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14

The Salam Sale Contract
in
Jurisprudence and Practice

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Introduction:

Praise be to Allah with Whom good deeds are accomplished and prayer and blessing upon His Messenger who was sent as a mercy for all people.

Dear reader,

We have prepared this book on the salam sale contract in jurisprudence and practice. This contribution hopes to instigate the operations of the Islamic banks and to ensure the validity of Islamic investment for all times and places. If you trace the circumstances and implications coinciding with the emergence of Islamic banks as alternatives to usurious banks, you will find that these banks have ensured the validity of the Islamic economic approach, which is beneficial to both shareholders and depositors, without harming the state or the individual's religion or faith, which forbids dealing in usury. These modes allow getting profit in a way that does not cause grievance or harm to any of the parties to the contract. If you examine the fiqh (Islamic jurisprudence), you will find that it is based on social goals manifested in Islam's keenness to remove anything that leads to envy, separation, blackmail and grievance. Grievance will lead to dispute, however the cause of fiqh, has insisted on a perfect contract beginning with the competence of the two parties and mode of the contract manifested in proposal and acceptance till the signing of the contract to prevent any dispute that might disintegrate the Islamic society.

Islam tends to set up an integrated society based on good morals, benevolence and virtue. Likewise, the Islamic mode takes into account all aspects and profits for the parties to the contract, because profit must be lawful. The Messenger of Allah (pbuh) said to his friends on some transactions, "How can you make the wealth of your fellow Muslim

lawful (to yourself)?” Usury is capitalization on the needs of others and increased enrichment without exerting more efforts or undertaking to share the loss. It is an injustice and encroachment on the wealth of others. Therefore, it breeds injustice, exploitation, and disintegration of the society, envy and rancor, which are rejected by Islam, the true religion.

The salam is one type of Islamic transaction. It is allowed to meet the needs of some people, e.g. farmers and manufacturers, who are in need of money for operation costs. Instead of dealing based on usury, which is forbidden according to Islamic Sharia, it is better to deal in this mode upon agreement of the two parties. It is one of the modes the Islamic banks in Sudan have adopted to finance farming whereby the bank agrees to finance the various stages in exchange for a specified quantity at a specified date in the future in accordance with the salam sale contract.

The commercial banks’ portfolio was therefore formed to fund agricultural corporations through murabaha (sale of goods at purchasing cost plus profit) in case of production inputs and through salam to meet operation costs. In this book, we have discussed the portfolio’s expertise and advantages as a practical mode to generalize the concept.

We have also discussed legal views about the salam contract and the expertise of the Sudanese banks’ portfolio. These views were included in a paper presented at the 18th meeting of operations and investment directors of Islamic banks held in the Qatari Capital of Doha in 1992.

The book also discusses the salam and parallel salam’s accounting standards dealing with accounting standards that regulate financing the salam and parallel salam. The standards were endorsed in the meeting of auditing board held on June 15-16, 1997 in Bahrain. It also contains a number of fatawi (plural of fatwa, or Islamic ruling) on the salam sale contract.

We are grateful to our colleagues serving for Dalat Al Barkah of Saudi Arabia for publicizing these fatawi on the electronic economic Fatwa programme on Sakhr.

It is the twelfth publication by Tadamon Islamic Bank and the second this year. It was preceded by a book entitled Tadamon Islamic Bank's Islamic Sharia Fatawi, which appeared this year.

May Almighty Allah help us to deliver beneficial material to the reader and maintain our contribution to originate operations of the Islamic banks. Oh Lord! This contribution is because of You. If we succeed it is because of You and if not it is because of us and the Satan.

“Our Lord ! forgive us our sins and anything
We may have done that transgressed our duty:
Establish our feet firmly,
And help us against those that resist faith”.

General Manager,
Tadamon Islamic Bank
Salah Edeen Ali Abul Naga

The Salam Sale Contract

Definition:

Literally, the terms “salam” and “salaf” are the same. The former was used by the people of Hijaz while the latter was used by the people of Iraq. It is said that the salaf is the payment of the price in advance and the salam is the payment of the price on the spot.

In Sharia, the salam is “a forward sale for immediate payment”. It is the selling of a specified commodity for exchange of a price paid in advance. The Hanafi school defined the salam as “a contract which ensures the possession of the price paid in advance and the commodity delivered at a specified date in the future”, while the Maliki school defined it as “the sale whereby the commodities are delivered at a specified date in the future for exchange of a price paid in advance.”

The salam, hence, is a type of sale whereby the delivery of the commodity is delayed in exchange for an advanced payment called the price. The salam, therefore, is in contrast to a sale with a deferred payment.

The Sudanese Civil Transactions Act, 1984 (Section 217) defined the salam as “Deferred sale in exchange for a price paid on the spot”.

Permissibility (legitimacy) of the salam:

The salam is a permissible operation according to the Holy Qur’an, Sunna, consensus and analogy according to some jurists.

The Holy Qur’an says:

Ye who believe!
When ye deal with each other,
In transactions involving
Further obligations
In a fixed period of time

Reduce them to writing'

As for the verse above, Ibn Abbas (May Allah be pleased with him) said, "Guaranteed salaf with specified date in the future is permitted by Almighty Allah." Then he recited:

Ye who believe!
When ye deal with each other,
In transactions involving
Further obligations
In a fixed period of time
Reduce them to writing'

It is also permissible according to Sunna. On the authority of Ibn Abbas (May Allah be pleased with him), when the Messenger of Allah (pbuh) came to Medina the people used to pay the price in advance for dates to be delivered within one, two or three years. He said to them "Whoever pays in advance the price of a thing to be delivered later should pay for a specified measure at a specified weight for a specified period."

The fuqaha (Islamic thinkers) have unanimously allowed the salam sale except Ibn Al Maseeb. It was reported that he made it illegal, sticking to the hadith (what has been said by our Prophet) banning the sale of a nonexistent commodity.

Ibn Al Qayam of the Hanbali school said the salam is permissible in case it agrees with analogy because it guarantees a specified sale that is deliverable. The salam is the exchange of interests. Most jurists have allowed the salam sale except those sticking to analogy. One of those are the Hanafis who said the salam is allowed. They were not sticking to analogy because the salam is decided in the Holy Qur'an, Sunna and consensus.

The pillars of the salam sale contract:

The pillars of the salam sale contract are proposal and acceptance according to the Hanafi school, but for non Hanafi the pillars are:

1. The mode which includes proposal and acceptance.
2. Parties to the contract. They are the buyers and the sellers.
3. The contracted item, which includes the capital paid by the buyer, and the commodity, which the seller undertakes to supply.

The expressions, according to the Hanafi and Maliki schools, for finalizing the contract are that the buyer can say, “I pay you in advance for exchange of so and so.” And the seller in return says, “I sell you such and such.” Some Hanafi and Shafi scholars said the contract will not be valid unless the two terms “salam” and “salaf” are mentioned at signing, contrary to analogy, which sees the contract as invalid. The analogy was left aside because according to Shari’a the two terms are mentioned. The Shafi’ school is on two views if the salam is finalized as any other sale contract.

If a certain expression customarily used to mean the salam sale contract must be respected.

Conditions:

Two things are conditioned to sign the salam contract:

1. Sale contract condition excluding existence of the commodity.
2. Special conditions.

The conditions are various. Some are related to the parties to the contract, the mode and the agreed upon place.

1. As for the two parties, they must be able to differentiate and to choose.
2. Regarding the mode, proposal and acceptance must be conforming and audible. The contract shall go uncommented and should be delayed to certain time in the future and that the parties to the contract should be in agreement.

3. On the commodity, it must be beneficial, pure, available, deliverable, known and in the possession of the seller.

As for the special conditions, some are related to price, commodity, date and place of delivery. Jurists have agreed on some of these and disagreed over the others.

Here, we will elaborate these conditions according to the Hanafi school, which has set six conditions regarding the price.

The price:

1. Determining its category e.g., money, wheat etc.
2. Determining the origin e.g., Bahraini dirhams, Libyan dinar, Saudi riyals or Sudanese pound etc.
3. Determining the quality.

These conditions tended to remove ambiguity that leads to dispute and cancellation of the contract.

4. Knowing the amount of the price paid for measured or quantified commodities or commodities of the same category. The price must not be hinted. The amount must be defined according to Abu Haneefa and Sufyan Al Thawry. If the buyer say: “I pay you these Dirhams or Dinars” without defining the exact amount or the quantity the contract will go cancelled.

The Sahiban (Abu Yusuf and Mohamed), Ashafi and the Hanbali schools, however, do not condition knowing the exact price, saying seeing the price is quite sufficient than knowing the amount. Abu Haneefa is in the same view. If the commodity is measured such as clothes and carpets, or numbered such as watermelons, the amount is not necessary just pointing and specification is enough.

5. According to Abu Haneefa, the Dirhams and Dinnars must be visible to know if they real or not because unfamiliarity will lead to dispute and abolish the contract. The Sahiban are on the same view.

6. Paying the price to the seller at the time of affecting the contract before they depart whether the price is tangible or ad valorem. If the two parties depart without the price, the contract will be cancelled because it is required in production. But, according to the Maliki School, the price can be delayed for three days or less.

Professor Sidiq Mohammed Al Amin, however, sees that the price can be delayed to a later date, and paid before the date of delivery, while the Sudanese Civil Transactions Act, 1984 has stipulated that the price must be known in terms of amount and kind and must not be delayed for more than few days.

The commodity:

As for the commodity, the Hanafi school has set eleven conditions.

1. It must be known e.g. wheat, sorghum, rice etc.
2. It must be known in terms of origin e.g., Sudanese or Australian wheat, Egyptian rice etc.
3. The commodity must be known in terms of measure, quantity and number.
4. The commodity must be known in terms of quality.

These conditions tend to remove ambiguity leading to dispute and cancellation of the contract. The Messenger of Allah (pbuh) said: (whoever pays in advance the price of a thing to be delivered later, should pay it for a specified measure at specified weight for a specified date”

For the validity of the contract, the Sudanese Civil Transactions Act, 1984 has provided that the commodity shall be specified in terms of quantity and category.

5. The exchanged commodities should not be usurious in either quantity or kind. The salam contract can be usurious if the items are exchanged on the basis of usury. i.e., the salam sale should not be usurious in terms of weight, measure or kind. Another feature of

usually is that arising from credit sale. Any contract depicted as usurious is invalid.

According to Maliki school the delay in delivery is permissible if the price and the commodity are of different categories. i.e., it is not allowed to exchange gold for silver because it is usurious, but it is possible to exchange items of the same category.

6. The commodity must belong to a category that can be defined. This includes all things except money, because money is not classified as a commodity.
7. The date of delivery, according to the Hanafi, Maliki and Hanbali Jurists, shall be specified because the salam sale is treated as a grace to the dealers. The Shafi' school, however, has allowed the salam if it is completed immediately or later.

The Jurists have disagreed over the date of delivery. It is one month or less according to the Hanafi school and according to the Malikis it is less than 15 days, the approximated period in which increase or decrease in price is expected.

According to the Hanbali school, the least period is the one that influence the price e.g. one month or so, while Ashafi and the Zahiri have not set any date leaving that to the parties to the contract.

The Sudanese Civil Transactions Act, 1984 has provided that the salam sale contract shall specify the date of delivery.

Early Delivery:

If the seller delivers the commodity before the agreed upon date, the buyer has to accept. If he refuses, must he be forced to accept? There is disagreement over this point.

Ibn Rushd said the Muslim Jurists have agreed that if someone is owed some dirhams or dinars and returns the amount at or before the specified

date, the creditor must accept, but they disagreed over the commodities i.e., the salam sale etc.

