

Issues in Islamic Housing Finance



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Issues in Islamic Housing Finance

- Types of Contracts
 - Musharaka
 - Murabaha

Musharaka Contract

- Shirkah
- Shirkat-ul-Milk
- Shirkat-ul-aqd

Financing Documents of Shirkat-ul-Milk

- Shirkat-ul-Milk Agreement
- Monthly payment agreement
- Undertaking
- MODT
- Purchase Receipt
- Token Registered Mortgage (if applicable)
- Demand Promissory Notes

Essentials of Shirkat-ul-Milk Agreement

- Offer
- Acceptance
- Consideration

Technical Aspects of Agreement

- Partnership/Sharing in Immoveable Property
- No legal Joint Ownership can be created without registered document.
- Stamp Duty equal to Sale deed may require
- Protection of Section 18 (4) F.I Ordinance 2001

Set of Financing Documents

- Shirkat-ul-Milk Agreement
- Undertaking
- Monthly Payment Agreement
- Memo of deposit of Title deeds
- Demand Promissory Note

Monthly Payment Agreement

- Use & Possession of Property
- Consideration
- Yearly Variation
- Diminishing Musharaka Basis
- Revised Payment Schedule
- Cost & expenses

Monthly Payment Agreement

- Technical Aspects
 - Nature of monthly payment
 - Linkage of Monthly payment with KIBOR

Suggested Para to Avoid KIBOR Linkage Objection

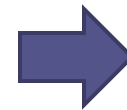
Monthly Payment schedule; means the Schedule attached hereto as Schedule _____, as amended and / or replaced, from time to time, in accordance with the terms hereof depending upon the _____ Months KIBOR-ASK side (Base Rate) plus _____ Basis points. Upon such revision, the monthly obligation of the customer mentioned in the instant agreement, shall be deemed to have been correspondingly increased or decreased and the Schedule annexed hereto shall also be amended and replaced by the BANK; However, the benefit of declining balance corresponding to the purchase of Bank's Musharakah units by the customer (diminishing Musharakah Basis) shall be available at the time of every such revision”.

Monthly Payment Agreement

- **KIBOR Objection**
 - BPRD Circular 06 dated July 14, 2006
- **Payment is tantamount to Rent Objection**
 - Rent must not increase by more than 10% after every 3 years
 - Rent must be in accordance with the other similar properties of the area.

Monthly Payment Agreement

- Legal support for Housing Finance
 - Section 2(d) of Financial Institutions (Recovery of Finances) Ordinance 2001
 - SBP Circular No. 12 of 2007
 - To strengthen the agreement



Undertaking to Purchase Musharaka Units

- Technical & Legal Aspects
 - General Meaning
 - Undertaking = Responsibility, Task, Job, Duty.
 - Undertake: assume, start, carryout, agree to, and accept
 - Islamic View Regarding Promise
 - Legal Definition
 - A contract in which only one party makes an express promise or undertakes a performance without first securing a reciprocal agreement from the other party.
 - Proper application for the purchase of Bank's Musharaka units
 - Filling of Date of Undertaking
 - Revision of draft of Undertaking

Mortgage by Deposit of Title Deeds

- Applicable Law
 - Section 58 (f) Transfer of Property Act
- Essentials
 - A debt
 - A deposit of Title Deed ; and
 - An intention to create a security thereon.
- Memorandum of Deposit of Title Deeds
 - Must be in writing

Mortgage by Deposit of Title Deeds

- Technical Points to be observed
 - Should be past tense
 - Filling of Date
 - For creation of Mortgage, the Property should be specific
 - A Mortgage of Property that may come into existence in future is not valid.
 - The valid title deed deposited by the customer should connect the customer with the property.

Mortgage by Deposit of Title Deeds

- Technical Points to be observed
 - Document deposited must be a title deed.
 - The mentioning of the date of Financing Agreement is also mandatory in the Memo.
 - Every page of the document should be signed by the customer.
 - Registration Number & Dates
 - The Memorandum should also be signed by two witnesses.
 - Can a Financial institution equitably Mortgage a portion of property under its ownership?

Demand Promissory Note

- Technical points to be observed
 - This document should be on green ledger Paper and Revenue Stamps of required amount should be affixed on it. The preparation of this document on non-judicial paper is not appropriate.
 - All the Revenue Stamps affixed should be crossed/cancelled with pen.
 - The date of this document should be filled after disbursement of financing amount; otherwise, the document would be of no legal value.
 - The validity of D.P. Note is for 3 years. If the financing period is more than 3 years, the D.P. Notes should also be multiple in numbers.

General Technical Aspects

- Every page of all Financing documents should be signed by customer
- Placement of Intimation Letter
- All Documents Should be signed in presence of Bank Officials.
- Printed Booklet
 - Date of execution of financing agreement
 - Difference in actual execution date of financing agreement and stamp affixation
 - Statement of accounts.
 - Charity

HANDING/TAKING OVER PHYSICAL POSSESSION OF

Property bearing No. _____

In consideration of having received full and final payment of the above mentioned Property from Mr. _____ and _____ Islamic Bank as per the Acknowledgement Receipt dated _____.

I do hereby hand over the physical possession of the said Property to Mr. _____ S/o _____ (Vendee), resident of _____

the ____ day of _____, 20__ which have acknowledged by the Vendee, as well, by signing taking over the physical possession of the aforesaid house.

POSSESSION HANDED OVER

By (Vendor)

NAME:

CNIC NO.

POSSESSION TAKEN OVER

By (Vendee)

NAME:

CNIC NO.

