

Personal Finance Product Using the Bai-Salam Contract as a Financing Tool (As Conducted By Islamic Banks): A Jurisprudential Study

By

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Abstract

The aim of this research is to clarify the personal finance mechanism and the contract system that comprises it, and to describe the Shariah ruling for employing this product in Islamic banks based on the Bai-Salam contract. The nature of this research necessitated the use of the inductive method to track the components of the product to reach a total or majority judgment on the product, and to rely on the analytical method of interpretation, criticism, comparison and deduction to reach the jurisprudential description of the phenomenon. The findings of the research showed that the personal finance product is novel and has been developed by Islamic banking jurists so that it can be activated depending on the Bai-Salam contract. It consists – as a product – of a system of contracts and not of a single contract. It can also provide the necessary liquidity to the client who requests financing without resorting to usury. The findings also showed that personal finance is a product that was invented to be an alternative to lending or borrowing with interest (usury). Through personal finance, a person can be provided with the necessary liquidity to meet his personal needs without resorting to usury.

Keywords: Personal finance, Bai-Salam contract, Islamic banking, sample sale, supply contract.

Introduction

Islamic banks are described as the backbone of the banking sector in the Arab and Islamic region, based on investment mediation between depositors, shareholders and founders and between investors, according to banking operations that comply with the provisions of Islamic Sharia, and provide financing, investment and services. Just as a person may need to deal with an Islamic bank in financing and investment operations, he may need services that an Islamic bank can provide. These services include the provision of cash for personal purposes, regardless of their nature, and those services were previously available only through lending and borrowing.

Perhaps the share of the interest-free loan is the least fortunate among the services provided by the Islamic bank and it has the narrowest scope, as it is an interest-free loan. It does not bring profits to the bank. Therefore, the bank cannot open its door wide for interest-free loan because it will weaken the financial position of the bank, or in a sense prevent the continuity of the bank's work. If it is a loan that is not interest-free, then it is forbidden, because

the profit as a result of using it is considered as a loan that brings a benefit and is considered one of the methods of usury.

This prompted Islamic financial and banking jurists to invent a new product based on employing a set of financing modes that constitute it to be an alternative to lending or borrowing with forbidden interest (usury), and through which it can provide the necessary liquidity to the customer who requests financing without resorting to usury.

Research Significance

The importance of this research stems from the following:

1. Drawing and highlighting the limits and features of a new financing product through which liquidity can be provided to the customer who requests financing other than through banking services, but rather through bank financing.
2. Describing the Shariah ruling for a financing mode that was formed through a group of contracts and in successive stages that formed its system.
3. Providing an updated legal formula for the customer requesting financing to obtain cash other than the usurious loan.
4. Highlighting the role that the Bai-Salam contract mode can play as a financing product that provides contemporary solutions.

Problem Statement

The problem of this research can be limited to the extent to which it is possible to find a mode through which cash can be provided to the customer who requests financing outside the framework of the interest-free loan or usurious loan, by relying on the development of the system of contracts on which the financing modes in Islamic banks are based and that are in accordance with the provisions of Islamic Sharia.

Research questions

This research seeks to answer the following questions:

1. Are the Islamic financial and banking jurists able to find a financing product through which liquidity can be provided outside the framework of an interest-free or usurious loan?
2. How compatible is this new product with the provisions of Islamic Sharia?
3. What is the role of the Bai-Salam contract mode as a financing tool in achieving the desired goal of the personal finance mode?
4. What is the role of the supply contract in shaping the personal finance mode system?

Research Objectives

The current research aims to achieve the following objectives:

1. To show the mechanism of personal finance and the system of contracts that comprises it.
2. To highlight a financing mode through which cash can be provided to the customer who requests financing outside the framework of the interest-free loan or usurious loan.
3. To show the Shariah ruling for employing this product in Islamic banks.
4. To highlight the role of the Bai-Salam contract in achieving the desired goal of employing personal finance in Islamic banks.
5. To show the role of the supply contract in providing the commodity to the customer agreed upon with the Islamic bank under the Bai-Salam contract.

Previous studies

The personal finance product is a new product, and there are only few studies about it. It can be said that there is no direct study of this product as an integrated whole, but there are studies close to this research and the difference between them will be highlighted according to the following:

The Shariah Guide to Personal Finance, Shariah Committee, Bank of Albilad (2021). It is a set of working issues and their discussion and not a description or control of the provisions of the product. Moreover, it doesn't highlight the Bai-Salam tool as one of the financing tools in the product.

There are some other studies that have a title similar to the title of this research, the most important of which are (Qarat, 2017) entitled "Shari'a Controls for Personal Finance Products" and (Abu Munis, 2017) entitled "Personal Finance Products Problems and Solutions" and (Misha'l, 2016) entitled Personal finance product development. The first research discussed the controls of the personal finance product in all its forms, drawing the limits of the model, regardless of the tool used. The second research also discussed the economic and legal aspects of the product without accessing the formula used to provide liquidity to the customer requesting financing. As for the third research, it agreed to a large extent with the first research, but it greatly elaborated the statement of product forms and was not directly exposed to providing liquidity to the customer who requests financing.

There is another study carried out by (Arafa, 2016) under the title "Islamic Finance with the Bai-salam Contract: An Economic Jurisprudential Study." However, it did not deal with the Bai-Salam contract as a tool for personal finance in particular, but rather as a tool and form of financing long or short-term projects.

Therefore, the current research is unique and distinguished from previous research by its statement of the components of the personal finance formula system and the steps and stages of its employment based on the bai-salam contract in terms of the implementation mechanism and showing the legal visions of the meeting of contracts that make up the personal finance mode.

Research Limits

The current research is limited to studying the integration of the personal finance product in absolute sale, bai-salam, authorization and supply contracts.

Research Methodology

The current research depends on the inductive approach to extrapolate the components of the product to reach a total or majority judgment on the product, and rely on the analytical method of interpretation, criticism, comparison and deduction to reach the legal description of the subject of the study.

Research Outline

The structure of this research includes an introduction, a preface, two chapters and a conclusion, according to the following:

- Introduction: It addressed the importance of the research, its problematic, questions, objectives, previous studies, what it adds, its limits, and the approach to building its system and plan.