Imam Malik and others jurists have agreed on the principle that if the seller delivers the commodity before the agreed upon date the buyer must accept, while Al Shafi' argued that if the commodity doesn't go bad such as copper or iron, the buyer must accept, but if the commodity does spoil, the buyer cannot be forced to accept.

If the interests of the two parties overlap because of antedate delivery, crucial interest must be put into account. This is according to the Shafi' school.

8. That the commodity can be delivered at the specified date. I.e., it must be existing in the market till the date of delivery.
9. The contract must be decisive with no alternatives to each of the parties. For example, if someone pays 1- pounds in advance for exchange of kaila (certain measure) of wheat and claim a grace of three days, the contract will be cancelled.

It is noted that having options to see the price whether it is tangible or ad valorem and to examine it does not cancel the contract since these two options do not hinder the transfer of ownership, but with respect to commodities, the option doesn't apply because it is not in the possession of the seller. The commodity can just be specified and defects can be preconditioned.

10. Specifying the place of delivery the commodity is measured or quantified. This condition is set forth by Abu Haneefa, while Al Sahiban are in different view.

According to Imam Malik, it is better to define the place of delivery, while Shafi' stipulated that the place must be specified as the delivery may be cost and beneficence of the two parties may be different.

The Hanbali jurists, however, do not specify the place of delivery unless the contract is concluded in a desert or a ship or there is a difference between the two parties. In this case, the commodity can be delivered at the same place of signing.

According to the Sudanese Civil Transactions Act, 1984, if the place of delivery is specified, this condition shall be respected and if not the commodity shall be delivered at place of signing.

11. Specifying the quality of the commodity of which the prices substantially vary. The commodity is an exchange honoured by the seller.

The salam suited commodities:

The prices substantially vary. The commodity is an exchange honoured by the seller.

The salam – suited commodities:

Muslim jurists agreed that some commodities are unsuitable for the salam sale and disagreed over the suitability of others. For example, they agreed that properties are not allowed. However, they unanimously allowed measured, quantified and numbered commodities.

The Zahiris were in the same view.

The Muslim jurists adopt the following rule:

It was reported by ibn Rushd that the Muslim Jurists have allowed the salam contract commodities that can be specified in terms of weight and number and disagreed over the validity of animals. Imam Malik, Ashafi, Al Awza'e and Al Leith said an animal is allowed for the salam sale, while Abu Haneefa, Al Thawry and the people of Iraq argued that an animal doesn't fit. They disagree over the suitability of eggs, meat, heads etc. which are permissible according to Imam Malik and impermissible according to Abu Haneefa, while Al Shafi' has a different view. For example, Al Shirazi of the Shafi' school says: "The salam sale is valid for

all marketable and specified Sections, but items that cannot be specified lie within the range of unknown Sections which are forbidden.

Abu Haneefa said any commodity that can be specified is valid for salam because such Section doesn't lead to dispute unlike unknown. This is the guideline on which the salam is based. The same view was supported by Al Kharqi of the Hanbali school saying: "Any commodity that can be specified is salam – suited.

Default in Delivery:

If the seller fails to deliver the commodity at the specified date, the buyer should wait until it is available or cancel the contract and get the price back if it is tangible or ad valorem. This is according to Abu Hanifa, Ashafi' and Ibn Al Qasim of the Maliki school.

Ashhab, one of Imam Malik's followers, said, "The contract must be revoked without delay with no other choice for the buyer."

The Sudanese Civil Transactions Act, 1984 has upheld the principle of the fuqaha stipulating that the buyer has either to make or repeal the contract.

Disposal:

The views of the fuqaha on the buyer's disposal of the commodity before receiving it are based on the hadith reported from Ibn Omer (may Allah be pleased with them) that the Prophet (pbuh) said, "Whoever buys food should not sell until he has taken hold of it".

Accordingly, the jurists have unanimously forbidden selling of a commodity before holding it.

Is the prohibition restricted to food only or it covers all other things which are not in the possession of the buyer? The hadith has mentioned food in particular because it is the most common commodity over which dispute rises. By analogy, does the prohibition restrict movable commodities only or both movable and immovable things.

Receiving the commodity is required according to Abu Haneefa and Al Shafi' whether it is food or non food in addition real estate according to Al Shafi'. Making comparison between food and non food items, the two Imams have not given the buyer permission to sell the commodity before receiving, while Malik and Ahmed said the condition is confined to food only. However, Ahmed and Ishag of the Maliki school have forbidden selling of the commodity before receiving it whether it is food or not sticking to the hadith reported by Atyia Al 'Aufy from Abu Saeed Al Khidry (May Allah be pleased with them) that the Prophet (pbuh) said "whoever buys a commodity to be delivered later, should not sell it to others (before receiving it)".

According to Imam Malik, the commodity should not sold before having it if it is food and if not it is allowed to be sold at any agreed upon price to other than the seller. Imam Malik has two conditions for items sold to the seller.

First: He has to pay immediately otherwise the deal is considered debt against debt.

Second: The price should not be of the same category of the bought Section, for example if the price is cloth and the bought item is a camel, it is permissible for the seller to deliver a cow instead in exchange for the cloth, but if a camel is purchased in exchange for gold and the pays in silver it would not be allowed.

The Sudanese Civil Transactions Act, 1984 has given the buyer a permission to dispose of the commodity by acquiring it.

If the meant item is food, the Act is in opposition to the hadith by the Messenger of Allah (pbuh) and unanimous principles of fuqaha.

Cancellation of the salam sale:

This means to terminate the contract by returning the price to the buyer and the commodity to the seller when the buyer receives the price. It is

unanimously permissible if the return is full otherwise it would not be allowed. A partial return is acceptable according to Abu Haneefa and Ashafi' and unacceptable according to Ahmed as reported by Ibn Rushd reported, it should not be less or more than the thing meant otherwise it is invalid.

The value that the seller returns to the buyer when the contract is over is the price of the commodity whether it is tangible or ad valorem.

According to Ashafi' and Al Qady Abu Yaly of the Hanbali school it is permissible for the seller to return substitute price. If he desires so provided that not deemed a debt deal, while Abu Haneefa said the buyer should not invest the price in another salam contract before receiving it..

Substitute salam price, meaning accepting another thing instead of the price, is impermissible before receiving the price unless the contract, becomes invited. Likewise, commodity shall not be substituted after being in possession.

Substitution for another commodity in Salam

Is it permissible to accept a substitute price (other than the price stipulated by the salam contract)?

If, according to the salam sale contract, the two parties agree to a specified commodity e.g. wheat, is it allowed for the buyer to accept barley instead?

Imam Malik has allowed it in his book Al-Mudwans Al-Kubra, page 136.

“If I buy wheat can I have samraa instead, or say if I buy samraa is it permissible to have barley instead when the specified time comes?”

“Is this Malik’s opinion?” I asked. “Yes”, he replied.

“Again, if I buy barley and I have samraa instead when the specified date comes, is it allowed?”

“It is acceptable,” replied Malik.

“Is this not the same as selling of food before being ripe?” I asked.

“No. If the specified date comes and you have any of what you have mentioned with the same weight, it is just a substitute and not selling of food before being fit.”

“If you buy any food you can have Samraa or barley or even rye when the specified date comes,” spelled out Malik.

Ibn Taimia was asked in Majmu’ Al Fatawi, Volume 29, Page 503, “If a man has paid 50 dirhams in exchange for a pound of silk, but when the exact date comes the silk was not available, can he have the value of the silk or get other substitute Sections instead?”

“Praise be to Allah. There are two views on this case according to Imam Ahmed,” he said.

“The first is that it is not permissible to get other than the exact commodity according to Al Shafi’ and Abu Haneefa because according to the hadith, the Messenger of Allah (pbuh) said, “Whoever pays a price in advance (in exchange for a commodity to be delivered later) should not

be distracted (by other offers or substitutes). According to Al Kharraqi, this is common among the late followers of Imam Ahmed.”

The Second opinion:

It is allowed in goods and non salam debts according to the Maliki school. This was also confirmed by Imam Ahmed in many situations. He considers the salam debt as any other sale. If he gets a substitute not measured or quantified tantamount to the price, not less or more, it must be of the same kind of the bought commodity, i.e., to buy wheat and have similar amount of barely or to buy silk and have horse, cows or sheep. This is allowed according to Al Ashhab: Ibn Abu Musa and Asamiry, the writer of Al Mustawib.

In some cases, as reported in Al-Mustawib, “For whoever buys a commodity, it is allowed for him to have other than the same category of the commodity in respect to one of the aforesaid cases, but it is allowed in the other case. He can accept a less valued commodity such as barley, etc., and not more or less than the quantity or value. According to Abu Talib: If you buy wheat and have barley instead it will be acceptable because it is less than your amount, but take no wheat for barley.

Those who are familiar with Imam Ahmed’s opinions have raised more general views, allowing substitution of price for a commodity. As Abu Hafs Al Kabary said, quoted by Al Qandhy Abu Yaly in his script. “It is allowed if he buys a quantified and measured commodity and have a substitute less in value on to return the value if he desires so.

Ibn Al Qasim said, quoting Ahmed: “I said to my father Abdallah, if he doesn’t find the commodity, but he finds another one of the same kind, can he have it?”

“Yes, provided it is less in value than what you have mentioned”.

“Even if he buys *musil* wheat?” I asked.

“He can get rye or barley and not more, otherwise it is not allowed,” he replied citing the hadith reported by Taoos from Ibn Abbass: “If you pay a price in advance for a commodity and you don’t acquire it when the specified date comes, you can have a substitute with less value and don’t acquire profit twice”.

Ahmed Ibn Asram said: Ahmed was asked about someone who entered into a food contract based on salam for a specified date to have a property or something else in exchange. “Yes, he can have anything not quantified or measured,” replied Ahmed.

Harb Al Karmany said, “I asked Ahmed about a man who paid dirhams in exchange for wheat and when the specified date came he couldn’t find any. Some people advised him to take barely”.

“He must not take the barely unless it is of the same quantity as the wheat or less,” he replied.

“If it is ten-bag weight, can he get the same amount?”

“Yes”, he replied.

Some others have reported Ahmed that this account is mentioned in Ahmed’s script and it is similar to his principles. The reason behind prohibition is that a commodity cannot be sold before reception. Seemingly, Ahmed’s school does not forbid selling before reception, but he has just more elaboration and well-known views. Differentiating between sale and seller and others.

The Maliki school also allows selling of the commodity. If it is a substitute, he has to sell it at the same price or less but not more. Food, however, is not allowed.

Ibn Al Munzir said that Ibn Abbass had said. “It is allowed to have wheat (for those practicing salam) or to have for barley with the same amount and silk for substitute commodity, e.g. horses, cows or sheep”. This was mentioned by the Ashaab: Ibn Abu Musa and Al Samiry, the writer of Al

Mustawib. In some cases as reported by Al Mustawib that: “whoever buys a commodity, it is allowed for him to have other than the same category of the commodity with respect to one of the aforesaid cases, but in other cases it is allowed. He can accept a less valued commodity such as barley etc., and not more or less than the quantity or value. According to Abu Talib: “if you buy wheat and have barley instead it will be acceptable because it is less than your amount. He said: “if you buy wheat and you have barley in return, it is acceptable, but take no wheat for barley”.

Those who are familiar with Imam Ahmed’s opinions have raised more general views allowing substitution of price for another commodity as a Abu Hafs Al Kabary said quoted by Al Qadhy Abu Ya’ly in his script. “It is allowed if he buys a quantified and measured commodity that has a substitute less in value or to return the value (price) if he so desires.

Ibn Al Qasim said quoting Ahmed:

“I asked my father, Abdallah, if one does not find the commodity, but he finds to another one of the same category, can he have it”?

“Yes, provided it is less in value than what you have mentioned”.

“Even if he buys *musil* wheat?” I asked.

“He can get rye or barley and not more, otherwise it is not allowed,” he replied.