WITNESSES:

Signature: _____

Name: _____

Address: _____

CNIC NO.: _____

Signature : _____

Name: _____

Address: _____

CNIC NO.: _____

AUTHORIZATION TO TAKE POSSESSION OF THE TITLE DEEDS

**Sub-Registrar _____ Town
Karachi.**

Dear Sir,

I/We, _____ S/W/D/O _____,
Muslim/Charistian/Hindu/Parsis, Adult, holding CNIC No. _____,
residing at _____

_____, also refer to the Agreement for House Financing dated
_____ entered into by me/us with _____ Islamic Bank, in respect
of financing granted to me/us under (modes of finance) as defined in the Financial
Institutions (Recovery of Finances) Ordinance 2001 (the “**Finance**”).

I/We also refer to the Sale Deed/ Conveyance Deed/ Sub-Lease (Title Deed) registered
on _____, vide receipt No. ____ & Urgent Receipt No _____, with Sub-Registrar
_____ Town Karachi.

I/We, hereby unconditionally and irrevocably authorize _____ Islamic Bank having
office/branch at _____ to collect and take absolute
possession of the said Title Deed directly from the Said Sub-Registrar Office, upon
presentation of original receipts to the Concerned Sub-Registrar Office, in my/our
names(s) for and on my/our behalf.

AUTHORIZATION TO TAKE POSSESSION OF THE TITLE DEEDS

I/We, hereby agree with your authorized representatives, officer, agents or any other firm engaged by you for this purpose will have the unrestricted right of collecting and taking absolute possession of the said Title Deeds from the said Sub-Registrar office and for this purpose to correspond and coordinate with the Said Sub-Registrar Office on my/our behalf as my duly constituted authorized representative.

Since you are corporate body, the authority delegated to you by this Authorization is coupled with interest, therefore, irrevocable and may be exercised by you through your duly constitute attorney or by any of your officer designated for this purpose.

I/We, have granted this Authorization to the Bank in consideration of the Finance being provided by the Bank to me/us under the aforesaid Agreement.

I/We recognize and accept and hereby declare that this Authorization is irrevocable and is binding on my/our heirs and successors.

AUTHORIZATION TO TAKE POSSESSION OF THE TITLE DEEDS

I/We will ratify all actions and _____ Islamic Bank shall not responsible in any manner for the costs, expenses, losses and damages, The bank or its authorized representative may have to incur while acting under this Authorization and I/We hereby indemnify _____ Islamic Bank and its authorized representative against all claims, demand, dues, costs, expenses, losses and damages that my be claimed from or paid by said Bank or by its authorized representative while acting under this Authorization.

Yours faithfully,

Name _____

CNIC No. _____

WITNESSES:

Signature: _____

Name: _____

Address: _____

CNIC NO.: _____

Signature: _____

Name: _____

Address: _____

CNIC NO.: _____

Public Notice

I, _____ S/O _____, in Partnership (Shirkat) with _____ Islamic bank having its office/branch at _____ have contracted to purchase House bearing No. _____, Measuring _____ Square Yards, situated in _____, Karachi, from Mr. _____ son of _____, resident of Karachi free from all encumbrances, liens, charges, demands dues, with full vacant physical possession

Any authority, persons, loan granting agency having any claim, objection, right, title or interest whatsoever should notify the same to concerned Registrar office and us (Myself and the bank) with documentary evidence by registered AD within Seven days from the day of this publication, failing which all claims and objection whatsoever shall be deemed to have been waived and abandoned and the transaction shall be completed in favour of our clients.

_____, Karachi.

TEL #: _____

Bank's Tel# _____

Dated: _____

The Departmental Head
Housing Finance
XYZ Islamic Bank Limited
Karachi.

Sub: Application For Purchase of Musharakah Units of the Bank in respect of Property bearing No. _____, acquired by the bank under Shirkat-ul-Milk Agreement dated _____.

Dear Sir,

With Reference to above captioned subject it is submitted that I have ____ Percent share in above stated Musharakah Property, whereas, the bank has ____ percent share in the same by virtue of Shirkat-ul-Milk Agreement dated _____ (The Agreement). As per Agreement, the Bank's share consists of ____ units and price of every unit is also defined.

Due to some unavoidable personal needs, I want to purchase the entire units of Bank's shares at agreed price as mentioned in the Agreement on monthly payment basis.

You are, therefore, requested to consider my above stated submissions. I am also ready to execute any formal document in this regard.

Best Regards

ABC S/o EFGH R/O _____

N.I.C. # _____

Our Ref. XYZ/Int.58-F/ABC/1/20__

Dated: _____

Sub-Registrar-
_____ Town,

**Subject:-Intimation of Equitable Mortgage in respect of Property Bearing
No. _____ Karachi**

Dear Sir,

This is to inform you that in consideration of a Musharaka finance facility extended to Mr. _____ S/O _____, by _____ Islamic Bank Limited, the above mentioned property has been Mortgage by way of deposit of Title Deeds in favour of _____ Islamic Bank Limited. (Copy of Memorandum of Deposit of Title Deed is attached herewith)

We would appreciate if an endorsement of the said equitable mortgage is made in the record of the property maintained with you. Please also not allow any further Transfer transaction, whatsoever in nature, in respect of the above said property without obtaining the Bank's Clearance Certificate.

Yours faithfully,

For and on behalf of _____ Islamic Bank Limited.

Thank You

To strengthen the agreement

“The Monthly payment defined herein, neither be treated as “Rent” as defined in Sindh Rented Premises Ordinance 1979, or in any other law governing the matters related to rented premises in whole of Pakistan, by whatsoever name it may be, nor the modus operandi describe therein for fixation of Fair Rent or its enhancement shall have any application to the monthly payments under this agreement or its linkage with KIBOR as benchmark for every revision of monthly payments rate/amount.”