- Preface: It addressed the main concepts used in the research and drawing the boundaries of the issue and describing it.
- The first topic: It presented a jurisprudential study of the contracts that make up the personal finance formula: bai-salam, supply and authorization contracts.
- The second topic: It has been devoted to the jurisprudential study of the contract system for the procedures for receiving and selling the commodity by the bank.
- Conclusion: It included the results and recommendations of the study.

Introduction: Concepts and legal description:

First: The concepts used in this research:

Financing:

The concept of finance in the Arabic language

The word تمويل [finance] in the Arabic language is derived from the verb مول 'mol': the meem, the waw and the lam (one word) (Bin Faris, 1979). And in the book *The Bride's Crown*: "Money: It is what a person owns of things...It is said: This is a man with money (Al-Tarzi, 2000).

Finance as a Term:

The concept of finance in Islamic jurisprudence

By looking at the books of jurists, we notice that they did not use the term finance, although they had dealt with it in building the jurisprudence system according to what was stated in its linguistic meaning. What supports their knowledge of it and their use of it according to its linguistic meaning is what came in the book "The End in the Unclear Hadith" as it states: "...a man owned money and financed it, if he became wealthy. And someone else financed it" (Ibn Al-Athir, 1979), meaning that he had money regardless the methods of obtaining money, and it may be financed by someone else, as the author mentioned.

In this respect, the term Islamic finance has been defined as: "Providing in-kind wealth, with the intention of profit, through its owner to another person who manages and disposes of it, in return for a return permitted by Shariah rulings" (Qahf, 1991). That is, it means that a person obtains money from another person who intends to profit by providing this money, provided that the person employs it according to an investment mode that he manages and returns the profit.

Finance as an economic term:

It means "the fact that the entity that owns the money – a bank or a financial institution, public or private – provides the necessary money to the person dealing with it, in order to obtain basic or other needs, such as housing and the like" (Ibrahim, 1990).

According to the Dictionary of Economics Terms, finance refers to: "the art, science, or system of dealing with financial issues in the state, or company, and managing and providing funds and organizing and managing their affairs (Ghattas, 2000).

These two meanings agree with terminological dictionaries. Therefore, it can be said that what is meant by financing is the ownership of money – for those who request it, whether for investment projects or for consumer needs – with the intention of profit. If we want to Arabize Islamic finance, we add the phrase: by employing one of the legal forms of financing.

Personal

The book “Measures of Language” states that: “The letters شAl-Shin, خAl-Kha’, and صAl-Sad (which make up the Arabic word شخص: A singular infinitive that indicates an elevation in something from that person, and it is the human being if he appears to you from a distance.” (Bin Faris, 1979). And "personal – singular: a noun attributed to a person... personal matter: pertains to a specific person..." (Omar et al., 2008). Personal: related to a person.

Personal Finance:

It is obvious through what has been discussed above that the idea of personal finance is based on the Islamic bank’s employment of one of the legal financing modes in a system of contracts to provide liquidity to the customer, which brings back the bank with profit and the customer with money for investment or consumption, and does not take the form of an interest-based loan. Among the modes that the bank employs in this process: the bai-salam contract, which is the subject of this study.

Looking at the practical reality of Islamic banks, we find that the Saudi Investment Bank – for example – adopted the personal finance product and called it (sustenance finance) and described it as financing based on the purchase of a certain amount of goods owned by the bank according to an agreement that shows the amount of profit and the mechanism of fulfillment. In the event that the customer does not wish to receive the commodity, he can assign the authorized merchant to sell the commodities on his behalf to the bank and deposit their value in his account with the Saudi Investment Bank, bearing in mind that the commodities that the bank deals with are: rice and flour (Saudi Investment Bank, 2022). This mode has been approved by the Sharia Supervisory Board of the Bank.

Personal finance under the Bai-Salam contract:

This means that the Islamic financial institution finances any client by paying an urgent price in goods produced by that client and delivered on a specified date in the future, even if the institution receives that commodity and sells it, or delivers it to another buyer through a previous Bai-Salam sale” (Encyclopedia of Islamic Finance).

In this respect, Ras Al Khaimah Bank indicated in its description of personal finance, as it indicated that it – i.e. the personal finance product according to the Salam contract – is a financial service in compliance with the provisions of Sharia, provided to individuals who have salary accounts with it, so that later the payments owed by the customer are deducted, and this will be explained when talking about the customer’s purchase of the commodity according to the supply contract in installments and paying its price as well (RAK Bank, 2022).

Applications of the Bai-Salam Contract in Islamic Banks:

The Bai-Salam contract can be employed in Islamic banks in several forms (RAK Bank, 2021), in which the bank can be the master of Salam at one time and the merchant at other times (Al-Ajlouni, 2012). In personal finance, the Islamic bank is the owner of Bai-Salam and the merchant.

Employing the Bai-Salam contract in the personal finance product:

The adoption of the Bai-Salam contract by some Islamic banks to be a tool for the personal finance product is due to the advantages that the this type of contract has, including (Islamic Finance Encyclopedia):

1. The seller who produces goods is able to sell goods from production, and if it were not for the sale process, he would not have obtained the liquidity necessary for production. Although he sells the commodity at a deferred price for a lower price than if he sold it after becoming ready, without this Salam contract, he would not have been able to produce it at all.
2. The buyer will be able to purchase a commodity in the future for less than its current value according to its market value at that time.
3. Selling according to the Bai-Salam achieves the economic benefit of society, because it helps and encourages the increase in production.
4. It contributes to increasing the profit of shareholders and depositors in Islamic banks, which helps in the continuity of Islamic banks and achieve competition and profit in the long run.

Product Components

Since the goal of the personal finance product is to provide liquidity and cash to the customer and not the commodity itself, without the customer resorting to usurious loans, this product is a financing contractual mode consisting of several parties and several contracts, which can be described as follows:

Components of personal finance under the Bai-Salam contract:

1. The Islamic bank and the agent of the bank.
2. The customer who applies for financing and he is the seller of the commodity to the Islamic bank.
3. The agent of the client requesting the financing.
4. The first trader who owns the commodity on which the Bai-Salam is concluded, and he is the seller of it to the customer.
5. The second merchant who is the buyer of the commodity from the bank.

