

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Mudārabah Contract

As Muslim's, we are faced with tremendous hurdles to overcome the conventional system of banking and finance. It is for this reason; a broad guideline of the general rules of Mudārabah along with a Mudārabah contract was prepared to assist those who wish to invest through a private partnership agreement.

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Definition: Mudārabah refers to a type of partnership where one partner outlays his capital and the other offers his skills by doing business, on condition that they share the profits according to a mutual agreed ratio.

[Al Hidāyah, Vol. 3, 4, Pg. 257-258, Shirkat Ilmiyyah]

Terminologies:

1. Mudārabah- The actual contract of this nature.
2. Rabb ul Māl- The investor.
3. Ra's ul Māl- Capital.
4. Mudārib- Partner who manages the investment.
5. Mudārabah Mutlaqah- Open mandate (see clause 1.7)
6. Mudārabah muqayyadah- Closed mandate (see clause 1.8)

Example: Ebrāhim enters into a partnership with Ahmad. Ebrāhim invests R100, 000. Ahmad will venture out and apply his skills in doing business and trading with the R100, 000. The profit thereafter will be shared by both partners as per agreement.

1. INVESTMENT

1.1 The Rabb ul Māl will provide the capital only. The Mudārib will invest the wealth and the Rabb ul Māl will have no authority to interfere in the Mudārib's management. Furthermore, the capital must be placed at the disposal of the Mudārib, or the Mudārib must have free access to the capital. The Rabb ul Māl will have authority to oversee the Mudārib's activities and to work with the Mudārib if he consents.¹

1.2 Mudārabah can be limited to a specific time. The Rabb ul Māl can state for example, "I will establish a contract of Mudārabah with you, in this amount for one year."

[Al Hidāyah, Vol. 3, 4, Pg. 258, Shirkat Ilmiyyah]

1.2 The Capital of Mudārabah should be clearly known to the contracting parties and defined in terms of quality and quantity in a manner that eliminates any possibility of uncertainty and ambiguity.

1.3 All goods purchased by the Mudārib are solely owned by the Rabb ul Māl. The Mudārib will only earn his share in the profit, once the goods are sold on profit.

¹قال ولا بد أن يكون المال مسلما إلى المضارب ولا يد لرب المال فيه لأن المال أمانة في يده فلا بد من التسليم إليه وهذا بخلاف الشركة لأن المال في المضاربة من أحد الجانبين والعمل من الجانب الآخر فلا بد من أن يخلص المال للعامل ليتمكن من التصرف فيه (الهداية، ج. 3، 4، ص. 258. شركة علمية)

1.4 The Mudārib is authorised to do such things, which are normally done during the course of business. However, if he wishes to do anything extraordinary which will be contrary to the normal routine of trade and commerce, express permission will be required from the Rabb ul Māl. ²

[Al Hidāyah, Vol. 3, 4, Pg.259, Shirkat Ilmiyyah]

1.5 The Rabb ul Māl ought to specify whether the Mudārib will be transacting with an open mandate [Al Mudārabah Al Mutlaqah] or a closed mandate [Al Mudārabah Al Muqayyadah]. Once this is clarified, the Mudārib has no right to transgress the limitations of the Rabb ul Māl if he will do business on the basis of a closed mandate.

1.6 An open mandate, or more commonly referred to as unrestricted Mudārabah, is where the rabb ul Māl gives full freedom to the Mudārib to do what entrepreneurs do in his field of activity. However, if he wishes to do anything extraordinary which will be contrary to the normal routine of trade and commerce, express permission will be required from the Rabb ul Māl.

