

The Practices of Musharakah Mutanaqisah in Islamic Financial Institutions

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Abstract

Islamic banking and finance, is a concept of finance that existed in theory embedded in the classical text of Muslim jurist, has eventually become a practical reality and an accepted financial medium in recent times and has been practiced worldwide. Islamic banking and finance, is a system that derives its basis from the glorious shari'ah, a divine wisdom that aims to preserving the human social order and promote the Nation (Ummah) prowess and glory, therefore attaching a high importance and regards to the economic well being of the Muslims and the Islamic state. Therefore, this paper intended to study Musharakah Mutanaqisah historical development, its modern practices and differences with other concept and few issues related to MM and the Steps that applied in the practice of the Islamic banks.

Key words: Musharakah Mutanaqisah, Historical Development, Concept and Modern practices, Practical Applications.

1. Introduction

Musharakah Mutanaqisah is one of the investment and financing tools and forms which is adopted by companies and financial institutions. This form of financing appeared and spread particularly in companies as a financing tool and investment together with Murabahah, Ijarah and other financing tools.

Partnerships as an investment mode are acceptable mode in Shari'ah because it is based on assistance and coordination of efforts for investment and development of individuals and communities. Partnership aimed at assurance of the low capital providers in its investment in a wide range for realization of profits.

Partnership is one of the best contributions of Islamic financial institution through its arrangement of investment and among things that distinguishes Islamic financial institutions from that of conventional financial institutions. It is worth to state that Islamic financial institutions are partnership financial institution because the arrangement of partnership would be a vital distinction for Islamic financial institutions wherein the IFIs share in the returns of activities whether it is profit or loss (al-Ghazali, 1417H).

2. Historical development and roles of musharakah mutanaqisah in Islamic financial institutions' activities:

Though partnership concepts are common in monographs and textbooks of Islamic jurisprudence, however Musharakah Mutanaqisah is still be considered as a new concept and has no description in monographs and textbooks of Islamic jurisprudence. The first contribution in this regard amongs contemporary jurists and as well modern researchers in pointing out this mode of financing is Samy Hamoud in his doctorate thesis in 1976 (al-Kawamilah, 2008).

The Jordanian Islamic banks' laws have used it for financing and investment No.13(2) of 1978 and it was known as Musharakah Mutanaqisah (al-Kawamilah 2008; al-Marzouqi 2000).

In 1979 the acceptability of the term Musharakah Mutanaqisah was witnessed at the first Islamic financial institutions' conference held in Dubai and regarded it as a new mode of wealth partnership utilized and employed in medium and long terms (first Islamic financial institution conference, Dubai 1979; al-Marzouqi 2000).

In 1982 the knowledge and working encyclopedia of Islamic banks- released by international organization for Islamic banks- expounded on the importance of modes Islamic investment (International Association of Islamic Banks, 1982)

In the application and practical implementation of this Musharakah al-Muntahiyah bi al-Tamlik some researchers have stated that it (Musharakah al-Muntahiyah bi al-Tamlik) was first used in Egypt when one of the Islamic commercial activities “Musharakah” was established in one of the commercial banks with participation of a tourism company in possession of road transport fleet for transportation of tourists and the costs of cars at that time reaches five millions of Egyptian pound, the company paid part of it one million and other part paid four millions to be repaid in installment for five years with $\frac{3}{4}$ million pound every year. When the tourism company has capacity to produce and technical knowhow to manage the transportation profits are shared as follows:

15% is for the managerial expenses and service fees.

85% of the profits in the first year were shared in the ratio of 4 for the bank and 1 for the tourism company.

Whenever the company pays an installment the percentage of bank’s ownership reduced with the equivalent of its share in the financing and the tourism’s share increases. Hence, though they did not use the term “Musharakah Mutanaqisah” for this product, the element of diminishing ownership of capital provider was there.

The contract was completed and the cars became property of the tourism company after payments of all installments. The feasibility study indicated that there is possibility that annual profit that would be realized in this project would not less than 40% of the capital (al-Marzouqi, 2000).

3. Definition of Musharakah Mutanaqisah

3.1 Literal and Technical Definitions of MM

Partnership is an exaggerative expression on the constructed on the weight of “reactance”, indicating something built by many part, it is derived from the verb “sharaka”. Sharak: trapper/conceiver, hunter, and what is installed in trapping for bird. Shirkah: major/bulk of way and its middle. In its plural form “Shuraka” (partners) (Ibn Manzur, 2003) and Shirk (association (with idol)) is Kufir (apostasy/disbelieve). The statement “that person has associated something with Allah” therefore he is idolizer and associate because he has shared the throne of Allah with another deity (god). Partner: Is one who share or participate or partner and in its plural “Ashrak” (collaborators) and Shuraka’ (mates/group/contemporaries) and Shaarakat fulaan: means when he became his partner, and his partner in trade and inheritance, companion with him means partnership; the noun of the word “al-Shark means share and portion. Shirkah or Sharikah connote same meaning, which is means the mingling of the partners, and our participation means we partner, the statement “two men participate” and one partner with the other (Ibn Manzur 2003).