Personal Finance Product Procedures

1. A contract of sale in the form of Bai-Salam between the Islamic bank in which it requests, in its capacity as the master of Bai-Salam, the purchase of a commodity described in the liability with a definite amount, capacity and date of delivery, from the customer who requests financing in his capacity as the recipient of a sum of money, which is the capital of the Bai-Salam. The process is carried out according to a standard contract prepared for this purpose, in which it shows the most accurate details of the Bai-Salam contract.
2. A sales contract in the form of supply between the customer who requests financing as a buyer and the first trader who owns the commodity as a seller, according to the reasons that will be revealed through this research.
3. Delivery of the commodity to the bank under standard delivery authorizations prepared for this.
4. A contract of sale between the Islamic bank in its capacity as a seller and the second merchant as a purchaser of the commodity.

A jurisprudential study of the contracts that make up the personal finance mode: Bai-Salam, supply and authorization contracts

First: The Bai-Salam Contract for the Purchase of a Good Described in the Debt:

The concept of Bai-Salam in Arabic and Islamic jurisprudence:

- 1 - Bai-Salam in Arabic: Ibn Sayyidah said: “I delivered to him in such-and-such and it is Bai-Salam, I forsold and forsold, and it is the bai-salam” (Jafal, 1996). Al-Zubaidi said: "...and Bai-Salam means: the borrowing (Al-Zabidi). Therefore, Bai-Salam in the Arabic language revolves around the meaning of lending.
- 2- Bai-Salam as a Jurisprudential term: The terminology of the jurists came according to the following:
 1. Hanafism: “Immediate deferred sale” (Al-Rassa'a).
 2. Malikism: “A netting contract that requires a debt settlement without an asset or a benefit that is not identical to the two considerations” (Al-Rassa'a).
 3. Shafi’is: “Selling something described in the treasury for an exchange must be expedited with the sale session” (Al-Ansari, 2000).
 4. The Hanbalis: “a contract for a specified person in a debt that is deferred at a price received” (Al-Bahuti, 1993).

And those who contemplate the terminology of the Muslim jurists – with their varying expressions – realize that the term “bai-salam” refers to a sale described in the fiduciary at an urgent price in the session of the contract.

The stage of selecting the Bai-Salam contract: It is the first stage of implementing the personal finance product as a financing mode to provide liquidity to the client requesting financing, for the following:

- 1- Because this contract has the advantage that it meets the needs of the customer as a seller and the Islamic bank as a buyer, so the customer will obtain liquidity and be able to use it as he wants for investment or consumption – even if the original is to feed his investments according to what will be explained later.
- 2- The bai-salam formula is considered for the Islamic bank as one of the financial resources resulting from the operations carried out by the bank, so it buys cheaply and sells at a better price in most cases. This was expressed by some of the previous jurists when defining the benefits of the Bai-Salam contract.
- 3- The previous jurists summarized the need of both the buyer and the seller to conclude the Bai-Salam contract, as the seller obtains money to spend for his personal purposes or for what he needs to produce his commodity – agricultural or commercial – and the buyer obtains the commodity at less than its value on time by paying its price in advance based on what is required by the mode of the Bai-Salam contract (Abdulwahid, 2003).

It should be noted here that the Islamic bank was not limited to employing the Bai-Salam formula to achieve personal finance for individuals, but rather employed a group of contracts and financing formulas such as Murabaha and Istisna'a etc. However, the subject of this research is personal finance using the Bai-Salam contract formula.

The Islamic bank, according to this contractual mode, is the main party of Bai-Salam (the buyer), and the customer requesting the financing is the one who is delivered to (the seller), and it usually has an agent who manages the work for him in this mode. The agreed commodity shall be delivered in installments (Samhan, 2013), according to certain specified deadlines.

In other words, the customer sells – in accordance with this formula – to the bank a commodity described in the liability, which is delivered later to the contract in return for a price that the bank delivers to the customer immediately as required by the Bai-Salam contract. Under this contract, a debt owed by the customer described in the liability arises, and he is required to pay it within the specified term with what was described in his debt at the creation

of the contract, i.e.: the agreed upon commodity. In other words, the customer sells – in accordance with this mode – to the bank a commodity described in the liability, which is delivered later to the contract in return for a price that the bank delivers to the customer immediately as required by the Bai-Salam contract.

***Second: A commodity purchase contract according to the form of a supply contract:
The second stage***

It is the stage where the customer or his agent begins to contract with a merchant who provides the commodity at the date(s) specified in the Bai-Salam contract between the customer requesting financing and the Islamic bank. This commodity provides several contractual forms, including the supply contract.

What is a supply contract? And how legitimate is it?

A- The concept of the supply contract: The contract is well-known. As for the term of supply it is clarified below:

First: In the Arabic language: the word ورد “Ward” came in the book Language Standards: ورد “Ward: waw and ra’ and dal: two meanings, one of them: the fulfillment of something, and the second: a color of roses (Ibn Faris)

Second: The term supply contract

It is an updated contract required by the nature of the development of civil life and the ways of internal and external trade exchange, especially with the expansion of the commercial sector. It was defined as:

A contract whereby a first party undertakes to deliver known, deferred goods periodically, during a certain period, to another party, in return for a certain amount of money in whole or in part (Journal of the International Islamic Fiqh Academy, 2000). While emphasizing that it has several definitions in the language of legal scholars and Islamic economics and financial scholars, each definition is linked to the mechanism in which this contract can be employed. This definition describes the situation that this research deals with, so it was satisfied with it and building the legal description of this contract formula in its light.

Type of the supply contract that fits the research question

Based on the fact that the judgment on the thing is a branch of its perception (Al-Hamawi, 1985), and in order to achieve the point of the issue, the supply contract has several forms, of which we are interested here in the form in which it is agreed to supply the commodity in specific batches in terms of the amount and delivery time for each of them, as if it was agreed to supply one hundred tons of wheat described in the debt in ten batches, each batch of 10 tons on top of each month for a period of ten months.

The payment of the price is also divided, accompanying the flow of commodity quantities, which is predominant in supply contracts, although there are other forms and modes that this research is not concerned with. This division in the financial payments corresponds to the limit drawn by Al-Othmani for the supply contract, as he said: “It is a contract between two parties, provided that one of them supplies a specific commodity to the other party, provided that the latter pays the price all at once or in installments” (Al-Othmani, 2000).