[Al Hidāyah, Vol. 3, 4, Pg. 259, Shirkat Ilmiyyah]

1.7 A closed mandate, or more commonly referred to as a restricted Mudārabah, is where the Rabb ul Māl specifies a particular type of business or a particular place in which the Mudārib shall use the capital provided by the Rabb ul Māl in that specific business or place. ³

[Al Hidāyah, Vol. 3, 4, Pg. 260, Shirkat Ilmiyyah]

2. PARTICIPATION IN PROFIT

2.1 It is a requirement that the mechanism for distributing profit must be clearly known in a manner that eliminates uncertainty and any possibility of dispute. The distribution of profit

²قال وإذا صحت المضاربة مطلقة جاز للمضارب أن يبيع ويشترى ويوكل ويسافر ويضع ويودع لإطلاق العقد والمقصود منه الاسترباح ولا يتحصل إلا بالتجارة فينتظم العقد صنوف التجارة وما هو من صنيع التجار والتوكيل من صنيعهم وكذا الإيداع والإبضاع والمسافرة ألا ترى أن المودع له أن يسافر فالمضارب أولى (الهداية، ج.3، 4، ص.259 شركة علمية)

³قال وإن خص له رب المال التصرف في بلد بعينه أو في سلعة بعينها لم يجز له أن يتجاوزها لأنه توكيل وفي التخصيص فائدة فيتخصص وكذا ليس له أن يدفعه بضاعة إلى من يخرجها من تلك البلدة لأنه لا يملك الإخراج بنفسه فلا يملك تفويضه إلى غيره (الهداية، ج.3، 4، ص.260 شركة علمية)

must be on the basis of an agreed percentage of the profit, and not on the basis of a lump sum or a percentage of the capital⁴

[Al Hidāyah, Vol. 3, 4, Pg. 258, Shirkat Ilmiyyah]

2.2 Apart from the agreed proportion of the profit, the Mudārib cannot claim any periodical fee or salary for the work done by him for the Mudārabah.⁵

[Al Hidāyah, Vol. 3, 4, Pg. 258, Shirkat Ilmiyyah]

2.3 On termination date, the profit [if any] due to the Mudārib and Rabb ul Māl will be worked out and paid according to the proportion specified.

[Islamic Finanace Mufti Taqi Usmāni]

2.4 If the commercial enterprise has incurred loss in some transactions and gained profit in others, then the profit will be used to offset the loss at the first instance, then the remainder, [if any], will be distributed between both parties.

[Al Hidāyah, Vol. 3, 4, Pg. 258, Shirkat Ilmiyyah]

2.5 If the Rabb ul Māl says, "use the money in trade and divide the profit between us," then each one will take half of the profit since the division is between the two and no ratio was specified. If the Rabb ul Māl says to the Mudārib "use the money in trade and give me three quarters of the profit" or "you take three quarters of the profit," then the Mudārabah is valid. The ratio is stated and each one's share is known before hand.

[Sharhul Majallat, Vol. 4, Pg. 326, Rashīdiyyah]

2.6 The share of the Mudārib can be high or low based on the type of work and its level of ease or difficulty or the requirement of skill or lack thereof.

2.7 The distribution of profit will be determined on the final result of the operations at the time of liquidation of the Mudārabah contract.

3. LOSSES

3.1 All or any loss in the project will be solely borne by the Rabb ul Māl, as the Mudārib did not invest anything. The loss of the Mudārib is restricted to the fact that his effort was unproductive and his labour has not brought any fruit to him.⁶

⁴قال ومن شرطها أن يكون الربح بينهما مشاعا لا يستحق أحدهما دراهم مسماة من الربح لأن شرط ذلك يقطع الشركة بينهما ولا بد منها كما في عقد الشركة (الهداية، ج. 3، 4، ص. 258 شركة علمية)

⁵أما المضارب فليس له إلا الربح (الهداية، ج. 3، 4، ص. 257-272 شركة علمية)

⁶قال وما هلك من مال المضاربة فهو من الربح دون رأس المال لأن الربح تابع وصرف الهلاك إلى ما هو التبع أولى كما يصرف الهلاك إلى العفو في الزكاة فإن زاد الهالك على الربح فلا ضمان على المضارب لأنه أمين وإن كانا يقتسمان الربح والمضاربة بحالها ثم هلك المال

3.2 The above condition is subject to the fact that the Mudārib has worked with due diligence. If it is proven that he has breached his obligations or he failed to discharge his obligations under this agreement, then the Mudārib will be liable for the loss of the Mudārabah capital.