On the authority of Ibn Abbas (May Allah be pleased with him) he said:

“The Messenger of Allah (pbuh) has forbidden selling of food before receiving it. “I do think that all things are the same as food”.

In case of Death:

The majority of fuqaha think that deferred debts, honoured by trust, can be incumbent when the debtor dies. One of these is the salam (*salam feehi*).

Al Kasany said: “If the seller dies before the specified date of delivery the debt must be incumbent upon this inheritance and these fore the inheritors have to fulfill.

The law has given the buyer the right when the seller dies before the exact date of delivery to revoke the contract and get back the price from the inheritors or to wait until the coming of the specified date. In this case some of the inheritance will be seized to meet the price unless the inheritors name qualified guarantor to undertake to deliver the commodity at the specified date.

Buying the crop at unfair price or conditions:

The law stipulates that if the conditions of the salam contract or the price is unfair, the seller shall demand the court to remove the grievances and define fair price putting into account the date, the place, the general level of the prices and the price variance between the date of signing and date of delivery. Similarly, the buyer has the right to reject the amendments by the court get back the price and revoke any agreement or condition tended to waive his right.

This example makes the salam an allegory contract because the risks are unknown and the contract becomes subject to repeal following the signing by agreement of the two parties because the seller will not be familiar if the price is fair or not when the specified date comes or if the court will respond to his demand or not. Likewise, the buyer will not be conversant if the agreed upon quantity will decrease or not at the specified date. He does not know if he would accept the amendment by the court or not.

Does he get back the price and cancel the contract? The seller’s right demanding amendment of the price must be considered before finalizing the sale at the agreed upon price, otherwise he will be automatically willing.

The law, from this corner, will encourage buyers to refrain from the salam contract in support of the sellers. The buyer may avoid asking the seller to change the agreed upon price. This is likely to be less than the price at the specified date in addition to the difference between the agreed upon price and the expected price, which constitutes the profit that encourage buyers to enter into the salam and invest their money through this sort of sales. The price may be the same at the specified date with no profit unless the price is expected to rise or is used in other business to generate him profit. The price may also drop because of the difference between the two prices.

From a fiqh point of view, Muslims are forbidden to exploit the need of others by under valuing their products and buying them at lower price to gain excessive profit.

The law will acceptable if it applies less-for-gain principle so that the buyer will have the right to demand increase in the quantity of commodity, by doing so the contract will be unknown and subject to amendment or repeal although the price is rendered according to the agreement by the two parties. The law had better stipulate criteria and regulations to abide by as guideline when the contract is finalized. For example, it has to provide that the price shall not be less than on third of the price prevailing at signing of the contract, or wait for the specified date to ensure of the contract by the acceptance of seller on the agreed upon price or by the court's confirmation of the price.

The contract becomes unbinding in this case because it depends on the agreement by the buyer although the entrant is affected with the reception of the price and binding for the two parties with no alternatives to either of the two parties. The two parties then can withdraw from the contract.

It may be said that price is paid in exchange for unspecified at signing of the contract and that quantity can be specified when the exact date comes

according to the existing or suitable price as agreed upon or seen fair by the court or arbitrators i.e., the total price agreed upon at signing of the contract is specified. The quantity of the commodity and price of the unit cannot be determined until the coming of the exact date, but unfamiliarly of the quantity and the price of the unit will lead to dispute.

The actual application of salam.

The salam in the Sudanese convention.

The term “salam” as mentioned in this paper is similar to the Sheel (traditional finance scheme in rural agricultural areas) system in the Sudanese rural areas, which is mostly used in crops. The Sheel system can differ from the allowed salam to some extent if the buyer provides that the commodity should be of certain crop or harvest of a certain farm or certain origin if it belongs the seller or come one else. Such condition will revoke the contract because the commodity must not particularized but it is trust-based.

Moreover, some buyers, whether they are traders or non traders, capitalize on the seller’s needs by arriving at low prices compared to the price existing at the signing of the contract and the price expected at the specified date. Such behavior violates the general principles forbidding the Muslim to exploit the need of other and to under value the product, of others and warning against trend because the Muslim is the brother of the Muslim so he has to cause no grievance or, betray him. It is better to consider the acceptable price and profit for each commodity according to sale ethics and tolerance.

Appealing banks to adopt salam:

The Juristic Censorship Authority at Faisal Islamic bank has worked out a group of fatawi allowing salam deals. Moreover, the first conference of Islamic banks held in Dubai has called for abiding by the rules and conditions of the salam approved by the Islamic Sharia when a bank buys

certain commodity to be delivered at specified date in the future or sells a commodity to be delivered later against immediate payment. The scientific encyclopedia of Islamic banks has discussed the salam as one of the main modes of Islamic investment applicable in Islamic bank addition to mudharaba, sharikat alama, murabaha, etc.

According to current practices, the encyclopedia said that Dubai Islamic Bank has succeeded to introduce salam sales into its operations, affirming the nobleness and inclusion of Islamic Sharia of all human activities in the future.

The salam practice by the banks:

The banks can carry out the salam sales as buyer with farmers (sellers) and reach salam sales contract on some crops:

They can specify the sort of the commodity e.g. wheat, sorghum, date or brand e.g., Sudanese wheat, berakawi or qundeela (Sudanese dates).

Regarding the amount, they have to specify the quantity and measure by naming the units exactly, the number and quality as prices range according to quality.

The quality should be conditioned to avoid ambiguity that lead to dispute because any ambiguity regarding the sort, brand or, quantify leading to dispel will revoke the contract.

The commodity shall be existing and can be delivered at the same date and place agreed upon the exact date shall also be specified according to the harvest of each crops. The two parties shall agree on place or site of delivery e.g. at Tadamon Islamic Bank's warehouses located in the industrial area, Bahry (Khartoum North) and the price paid by the bank (the buyer) to the farmer (the seller). The price should be known in terms of sort or amount. It is usually the exchange currency as agreed upon by the two parties who shall determine that the amount is paid by the buyer

as agreed upon and specify the quantity and quality of the commodity to be delivered at such and such. place as the seller agreed with the bank.

The buyer must not undervalue the commodity, or crops of the seller. He has to pay the acceptable price and they have estimate the price in accordance with prices prevailing at signing of the contract and the price expected at the date and place of delivery in addition to expenses and costs related to the commodity and that the price should not be higher than expectation. In this case the buyer will loose accordingly.

If the price agreed upon is unacceptable, the contract will be subject to amendment or repeal. The court has the right to enrage the agreed up on price at the seller's request, and if the buyer agree on the amendment, the contract will be amended, but if he doesn't accept amendment by the court the contract will also go cancelled by the buyer's retaining of the price according to Section (221) of the Sudanese Civil Transaction Law, 1984.

Since the price paid in money by bank and the commodity are usually crops of different categories, the delay in delivery is possible. There are no other usurious reasons forbidding the salam practice.

The banks' practicing or refraining from the salam sales depend on recommendation, and conclusions of the economic feasibility study conducted by investment section in this connection.

Conditions of the salam sale contract stating the duties and rights of the two parties to the price and commodity should expressly be written. Banks can get involved in this task along with other individuals.

**A Paper on
Expertise of Banks' Portfolio
in Salam Sales**

Preface:

This part of the book discusses expertise of the Sudanese banks' portfolio in charge of financing agricultural corporations through Murabaha to introduce inputs and through the salam mode to meet operation costs.

The paper discusses it as a practical expertise in selling through the salam. The paper was submitted at the 18th meeting of operations and investment directors of the Islamic banks in Doha, Qatar on 5-8 October, 1992.

The paper was prepared by Suleiman Hashim Mohamed of Tadamon Islamic Bank, Khartoum. The appendix on conditions and criteria of salam sale has been dropped to avoid repetition. The book has already discussed the salam sale counteract and juristic rulings at the beginning.

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1. Preface.
2. Agricultural corporation
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 - Goals and Reason behind the portfolio.
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 - Administrative and Executive structure of the portfolio.
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 - Advantages.
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First Appendix on the salam Mode.

This paper, discussing fatawi of the salam, has been dropped to avoid repetition, because we have discussed it at the beginning of the book).

Second Appendix:

The permissibility of reselling the commodity to the seller.

Third Appendix:

Financing cotton crop for 91/92 before the signing of the salam sale contract.

Fourth Appendix on:

Signing salam sale contract on cotton crop with the Gezira Scheme 91/92.

Preface:

The Sudanese government has been in the view that all public corporations should operate on commercial system to depend on themselves to get necessary funds. One of these are agricultural corporations which used to obtain their funds from the Central Bank on usurious basis. However, from the 90/91 season, these corporations began to get their funds from commercial banks.

Public Agricultural Corporations:

These are state run. They have excellent infra structure and administrations in charge of supervising production relations and provision of inputs and extension.

They depend on constant streamlined irrigation from dams and pumps.

The following is a brief outline about these schemes.

Exploited areas at Irrigated Sector
Crop Rotation and Production Relations

Corporation	Site	Total area (In feddan)	Exploited area (In feddan)	Cultivated Crops	Crop Rotation	Production Relations
Gezira	Central region	21,00000		Cotton/ groundnut/ wheat/ sorghum/ vegetable	Managil: four field crop rotation Gezira: five field crop rotation	Individual account
Halfa Al-Gadida	Eastern region	3,0000	2,0000	Cotton/wheat/ Groundnut	Three-field crop rotation	Individual account
Al-Rahad	Central region eastern	3,0000	275,000	Cotton/groundnut/ sorghum /fruit/ vegetables	Two field crop rotation	Individual account
Blue Nile	Central region	30,0000	5,0000	Cotton sorghum	Two field crop rotation	Individual account
White Nile	Central region	54,0000	29,0000	Cotton sorghum	Two field crop rotation	Individual account
Asoaky	Central region	76000	76000	Cotton sorghum	Two field crop rotation	Individual account
Toukar	Eastern region	206,000	2,00000	Cotton/ sorghum millet/vegetable	Two field crop rotation	Mutual account

Before the emergence of bank's portfolio, it was funded by the Central Bank and guaranteed by the Ministry of Finance.

Commercial Bank Portfolio for Funding Agricultural Institutions

Objectives for setting up the Portfolio

The portfolio has been established to realize the general aims of the three-year economic salvation programme. More importantly are:-

1. To break the economic recession of Sudan's economy and to be geared towards production.
2. To mobilize all the efforts and to allow those who wish to particulate internally or externally to realize the objectives of the programme and adjust or amend the economic financial and institutional structures necessary for participation of all.
3. To attain social equilibrium (stability) so that economic progress does not occur on the expense of economically poor groups.

The most important approaches set by the three year programme:

1. Emphasis on agricultural development as a whole.
2. Liberation of expert and rendering the necessary support.
3. Provision of real soft and hard currencies internally and externally to realize the programme's objectives through.
 - (a) Provision of real soft and hard currencies internally and externally to realize the programme's objectives.
 - (b) Private sector investments' either locally or in the Arab and Islamic worlds.
 - (c) Obtaining any available procure, from private no owners or official ones politically accepted and in line with economic programme's directives.

The portfolio has been established to realize the objectives of the three-year programme of economic salvation cited above and other national objectives, including.

1. Bank work base should be broadened through utilization of available bank resources and to play a role in development.
2. Discipline in financial conduct of agricultural corporation should be preached and expenses should be rationalized in these institutions.
3. Easing the burden on the Central Bank and reducing borrowing from the bank system. In order to help the commercial banks achieve these objectives, the Central Bank started to increase its bank's ceilings and these banks have been directed to employ their available ceiling as follows:

- 40% for agricultural sector.
- 40% for sector having other priorities, these are:-

Experts, industry, transport, handicraft.

* 20% for Business Sector.

With expansion in cultivable lands in a country, the funding for agricultural sector is increased to about 50% and the sector having other priorities has become 30% and the business sector is still at 20%.