The form of contracting on the commodity is that the thing sold is actually in the seller’s possession, and he contracts it according to the form of a contract for selling goods that are

absent in quality, with the price being postponed until the goods are received, and this is a form that can be employed in this research.

The customer requesting the financing; that is, the buyer in this contract, has a contract with the merchant which can be carried out according to this mode, meaning that the commodity is in the possession of the merchant who sells, because the contract between them is not a bai-salam on what is described in the liability, as is the case between the customer and the bank.

The legality of the supply contract according to this form:

The supply contract in this way is described as a consensual contract, which is established with the consent of the contracting parties, as the contracting parties' will to establish this contract is free will (Ji and Qunaibi, 1988). What is the legality of this form? In order to answer this question, it is necessary to define the problem in it and then clarify the position of the legislation in it, according to the following:

First: The problem with this form

The problem lies in the fact that the two allowances are deferred in this form. When the customer or his agent concludes with the merchant or his agent the contract for the supply of the commodity in installments, starting from the next month, for example, this is a postponement of the price that may be accompanied by a delay in receiving the commodity and delivering it to the bank. This is called the sale of debt for debt or the sale of what is forbidden for what is forbidden by Sharia (Ibn Hajar, 1989).

The view of the jurists on this contractual mode if the absent commodity is sold on the quality:

The Hanafi school has permitted the delay of two substitutes for the item that is not in quality, based on:

What was narrated on the authority of Makhoul that the Prophet, may God bless him and grant him peace, said: "Whoever buys something that he did not see has the option, if he sees it, if he wants to take it, and if he wants to leave it" (Qutni, 2004). This hadith indicates that the sale contract is not necessary because the buyer did not see the goods (Al-Haskafi).

An analogy with the delay in delivering the goods due to their absence from the contract session, so the delivery of the price is delayed even though the contract is in place. In this context, the Hanafi jurists believe that the buyer should refrain from delivering the price of the existing goods that are absent from the contract session until they are present, due to the lack of equality if the price was delivered and the sale was not delivered, but rather the seller's right becomes most and the buyer's right is late. On the other hand, if the price is advanced, the buyer is not ordered to deliver the price, because the delay in the goods embodies the possibility that they may be spoiled. (Al-Kasani, 1986).

2. As for the Malikis, they said: "...and the summary of the jurisprudence of the issue is that the amount of the absent goods may be paid voluntarily, provided that the sale is necessary, whether the goods are real estate or something else, near or far." (Al-Dasoqi, 1989). If it is permissible to pay in advance – i.e. to speed up the price – it is permissible to delay it, then the price and the commodity will be delayed.

3. As for the Shafi'is, they believe that buying the absent thing with debt is permissible (Al-Shafi'I, 1990), and they justified this as falling under the so-called sale of things. Al-

Shafi'I— may God have mercy on him – said: “It is permissible to sell the absent thing at a price that is immediate and deferred, because the sale of things is valid to postpone the price in them, whether the goods are present or absent. This is because it is the sale of something with a debt” (Al-Mawrdi, 1999).

4. The Hanbalis believe that selling is limited to a present commodity, since the adjective takes the place of seeing the described. This appeared in their talk about selling the specific commodity that is permissible to disperse before receiving the price and taking possession of the sold item, as is the case with the present sale "It is permissible to disperse before receiving the price and taking possession of the sold item, as is the case with the present sale" (Ibn Qudamah, 1995).

It may also be inferred here:

It was narrated on the authority of Jaber, may God be pleased with him, that he was walking on a camel and the camel was tired, so the Prophet, may God bless him and grant him peace, passed by and struck him, then called for him, so he walked with a walking that was not as easy as him, then said: “Do you sell a camel with an awqiyyah?” I said: No, then he said: Sell it to me with an awqiyyah.” So I sold it, then I excluded its lambs to my family. When we arrived, I gave him the camel and he gave me its price, then I left, then he sent for me, and said: “I would not take your camel, so take your camel that is your money.” (Al-Bukhari).

It appears from this text that the sale took place, but the exchange did not take place in the contract session. Rather, it took place after they reached their homes, as he brought him the commodity – the camel – and he gave him the price. Accordingly, the postponement of the two exchanges according to this conception is permissible because there is no reason for the prohibition, since in the case of selling on the basis of the quality, the buyer has the right to choose, and he is not forced to deliver the price until he receives the commodity, just as the seller has the right to keep the commodity until the price is paid.

The principle is not to generalize the prohibition of postponing the two alternatives for the prohibition, because the forms of postponing the two alternatives are numerous, and the generalization contradicts reality in some of them and contradicts the purposes of the pure Sharia (Al-Nashmi, 2011).

In adopting this view, one of the purposes of the Shariah is to facilitate and relieve embarrassment. The Almighty said: "Allah intends for you ease and does not intend for you hardship and [wants] for you to complete the period and to glorify Allah for that [to] which He has guided you; and perhaps you will be grateful" (Holy Quran, 1:185). Almighty also said "He has chosen you and has not placed upon you in the religion any difficulty" (Holy Quran, 28:78).

This is the main purpose of building a system of jurisprudence legislation, as there is no mandate that is intolerable (Al-Qannuji, 1992), and the principle in all legislation is: facilitation and relief, as the supply contract is of great importance in daily life in all institutions: government, health, education, etc.

Accordingly, the customer requesting financing can employ the supply contract by contracting with a merchant who owns the commodity contracted between the customer and the Islamic bank according to the form of the Salam contract, so that the customer delivers it to the bank in accordance with the contract on the specified dates.

Third: Authorization Contract

Authorization concept

First: The concept of authorization in the Arabic language: The origin of authorization in the Arabic language is derived from the word **وكّل** (wkl): people say he entrusts to God and puts his trust in God. It is said that the matter is entrusted to him, i.e. handed it over and left it..., and the name: authorization (Abadi, 2005). The Almighty said: "And sufficient is Allah as Disposer of affairs" (Holy Quran, 4:81), Al-Asbahani said: "Authorization: to rely on the other and make him your representative" (Al-Asbahani, 1991).

The linguistic purpose of the agency article revolves around someone taking the place of another in a business.

The concept of agency in Islamic jurisprudence

It is the granting of a person to act on behalf of another person (Al-Manawi, 1990). Or it is: the establishment of another person in the place of the self in what accepts the representative of the actions (Hammad, 2008).