3.3 Liability of the Rabb ul Māl is limited to his investment unless he has permitted the Mudārib to incur debts on his behalf. If debts are incurred over and above the investment of the Rabb ul Māl, then it will be shared equally between the two despite the agreed profit ratio.

[Sharhul Majallat, Vol. 4, Pg. 352, Rashīdiyyah]

4. EXPENSES

4.1 All personal expenses of the Mudārib like meals, clothing, conveyance and medical will not be borne by the Mudārabah account. However, business expenses such as expenses incurred during business travels, like meals, accommodation etc. shall be borne by the Mudārabah account.⁷

4.2 Expenses such as wages of employees\workers or commission in buying and selling will be paid through the Mudārabah account.⁸

[Al Hidāyah, Vol. 3, 4, Pg. 257-272, Shirkat
Ilmiyyah]

5. ROLES OF THE MUDĀRIB

The Mudārib is a trustee in this contract, so he should fear Allah Subhanahu Wa Ta'ala in what he is entrusted. His claim of loss and damage should be accepted. He should be believed in what he states about things purchased whether they are for his own use or for Mudārabah.

بعضه أو كله ترادا الربح حتى يستوفى رب المال رأس المال لأن قسمة الربح لاتصح قبل استيفاء رأس المال لأنه هو الأصل وهذا بناء عليه وتبع له فإذا هلك ما في يد (الهداية, ج. 3, 4, ص. 266 شركة علمية)
7 قال وإذا عمل المضارب في المصر فليست نفقته في المال وإن سافر فطعامه وشرابه وكسوته وركوبه ومعناه شراء وكراء في المال ووجه الفرق أن النفقة تجب بإزاء الاحتباس كنفقة القاضي ونفقة المرأة والمضارب في المصر ساكن بالسكنى الأصلي وإذا سافر صار محبوسا بالمضاربة فيستحق النفقة فيه (الهداية, ج. 3, 4, ص. 269 شركة علمية)
8 قال وإذا ربح أخذ رب المال ما أنفق من رأس المال فإن باع المتاع مرا بحة حسب ما أنفق على المتاع من الحملان ونحوه ولا يحتسب ما أنفق على نفسه لأن العرف جار بإلحاق الأول دون الثاني ولأن الأول يوجب زيادة في المالية بزيادة القيمة والثاني لا يوجبها (الهداية, ج. 3, 4, ص. 269 شركة علمية)

Ibnul Qayyim [*Rahimahullah*] said, "The Mudārib is a trustee, an employee, an agent and a partner. He is a trustee when he takes the money; an agent when he uses it, an employee in the work that he executes, and a partner in the profit. Once the Mudārib has entered into the contract of Mudārabah, he will undertake an active role in the commercial enterprise in one or more of the following capacities:⁹

5.1 *Amīn*- [Trustee]: To look after the capital responsibly.

5.2 *Wakīl*- [Agent]: To purchase with the funds provided by the Rabb ul Māl.

5.3 *Sharīk*- [Partner]: A partner that will share in the profit generated.

5.4 *Dhāmin*- [Liable]: To take responsibility for losses suffered by the mudārabah due to any negligence on his part.

5.5 *Ajīr*- [Employee]: To work for the Rabb ul Māl by investing his money.

6. TERMINATION OF MUDARABAH

6.1 The Mudārabah contract will stand terminated when the period specified in the contract expires.¹⁰

[*Al Mukhtasar Al Qudūri, Pg. 120, Imdādiyyah Deoband*]

6.2 The Mudārabah contract automatically terminates upon the death of one of the two parties.¹¹

6.3 If all assets of the Mudārabah contract are in cash form at the time of termination, and some profit is generated on the actual capital, it will be distributed amongst the concerned parties according to the agreed ratio.

6.4 If the assets of Mudārabah are not in cash form, assets will be liquidated so that the actual profit may be determined and distributed.

[*Al Mukhtasar Al Qudūri, Pg. 120, Imdādiyyah Deoband*]

6.5 If the Mudārabah is nullified (due to a breach of contract in any of its conditions), then the profit will be for the Rabb ul Māl because it is an increase in his money. The Mudārib will be paid a fair wage for his labour, and will not receive a share in the profits [if any].