The portfolio resources:

The banks union met and decided to set up a portfolio comprising of a group of commercial banks operating in the Sudan. The contribution of each bank shall be voluntary.

The Administrative structure and executive body of the Portfolio:

The administrative and executive structures of the portfolio comprises of the following:

Shareholders' Board:

It comprises of bank managers which have contributed shares to the portfolio and it has the highest authority in decision – making and in carrying out the portfolio duties.

The executive body:

It comprises of a number of bank managers who have been nominated by shareholders board to run the affairs of the portfolio on behalf of shareholder board.

The portfolio management:

In the first year of the portfolio 90/91/ and due to limited time and the approaching farming season. The Central Bank had been assigned on behalf of the banks which have contributed shares, to follow mudaraba Model and to allocate the necessary funds to agricultural corporations by adopting murabaha and salam models so that the Central Bank shall earn 10% of the portfolio.

While in 1991/92 season the management of the portfolio was assigned to the Bank of Khartoum, being the biggest bank in accounting, to earn 10% of the total profits of the portfolio, the same thing was applied to the third year 1992/93.

- Khartoum Bank plays a leading role in collecting the banks' share (contributions) and it also supervises the funding processes of the agricultural corporations.
- The portfolio shall appoint a legal advisor to assist in legal matters.

The portfolio's work and its executive body:

The portfolio discharges its duties through its technical committee attached to the leading bank as follows:-

- (a) Submission of applications.
- (b) The advisory unit conducts a feasibility study concerning all the technical and economic aspects and presents its recommendations to the technical committee of the purse.
- (c) The study should be comprehensive encompassing all the institution's needs with a table showing when flow (or currency flow) and the expected dates of payment.

The study should contain:

1. The last aviated budget of the corporation.
2. The position of funding for the last two years.
3. Operation evaluation from the profitability point of view.
4. Settlement/payment timetable and its sources.
5. The proposed guarantees vis-à-vis the required funding.

1. The application is studied by the technical committee and the recommendations are forwarded to the council:

The committee shall evaluate the study on banking basis so that:-

- (a) The information is revised, completed and ascertained at the advisory unit of the Ministry of Agriculture or at the Agricultural Corporation.
- (b) To seek any expertise needed.
- (c) The technical committee forwards its recommendations to the executive body.
- (d) If the recommendation is positive then it should contain the following:

2. The required guarantees:

1. The production inputs and agricultural crops should be ensured wholly in accordance to the Islamic system.
2. To meet the contract terms locally.
3. The leading Bank after having met the legal and executive aspects of the contracts, shall sign on the contracts with agricultural corporations on behalf of the banks that have contributed shares.
4. The leading bank collects the banks' contributions in accordance to the table showing cash flow as agreed upon.
5. The leading bank implements funding in accordance with terms and bases set by the executive council of the portfolio, i.e. each funding is in accordance to an agreed upon Islamic form.

6. The leading bank satisfies the agreed upon guarantees.
7. The leading bank follows up the end of the season as set before through collecting the dues and securing all the crops and selling them and setting all dues of each bank.

Basis for financing Agricultural corporation set by the portfolio:

1. No fund is released to any agricultural corporation unless the contracts based on Islamic modes are signed as agreed upon.
2. Funding should be in accordance to sound banking bases that answers the validity of the process.
3. The required funding to an agricultural corporation is about 80% of expected value of the crop.
4. The agricultural land should be at the fund disposal as a guarantee in case the former fails to hand over the crop. If it does not meet the obligation then the board of corporation has the right to take over the land legally.
5. The fund is liquidated at each season by the end of cultivation, it should not exceed June of any year.
6. A schedule should be drawn up for funding according to actual needs of the agricultural corporation as contained in the table of cash flow as agreed upon by the corporation's management.
7. Coordination with all governmental concerned parties that have something to do with the transport of cotton and wheat to guarantee its handing over and safe marketing.
8. No fund is given to any agricultural corporation that has failed to meet its previous obligations.
9. The fund shall finance crops that are under the responsibility of agricultural corporations' management such as: cotton, wheat and sorghum.

10. An agreement should be reached on prices and the amount of crops needed to be handed over through negotiation with the fund from one side and management of the agricultural corporations and farmers unions from the other side on the basis of the size of funding to be given to each crop in accordance to the technical studies.
11. Funding should be in accordance to the murabaha form for the production inputs and through salam form for the running expenses.

Basis for determining the salam price:

To set a salam price, a broad-based meeting including all the agricultural corporation departments, farmers unions and the fund management should be held to agree on the price of salam, which is usually based on the following:-

1. The total cost of cultivating one feddan; this is in accordance to technical and scientific studies conducted by the corporation management in collaboration with the advisory unit attached to the office of the Agriculture Minister.
2. The productivity per feddan.
3. Deducting immediate profits to farmers within 33%.

Example: The cost of production of Shambat cotton for the season 1991/92 (Gezira Scheme)

The total cost	6341 Sudanese pounds.
Production per quintar	5.5 feddans
The cost of quintar production	1152.91 Sudanese pounds.
To be added to 33% farmers' profit	380.46 Sudanese pounds.
Salam price per quintar	1533.38 Sudanese pounds.

The portfolio Experience for the 1990/91 season:

The necessary funding to cover the general agricultural corporation for the season 1990/91 was estimated to be 2 billion Sudanese pounds. However, the actual contributions of banks amounted to 1,745,165. Due to nearing

cultivation season and limited time the Bank of Sudan had been assigned to supervise the fund in accordance to a mudharab contract signed between the Bank of Sudan and a number of commercial banks with a profit estimated at 10% from the total profits earned.

- The Bank of Sudan should grant a fund to agricultural corporations adopting murabaha and salam Islamic modes of finance.
- The funds are offered against guarantees from the Ministry of Finance, in addition to the crop guarantees.
- The Bank of Sudan has actually set up a technical unit comprised of specialists in agriculture, financial analysis and a number of bankers and sealing support from trained cadres in the Ministry of Agriculture.
- A number of banks that contributed in the season 1990/91 were seventeen (17) banks and seven (7) banks did not participate in the fund due to liquidity difficulties.

Funding uses:

The available funding from the banks are used as follows:-

Corporation	Cotton funding (million Ls)	Wheat funding (million Ls)	Total funding (million Ls)
Gezira Scheme	541.0	483.0	1024.0
Rahad Scheme	182.0	78.6	260.6
New Halfa Corporation	112.0	52.0	164.0
Blue Nile Corporation	49.0	46.7	95.7
White Nile corporation	49.0	84.0	133.0
Soki Corporation	42.0	9.6	57.6
Shamalia Corporation	-	14.5	14.8
Tokar Scheme	1.5	-	1.5
Total	976.5	768.4	1744.9

The contracts and investment modes used are:

In the funding of the season 1990/91 two Islamic modes were used. They are salam and legal loan.

- The Islamic form of loan was offered to Shamalia Agricultural Corporation and Tokar Agricultural Corporation because they were given loans prior to establishment of the purse and signing of contracts. But the other corporations were funded in accordance to salam selling contracts as follows:-
- 265,392 tons of wheat with a price of 2764 Sudanese pounds.
- 1,565,141 quintars of cotton with a price of 623 Sudanese pounds.

Liquidation of the Portfolio in 1990/91 season:

The Mudharaba Unit at the Bank of Sudan has managed to liquidate 1990/91 season finally in December 1991 with an extra time of six (6) months from the set date of 30 June 1991. This was attributed to delay in cotton earnings and its products. The liquidation was done as follows:-

The wheat crop:

The corporations that managed to hand over the crops are: Gezira, Rahad, New Halfa and Blue Nile where as White Nile and Souki corporation have failed to fulfill the required amounts due to losses suffered by these corporations. Therefore, the Ministry of Finance met the deficit from the guarantees presented by these two corporations. The deficit was about 67 million Sudanese pounds.

The cotton crop:

The cotton was sold to various sides:- Oil seed presses – Local textile companies – Ministry of Finance.

The handing over of cotton earnings were delayed particularly the cotton allocated to oil manufacturing due to its failure in granting the funding.

Income from investment of the portfolio for the 90/91 season.

	Size of Financing in millions	Profits in Millions	Net income
Cotton crop	977,077	97,557	10%
Wheat crop	768,088	75,358	9%
Total	1,745,165	172,915	9.9%

*The profit was about 6.6% per year.

Portfolio's experience for the 1991/92 season:

The success of 1990/91 season had led a good number of banks to respond positively in contributing in financing the 1991/92 season.

The number of banks that contributed were (18) each bank contributed more than its previous contribution. The total contributions of banks amounted to 3,085,244,820 Sudanese pounds which was equivalent to the size of funding agreed upon in accordance to estimated production costs for agricultural corporations.

The use of available funds as in table below (by millions).

Agricultural Corporation	Cotton Crops	Wheat Crops	Total funding (million Sud. Pds)
Gezira Scheme	1035.0	1330.0	2365.0
Rahad Scheme	273.0	134.0	407.0
New Halfa Corporation	93.0	66.0	159.0
Blue Nile Corporation	60.6	48.9	109.8
Total	1461.6	1578.9	3040.5

The contracts and investment modes used:

In 1991/92 season, the salam mode was the only one used. Salam contracts concerning wheat were signed between the portfolio and the agricultural corporations after having agreed on salam selling price and the quantities (by sacks), as follows:

The Scheme	The size of funding	salam sale price	Amount	
			By Sack	Per Ton
Gezira Scheme	1330.0	610	2,180,000	218,000
Rahad Scheme	134.0	620	216,129	218,000
New Halfa Corporation	65.8	620	106,161	10,600
Blue Nile Corporation	48.8	620	78,710	7,000
Total	1578.6			

As regards to wheat crop, an agreement has been reached on details of salam Contract that the prices should be according to what the government announces because the government is the only party which fixes the prices of cotton and markets it. This has led to failure of signing salam sale contracts concerning funding of cotton crop at time when the portfolio allotted the funds for agricultural corporation's to enable them cultivate in the set time. This has shown a problem which will be discussed later.

Liquidation of the Portfolio in 1991/92 season:

The production costs for 1991/92 season were based on the average of productivity per feddan as follows:

Cotton Crop	Average productivity per feddan (7) sacks
Wheat Crop	Average productivity per feddan (6) sacks

The actual average production in agricultural corporations is as follows:

Agricultural Corporations	Average production per feddan	
	Cotton / Quintar	Wheat / Sacks
Gezira Scheme	6	9.4
Rahad Scheme	6.2	9.5
New Halfa Corporation	4.5	9
Blue Nile Corporation	5	6

The 1991/92 agricultural season was characterized with high production. This has enabled agricultural corporation to receive cotton and wheat without any difficulties with exception of Blue Nile Corporation, which did not hand over the required amount of wheat on time. The amounts, which had been agreed upon from various departments of agricultural corporations, were handed over. This allowed the Portfolio to sell the crops and get its earnings as follows:

Crop	Size of Funding	Earnings from Sales	Actual Earnings	Percentage
Cotton	1,461,425,000	1,680,635,000	219,210,000	15%
Wheat	1,578,674,000	1,973,344,000	394,670,000	25%
Total	3,040,099,000	3,653,979,000	613.880.000	17%

The earnings from the commercial banks portfolio investments in agricultural corporations were about 17%. The funding was granted as from 1/8/91 to 30/3/92 and the funding was recovered with profits during the period June 92 to Sept. 92.