“al-Mutanaqisah” (diminishing): based on scale of “interactive”, derived from the verb “reduce”, and reduction: the one which loss in luck. Reduction: weakness. Diminution: disappear after completion. Diminution: is a noun for value of gone from the reduced. The Lessing: deficiency. Deprecate and deprecating: to take little part of it, and reduction of purchase price: (Ibn Manzur, 2003).

Technical definition of Musharakah Mutanaqisah in Islamic jurisprudence has been stated by researchers in the area of Islamic economics and they have stated different types of definitions except that all have common traits such as meaning, intention and effects (Arabiyyat, 2009). The researcher states some of them as follows:

- 1- It is a partnership that gave the bank the right to partner in its capacity resolution in property at one payment or on payments based on pre-agreed conditions and the nature of it operation based on arrangement to making a part of the returns as the instalment for repayment of the total value of the share (Mashoor 1991; al-Shubayli 2002; International Association of Islamic Banks 1982). According to the researchers this elaboration is not clear in term of determining the element of “Diminishing” because the nature of payment look like it’s just a payment with a profit without any diminishing of partnership.
- 2- It is an initiation of a professional the partner with purchasing things producer for entry through work/service on it such as cars for example founded to carry some processes for purpose of part profit realization until the value is completed up to the value of the car wherein the investor’s ownership in the car would decreases for the benefit of work on it for a stated period that he would totally repay the funds (Hamoud 1976).

3- Engagement of the bank as partner fully or partially funded in project that has sure returns based on pre-agreed term with other party that the bank recouped back its funds from his shared returns realized from the property and the right to withheld the balance share or any value agreed on so that would be the installment for repayment of original value of the bank's advancements for the finance (Jordan Islamic bank's laws, 1978).

4- Musharakah may be entered into by two or more parties on a particular asset or venture which allows one of the partners to gradually acquire the shareholding of the other partner through an agreed redemption method during the tenure of the contract. Such arrangement is commonly referred to as Musharakah Mutanaqisah (Diminishing Musharakah) (BNM, 2013).

5- New activities which enjoins partnership between two parties in a project that has return/profits wherein a party promises one of them to purchase the other party's share by stages whether the buyer owns a portion in it or not (Islamic Fiqh Academy, 2004).

The researcher summarized that Musharakah Mutanaqisah is an agreement between two or more people on participation in ownership of an asset or services/work on its existence or one of them pay the other kinds for work on it with intention of investment and sharing of the returns between them then one of them sells his share to his partner from the returns of the project or from the money from outside payment at once or periodical payments based on the conditions pre-agreed on until the ownership of the project turns to him at the end of the contract or rent/lease the property to a third party and they share the rental/lease payment between the partners according to their shares.

4. Few Concepts Related to MM

There are few concepts which are belonging to the concept of partnership effort however they do not have the element of continuous diminishing shares throughout the contract duration. The detail is as follows:

1. Musharakah Muntahiyah bi Tamlik: Musharakah al-Muntahiyah bi al-Tamlik is a concept where capital owner invested his money in entrepreneur project as a partner in which they commingled their capital against pre agreed profit sharing ratio and jointly managed the capital. At maturity date, the partner i.e. the capital owner will sell his share at token price to the entrepreneur after satisfying that the profit of his investment has reached certain acceptable percentage. This concept is different from MM as it does not have the element of continuous diminishing of partnership (Fiqh Academy 2001, 2004; al-Amrani 2010).

2. Mudharabah Muntahiyah bi Tamlik: it is a concept where the entrepreneur has expertise to do the business however he does not have any fund to run the business. Hence the role of the capital provider is to provide the fund against certain pre-determined profit sharing ratio. At the maturity date, the capital provider will surrender his right to the entrepreneur either by way of donation or selling it at token price. In the event of loss, the capital provider shall bear the loss of the fund whereby the entrepreneur definitely lost their effort. (International Association of Islamic Banks 1982; al-Amrani 2010).