It should be noted here that the Islamic bank provides two things to the customer requesting financing:

The first: an agent on behalf of the customer requesting financing, who conducts his transactions with the bank on the one hand, and with the original merchant, the owner of the commodity, on the other hand. This is according to the authorization formula.

Second: The original trader who promises to supply the commodity to the customer requesting financing or his agent so that it can be delivered to the Islamic bank or its agent in accordance with what was stated in the Bai-Salam contract.

Collusion charge

This accusation emerged as a result of the bank providing the client requesting financing with the agent who undertakes everything that is required of the client, such as signing the peace contract with the bank, signing the purchase contract from the original merchant, and handing over to the bank the agreed commodity after its ownership from the original merchant in installments.

But what denies the accusation of collusion between the bank, the customer and the merchant is the following:

First: The customer who requests financing actually owns the commodity with its benefits and losses, as evidenced by the merchant sending a letter to him to take possession of the goods and asking him whether he wants to keep them and not sell them, requesting a response within a full day.

Second: The provision of an agent and dealer by the Islamic bank can be described as a marketing aspect, that is, it is classified as services and facilities accompanying the contracting process to encourage the customer to deal with the Islamic bank. If the matter is left to the customer, he may find it difficult to communicate with the parties and provide a dealer who owns the commodity and promises to supply it – without prejudice – on the specified dates.

Third: The Islamic bank or its representative actually owns it and sells it to a second merchant other than the first merchant, who has no connection with the bank or with the first merchant in a business partnership under one umbrella.

Therefore, the customer requesting financing had to resort to another form, such as the Bai-Salam contract with the Islamic bank on the dates specified in the contract between him and the bank. Perhaps, adopting the mode of the supply contract between the customer who requests financing and the merchant who can commit to providing the commodity according to specific dates is the safest mode from a practical point of view.

The bank received the commodity and sold it

First: Handing over the commodity (paid for) to the Islamic bank (the owner of the bai-salam contract or his agent):

Through the foregoing, it is clear that the customer requesting financing will deliver the commodity to the bank in divided installments, according to what the original merchant, the owner of the commodity, will supply to him under an agreement between them – previously discussed – to show here the problem of the legality of delivering the commodity (paid for) in installments.

The opinions of the jurists on the issue of delivery of the commodity (paid for) in installments:

The scholars have two views on this issue:

The first view: It is not valid to deliver the goods paid for in installments. This opinion is observed by the Shafi'is:

Ibn al-Rafa' said: "...It is not permissible, because it may not be possible to deliver in one of the two terms, or one of the two types, so the contract is canceled, and we do not know what the corresponding capital will be... Al-Mutawali said: This falls under two matters, one of them: that the goods for which the price was paid. If the contract is terminated, the second is that the transaction does not separate (Ibn Al-Rifa'h, 2009). It appears in their description of the issue here that they made their opinion regarding rejecting the issue because:

1. The possibility that delivery will not be possible because the commodity is cut off from the market and the contract will be invalid, as it was stated in their reasoning that this contract is void (Al-Rafe'I, 1997).
2. The principle is not to separate the deal so that the violator does not resort to correcting the contract by separating the deal. And this inference – for them – is a natural result of the corruption of the contract, even if it was made in the part – the batch – that was delivered before due to the non-dispersal of the deal.
3. Gharar resulting from the impossibility of delivery because there is no equivalent to the price paid – the Bai-Salam capital – and the search for alternatives or termination of the contract.

The second opinion

It is correct to deliver the goods paid for in parts. This is the opinion of the majority of Maliki jurists, and it is more correct than the views of the Shafi'is and Hanbalis.

Judge Abd al-Wahhab al-Maliki said: "It is permissible to pay the price of one thing for two terms and for two things for one term, contrary to al-Shafi'I in one of his opinions". This is because he said "for a known term" and did not differentiate, and because everything that may be in the debt for a specific period may be for two terms such as prices. And because it is a bai-salam sale in a manner that controls its quality, which may be delivered to a known time in which it is found, so the bai-salam in a single thing is likened to a single term.

Al-Nawawi said: "If a specific thing is sold according to the sale of Salam for two terms, or two things are different for a term, then it is correct according to the most reasonable" (Al-Baghdadi, 1999).

Al-Bahuti al-Hanbali said: "It is valid to use the Bai-Salam in one type for two terms, such as ghee, some of which is taken in Rajab, and part of it in Ramadan, because every sale is permissible to a term, it is permissible to two terms and deadlines" (Al-Nawawi, 1991).

They based their view on (Ibn Al-Rifa'h):

1. The general meaning of saying: "For a specified time." This is a general term that includes all of its members.
2. The measurement on whether he sold for the price of a deferred commodity of two types or parts.
3. It is permissible to separate the transaction, such as the one who sold two or more items at once for a term and according to the Bai- Salam, or he sold one item for two or more terms according to the Bai-Salam, then the contract is canceled with one of them, it is permissible based on the opinion that the transaction may be divided (Al-Ansari, 2000).

Discussion and Preference

This research sees that it is permissible to deliver the thing paid for in installments, for the following:

First: In terms of the generality of the phrase: "Who is forefather in something..." (Al-Bukhari). Here we note that the speech is general and it did not indicate whether the delivery was in one payment or in installments. Rather, it was sufficient to stipulate the term.

Second: Splitting the deal:

The concept of splitting the deal: The splitting of the deal means "that one man sells two commodities to another man, and each one has a uniquely known price" (Al-Suyuti, 2004). Regardless of the jurisprudential dispute in the definition or description, what came in the "Kuwaiti Fiqh Encyclopedia" expresses the reality of the situation that this study deals with, as it stipulates that the separation of the deal means that "The contract rule does not cover all the contractual matters, or deals with it and then subsides." Thus, the single deal combined would have been dispersed or fragmented" (Kuwait Fiqh Encyclopedia, 1990).

Its ruling: The jurists differed in the legal description of the splitting of the transaction and its adaptation in terms of a meeting of a permissible work and a prohibited work or a combination of two permissible actions.

This research is not about clarifying the legal characterization, but it is permissible to separate the transaction in this case, if the thing paid for was not present at the time of the contract and may not be present on the day of delivery, then why not look at the differentiation

of the transaction! Therefore, adopting the principle of separation of the transaction is not valid as a basis for the incorrect delivery of the thing paid for in piecemeal.

