevalent at the date of the commencement of musharakah. According to Imam al-Shafi'i, however, this can be done only if the commodity is from the category of dhawat-ul-amthal.

According to Imam Abu Hanifah, if the commodities are dhawat-ul-amthal, this can be done by mixing the commodities of each partner together. And if the commodities are dhawat-ul-qeemah, then, they cannot form part of the share capital.

It seems that the view of Imam Malik is more simple and reasonable and meets the needs of the modern business. Therefore, this view can be acted upon.[9]

We may, therefore, conclude from the above discussion that the share capital in a musharakah can be contributed either in cash or in the form of commodities. In the latter case, the market value of the commodities shall determine the share of the partner in the capital.

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[7] Ibid., 125.

[8] Al-Kasani, op cit.

[9] Ashraf Ali Thanawi, *Imdad al-Fatawa*.

## 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, and the ratio of profit allocated to him should not exceed the ratio of his investment, as discussed earlier.

However, if all the partners agree to work for the joint venture, each one of them shall be treated as the agent of the other in all the matters of the business and any work done by one of them in the normal course of business shall be deemed to be authorized by all the partners.

## Termination of Musharakah

Musharakah is deemed to be terminated in any one of the following events:

(1) Every partner has a right to terminate the musharakah at any time after giving his partner a notice to this effect, whereby the musharakah will come to an end.

In this case, if the assets of the musharakah are in cash form, all of them will be distributed pro rata between the partners. But if the assets are not liquidated, the partners may agree either on the liquidation of the assets, or on their distribution or partition between the partners as they are. If there is a dispute between the partners in this matter i.e. one partner seeks liquidation while the other wants partition or distribution of the non-liquid assets themselves, the latter shall be preferred, because after the termination of musharakah, all the assets are in the joint ownership of the partners, and a co-owner has a right to seek partition or separation, and no one can compel him on liquidation. However, if the assets are such that they cannot be separated or partitioned, such as machinery, then they shall be sold and the sale-proceeds shall be distributed.[10]

[10] Ibn Qudamah, *Al-Mughni*, 5:133–34.

(2) If any one of the partners dies during the currency of musharakah, the contract of musharakah with him stands terminated. His heirs in this case, will have the option either to draw the share of the deceased from the business, or to continue with the contract of musharakah.[11]

(3) If any one of the partners becomes insane or otherwise becomes incapable of effecting commercial transactions, the musharakah stands terminated.[12]

## Termination of Musharakah without Closing the Business

If one of the partners wants termination of the musharakah, while the other partner or partners like to continue with the business, this purpose can be achieved by mutual agreement. The partners who want to run the business may purchase the share of the partner who wants to terminate his partnership, because the termination of musharakah with one partner does not imply its termination between the other partners.[13]

However, in this case, the price of the share of the leaving partner must be determined by mutual consent, and if there is a dispute about the valuation of the share and the partners do not arrive at an agreed price, the leaving partner may compel other partners on the liquidation or on the distribution of the assets themselves.

The question arises whether the partners can agree, while entering into the contract of the musharakah, on a condition that the liquidation or separation of the business shall not be effected unless all the partners, or the majority of them wants to do so, and that a single partner who wants to come out of the partnership shall have to sell his share to the other partners and shall not force them on liquidation or separation.

Most of the traditional books of Islamic Fiqh seem to be silent on this question. However, it appears that there is no bar from the Shari'ah point of view if the partners agree to such a condition right

[11] Ibid.

[12] Op cit.

[13] See *al-Fatawa al-Hindiyyah*, 2:335–36.

at the beginning of the musharakah. This is expressly permitted by some Hanbali jurists.[14]

This condition may be justified, especially in the modern situations, on the ground that the nature of business, in most cases today, requires continuity for its success, and the liquidation or separation at the instance of a single partner only may cause irreparable damage to the other partners.

If a particular business has been started with huge amounts of money which has been invested in a long term project, and one of the partners seeks liquidation in the infancy of the project, it may be fatal to the interests of the partners, as well as to the economic growth of the society, to give him such an arbitrary power of liquidation or separation. Therefore, such a condition seems to be justified, and it can be supported by the general principle laid down by the Holy Prophet ﷺ in his famous hadith:

المسلمون على شروطهم الا شرطا احل حراما او حرم حلالا

> All the conditions agreed upon by the Muslims are upheld, except a condition which allows what is prohibited or prohibits what is lawful.

So far the basic concept of shirkat-ul-amwal or musharakah in its original and traditional sense have been summarized.

Now we are in a position to discuss some basic issues involved in its application to the modern conditions as an approved mode of financing. But it seems more pertinent to discuss these issues after giving an introductory account of mudarabah which is another type of profit-sharing and a typical mode of financing. Since the rules of financing in both musharakah and mudarabah are similar and the issues involved in their application are inter related, it will be more useful to discuss the concept of mudarabah before embarking on these issues.