From above explanation, it shows that Musharakah Muntahiyah bi Tamlik does not have the element of diminishing in its structure. It transferred the ownership of the business to the entrepreneur at the end of the tenure as discussed above. On the other hand, Mudarabah is a concept of having the fund from capital provider only. Therefore mudarabah muntahiyah bi tamlik contains similar way to transfer the ownership at the maturity date

4.1 Modern Musharakah Practices

There are discrepancies in the descriptions of Musharakah from a researcher to other, but all of them mentioned three types of Musharakah which has been researched and findings are presented in Islamic banks' conference which was held in Dubai in 1979. For example, Wahabah al-Zuhayli, Nazih Kamil Hammad has mentioned in the 13th meeting of the Fiqh Academy which was held at Kuwait in 2001 they brought to light the three descriptions itself in Dubai conference. Ajil Jasim al-Nashmi however, showed descriptions of Musharakah in seven forms during the Fiqh Academy's meeting.

In 2004 during the 15th meeting of the Fiqh Academy which was held at Musqat in Kingdom of Oman Ali Ahmad al-Salouisi, Ayatullah Muhammad al-Taskhiri and Murtadaa al-Turabi mentioned three descriptions as it was in the resolution of Dubai conference in 1979. But Qutub Mustapha Sano mentioned the three descriptions which was resolute in the 1979 Dubai conference in addition to another four. It is observed that al-Nashmi and Sano were of the same views on the seven types of description which would be discussed in the subsequent discussions.

In 2008 al-Kawamilah stated in his book 18 types of Musharakah in agreement with al-Nashmi and Sano nevertheless addition of another description of those seven types is “Musharakah al-Harrah” (hot diminishing partnership) (al-Kawamilah, 2008).

In 2010 al-Imrani stated in his book 16 types of Musharakah which 5 out of it resembles what al-Nashmi and Sano in addition to al-kawamilah. However, the 6th type is “Musharakah fi Ain ma’ al-Wa’d bi al-Bay’” (Partnership in an Asset with promise to purchase).

But the three types which the resolution of the first Islamic conference of Dubai in 1979 stated are as follows:

First Description: That the bank agrees with the partner on specifying the shares of each of them in the capital of partnership and its conditions. This is acceptable in Shari’ah if the bank sales its share to the customer/partner after the completion of partnership with a separate contract, wherein the bank has unlimited right to sell its share to the partner or to another person as it as acceptable for the customer/partner to sell his share to the bank or another person.

Second Description: It is the one which the bank agrees with the customer on partnership in total or partial financing for a project that generates returns this is based on agreement of bank with other partner that the bank should withdraw its financial rights from the returns realized with the bank’s right to withhold the other remaining part from the returns or any value from which was agreed on so that the portion is designated for installments payments of the loan provided by the bank for financing that is in this type the installment payments is through shares of profits.

Third Description: it is one the bank and partner’s shares in the partnership are determined in terms of shares/equity where total value of a thing is the subject matter of partnership (e.g. asset) and each of the partners i.e. the bank and the customer would share in the realized returns from the asset. The partner if wishes would acquire a portion of the bank’s shares every year wherein the subsequent shares of the bank would reduce until the partner takes the ownership of the shares totally. Thus, he would own the property all alone without other partner. This type ownership is gradual for the bank’s share this is most common or famous type. The partner (customer) would be paying the installment of the bank its monetary shares gradually from the returns that they realized or from any other means outside the partnership. This would be a specific period of time agreed between them. When installments are paid fully the bank exit from the property then the partner owns the investment asset in total which is the subject matter of partnership (Islamic Fiqh Academy, 2001, 2004).

4.2 Few Shar’iah Issues in MM

As discussed above, MM is a concept of partnership between two partners or more whereby one of the partners will lease the other partner portion and simultaneously purchasing his shares from time to time. These practices triggered few Shar’iah issues as follows:

1. The issue of Shirkat al-milk or Shirkat al-uqud:

Scholars disputed in classifying the practices of MM in IFI fall under which classification. Shirkat-al-milk is a partnership which occurred without any contractual formation, but it happen by way of join purchasing the asset, or inheritance, or receiving donation. According to Naim (2011) in his article the Hanafis examined a number of issues such as the use of the asset by one party in the absence of other owners, the sale of one partner’s ownership to the other partners or to a third party. In addition to that, the Malikis also deliberated a number of issues such as sleeping partner of co-ownership and how the partner’s can ensure that their asset is physically or constructively protected during the period of usage (Naim, 2011). In addition to that, shirkay al-milk is not for commercial purpose whereby any agreement towards achieving profit may transform the contract into contractual partnership.

The Hanafis determined two main conditions for the common shirkah including shirkat al-milk. The first one, is the subject matter of shirkah must fall under a matter that can be transacted under an agency contract. The second one, the profit must be per-determined in ratio or percentage. In a nutshell, the second condition was meant for contractual partnership (Shirkat al-uqud) rather than shirkat al-milk. According to Naim profit in shirkat al-milk should be equal to the partners’ portions in the partnership (Naim, 2011).