⁹ ثم المدفوع إلى المضارب أمانة في يده لأنه قبضه بأمر مالكة لا على وجه البدل والوثيقة وهو وكيل فيه لأنه يتصرف فيه بأمر مالكة وإذا ربح فهو شريك فيه لتملكه جزءا من المال بعمله فإذا فسدت ظهرت الإجارة حتى استوجب العامل أجر مثله وإذا خالف كان غاصبا لوجود التعدي منه على مال غيره (الهداية، ج. 3، 4، ص. 257 شركة علمية)

¹⁰ قال وكذلك إن وقت للمضاربة وقتا بعينه يبطل العقد بمضيه لأنه توكيل فيتوقت بما وقته والتوقيت مفيد (الهداية، ج. 3، 4، ص. 257-272 شركة علمية)

¹¹ قال وإذا مات رب المال أو المضارب بطلت المضاربة لأنه توكيل على ما تقدم وموت الموكل يبطل الوكالة وكذا موت الوكيل ولا تورث الوكالة وقد مر من قبل (الهداية، ج. 3، 4، ص. 265 شركة علمية)

6.6 The profit of the Mudārabah is not to be divided between the two before the end of the contract unless they both agreed otherwise. This is so since there may be future losses. Any business is susceptible to losses. If the profit is divided before the end of the contract and loss occurs later, there will be no funds to cover this loss. Therefore, the Mudārib is not entitled to any of the profit until the completion of the contract.

6.7 The Mudārabah contract is normally not binding on any party. It will continue for as long as there is consent. Therefore, each party may terminate it at will. However, this may create difficulty because most commercial enterprises require time to be productive. If the parties agree at the very beginning on a time limit, and that no party may resile or terminate it during a specific period, except in specified circumstances, this will not be violating any law of Shari'ah and hence permissible. Such a contract will be binding.

*[Al Hidāyah, Vol. 3, 4, Pg. 257-272, Shirkat Ilmiyyah]
[Al Mukhtasar Al Qudūri, Pg. 120, Imdādiyyah Deoband]
[Sharhul Majallat, Vol. 4, Pg. 325, Rashīdiyyah]*

MUDĀRABAH AGREEMENT

BETWEEN

[Mudārib], _____, I, D no, _____, residing at,
_____ hereinafter referred to as the Mudārib;

AND

[Rabb ul Māl], _____, I, D no, _____,
residing at, _____ hereinafter referred to as the Rabb ul Māl.

This Mudārabah is hereby established between the two parties as follows:

1. The Rabb ul Māl provides a capital of _____, for the purpose of using it as a capital for the Mudārabah.
2. The Mudārib will be managing the Mudārabah on an:

Open Mandate: _____

Closed Mandate: _____

[If the Rabb ul Māl has opted for an open mandate, then clause three will not apply]

3. The Mudārib will enter into a Mudārabah agreement to trade in _____
[Type of business], in the location of _____ [Area], for a period of
_____.

The Mudārib takes full charge of managing this Mudārabah for the purpose of maximising its profit and to liquidate all its assets by its closing date with full honesty and maximum loyalty to its objective. He/She shall maintain separate, complete and comprehensive accounts for the Mudārabah.

The Rabb ul Mal has the full right to inspect accounts, books and records of the Mudārabah at any time, and to place a reservation on any managerial acts he deems unfit with the best interest of the Mudārabah.

The participation in profit will be in accordance to the following ratio:

1. [_____] % of the profit will be payable to the Mudārib.
2. [_____] % of the profit will be payable to the Rabb ul Māl (investor).

Med/Arb clause

Any dispute arising from or in connection with this contract shall be finally resolved in accordance with the standard conditions of Arbitration/Mediation of The Dārul Iftā, by an arbitrator appointed by the Dārul Iftā or any other competent Dārul Iftā.

Mudārib: _____
[Print name in full & sign]

Rabb ul Māl: _____
[Print name in full & sign]

Signed at _____ on _____.

As witnesses:

1. _____
[Print name in full & sign]

2. _____
[Print name in full & sign]