[14] See al-Mardawi, *al-Insaf* (Beirut, 1400 AH), 5:423.

# 3

# Mudarabah

"*Mudarabah*" is a special kind of partnership where one partner gives money to another for investing it in a commercial enterprise. The investment comes from the first partner who is called "*rabb-ul-mal*", while the management and work is an exclusive responsibility of the other, who is called "*mudarib*".

The difference between musharakah and mudarabah can be summarized in the following points:

(1) The investment in musharakah comes from all the partners, while in mudarabah, investment is the sole responsibility of rabb-ul-mal.

(2) In musharakah, all the partners can participate in the management of the business and can work for it, while in mudarabah, the rabb-ul-mal has no right to participate in the management which is carried out by the mudarib only.

(3) In musharakah all the partners share the loss to the extent of the ratio of their investment while in mudarabah the loss, if any, is suffered by the rabb-ul-mal only, because the mudarib does not invest anything. His loss is restricted to the fact that his labor has gone in vain and his work has not brought any fruit to him. However, this principle is subject to a condition that the mudarib has worked with due diligence which is normally required for the business of that type. If he has worked with negligence or has committed dishonesty, he shall be liable for the loss caused by his negligence or misconduct.

(4) The liability of the partners in musharakah is normally unlimited. Therefore, if the liabilities of the business exceed its assets and the business goes in liquidation, all the exceeding

liabilities shall be borne pro rata by all the partners. However, if all the partners have agreed that no partner shall incur any debt during the course of business, then the exceeding liabilities shall be borne by that partner alone who has incurred a debt on the business in violation of the aforesaid condition. Contrary to this is the case of mudarabah. Here the liability of rabb-ul-mal is limited to his investment, unless he has permitted the mudarib to incur debts on his behalf.

(5) In musharakah, as soon as the partners mix up their capital in a joint pool, all the assets of the musharakah become jointly owned by all of them according to the proportion of their respective investment. Therefore, each one of them can benefit from the appreciation in the value of the assets, even if profit has not accrued through sales.

The case of mudarabah is different. Here all the goods purchased by the mudarib are solely owned by the rabb-ul-mal, and the mudarib can earn his share in the profit only in case he sells the goods profitably. Therefore, he is not entitled to claim his share in the assets themselves, even if their value has increased.[1]

## Business of the Mudarabah

The rabb-ul-mal may specify a particular business for the mudarib, in which case he shall invest the money in that particular business only. This is called al-mudarabah al-muqayyadah (restricted mudarabah). But if he has left it open for the mudarib to undertake whatever business he wishes, the mudarib shall be authorized to invest the money in any business he deems fit. This type of mudarabah is called "*al-mudarabah al-mutlaqah*" (unrestricted mudarabah)

A rabbul-mal can contract mudarabah with more than one person through a single transaction. It means that he can offer his money to A and B both, so that each one of them can act for him as

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[1] However, some jurists have opined that any natural increase in the capital may be taken as a profit distributable between the rabbul-mal and mudarib. For example, if the capital was in the form of sheep, and lambs were born to some of them, these lambs will be taken as profit and will be shared between the parties according to the agreed proportions (see al-Nawawi, *Rawdat al-Talibin*, 5:125). But this is a minority view.

mudarib and the capital of the mudarabah shall be utilized by both of them jointly, and the share of the mudarib shall be distributed between them according to the agreed proportion.[2] In this case both the mudaribs shall run the business as if they were partners inter se.

The mudarib or mudaribs, as the case may be, are authorized to do anything which is normally done in the course of business. However, if they want to do an extraordinary work, which is beyond the normal routine of the traders, they cannot do so without express permission from the rabb-ul-mal.

## Distribution of the Profit

It is necessary for the validity of mudarabah that the parties agree, right at the beginning, on a definite proportion of the actual profit to which each one of them is entitled. No particular proportion has been prescribed by the Shari'ah; rather, it has been left to their mutual consent. They can share the profit in equal proportions, and they can also allocate different proportions for the rabb-ul-mal and the mudarib. However, they cannot allocate a lump sum amount of profit for any party, nor can they determine the share of any party at a specific rate tied up with the capital. For example, if the capital is Rs. 100000/- they cannot agree on a condition that Rs. 10000/- out of the profit shall be the share of the mudarib, nor can they say that 20% of the capital shall be given to rabb-ul-mal. However, they can agree on that 40% of the actual profit shall go to the mudarib and 60% to the rabb-ul-mal or vice versa.