1. On the other hand, they stipulated – as mentioned above – the permissibility of splitting the deal. Accordingly, the principle of deal splitting can be employed as a way to correct the Bai-Salam contract if the contract has not been canceled.
2. Everything that may be owed for a term may be for two terms, such as prices. As they stipulated it.
3. Because it is possible to set its attribute in what may be delivered to a known time in which it is found, since the Bai-Salam for a single thing takes the attribute of a single term.

The Sharia standards stipulated that: “It is stipulated that the term for the delivery of the thing paid for it be known in a way that removes the ignorance that leads to the dispute, and there is no objection to specifying multiple deadlines for the delivery of the thing paid for in installments, provided that the whole capital is accelerated.” (Accounting and Auditing Organization for Islamic Financial Institutions, 2017). Kuwait Finance House has followed this principle (2014).

Contract of sale of the commodity (the pre-paid commodity) for the second trader:

After the bank receives the commodity (paid for) based on the Bai-Salam contract concluded between it and the customer, in installments according to the specified deadlines, he or his agent sells it to a second merchant other than the original merchant who owned it and sold it to the customer, for fear of being accused of complicity in usury, and that is under a sale contract between the Islamic bank and the second merchant (Samhan).

This sale may be at the same price at which the bank bought it, and it may be for less or it may be more. This is prevalent in Salam contracts, as the need of the buyer – the Islamic bank – to buy according to the Bai-Salam sale formula was for the purpose of buying at a cheap price and selling at a better price in its season and time.

The bank may sell the commodity according to any legal sale formula that is consistent with the formulas and controls for selling the available thing or the like, regardless of whether it was bought through Bai-Salam mode.

First: Controls of the bank's sale of the commodity formula:

One of the controls that must be observed here is that the bank or its agent does not sell the purchased commodity to the customer requesting financing, or to the merchant, the original owner of the commodity, at a deferred price higher than its price in cash, in order to avoid mohatra contract, which includes deception of usury.

The mohatra contract is: “a sale in which it is deceptive to pay something in more than it” (Al-Rasaa, 1993). It is as if someone sold a telephone for one thousand dirhams for a term and then bought it for nine hundred in cash.

This type of sale is different for the jurists in its ruling as follows:

The first opinion: Muhammad ibn al-Hasan from the Hanafis (Ibn A'bdin), the Shafi'is (Al-Sabki) and the Hanbalis (Ibn Qudamah) believe that this type of sale is forbidden and prohibited, for the following:

1. It was narrated on the authority of Ibn Umar, he said: I heard the Messenger of God, may God bless him and grant him peace, say: “If you sell by **mohatra contract**, and take the tails of cows, and are content with farming, and abandon jihad, God will inflict humiliation upon you that will not be removed until you return to your religion” (Abu Dawud).

2. It was narrated that Umm Muhibah asked Aisha, may God be pleased with her, about a slave-girl whom she bought from Zaid bin Arqam for (800) dirhams, and after that Zaid wanted to sell her, so she bought her from him for (600) dirhams in cash. So tell Zaid that he has nullified his jihad with the Messenger of God, may God’s prayers and peace be upon him, unless he repents.” Umm Muhibah said to her:

Did you see if I only took my capital from him? She recited Almighty's saying: “So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. ” (Holy Quran, 1:75).

These two texts showed the prohibition of the **mohatra contract**, as the first text arranged the sale of the sample promise of humiliation and despondency, and the second text arranged on it the invalidity of the work of the mohatra contract knowing that it is a circumvention of usury.

The second opinion: The majority of the Hanafis (Al-Aini) and the Malikis (Al-Dasouqi) consider that the mohatra contract as detestable, citing the following:

1. It includes reluctance to lend miserliness (Al-Aini).
2. It is understood from their texts that it might become a means to circumvent usury.

This saying was not as strict as the first saying, because it based the judgment on the work of the best, so it was mentioned that in lending the reward and reward with God, which will be missed by employing the fictitious sale according to the sample sale formula, and will deepen the creation of blameworthy miserliness in the same particular.

The third opinion: Abu Yusuf, who follows the Hanafi school (Alhumam) and also the Shafi’I majority (Al-Nawawi), believes that the mohatra contract is permissible, citing the following:

Almighty said: " But Allah has permitted trade and has forbidden interest" (Holy Quran, 1:275), and "He hath explained to you in detail what is forbidden to you" (Holy Quran, 6:119).

The point of inference is that the sale of the sample falls under the generality of the first text, and is not stipulated in the second text.

The Messenger of God, may God’s prayers and peace be upon him, hired a man on Khaybar, and he brought him dates. The Messenger of God, may God’s prayers and peace be upon him, said: “Is every Khaibar date like this?” He said: No, by God, O Messenger of God. We take a saa’ of this for two saa’s, and two saa’s for three. The Messenger of God, peace and blessings be upon him, said: “Do not sell the combination for dirhams, then buy dates with dirhams.” (Al-Bukhari).

The reason for the inference is that the Prophet, may God’s prayers and peace be upon him, did not refer to the union of the seller and the buyer in the two contracts with the union of the commodity or not (Al-Sakbi)

1. The Companions' doing, and this was mentioned by Abu Yusuf, who follows the Hanafi school (Abdin).
2. They pointed to the weakness of the reasoning of the group's opponents due to the weakness of their evidence. (As indicated in the graduation margin).

Section Two: Discussion and Preference

Looking at the sayings of the jurists and their evidence, we find that each of them has reliable evidence, and the adoption of the weighting between the permissible statement and the prohibitive statement – in particular – is difficult. In order to overcome the dispute, and by diving into the depths of this issue and its sensitivity, this research sees that the mohatra contract is forbidden due to the presence of the accusation and the presence of a strong presumption that arises when selling to the first merchant or to the customer himself. This evidence was represented by:

- The price of cash is less than the price of the term.
- In order to obtain liquidity with the client, this suggests collusion.

This preference was also supported by Ibn Taymiyyah – may God have mercy on him – when he said: “Likewise, if they agree on a usurious transaction, then they come to a shop owner asking him for goods as much as the money, and the giver buys it, then the taker sells it for a term and then returns it to the shop owner for less than that, so the shop owner is an intermediary between them, and this is also one of the types of usury in which there is no doubt” (Ibn Taymiyyah , 2005).

