

Securitization of Musharakah

Musharakah is a mode of financing which can be securitized easily, especially, in the case of big projects where huge amounts are required which a limited number of people cannot afford to subscribe. Every subscriber can be given a musharakah certificate which represents his proportionate ownership in the assets of the musharakah, and after the project is started by acquiring substantial non-liquid assets, these musharakah certificates can be treated as negotiable instruments and can be bought and sold in the secondary market. However, trading in these certificates is not allowed when all the assets of the musharakah are still in liquid form (i.e., in the shape of cash or receivables or advances due from others).

For proper understanding of this point, it must be noted that subscribing to a musharakah is different from advancing a loan. A bond issued to evidence a loan has nothing to do with the actual business undertaken with the borrowed money. The bond stands for a loan repayable to the holder in any case, and mostly with interest. The musharakah certificate, on the contrary, represents the direct pro rata ownership of the holder in the assets of the project. If all the assets of the joint project are in liquid form, the certificate will represent a certain proportion of money owned by the project. For example, one hundred certificates, having a value of GBP one million each, have been issued. It means that the total worth of the project is GBP 100 million. If nothing has been purchased by this money, every certificate will represent GBP one million. In this case, this certificate cannot be sold in the market except at par value, because if one certificate is sold for more than GBP one million, it will mean that GBP one million are being sold in exchange for more than GBP one million, which is not allowed in Shari'ah, because where money is exchanged for money, both must be equal. Any excess at either side is riba.

However, when the subscribed money is employed in purchasing non-liquid assets like land, building, machinery, raw material, furniture etc. the musharakah certificates will represent the holders' proportionate ownership in these assets. Thus, in the above example, one certificate will stand for one hundredth share in these assets. In this case it will be allowed by the Shari'ah to sell these certificates in the secondary market for any price agreed upon between the parties which may be more than the face value of the certificate, because the subject matter of the sale is a share in the tangible assets and not in money only, therefore the certificates may be taken as any other commodities which may be sold with profit or at a loss.

In most cases, the assets of the project are a mixture of liquid and non-liquid assets. This comes to happen when the working partner has converted a part of the subscribed money into fixed assets or raw material, while rest of money is still liquid. Or, the project, after converting all its money into non-liquid assets may have sold

some of them and has acquired their sale proceeds in the form of money. In some cases the price of its sales may have become due on its customers but may have not yet been received. These receivable amounts, being a debt, are also treated as liquid money. The question arises about the rule of Shari'ah in a situation where the assets of the project are a mixture of liquid and non-liquid assets, whether the musharakah certificates of such a project can be traded in? The opinions of the contemporary Muslim jurists are different on this point. According to the traditional Shafi'i school, this type of certificate cannot be sold. Their classic view is that whenever there is a combination of liquid and non-liquid assets, it cannot be sold unless the non-liquid part of the business is separated and is sold independently.

The Hanafi school, however, is of the opinion that whenever there is a combination of liquid and non-liquid assets, it can be sold and purchased for an amount greater than the amount of liquid assets in the combination, in which case money will be taken as sold at an equal amount and the excess will be taken as the price of the non-liquid assets owned by the business.

Suppose, the Musharakah project contains 40% non-liquid assets i.e. machinery, fixtures etc. and 60% liquid assets, i.e. cash and receivables. Now, each musharakah certificate having the face value of GBP 100/- represents GBP 60/- worth of liquid assets, and GBP 40/- worth of non-liquid assets. This certificate may be sold at any price more than GBP 60. If it is sold at GBP 110/- it will mean that GBP 60 of the price are against GBP 60/- contained in the certificate and GBP 50/- is against the proportionate share in the non-liquid assets. But it will never be allowed to sell the certificate for a price of GBP 60/- or less, because in the case of GBP 60/- it will not set off the amount of GBP 60, let alone the other assets.

According to the Hanafi view, no specific proportion of non-liquid assets in the whole is prescribed. Therefore, even if the non-liquid assets represent less than 50% in the whole, its trading according to the above formula is allowed.

However, most of the contemporary scholars, including those of Shafi'i school, have allowed trading in the units of the whole only if the non-liquid assets of the business are more than 50%. Therefore, for a valid trading of the musharakah certificates acceptable to all schools, it is necessary that the portfolio of musharakah consists of non-liquid assets valuing more than 50% of its total worth. However, if Hanafi view is adopted, trading will be allowed even if the non-liquid assets are less than 50%, but the size of the non-liquid assets should not be negligible.