Cotton was sold to the government and was paid in full whereas wheat was sold to various wheat flour mills in the Sudan as follows:

Grain Mills	Scheme
Gezira Farmer's Mills	Gezira
Managil Mkashfy Mills	Gezira
Arab Mills of Khartoum North	Gezira
Bagair Mills	Gezira
Rufaa Grain Mills	Gezira
Al Ahlia Mills	Gezira
Rufaa Mills	Rahad
Blue Nile Mills	Rahad
New Halfa Mills Union	Rahad
Atbara Grain Mills	Blue Nile

**General evaluation of portfolio experience for two Seasons 1990/91 –
1991/92**

First, Advantages:

We can say that the portfolio has realized the objectives for setting it up for instance:-

1. The corporations depended on themselves in securing funding from the portfolio rather than from the Central Bank (CB).
2. The corporations departments were concerned about increasing productivity per feddan to enable the farmer attain a production that would enable him to hand over his share of crops to the portfolio and to realize sufficient surplus.
3. The corporations departments were concerned with realization of profits so that they are not deprived from funding in future.
4. To be familiar with Islamic modes of investment particularly salam form of sale.
5. To be concerned about clean handling or rather correct application conditions concerning the Islamic forms.
6. To attain a financial discipline in agricultural corporations. Departments.
7. The portfolio has realized profits in the above-mentioned seasons.
8. The banks have allowed exploration of their resources and their real contributions in agricultural development: salam form has been used on larger scale. This has been included rain-fed agriculture.

Second: Disadvantages:

The disadvantages were attributed to lack of observing the basis for funding:-

1. Granting funds before reaching an agreement on salam price. This has led to some legal problems in the Islamic modes, and will be dealt with later.
2. Lack of early coordination with the corporations, which have something to do with cotton and wheat. This has delayed the liquidation of the portfolio. It will be dealt with later.
3. Interference of the Ministries of Finance and Industry in handing over of cotton and seeds to factories has led to the delay of the portfolio liquidation in the set time.
4. Variation in the prices of crops between salam price and crop price in the harvesting season this has led to damages to one of the parties. This matter has been resolved.

Thirdly: Samples of these disadvantages:

The First Sample:

Economic and Funding Policies:

Some old economic and financial policies are not in line with new funding policies of agricultural corporations that are carried out through the portfolio:-

- (a) State monopolize policy concerning fixing the prices of cotton in later than the beginning of cultivation season this has made legal problems as regard to profits resulting from funding of cotton in 1991/92 season.
- (b) The policy of the Ministry of Industry that aims to secure the needs of textile factories from cotton and its seeds which demands payment of 20% in cash and the rest will be paid by the end of the year on December 31, against a bank letter of guarantee. This has led to failure of the portfolio to liquidate the portfolio for 1990/91 season on time. The season cannot be liquidated (ended) unless funding is

provided to factories – through Morabah from the banks or follow the old polices.

The Second Sample:

Funding of cotton in 1991/92 Season:

The portfolio funded the cultivation of cotton in 1991/92 season that is before signing salam contract due to lack of fixing the prices of cotton at that time. The price were usually fixed by the government because fixing its prices and marketing of cotton is a government monopoly, in fact, the prices were fixed in May 1992 after the portfolio had paid a large amount of funding this had created a legal dispute. As such, the legal advisor of the portfolio rejected the earned profits.

The legal advisor has confirmed the need that the amount paid to the farmers should be considered as a loan which will be refunded without profits unless the farmers representatives want to appease the portfolio so they can pay some money. By doing so the amount which will be paid should be less than the profits demanded by the portfolio in accordance to salam contract. In fact this matter has been shared with the farmers and the motives behind paying funding earlier or rather on time and being keen to make the cultivation season a success and the necessary legal retributions have been explained and signing contract before granting funding. After ward the farmers agreed to give profits to the portfolio that in turn will fund the cotton in that season. It is worth mention that the cotton profits have reached 219 millions Sudanese pounds.

The Third Sample:

Funding of Dura and wheat in 1991/92 Season:

The portfolio has granted an amount of 300 millions pounds to Gezira Scheme on 17 July, 1991 for purchasing of wheat seeds from farmers to all corporations. An amount of 191 million Sudanese pounds has granted as a loan for sorghum to most agricultural corporations before having

agreed on salam contract and salam price. It seemed that this procedure was wrong and it had created a legal problem to the portfolio. Since an agreement had not be reached with farmers concerning the salam price of sorghum so the amount paid for sorghum is regarded as a loan and should be recovered immediately from the farmers as stated by the fatwa issued by the legal advisor. This has been done and the portfolio decided to stop funding for sorghum .

As regards to wheat, the agreement had been reached on salam price at 610 pounds per sack. And the amount paid for wheat is considered as a part of total funds granted to agricultural corporations.

The Fourth Sample:

The concessionary clause:

Abiding by (no harm nor harming others) principle, this clause has been added to remove any damage on each of the two parties. Accordingly, the two parties has to respect the concession of the contract and pledge to remove any loss resulting from price variance so as not affect the farmers. The portfolio, accordingly, has given up some of its profits when the sack of wheat reached 981 pounds compared to 620 pounds when the contract was signed.

Appendix 4:

Comment by the publisher

The Sudanese Banks Association, annually, announces a mechanism through which it can remove any grievance that may result from the salam sale contract.

Portfolio experience for 1992/93 Season

The Agricultural corporations have submitted their applications to the portfolio regarding funding a little earlier before the beginning of the cultivation season. In fact, these applications have been studied and an agreement reach with agricultural corporations on the size of funding which is as follows:-

Corporation	Cotton (by millions)	Wheat (by millions)	Total (by millions)
Gezira Scheme	3250	1120	4370
Rahad Corporation	756	135	891
New Halfa Corporation	428	75	503
Blue Nile Corporation	315	1370	355
Total	4749	1370	6119

Signing of contracts and forms:

Contracts have been signed with agricultural corporations following the salam sale form regarding funding of cotton only, and the terms of salam sale contracts were as follows:

1. The cotton flour for 1992/93 production season should be from these samples: Barakat, Shambat and Akala.
2. It should not contain impurities and litter with a percentage not more than 2%.
3. Cotton should be handed over to ginning mills according to the timetable below.
4. The amount of money, salam price and the quantities should be as follows:-

The corporation	Size of Funding (in millions)	Salam Contracts for Cotton			
		Type	Quantity (in Quintars)	Quintar price (in pounds)	Ginning mills
Gezira Scheme		Barakat	328500	4551	Marigan
Gezira Scheme		Shambat	116842	3616	Hasahesa
Gezira Scheme	3250	Akala	380932	3498	Al-Bakeir
Al-Rahad Corporation	756	Akala	204325	3700	Al-Fao
New Halfa Corporation	428	Akala	120000	3600	New Halfa
Blue Nile Corporation	315	Shambat	85135	3700	Kasab Handnalah
Total	4.749				

- Concerning the wheat crop, an agreement has been reached on the size of the required funding and the contracts signed with the beginning of the winter season.
- The portfolio management tried to deal with all the disadvantages that faced the two previous seasons.

Appendix (2)

On legality of selling sorghum to farmers

(salam resale to the buyer)

Date: 21 October 1991

Dear Mr. Salah El-Din Abu Alnaga

The Portfolio Executive Council member,

Subject: Fatwa on Salam Sale to Farmers

I would like to attach to Your Excellency a copy of the fatwa presented to us by Dr. Ahmed Ali Abdalla, the Legal Advisor for the Portfolio concerning sorghum sale in advance to the farmers following the meeting held in his office on 15 Oct. 1991 attended by Moulana El-Sheikh/ Sadieg Mohamed Al Dareer and Sheikh/ Abd El-Jabar Al-Mobarak.

The corporations' office managers who have been served with copies of the fatwa are kindly requested to send as quickly as possible to the headquarters of the agricultural schemes through radio or telephone and a copy should be attached to be distributed to farmers.

Thanks.

Dr. Badawi Babiker Osman

Head of Technical Unit at the Portfolio

Appendix (2)

An attempt by the portfolio to sell sorghum to the farmers

Opinion of the fuqaha on salam resale for the farmers

The two jurists, Sheikh Sadieg Mohammed Al Amin Al Dareer and Abdel Jabar Al Mubarak have agreed that the mode that had been agreed upon for funding of sorghum is more or less like the *aliena* sale (a type of forbidden sale whereby the seller purchases the goods or commodity from someone and then resales it to him). This is because in the aliena sale the sold sample should be returned to the owner with an increase, which goes to the buyer. The latter has been forbidden because it is usurious.

Sheikh Ahmed Ali Abdallah said the prohibition tended to avoid a doubtful act, saying there is no similarity between the two. The two requirements for the aliena sale is to return the commodity to the owner in exchange for the return of the price plus the profit. With respect to the second type, the portfolio is uncertain about the return of its price apart from the profit and that the commodity will be returned to the owner, in all situations.

The board, therefore, agreed to turn over the arbitration to the committee, which has forbidden the deal and called for negotiating with the farmers instead.

The committee, moreover, said the advance paid in exchange of sorghum can be berated as a deposit in the general sense. It can be treated as a price if it is agreed upon by the two parties, otherwise, the price should return to the portfolio.

Appendix (3)

On funding of cotton prior to the signing of contracts

Determining the salam price:

Dear Dr. Sabir Mohamed Hassan

Chairman, The Portfolio Council

1. The portfolio council has decided to fund cotton for 1991/92 season through salam form in its meeting on 17 July 1992.
2. Upon an agreement reached between the portfolio from one side and the farmers' Unions and agricultural corporations departments from another side on the funding by salam based on price that will be determined later by the state.
3. It seems that the lack in determining the salam capital is that the state is the one which determines the prices in the future because it monopolizes them.
4. As such, the Minister of Agriculture formed a committee to determine the price of cotton representing the government and salam contract parties. The committee presented its recommendations and agreed with the concerned parties on the prices for the year 1991/92. The prices were declared by the Minister of Finance on 5 May 1992.
5. The fixed price has been considered as a salam capital, and the portfolio agreed with Sudan cotton company with a fixed price plus 15%.

Basically, salam is one of sale contracts whereby place of signing, the commodity and the price are known to remove ambiguity. These conditions, are seriously adopted in the salam sale contract, because the price paid in advance must undoubtedly be defined.

The Islamic jurists have prohibited a sale without defining the price nor a sale with a market price but Imam Abn Taimia has allowed this, considering the a price as something known to the people at time of contract. But what people can agree upon or which can be known later is something which has not be known later is something which has not been stated by either of the Muslim jurists. Therefore, it is rejected.

It is obvious in the above examples that what has been agreed upon and known as salam contract between commercial banks' portfolio and representatives of farmers and agricultural corporations has nothing to do with salam contract. However, the amount of money paid to farmers is considered as refundable loan unless representatives of the farmers after having known the whole fact decided to pay something to the portfolio to appease it. If they do so, then the amount paid should be less than the profits demanded by the bank on basis of unsound salam contract.

We should accept this judgement whole heartily though has caused some losses.

Ahmed Ali Abdalla

The Portfolio Legal Advisor

13/7/1992

Date: 13 Aug. 1992

From: Chairman of Executive Council

The Portfolio

To: Dr Saber Mohamed Hassan

Greetings to you,

Subject: Funding of cotton for 1991/92 Season

With reference to your letter on 8 Aug. 1992 which I received on 10 Aug. 1992. I met the farmers' union, in the meeting of a joint committee for Gezira Scheme in which I briefed them about the idea and it was accepted by the members and they also accepted your directives concerning removal of unlawful dealings and their efforts to purify the financial dealings from impurities, they decided to meet on 21 Aug. 1992 at Bank of Khartoum, main office.

The meeting was held in the presence of Sheikh El-Tayeb Al) Abeid Badr, Chairman of Gezira Farmers' Union and Managil, Sheikh Ismail Shamboul Secretary of Treasure for the Union, two representatives of the farmers in addition to managing director of Finance, Mr. Rahmatallah – Director of Funding and Marketing Unit, Abubaker Ismail Karar – Director of Socio-economic Planning and Research Unit and Mr. Moustafa Akhasah – The farmers have conveyed their consent regarding the profits which have been received by the portfolio.