It is also allowed that different proportions are agreed in different situations. For example the rabbul-mal can say to mudarib, "If you trade in wheat, you will get 50% of the profit and if you trade in flour, you will have 33% of the profit". Similarly, he can say "If you do the business in your town, you will be entitled to 30% of the profit, and if you do it in another town, your share will be 50% of the profit." [3]

Apart from the agreed proportion of the profit, as determined in the above manner, the mudarib cannot claim any periodical salary

[2] Ibn Qudamah, *Al-Mughni*, 5:145.
[3] Al-Kasani, *Bada'i' al-Sana'i'*, 6:99.

or a fee or remuneration for the work done by him for the mudarabah.[4]

All the schools of Islamic Fiqh are unanimous on this point. However, Imam Ahmad has allowed for the mudarib to draw his daily expenses of food only from the mudarabah account.[5]

The Hanafi jurists restrict this right of the mudarib only to a situation when he is on a business trip outside his own city. In this case he can claim his personal expenses, accommodation, food, etc., but he is not entitled to get anything as daily allowances when he is in his own city.[6]

If the business has incurred loss in some transactions and has gained profit in some others, the profit shall be used to offset the loss at the first instance, then the remainder, if any, shall be distributed between the parties according to the agreed ratio.[7]

## Termination of Mudarabah

The contract of mudarabah can be terminated at any time by either of the two parties. The only condition is to give a notice to the other party. If all the assets of the mudarabah are in cash form at the time of termination, and some profit has been earned on the principal amount, it shall be distributed between the parties according to the agreed ratio. However, if the assets of the mudarabah are not in the cash form, the mudarib shall be given an opportunity to sell and liquidate them, so that the actual profit may be determined.[8]

There is a difference of opinion among the Muslim jurists about the question whether the contract of mudarabah can be effected for a specified period after which it terminates automatically. The Hanafi and Hanbali schools are of the view that the mudarabah can be restricted to a particular term, like one year, six months, etc, after which it will come to an end without a notice. On the contrary,

[4] Al-Sarakhsi, *al-Mabsut*, 22:149–50.
[5] Ibn Qudamah, *Al-Mughni*, 5:186.
[6] Al-Kasani, *Bada'i' al-Sana'i'*, 6:109.
[7] Ibn Qudamah, *Al-Mughni*, 5:168.
[8] Al-Kasani, *Bada'i' al-Sana'i'*, 6:109.

Shafi'i and Maliki schools are of the opinion that the mudarabah cannot be restricted to a particular time.[9]

However, this difference of opinion relates only to the maximum time-limit of the mudarabah. Can a minimum time-limit also be fixed by the parties before which mudarabah cannot be terminated? No express answer to this question is found in the books of Islamic Fiqh, but it appears from the general principles enumerated therein that no such limit can be fixed, and each party is at liberty to terminate the contract whenever he wishes.

This unlimited power of the parties to terminate the mudarabah at their pleasure may create some difficulties in the context of the present circumstances, because most of the commercial enterprises today need time to bring fruits. They also demand constant and complex efforts. Therefore, it may be disastrous to the project, if the rabb-ul-mal terminates the mudarabah right in the beginning of the enterprise. Specially, it may bring a severe set-back to the mudarib who will earn nothing despite all his efforts. Therefore, if the parties agree, when entering into the mudarabah, that no party shall terminate it during a specified period, except in specified circumstances, it does not seem to violate any principle of Shari'ah, particularly in the light of the famous hadith, already quoted, which says:

المسلمون على شروطهم الا شرطا احل حراما او حرم حلالا

> All the conditions agreed upon by the Muslims are upheld, except a condition which allows what is prohibited or prohibits what is lawful.

## Combination of Musharakah and Mudarabah

A contract of mudarabah normally presumes that the mudarib has not invested anything to the mudarabah. He is responsible for the management only, while all the investment comes from rabb-ul-mal. But there may be situations where mudarib also wants to invest some of his money into the business of mudarabah. In such cases, musharakah and mudarabah are combined together. For example, A

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[9] Ibid., 6:99. See also Ibn Qudamah, *al-Mughni*, 5:185–86 and al-Sarakhsi, *al-Mabsut*, 22:133.

gave to B Rs. 100000/- in a contract of mudarabah. B added Rs. 50000/- from his own pocket with the permission of A. This type of partnership will be treated as a combination of musharakah and mudarabah. Here the mudarib may allocate for himself a certain percentage of profit on account of his investment as a sharik, and at the same time he may allocate another percentage for his management and work as a mudarib. The normal basis for allocation of the profit in the above example would be that B shall secure one third of the actual profit on account of his investment, and the remaining two thirds of the profit shall be distributed between them equally. However, the parties may agree on any other proportion. The only condition is that the sleeping partner should not get more percentage than the proportion of his investment.

Therefore, in the aforesaid example, A cannot allocate for himself more than two thirds of the total profit, because he has not invested more than two thirds of the total capital. Short of that, they can agree on any proportion. If they have agreed on that the total profit will be distributed equally, it means that one third of the profit shall go to B as an investor, while one fourth of the remaining two thirds will go to him as a mudarib. The rest will be given to A as "rabb-ul-mal."[10]

[10] See Ibn Qudamah, *al-Mughni*, 5:136–37; and al-Kasani, *Bada'i' al-Sana'i'*.