Perhaps the adoption of this saying – that is, the prohibition of the mohatra contract – is closer to the truth, as there are strong evidences that point to fraud in usury. The Malikis referred to this meaning as they stipulated that: “and to prevent the accusation what is intent on many, i.e.: to prevent every sale that is apparently permissible leads to something that is prohibited on the inside for the accusation, that the sellers are intentionally allowed to reach a forbidden on the inside” (Al-Kharshi).

In the context of this research – personal finance through a bai-salam contract – “Aafaq Islamic Finance” () warned against the complicity of the Islamic bank and the customer requesting financing and the merchant on this. That is, according to a tripartite formula, accomplices to usury in a legitimate way by employing the permissible bai-salam contract to reach what is not permissible.

Accordingly, the Islamic bank must own the commodity real and not fictitiously – by itself or its agent – under the Bai-Salam sale contract concluded between it and the customer requesting financing, so that the commodity becomes in its guarantee, bears its risks, benefits and losses, so as not to lose contracts in the system of personal finance is its real existence free from the suspicion of usury and fraud.

Findings and recommendations

The study of this phenomenon is characterized by its depth and sensitivity, as linking between the interest-based loan and the interest-free financing formulas is a delicate thread that this study was keen to investigate and take into account. The following are the most prominent results and recommendations of the current research:

First: The results:

1. The flexibility of the legislative system for the jurisprudence of financial transactions in absorbing developments, keeping pace with the requirements of the times, and providing the necessary funding for individuals and institutions to satisfy their needs.
2. The ability of Islamic financial and banking jurists to find a financing product through which liquidity can be provided in a form other than the good or usurious loan.
3. If the Shari'a controls of the meeting of contracts are observed, especially not complicity in usury, then the personal finance product according to the form of the Salam contract is in accordance with the provisions of Islamic Shari'a.
4. The product of personal finance through a bai-salam contract can be described as an alternative to lending with interest (usury).
5. The bai-salam contract can play a role as a financing tool in achieving the intended purpose of the personal finance formula.
6. The form of the supply contract is a form in which the customer who requests financing by employing it can provide the commodity agreed upon with the Islamic bank under the Salam contract.

Second: Recommendations

1. The Shari'a supervisory boards and Shari'a control and audit departments must constantly monitor the system of contracts that comprise the personal finance product.
2. The Shari'a Supervisory Board in Islamic financial institutions and Islamic financial and banking jurists are required to exert more effort and diligent consideration and research to invent new products or to employ other financing formulas that contribute to the continuity of dealing with Islamic banks and to avoid borrowing from traditional banks through usury.

References

- Aafaq Islamic Finance, Encyclopedia of Islamic Finance, Dubai – United Arab Emirates.
- Accounting and Auditing Organization for Islamic Financial Institutions (2017). Sharia Standards, New Edition, Riyadh – Saudi Arabia, Dar Al-Mayman.
- Al-Aini, Mahmoud (2000). The Building of Sharh Al-Hedaya, 1st floor, Beirut – Lebanon, Dar Al-Kutub Al-Ilmia.,
- Al-Ajlouni, Muhammad (2012). Islamic Banks: Its Provisions – Principles – Applications, 3rd Edition, Amman – Jordan, Dar Al Masirah.
- Al-Ansari, Zakaria (2000). Most demanding demands in the explanation of Rawdat al-Talib. Investigation by Muhammad Tamer, 1st Edition,
- Al-Baghdadi, Abdel-Wahhab (1999). Supervising Jokes on Dispute Issues, 1st Edition, Beirut – Lebanon, Dar Ibn Hazm.
- Al-Bahouti, Mansour, (1993). Minutes of the Wise to Explain the Ultimate Known as Explanation of ultimate intention, 1st Edition, Riyadh – Saudi Arabia, Alam Al-Kutub.
- Al-Bukhari, Abdel Aziz (1997). Uncovering the Secrets on the Origins of Al-Bazdawi, 1st Edition, Beirut – Lebanon, Dar Al-Kutub Al-Ilmia.
- Al-Bukhari, Muhammad (1987). Sahih Al-Bukhari, I 1, Cairo – Egypt, Dar Al-Shaab.
- Al-Dusuki, Mohamed (15) Dusuki's footnote to the great explanation, d. I, Beirut – Lebanon, Dar Al-Fikr.
- Al-Ghali, Bin Ibrahim (2012) Dimensions of the financing and investment decision in Islamic banks: an applied study, 1st edition, Amman – Jordan, Dar Al-Nafais.
- Al-Hamwi, Ahmed (1985). “The Eyes of Insights wink at explaining the likenesses and analogies”, 1, Beirut – Lebanon, Dar Al-Kutub Al-Ilmia.

