

Shari'ah Standard on

Sharikat ul Milk

and

Diminishing Musharakah
(based on Sharikat ul Milk)

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Statement of the Standard

1. Scope of the Standard

This Standard is applicable to all forms of joint ownerships, structured on the basis of Sharikat ul Milk of asset or property excluding receivables and cash and cash equivalent. This Standard shall also be applicable to a Diminishing Musharakah based on Sharikat ul Milk.

2. Definition

2/1. Definition of Sharikat ul Milk

It is a joint ownership of two or more persons in a particular asset or property without common intention to engage in business with respect to such asset or property.

2/2. Relationship of Joint Owners in Sharikat ul Milk

Each joint owner is independent of other(s) i.e. each of them is neither a Kafeel, nor a Zamin, nor a Wakeel, nor an Ameen in respect of the share of other joint owner(s) in the joint asset/property.

3. General rules for Sharikat ul Milk

3/1. Execution of a Sharikah contract

3/1/1. "Sharikat-ul-Milk (joint ownership) may come into existence by devolving ownership right due to inheritance or by gift or by joint purchase. Such legal relationship may be optional as in case of joint purchase or mandatory/obligatory as in case of inheritance. This arrangement should be documented/registered officially.

3/1/2. The proportionate share of each joint owner in the joint asset or property shall at the inception of Sharikat ul Milk be determined as evaluated by the evaluator(s) as per market practices or the fair value fixed by mutual agreement or on the basis of cash contribution made by the respective joint owners.

- 3/1/3. It is permissible for institution offering Islamic financial services to offer syndicated financing by entering into Sharikat ul Milk with conventional banks and other financial institutions subject to ensuring compliance of operations in accordance with Shari'ah.
- 3/1/4. Each joint owner has the right to sell/gift/ rent out (Ijarah) his share in the joint asset or property to the other joint owner(s) or to anyone else unless this act affects the right of other joint owner(s).
- 3/1/5. It is permissible for a joint owner in a Sharikat-ul-Milk to undertake the purchase of share of other joint owner(s) at face value, book value, agreed value, or market value. This undertaking should be independent of the Sharikat ul Milk contract.
- 3/1/6. It is permissible for a joint owner in a Sharikat ul Milk to indemnify loss of the other joint owner(s), in case of misconduct, negligence and breach of contract.
- 3/1/7. Any gain and loss in the jointly owned asset/property due to any reason will be shared by joint owners in proportion of their ownership.
- 3/1/8. It is permissible for the joint owners to assign the management of the joint asset or property to joint owner(s) or appoint a manager other than the joint owner(s) for managing the jointly owned asset/property.
- 3/1/9. It is permissible to pay remuneration for managing the joint asset or property to the joint owner(s) or to the appointed manager other than the joint owner(s) whose remuneration will be included in the expenses of the Sharikat ul Milk.
- 3/1/10. It is not permissible for the joint owner(s) to use share(s) of other joint owner(s) without his/their consent. However, joint owner(s) can use the share of other joint owner(s), on agreed terms with or without recompense.
- 3/1/11. It is permissible for a joint owner in Sharikat ul Milk to stipulate that another joint owner provides personal guarantee or pledge to cover cases of misconduct, negligence or breach of contract.

3/1/12. Expenses including taxes, levies, fees related to the joint ownership will be borne by all joint owners in proportion of their ownership.

3/1/13. It is permissible for the joint owners to enter into a binding promise for the continuity of the joint ownership for a mutually agreed period of time.

3/2. Withdrawal from or Termination of Sharikat-ul-Milk

3/2/1. Subject to agreement or by mutual consent of joint owners, a joint owner may withdraw his share from the joint asset or property after serving a due notice to other joint owner(s).

3/2/2. The withdrawal can be affected by sale or gift to existing joint owner(s) or to any other person(s). In case of sale, the parties may agree on face value, book value, agreed value, or market value.

3/2/3. A withdrawal of one or more joint owner(s) shall not lead to the termination of the joint ownership among remaining joint owner(s).

3/2/4. Subject to sub clause 3/1/13, it is permissible for the joint owners to agree on termination of the joint ownership before the agreed period.

4. Diminishing Musharakah (DM) on the basis of Sharikat ul Milk

4/1. Diminishing Musharakah (DM) is a form of joint ownership in asset or property in which any of the joint owners undertakes/promises to buy the ownership share of the other joint owner(s) gradually until the ownership of the joint asset or property is completely transferred to the purchasing joint owner.

4/2. The general rules of Sharikat ul Milk are applicable to Diminishing Musharakah on the basis of Sharikat-ul- Milk.

4/3. The sale and purchase of share of a joint owner in the joint ownership must be independent of the joint ownership contract.

4/4. It is permissible for any of the joint owners to rent out (Ijarah) his share to the other joint owner(s) for any specified amount and duration. In such a case, each joint owner will remain responsible for the structural maintenance of his share on a timely basis while the operational expenses shall be borne by the lessee.

- 4/5. The general rules of Ijarah are applicable to the arrangement of renting out by a joint owner his share in the joint asset or property.
- 4/6. DM arrangements involve various contracts and undertakings which must be independent of each other and must be executed sequentially as provided in sub clause 4/9.
- 4/7. DM arrangement on the basis of Ijarah shall comprise of atleast the following:
- a. Sharikat ul Milk Agreement.
 - b. Rental /Ijarah Agreement.
 - c. Undertaking from any joint owner(s) for Sale or Purchase of share of other joint owner(s).
- 4/8. All other terms and conditions of relevant modes of financing, contracts or agreements are applicable on such DM arrangement.
- 4/9. The sequencing of the agreements and undertakings in a DM shall be as follows:
- a. There shall be a Sharikat ul Milk Agreement of joint ownership between the joint owners.
 - b. There shall be an agreement of rent (Ijarah) between the lessor and lessee, both being joint owners. This agreement will be governed by the rules of Ijarah.
 - c. An undertaking from any joint owner for Sale or Purchase of share of other joint owner may be given by a 'joint owner as a purchaser' to other 'joint owner as a seller' to the effect that the 'joint owner as purchaser' will purchase all the shares at a mutually agreed price (as per sub clause 3/2/2) until the entire ownership of the asset or property is transferred to him. An undertaking may also be given by the 'joint owner as a seller' to 'joint owner as a purchaser' to the effect that the 'joint owner as a seller' will sell the shares owned by him to the 'joint owner as purchaser' in the event he desires to purchase the shares earlier than the agreed schedule on such price as determined as per sub clause 3/2/2.
- 4/11. The sale of shares by a joint owner to the other joint owner shall be documented in such a manner as the joint owners may mutually agree.

4/12. In case the 'joint owner as purchaser' fails to honor his undertaking with regard to the periodic payment and purchase, the asset may be sold in the open market and the joint owner as seller shall be entitled to recover:

- a. Actual loss, which is the difference between the market price and price mentioned in the undertaking, if any, not being the opportunity cost. In such a case, any gain on sale of joint asset or property over and above the price mentioned in the undertaking shall be passed on to the 'joint owner as purchaser'.
- b. In addition to the above, the joint owner shall be entitled to recover outstanding periodic rental payments in respect of the period for which the other joint owner has actually used or possessed the joint asset or property.

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