Thanks.

Izz El-Din Omar Makki

Commissioner of Gezira Scheme

Date: 13 Aug. 1992

Dear Mr. Chairman of Executive

Council of the Commercial Banks Portfolio

Subject: Financing of Cotton for 1991/92 Season

With reference to your letter dated 8 Aug. 1992 concerning funding of previous year 1991/92 season.

I would like to thank you for your cooperation and invaluable assistance which we received during that season which made it a success, it was considered as one of the most successful seasons in Al-Rahad Agricultural corporation in terms of production.

We have disclosed what had been mentioned in your letter to the meeting which was held yesterday between Agricultural corporations, departments and Rahad Agricultural corporation farmers union. The meeting, however, has generally authorized me to write this letter thanking you for your help. And all the funds which have been allocated to the cooperation for funding of 1991/92 season should be begrudgingly based despite that fact that the bulk of work did not allow us to grow in the legality of Islamic forms.

All present at the meeting were much concerned with clean dealings and the profits which have been received by the portfolio and they wish the dealings to continue in the future.

Appendix (4)

Salam Sale Contract for Cotton in the Gezira Scheme 92/93

Commercial Banks Portfolio for Financing government Agricultural Corporations:

salam Sale Contract for Cooton Crop:

This contract was made on 18 Aug. 1992 between:-

The Banks shown in the appendix No. (1) attached represented by the Bank of Khartoum.

A leading Bank and referred to later in this contract as the first party (the buyer) Gezira scheme as an agent for scheme's farmers and it is represented by Mr. Izz El-Din Omar Makki and they are referred to for the purposes of this contracts the second party (the seller).

Since the second party is in need for funding in: agriculture, monitoring, harvesting and cotton and they have requested from the first party to offer a sum of money in return for sale of a portion of crop through salam sale in accordance to the following terms:-

1. The second party has sold a cotton crop according to the description of the production for 1992/93 season.
2. The second party pays a sum of 3 billions and two hundreds and fifty millions Sudanese pounds.
3. The second party hands over the commodity as a sample according to legal rules of salam sale contract in payments according to section (3) of appendix No. (2).
4. The second party hands over the commodity to the first party in the period as from January 1, to the end of June 1993.
5. As a guarantee for adherence to obligations mentioned in the contract, the second party presents an undertaking mentioned in the appendix (3) attached to this contract.

6. The second party bears the costs of transporting the commodity to specified place as in term (3) of the attached contract.
7. The first party may send back the commodity to the second party if it is not matching with the description or there is a defect upon its handing over in the place agreed upon according to the description stated in the appendix (1-3) of this contract.
8. The appendixes as from (1-3) are complimentary to this contract.
9. If the second party violates any terms of this contract or fails to hand over the commodity or part of it with good reasons and his act has caused damage to the first party. So the first party has the right to demand compensation from the second party.
10. A bidding by no harm nor harming principle, the signature's to this contract should work hard to remove damage on either parties resulting from significant bias in the prices of the crop during the harvesting season. This should not contradict with the provisions of the signed salam contract.

11. Interpretation of the contract and settlement of conflicts:

This contract is interrelated in accordance to the provisions of the Sudan's law, which doesn't contradict with Islamic laws. When there is conflict on interpretation of this contract or implementation of its provisions, the conflict is resolved peacefully (friendly). If it fails, then it will be referred to arbitration in accordance to the rules of the law. he decisions of the arbitration should be in accordance to the rules of Islamic law, and they should be final and binding to both parties.

Signature of the First Party

Signature of the Second Party

Witnesses:

1.

2.

Agreement on funding of Gezira Agricultural Scheme

On 18 August, 1992 an agreement has been reached between the Commercial Banks' Portfolio (represented by bank of Khartoum) as first party. And Gezira scheme (as representative of Gezira and Managail farmers), a second party.

The first party funds the second party within the limit of the sums indicated below in accordance to suitable Islamic forms:

3250 million Sudanese pounds for cultivation of cotton 1120 millions Sudanese pounds for cultivation of wheat.

The first party undertakes to pay fund in accordance to currency flow list which is presented by the second party in accordance to the rules of the contract signed between the two parties.

The second party undertakes to offer adequate guarantees to the first party to ensure payment, the second party undertakes to hand over the agreed upon crop at the time of harvest or pays back the required sums of many in time and in place which have been set.

The Islamic form which has been agreed upon by both parties is salam sale and the salam price should be fixed for the produced crops before the signing of the contracts.

Guarantees:

The two parties agreed that the guarantees should be in form of undertaking made by the commissioner of Gezira scheme in accordance to the attached Islamic modes at this agreement and to include all the agreements reached implantation of funding by the first party depends basically on ensuring provision of deficit resulting from other funding sources and to make sure before paying any sums of money.

This contract is implemented in accordance to contracts drafted and implanted by technical bodies belonging to the two parties. However, each crop should have a separate contract or contracts.

No any fund is granted by the first party to the second party unless a contract or contracts are signed.

Signature of the First Party

Signature of the Second Party

.....

.....

Witnesses:

1.

2.

Appendix No. (1)
Commercial Banks Portfolio for funding
Agricultural corporations
salam sale contract (for cotton)

Names of Bank Portfolio contributors for 1992/93 Season:

1. Bank of Khartoum.
2. Unity Bank.
3. El Nilein Bank.
4. The National Bank for Export and Import.
5. Tadamon Islamic Bank.
6. Faisal Islamic Bank, Sudan.
7. Sudanese Islamic Bank.
8. The Saudi Sudanese Bank.
9. The Sudanese International Bank.
10. The Sudanese National Bank.
11. The Sudanese Commercial Bank.
12. The Sudanese Islamic Bank for Western Sudan.
13. Amman Bank Ltd.
14. Islamic Cooperative Development Bank.
15. The National Bank for People's Development.
16. El Shamal Islamic Bank.

The Bank of Khartoum being a leading bank signs contracts or any other obligations on their belief.

Appendix No. (2)

Description of cotton crop:

1. It should be a cotton flower for 1992/93 production season, from the following samples: Barakat, Shambat and Akala.
2. It must be pure (i.e., without impurities and waste) not more than 2%.
3. Cotton should be handed over to ginning mills in the following areas: Maringan Ginnery, Hasaheisa Ginning Mill, Bagair Ginning Mill according to the following quantities:

Type	Quantity in CWT	Price Pd. Per Quintar
Barakat	328500	4551
Shambat	116842	3616
Akala	380932	3498

Undertaking by the Commissioner of Gezira Scheme

I, being the commissioner of Gezira Scheme authorized by the Gezira Board and in exercise of the paragraph (6) of the agreement on funding on 18 Aug. 1992 between the Bank Portfolio and Gezira Scheme, hereby exercise the powers conferred upon me by the law to confiscate any ownership or any plot of land (Hawash) in Gezira Scheme in case any farmer fails to inform about the crop produced or fails to pay back any sums of money in accordance to agreement on funding referred to above. It should assign a person to meet or settle all the obligations to the Banks portfolio concerning "Hawasha". This undertaking is valid until settlement of all debts as a guarantee to all agreements researched in accordance to the funding agreement.

Izz El-Din Omar Makki

Commissioner of Gezira Scheme

Accounting standard of the salam and parallel salam

Standards of the salam and parallel salam

This part of the book discusses accounting standards of the salam and parallel salam. These standards focus on the accounting principles which govern funding on the basis of the salam mode and parallel salam activities in which Islamic bank and financial institutions deal. The standard was approved in the 13th meeting of accounting and auditing standards held on Safar 10-11, 1418 Hijri corresponding to June 15-16, 1997. The paper discusses the standard in simplified way for the reader to grasp. It consists of introduction, the standard formula, scope of the standard, validity date and historical background etc.

Introduction

The salam sale and parallel salam tend to set accounting principle that govern confirmations, assessment, proposal, and declaration of the funding on the basis of the salam and parallel salam operations carried out by the Islamic banks and financial institutions.¹ The standard is supported by juristic principles, which were referred to find out accounting handling.

The accounting formula

1. The scope of the standard:

The standard discusses accounting principles of funding on the basis of salam and parallel salam sale including handling of the price offered or received by a bank on the basis of the salam or parallel salam, the returns, spending, gains and loss resulting from the salam or parallel salam.

If the laws and system within which these banks operate are in opposition to the standard; they must clearly declare that if they want to proceed with their operations (paragraph 1).

2. Accounting handling of funding on the basis of salam and parallel salam:

2.1 The salam sale is confirmed when the price (cash, in kind or profit) is paid and become at the seller's disposal (paragraph 2).

2.2. The parallel salam sale is confirmed when the bank receives the price (cash, in kind or profit). (paragraph 3).

2.3 When the price is paid the following steps are taken:-

- a) The price is assessed in terms of the amount paid (paragraph 4).
- b) The price (cash, in kind or profit) is assessed in terms of the fair value (the price that the bank and the client agreed upon) paid in exchange of tangible Section or profit (paragraph 5).

¹ Using the word bank(s) here refers to Islamic banks or financial institutions.

2.4 By the end of the financial period the following are taken:-

- a) The price is assessed by the fiscal period as stipulated by clause 2.3, but if the bank is certain that the seller may not fully or partially fulfill or the price of the commodity may drop an allotment equal to the deficit must be preserved (paragraph 3).
- b) Funding on the basis of salam must be shown in the financial statement and named funding on the basis of salam (paragraph 7).
- c) Parallel salam operations must be shown in the financial statements and named parallel salam as due (paragraph 8).

2.5 Delivery:

2.5.1 If the bank receives a commodity compatible to the contract, the assets are recorded on the basis of historical cost (paragraph 9).

2.5.2 Delivering similar commodity but with different quality.

2.5.2.1 If the market value or (the fair value if the market is unavailable) of the agreed upon commodity and the substitute commodity is equal, the substitute commodity is assessed and recorded according to the book value (paragraph 10).

2.5.2.2 If the market value or the fair value if (the market value is unavailable) is less than the book value of the agreed upon commodity, the delivered commodity is assessed and recorded according to the market value at date of delivery and the difference is recorded as a loss (paragraph 11).

2.5.3 Default in Delivery.

2.5.2.3 Full or partial Default.

- a) If the default is full or partial and the contract is fully or portably revoked and that the seller does not return the price or other dues, the amount becomes a credit (paragraph 13).
- b) In case of guarantee, the amount is deducted, but if it is less the difference is recorded as a credit. If the remainder is more than is required, the residual will be registered and go to the client (paragraph 13).
- c) The client's additional obligations to the bank shall be fulfilled (paragraph 14).
- d) B and C are applied in case of cancellation of the contract (paragraph 15).

2.5.4 Default in Delivery.

2.5.4.1 If the default is full or partial and the delivery date is prolonged, the book value will remain unchanged (paragraph 16).

2.5.4.2 If the contract is fully or partially repealed and the price is not returned, it becomes a credit (paragraph 17).

2.6 Substituting the commodity:

If the commodity is substituted and that fair value is less than the book value, clause 2.5.2.2 will be applied (paragraph 18).

2.6 Assessing the value of a commodity by the fiscal period.

The assets acquired on the salam system are assessed by the fiscal period according to historical cost or the expected cash value and the less value is chosen. If the expected value is less than cost, the difference is calculated as a loss (paragraph 19).

2.8 Delivery a parallel salam commodity:

If the bank delivers the salam commodity to the buyer (the client) the variance between the amount received and the cost of the commodity is calculated in terms of profit and loss (paragraph 20).

3. Declaration Requirements:

The declaration requirements mentioned in financial accounting standards No. 1 regarding proposal and declaration should be consider in the financial statements of Islamic banks and financial institutions (paragraph 21).