- Alish, Mohammed (). Manah Al-Jalil, a brief explanation of Khalil, Beirut – Lebanon, Dar Al-Fikr.
- Al-Kasani, Abu Bakr (1986). Badaa' al-Sana'I in the Order of Laws, 2nd Edition, Beirut – Lebanon, Dar al-Kutub al-Ilmiyya.
- Al-Kharshi, Muhammad. A brief explanation of Khalil, Beirut – Lebanon, Dar Al-Fikr.
- Al-Mardawi, Ali (1995) Fairness in knowing the most correct of the dispute, 1st edition, Cairo – Egypt, abandoned for printing, investigation: Abdullah Al-Turki– Abdel Fattah Al-Helou.
- Al-Mawardi, Ali (1999). Al-Hawi Al-Kabeer, 1st Edition, Beirut – Lebanon, Dar Al-Kutub Al-Ilmiyya.
- Al-Nawawi, Muhyi Al-Din, (1991). Rawdat Al-Talibin and Omdat Al-Muftin, 3rd floor, Beirut – Damascus – Amman, Islamic Bureau.
- Al-Naysaburi, Muslim, Sahih Muslim, Beirut – Lebanon, House of Revival of Arab Heritage, investigation: Muhammad Fouad Abdel-Baqi,
- Al-Othmani, Taqi Al-Din, (2000) research entitled: Supply and Tender Contract presented to the Islamic Fiqh Academy in its 12th session.
- Al-Qanouji, Muhammad, (1992). Fath Al-Bayan fi Maqasid Al-Quran, Al-Asriya Library, d. I, Saida– Beirut – Lebanon.
- Al-Rafi'I, Abdel Karim (1997). Fath Al-Aziz, with the explanation of Al-Wajeez. Beirut – Lebanon, Dar Al-Kutub Al-Ilmia.
- Al-Ra'ini, Muhamma (1992). Talents of God in a Brief Explanation of Khalil, 3rd Edition, Beirut – Lebanon, Dar Al-Fikr.
- Al-Ramli, Muhammad (1984). The End of the Needy Explanation of the Curriculum, Dr. T, Beirut – Lebanon, Dar Al-Fikr.
- Al-Rasaa, Muhammad, (1993). The sufficient and healing guidance to clarify the adequate facts of Imam Ibn Arafa: Explanation of the limits of Ibn Arafa, 1st edition, Lebanon, Dar al-Gharb al-Islami.
- Al-Shafei, Muhammad (1990). The mother, Beirut – Lebanon, Dar Al-Maarifa.
- Al-Sijistani, Suleiman, 2009, Al-Sunan, 1st edition, Beirut – Lebanon, Dar Al-Resala Al-Alameya, investigation: Shoaib Al-Arnaout– Muhammad KamelQarah Belli.
- Al-Subki, Ali (). Supplementing the total, Sharh Al-Muhadhab, Jeddah – Saudi Arabia.
- Al-Subki, Ali (). Fatwas by Al-Subki, Beirut – Lebanon, House of Knowledge.
- Al-Suyuti, Abd al-Rahman, (2004) Dictionary of Maqalid al-Ulum in Borders and Drawings, 1, Cairo – Egypt,
- Al-Zubaidi, Muhammad. (2000) The Crown of the Bride from the Jewels of the Dictionary, 1st Edition, Kuwait, Kuwait Government Press, investigation: Ibrahim Al-Tarazi, review by a committee from the Ministry of Information / Kuwait.
- Dozi, Rinehart (2000). Arabic Dictionaries Supplement, 1st Edition, Baghdad – Iraq, Ministry of Culture and Information, Republic of Iraq.
- Ghattas, Nabih (2000). A Dictionary of Terms of Economics, Finance and Business Administration, New Edition, Beirut – Lebanon, Library of Lebanon Publishers.
- <https://rakbank.ae/wps/portal/ar/islamic-banking/finance/personal/amal-personal-finance/faq> RAK National Bank. Saturday 10/12/2021 pm at 22:00 Dubai time.
- <https://www.aliqtisadalislami.net> on: January 20, 2016.
- <https://www.alrajhibank.com.sa/personal/finance/personal/personal-finance-watani> Al Rajhi Bank. Saturday 10/12/2021 pm at 22:00 Dubai time.
- <https://www.saib.com.sa/ar/arzaq-murabaha-finance> Friday 10/12/2021 pm at 1:10 Dubai time.
- <https://www.sib.ae/ar/personal-banking/personal-finance/personal-finance> Sharjah Islamic Bank. Saturday 10/12/2021 pm at 22:00 Dubai time.

- Ibn Abidin, Muhammad (1992). The confused's response to Al-Durr Al-Mukhtar, 2nd Edition, Beirut – Lebanon, Dar Al-Fikr.
- Ibn al-Arabi, Muhammad. (2003) Rulings of the Qur'an, 3rd Edition, Beirut – Lebanon, Dar al-Kutub al-Ilmiyya.
- Ibn Al-Atheer, Al-Mubarak (1979). The End in Gharib Al-Hadith and Al-Athar, Beirut – Lebanon, the Scientific Library.
- Ibn al-Bay', al-Hakim (1990). al-Mustadrak on the Two Sahihs, 1st Edition, Beirut – Lebanon, Dar al-Kutub al-Ilmiyya.
- Ibn al-Humam, Muhammad. (2003) Explanation of Fath al-Qadeer on Guidance, 1st Edition, Beirut – Lebanon.
- Ibn al-Rafa'a, Ahmad. (2009) (kefaya al-Nabih fi Sharh al-Tanbih, Dar al-Kutub al-Ilmiyya.
- Ibn Fares, Ahmad (1979). Language Standards, Beirut – Lebanon, Dar Al-Fikr.
- Ibn Hajar, Ahmed (1989). Al-Habeer summary in the narration of the hadiths of Al-Rafi'I Al-Kabeer, 1, Beirut – Lebanon, Dar Al-Kutub Al-Ilmia.
- Ibn Hazm, Ali, (). Al-Mahali in Antiquities, Beirut – Lebanon, Dar Al-Fikr.
- Ibn Qudamah, Abdullah (1968). Al-Mughni, Cairo – Egypt, Cairo Library.
- Ibn Rushd, Muhammad (1988). The introductions, the first edition, Beirut – Lebanon, Dar al-Gharb al-Islami.
- Ibn Taymiyyah, Ahmad (2005). Collection of al-Fatawa, 3rd Edition, Cairo – Egypt, Dar al-Wafa'.
- Ibrahim Abdullah. Real Estate Finance for Building and Buying Homes, Jeddah – Saudi Arabia, Journal of the Islamic Fiqh Academy, March – 1990, No. 6.
- Ji, Qalaa and Qunaibi, Hamed, (1988). Dictionary of the Language of the Jurists, 2nd Edition, Beirut – Lebanon, Dar Al-Nafais.
- Journal of the International Islamic Fiqh Academy, 2000 Riyadh – Saudi Arabia, No. 12.
- Ministry of Endowments and Religious Affairs, (1990), Kuwaiti Fiqh Encyclopedia, 2nd Edition, Kuwait, That Al Salasil Press.
- Omar, Ahmed, and others (2008). Dictionary of Contemporary Arabic Language, 1st Edition, Riyadh – Saudi Arabia, World of Books.
- Qahf, Munther (1991). The Concept of Finance in the Islamic Economy, a Jurisprudential and Economic Analysis, Jeddah – Saudi Arabia, the Islamic Research and Training Institute, Analytical Research No. (123).
- Samhan, Hussein, 2013, The Foundations of Islamic Banking Operations, 1st Edition, Amman – Jordan, Dar Al Masirah.
- The Fatwa and Sharia Supervisory Board of the Kuwait Finance House (1982-2010), 2014 Sharia Fatwas on Economic Issues, 1st Edition, Kuwait, Dar Al-Diaa.