4. The validity Date:

The standards shall be applied on financial statements of Islamic banks and financial institutions as from Muhoram 1st. 1419 Hijri corresponding to January 1st. 1999 (paragraph 22).

Approval

The Board of Accounting and Auditing standards approved the salam and paralled salam standards in the meeting held on Safar 10-11, 1418 Hijri corresponding to June 15-16, 1997.

Members of the Board:

- | | |
|------------------------------|-----------------|
| 1. Abdel Malik Yusuf Alhamar | Chairman |
| 2. Nour Al Rahman Abid | Deputy Chairman |
| 2. Ahmed Ali Abdallah | |
| 3. Anwar Khalifa Asada | |
| 4. Hussein Hussein Shahata | |
| 5. Khalid Abdallah Janahi | |
| 6. Rasheed Akhar Jakatai | |

7. Salah Edeen Ali Abu Naja
8. Dr. Abdel Satar Abu Ghuda
9. Dr. Omer Zuhair Hafiz
10. Mohamed Alawi Zibyan
11. Mustafa ben Hamat
12. Musa Abdel Aziz Shahada
13. Nabeel Abdel Allah Naseef

Appendix 1

Overview of the Number of Standards

A message dated Jamada Alola 30, 1416 Hijri corresponding to October 24, 1995 was sent to Islamic financial institutions consulting their views over the standards to begin. Considering the views, the Board of Accounting and Auditing standards decided in its 9th meeting on Rabie Athani 24-25, 1416 Hijri corresponding to September 19-20, 1995 to give priority to the salam and parallel salam.

An accounting standards committee, affiliated to the Board commissioned in its 3rd meeting on Jamada Al Akhar 26, 1416 Hijri corresponding to November 10, 1995 appointed an advisor to carry out preliminary Juristic study on the standard.

The committee, moreover, instructed in its 5th meeting held in Jordan on Zu Al Qaida 14-15, 1416 Hijri corresponding to April 2-3, 1996 another adviser to conduct a preliminary study on the standard.

The two studies: Legal and accounting were completed in Rabie Al Awal 1417 Hijri corresponding to August 1996.

The committee amended the two studies in its 6th meeting in Bahrain on Rabie Al Akhar 17/18 1417 Hijri corresponding to August 31 – September 1 1996 and 7th meeting held on Jamada Al Akhara 28/29, 1417 Hijri corresponding to November 9-10, 1996.

The bill was submitted to Juristic committee in its 5th held on Rajab 20-22 1417 Hijri corresponding December 1-3, 1996. It has made some amendments. The bill was then turned over to the Board in its 12th meeting held in Jeddah, Saudi Arabia or Ramadan 9-11, 1417 Hijri corresponding to January 18-20 1997.

The Board, in turn, introduced some amendments and decided to pass it to specialists prior to the upcoming hearing session.

The Authority held hearing sessions in Bahrain on Zu Al Qaida 14-15, 1417 Hijri corresponding to March 23-24, 1997 and in Malaysia on Zhu Al Qaida 24-25, 1417 Hijri corresponding to April 2-3, 1997.

More than 145 participants representing Central Banks, Islamic banks, accounting bureaus, jurists, university teachers and other interested figures have attended the session in the Board has responded to notices and comments raised during the gathering.

The committee held two meetings on Zhu Al Qaida 15, 1417 Hijri corresponding to March 24, 1997 and Zhu Qaida 23, 1417 Hijri corresponding to April 40, 1997 to deliberate notices and to introduce amendments.

The amended bill was submitted to the legal committee in the 6th meeting on Muharam 1-2, 1418 corresponding to May 7-8, 1997. The committee, introducing some amendments, has finally approved the bill, which won also approved by the Board in a meeting held on Safar 10-11, 1418, Hijri corresponding to June 15-16, 1997.

Appendix B, focusing on legal areas, was dropped as we have mentioned.

Appendix C
Reasons for the standard

In reply to the authority's letter dated Jamada Alola 30,1416 Hijri corresponding to October 24, 1995, the banks have shown a desire to design accounting standard for the salam and parallel salam.

The standards board welcomed the move in its 9th meeting held on Rabie Athany 24-25, 1416 Hijri corresponding to September 19-20, 1990.

The study, carried out by the advisor who was commissioned by the Authority, has stated that funding through the salam represents 5% of the total funds provided by the banks which were involved in the study and that it concentrate on agricultural sector.

The study has stated that accounting handling of funding through the salam differ from one bank to another, therefore it is difficult to compare financial statements of the different banks.

The adoption of the salam mode is still in its early stage, however the initiative leading to accounting standard will help reduce the differences arising from isolated experiments without abiding a standard as other modes adopted by the banks which led to disagreement of these banks over confirmation, assessment, proposal and declaration.

Appendix D

The principles of the standard

Accounting standards committee has reviewed the different proposed alternatives to the considered in accounting handling of the salam and parallel salam deals where mentioned in the preliminary study ⁽²⁵⁾.

The committee has recommended the adoption of the move adequate alternatives to scheme financial accounting statement No. 1 on the goals of financial accounting for banks and Islamic financial institutions and statement No. 2 on financial accounting concept for the banks and Islamic financial institutions (statement of concepts).

This appendix is concerned with alternatives, which were considered when accounting handling of the salam and parallel salam was selected and justifications for opting for the alternative.

According to the salam mode, the buyer pays a price in advance in exchange for a commodity to be delivered later by the seller when the agreed upon date comes. If the buyer sells the commodity to another person before acquiring it, this is known as parallel salam.

The accounting handling of the salam and parallel salam contract are required to examine the following consequences:

- Signing the salam and paralleled salam contract and receiving the price.
- Receiving and selling the commodity or selling the commodity in a paralleled salam contract.

⁽²⁵⁾ Mohamed Almin Jaj A/Asfeya. Study on accounting areas of the salam and paralleled salam, Accounting and Auditing Authority of Islamic Financial Institutions, 1917 Hijri, 1996.

Confirming and assigning the price:

The price whether it is cash, in kind or utility is provided to be known with no ambiguity and to be received at the signing of the contract or delayed for short period as permitted and as precaution against usury, it must not be on credit.

Specifying the price is required to differentiate it and is a prelude to assess the value through which the price is confirmed in the bank's books whether is paid (in case of salam) or received (in case of parallel salam).

The amount of the price is specified if it is money and assessed according fair value if it is a commodity according to agreement of the two parties.

Assessing the price in terms of fair value instead of the historical cost will lead to achievement of financial accounting's goals stated by statement No. 1.

“The goals of financial accounting the banks and Islamic financial institutions (statement of goals), paragraph 36 and implementation of the concept of (fair demonstration) which is provided by financial accounting statement No. 2 concerning concepts official accounting of Islamic banks and financial institutions (statement of concept), paragraph 112.”

By the end of the fiscal period, the historical cost of the price was chosen as a property worthy of assessment because of its suitability to this field compared with other properties. The selection is conforming with the statement of concept, paragraph 98. For achievement of suitability and encouragement of predictability, the standard has stipulated that if the bank is certain that the seller is more likely will fail to deliver the commodity fully or partially or the value of the commodity will drop, an allotment tantamount to the deficit must be preserved. The allotment will undoubtedly give more information about the predicted flow of money in the future to generate from funding through the salam. The predictability

is one of the substantial properties stipulated by the statement of concepts so as to bring about adequacy (paragraph 150).

The amount paid as a price to fund the salam must be demonstrated in the financial statements as one of the bank's investment opposition with the aim to bring about another relative property of accounting with respect to under stability and comprehensibility of these information (paragraphs 120, 122). This can conform with the salam nature whereby the seller is need of the price to fill in the financial gap ranging from the date of signing to the delivery date. Although the salam contract is a sort of exchange resulting credit the relativity that financial statements want to demonstrate require demonstration of the price. The care readily doesn't change unless the client fails (fully or partially) to fulfil, then the contract is revoked and the paid price becomes a credit. The parallel salam is shown in the financial statements as dues.

Delivery:

In case the bank receives the commodity according to the contract, the historical cost becomes a basis for assessing and recording the assets at the date of possession according to financial accounting statement No. 2 statement of concepts, paragraph 98. The commodity possessed by the bank, therefore, is assessed as historical cost consisting in the price paid by the bank.

In case of substitution, the standard has allowed substitution of the commodity with one of the same category but with qualities or even the sort. The proposed accounting handling covers even Juristic views allowing substitution of the commodity including difference in category. If the market vale of the substitute commodity is equal to the agreed upon commodity, the substitute is assessed and registered in according to the book value, but if the market value of the substitute is less than the book value of the agreed upon commodity, the received commodity is assessed

and recorded according to the market value at date of delivery and difference is calculated as loss on the account of the bank. The drop in the value of the commodity must be considered by dropping the book value to conform and show money flow expected to obtain. This will undoubtedly provide adequate information to the users of financial statements to take decisions. It also conforms with statement of concept regarding relative properties which must characterize accounting information contained in financial statements of the banks (paragraphs 103, 104).

Abiding by the statement of concepts on the basic elements of income statement (paragraphs 34, 35, 36) dealing with gains and loss and when they are confirmed (paragraph 85) will lead us to admit the loss when the mutual transfer between the bank and the seller is completed at time of delivering the substitute.

Default in Delivery:

The standard has differentiated between default in delivery resulting from failure or neglect and default resulting from insolvency or non-existence of the commodity. The proposed handling is strict with the first group and lenient with the second by adopting a principle to delay the commodity or postponing the date of delivery or returning the price when the contract is revoked without resorting to guaranteed sale. If it exists – to fulfill the bank's right as in default resulting from failure or neglect. The standards, moreover, has given the bank a permission to return from negligent and failed client any amount that the bank has the right to as seen by the authority.

The differentiation tended to uphold what the statement of concept has stipulated regarding the goals of financial accounting top of which is to determine the rights and liabilities of each part including the rights to unaccomplished operations or activities according to principles and

intention of Islamic share towards justice and good deeds and abiding by the Islamic ethics (paragraph 37).

Assessing the commodity by the end of the fiscal period:

According to the statement of concepts on the relative properties which must characterize accounting information included in the financial statements of Islamic financial institutions (paragraphs 103, 104), assessing property was approved because it suits the commodity acquired through the salam (usually of the same category) in the absence of the value of the commodity by the fiscal period. This property is based on historical cost or expected cash value. Selling the commodity on paralleled salam basis.

The bank can sell the commodity after receiving it in cash on deferred price and can sell it before receiving on the basis of parallel salam as mentioned previously. According to the statement of concepts on definition of the main elements of income statement the selling of the commodity after receiving it will result in substantial need to provide the bank with a return (paragraph 32), but these requirements do not exist when the commodity is sold before receiving it on the basis of paralleled salam unless the bank (later on) delivers the commodity to the buyer and the bank delivers the commodity to the buyer (client) then received amount is considered as a return to the bank, therefore the difference between the amount received from client and the cost of the commodity must be ensured whether it is loss or profit to the bank.

Appendix E

Definitions:

The salam is deferred purchase in exchange for on-spot price under special conditions or it is forward sale in exchange of immediate payment.

Al Muslam Feeh is the commodity.

Al Muslam Ilaih is the seller

Al Musalam is the buyer.

Al salam Al Muwazi or Parallel salam is a contract whereby the seller undertakes to fulfil his obligation regarding the commodity ex officious a buyer in previous contract without associating this contact with the previous one.

Al Igalah (conciliation) means to revoke the contract at the agreement of the two parties to return to normal before the signing of the contract.

Raas Mal Al salam (the price) is the price paid in advance. It can be cash, in kind or utility. The end of this paper on salam and parallel salam.

Fatawi on the salam Sale

In this part of the book are some fatawi issued by Tadamon Islamic Bank on the salam sale mode as well as those taken from economic fatawi programs (first edition) issued by the Dalat Al Baraka. The aim is to ensure the validity of the salam sale for Islamic bank operations, originate the practices which reflect a lot of novel acts which are in need of Juristic views and disseminate the selfness of these fatawi.

We have published these fatawi as they are although they are repeated and different because of different Islamic schools, leaving the choice for the reader.

Fatawi on the Salam Sale

Question:

Would you please indicate the Islamic implications and fiqh view on the following salam sale.

On 31/10/1992, we entered into a salam deal estimated for 200 bags of potatoes. According to the contract, the commodity would be delivered at Omdurman Market on 30/4/1992. Can we sell the commodity to another agent who is seeking it, although the crop is still in the field. Would you please tell us about the permissibility of this mode?

Answer:

According to Islamic Sharia, it's not allowed to sell a commodity before it gets into possession because it is classified as food and food was forbidden by the Messenger of Allah (pbuh).

Comment: The fatwa is in opposition to Section 218/3 of the Sudanese Civil Transactions Act, 1984 which allows the buyer to sell the commodity before it gets into possession. The act doesn't differentiate between food or non food goods. Lately, a fatwa has permitted selling of the Section before it gets in possession on a parallel salam basis provided that the first and second sale should not be associated.

Question:

What's the influence of price change on the salam sale? Is it permitted to change the price according?

Answer:

According to the salam contract, the price is basically paid at the date of signing. The two parties should have considered all implications including change in price.

If the buyer has exploited the seller's need and paid him an unfair price, the seller can refer to the court at the date of delivery to change the price.

The court will consider the market trend and then remove the grievance in accordance with Section 221 of the Sudanese Civil Transactions Act, 1984. Anyhow, the two parties can agree to the removal of the grievance by canceling the contract and returning the paid money, not more or less. All these things should be taken at the delivery date. It's not allowed to finalize the contract on two prices nor two sales in one because the two prices cannot be delivered at the date of signing.

Comment: Now, circulars on accounting methods are issued to remove grievance from the two parties in case the price has highly changed (the previous Fatwa is taken from Fatwas book by the Tadamon Islamic Bank – pages 44-45).

Question:

Is it permissible according to Islamic Sharia to receive less amount than the agreed upon in the salam contract?

Answer:

According to Islamic Sharia, it's not prohibited to received less amount than that of the agreed upon commodity on the ground of concession and leniency.

Question:

According to the salam sale, can the two parties agree on a price of certain market (10% less than the price) at the date of delivery? Is it necessary to be decisive in defining the price?

Source: Islamic economic Fatwas, Al Baraka symposia, Fatwa No. 100.

Answer:

First: The price of the salam sales has basically to be defined at the date of signing.

Second: It's allowed to define the price according to certain market at the date of signing.

Third: It's also permissible to agree on specified with certain a increase or decrease.

Fourth: It's not allowed to define the price according to the market price in the future.

Question:

Can the commodity be sold before getting into possession ? If not, is it allowed for the buyer to sell a commodity of the same class which he will receive in the future without linking between the two sales? Can this be taken as a business?

Sources: Al Baraka Islamic economic Fatwas, (Fatwa No. 101).

Answer:

Firstly: It's not allowed to sell a commodity before receiving.

Secondly: It's however allowed for the buyer to sell a commodity of the same category without linking the first contract with the second one.

Thirdly: It's not allowed to take this activity as a business because the salam has exceptionally allowed to meet certain needs of producers, but it can be allowed it becomes necessity due to certain economic situations in some parts of the Islamic world or meant to remove certain grievances.

Question:

If someone buys 100 tons of cured in January 1985 at known price and the delivery was set for May 1985. Can be accept another person as a partner in March, 1985 in what has been agreed upon.

Sources: Al Baraka Islamic economic Fatwas, (Fatwa No. 102).

Answer:

The same implication forbidding selling a commodity before getting into possession will be applicable on this question according to previous Fatwa. (Al Baraka Islamic economic Fatwas, Fatwa No. 102 and 35).

Question:

Can previous loan be treated as a price ?

Answer:

One of the conditions of the salam sale is the payment of the price on the spot and not allowed to be settled later. Since the loan is previously acquired, and can be treated as a substitute price, the two parties can enter into the deal. They just have to indicate that the contract will be effective from the date of signing and not the date of acquiring the loan (the price).

Sources: Dalat Al Braka group Fatwas, No. 168.

Question:

If a company pays a price in advance in exchange of certain commodity (oil, metals or any other commodity) to be delivered in later date, can it sell this commodity before being into its possession ?

Sources: Al Rijihi Banking company for investment, Saudi Arabia (Fatwa No. 290).

Answer:

The feature of the salam contract is that it's reached on specified commodity (tangible commodity) whether it's measured, quantified or cultivated. The buyer can deal in similar commodity with similar conditions to the contract he has signed or with amended conditions in the period extending from the date of signing to delivery date. Such contract is highly efficient to meet the need of the Islamic banks since the main task of these banks is provide credit service and depends mainly on deferred sale. The effectiveness of this contract lies in its flexibility and meeting of funding requirements (short, mid or long term) and requirements of the different groups of producer, farmers, vocational lists, contractors and traders.

Since credit market transactions are carried out amid brash competition in advanced countries while other parts with highly flexible competition face investment drawback, the salam mode is considered as vital mode that ensures safe markets and flexible competition and it's risk-free.

First example: In Japan a steel factory obtains the required funding from the bank on the basis of interest extending till the factory how should out it. As for this care, an Islamic bank will offer the fund on the basis of salam sale in exchange of the product at specified date and place say import or export. Between signing the contract and receiving the commodity, the bank can seek investors to sell them products with similar or modified conditions instead of writing until it has received the product. The bank can sell these items to importers or retailers on sport or deferred price.

Second example: An Islamic bank agrees to offer funds for a cement factory located in the south in exchange of specified amount of cement at specified date or different dates and to be delivered at the factory or at any other location. If the funds are offend gradually, more than one contract should be concluded and that the bank can sell the product between the date of signing and date of delivery to any other contractors or intermediaries at a immediate or deferred price.

Third sample: The salam mode can be used by the bank to buy products produced by local factories and sell them through intermediaries who will distribute them. The bank will carefully choose the commodities that can be started putting into account purchase price plus marketing period, price change and storage costs. The bank can agree with those intermediaries to sell these products at price paid on the sport or deferred with suitable guarantees. In this case, the bank has used its funds in buying goods at low price and selling them at high price. This activity will allow wide investment area for the bank.

Fourth example: An Islamic bank can reach a contract with Aramco, of Saudi Arabia, whereby the company will deliver specified amount of oil to the bank at specified date at port Raas Tanoura where the ship is decking. The bank concluded similar or amended contracts with

consumers directly or through intermediaries. The bank can wait until it has received the commodity to sell it at on-spot or deferred price.

Fifth example: The bank can buy specified amount of cement on the salam basis, leave it in the factory's warehouse and commission the factory to sell at immediate or deferred price as specified by the bank. The bank can pay the factory for this service when the salam contract is finalized the price should be paid immediately so as prevent any acts leading to usurious gains, it's noted that funding on the basis of salam is Halal (lawful) while and loan interest in Haram (unlawful).

Question:

Can I sell a commodity before it gets into my possession to another person? Can this sale be made to more than one person?

Sources: Kuwaiti House of Finance, Fatwas, No. 19 and 453.

Answer: We are not certain whether prohibited or not after from what has been reported from Al Mughny, a book by Ibn Qudamah.

Question: An agent wants to sell his crop which will be ripe soon the salam basis as from November, 1985 at the price to prevail at Qadarif house. Specification of the commodity is known to the two parties. Can we consider this contract void?

Sources: Al Gharb Islamic Bank, Fatwa No. 4, and 1102.

Answer: The salam is a sale whereby the price is paid in advance in exchange of a commodity to deliver latter. The commodity should be specified and that the price should be paid at signing, therefore not the price immediately and not defining will not qualify for the contract.

Firstly: If the commodity is available in the market with the same specification, the seller has to fulfil his obligation, even if the price is high because once he sign, the commodity become possessed by the buyer.

Secondly If the bank is certain that the crop completely non existent, the contract will be repealed and that the seller has to return the price without bonus or compensation.

Thirdly: The bank can give the seller a grace of one year if it's certain of the guarantees provided. The bank's administration can then decide which action should be taken in the light of the existing information so as to protect its interest. We, however, insist that the bank shall not receive any compensation if the seller fails to deliver the commodity. This condition is the core of salam sale.

Question:

A group of crop traders in Gadarif have submitted an application seeking partnership in the sale. Can we accept this offer?

Sources: Faisal Islamic Bank, Fatwa No. 17 and 1147.

Answer:

The salam sale is permissible according to Koran and Sunna (tradition). It's a sort of sale whereby the price is paid in advance contrary to deferred price sale. Muslim jurists defined the salam as the sale whereby the price is advanced in exchange of deferred commodity. The salam is known as (sheel) is among the Sudanese farmers. Like other sales, the salam has special conditions:

1. The price should be received at signing of the contract and if the two parties depart without price, the contract be void and this is according to majority Muslim jurists. According to the Maliki school, the price can be delayed for three days, therefore the authority doesn't object adopting the Maliki view if there is need for that.

Secondly: The commodity should be delivered later on at specified date. According to the Majority jurists the deal should not be immediate as narrated from Ibn Abbas (may Allah be pleased with him): (Whoever

pays a price in advance in exchange of date to be delivered later, he should be for a specified weight and measure and for a specified date.

The Shafi school, however, have allowed immediate and delivered deal. The authority has stickled to the jurists' view for its strong evidences and the Maliki's vent allowing the delay of price till harvest.

Third: The commodity should be existent at the delivery date. The commodity should not be scarce e.g., date of certain tree or fruit of certain orchard. When The Messenger of Allah (pbuh) came to Medina forbade the sale of the dates of a certain tree. It's reported from the Messenger of Allah (pbuh) that a Jew paid him some dinars in advance for exchange of named date. The Jew said from: "The date should be from Bani Fulan." the Messenger said: "As for it being from Bani Fulan, No. But it will be a specified weight for a specified date". The fruits of a certain field is uncertain. According to the fuqaha the existence of the commodity at or after the date of signing and before the delivery date is of no necessity unlike the Hanafi who conditioned the availability of the commodity in the market in the period extending from signing of the contract to the date of delivery. The authority has adopted the Jurists; view. There is no difference between Jurists over the salam sale as for crops, qualified and measured commodities, provided the class, specification, the amount and date of delivery are given. The bank is allowed to deal in crops on the basis of salam as individual or partner.

Question:

Some banks pay the price in advance in exchange of a commodity and sell a commodity to be delivered later in exchanger of a price paid immediately. You view about this activity.

Sources: The first conference of Dubai Islamic Bank. Fatwa No. 1266.

Answer:

The conference has discussed the salam sale in the light of conditions set forth by Muslim Jurists as a sale whereby the price is paid advance for a commodity to under later on. Place and cost of delivery and specification of the Section should be determined. The conference has recommended adoption and respect of the salam principle and conditions according to Islamic Sharia.

Question: If a man has paid an amount of money in advance for a quintar of cotton which was to be delivered say October, can the buyer have a price instead at the specified date according to the current price. Remember the commodity is existent and able to be delivered. If he has given him the price, can this be treated as usury?

Fatwa No. 1397 – Kitab Al Ahram – Egypt.

Answer: It's not allowed to sell the commodity before it gets in possession and the buyer has right to another thing other than the commodity if the sale contract is valid, but if it's void, then he can have the price.

Question: Is it permissible to buy a commodity to be delivered later on? It's specified and the price is fully paid.

Answer: If it's specified and the price is fully paid.

Sources: Al Baraka Islamic Economic Fatwa; 6th Smposium Fatwa No. 103.

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