2. Capital guarantee:

Pre-determine of the partner shares price is a big issue and may trigger the issue of capital guarantee which is prohibited in Islamic law. The partnership is a contract of trust thus, partners are not allowed to guarantee the capital and the profit of the investment, unless if there negligence or misconduct of the partner.

Therefore, it is not acceptable for either of the partners to guarantee the return of the investment because partnership is founded on trust thus it does not entail guarantee (Ibn Qudamah 1992; Ibn Muflah 2003). It is however, permissible for the partners to request each other for guarantor or mortgage for guarantee against negligence, damage, or violation of conditions of partnership (Nadwah al-Barakah, 2000). In contrast, the Islamic Fiqh Academy permitted promise from a third party who is entirely different in dealings from the partners to shoulder the loss, condition which indicate that there can be promise of catering for responsibility as a separate contract from the partnership without fees/charges and that the third party should not own or be ownership of anything above half of the partners. It is not right for the partners to benefit from the agreement prevention of the cancelation of the partnership or restriction from fulfilling his responsibility as a result of promisor failure to donate and fulfilling with the gift on the basis that this responsibility is vital part in the partnership (Islamic Fiqh Academy, 1985-2000).

4.3 Musharakah Products in IFIs

Musharakah Mutanaqisah and their manifestation in the Islamic financial institutions without their grounding theories in academic for perfect implementation in the Islamic financial institutions by mentioning seven types of these partnerships including the three types mentioned earlier as follows:

1. Financing Working Capital

This is where the employee of an Islamic financial institution provided an asset which he/she was unable to utilize such as owning a factory and unable to finance its materials for production the bank would step-in as a partner with specified and adequate amount and share its portion of the profit and as well its share in participating capital. The two parties would agree that the company sells its share to the partner in a lump sum payment or on installments and the company's share would reduce wherein the employee's share increases until all installments are paid and total rights transfer to the employee (International Association of Islamic Banks 1982; Islamic Fiqh Academy 2004; al-Imrani 2010; al-Kawamilah 2008).

2. Manufacturing

This is where the employee provided land and requests the Islamic financial institution to build it the manufacturing contract (which legitimizes production in progress as a legal contract). The partner would pay part of the required funds, if the land owner keeps the ownership to himself, the profits would be divided between the partners based on pre-agreed ratio. However, the land owner in this case would pay the financial institution its capital share in the building at lump sum payment or installments. The financial institution has no right to arrive at his financial rights by raising the costs or required payments. Where the partner's interest is invest the land in an investment then it will be a partner with the financial institution in the construction of the land, thus, he is entitled to any increase in money and the land owner has right to choose between selling or to purchase with market price (International Association of Islamic Banks 1982; Islamic Fiqh Academy 2004; al-Kawamilah, 2008).

3. Musharakah Mutanaqisah by Institutional Financing of Group of Partners

This is where bank engage with another in establishment or financing of a project. The agreement at the beginning would be on withdrawal of one of the financiers or more in order to transfer legal ownership to other partner or partners and sharing of profits as pre-agreed based on Musharakah Mutanaqisah (International Association of Islamic Banks 1982; Islamic Fiqh Academy 2004; al- Kawamilah 2008).

4. Musharakah "al-Muntahiyah bi al-Tamlik" with ijarah

This is where an agreement was reached between the financial institution and the partner on construction project with the partner's promise to rent/lease the building for a specified period with equivalent rental payments thus, the partner becomes the tenant. The profit sharing would be based on their pre-agreed ratio. In the case of this mode: it can be say (the financial institution is the owner of the total building): I sell to you $\frac{3}{4}$ of my share in this building withamount specified and known- and your rental amount if $\frac{3}{4}$ of rent is ...for a period ending in 30/12/1424, and I sell to you at the end of the stated period $\frac{3}{4}$ atamount and your remaining rental amount $\frac{1}{3}$ isamount ending in 30/12/1425 and I will sell to you at the end of stated period the remaining $\frac{1}{3}$ and the last of my share in the project withamount. At the end of the contract the ownership of the building would transfer to the partner (the tenant) both physical and benefits (International Association of Islamic Banks 1982; Islamic Fiqh Academy 2004; al-Imrani 2010; al- Kawamilah 2008).

5. Musharakah Mutanaqisah with Partnership financing

This where the financial institution agrees with the partner on total or partial financing of a project with sure returns and that is based on the agreement of the financial institution with the partner on the institution receiving certain portion of the returns with its rights of keeping the remaining share of the returns/profits or any amount agreed upon so that the portion the institution withdrawal would cover the repayments of its portion of capital (International Association of Islamic Banks 1982; Islamic Fiqh Academy 2004; al- Kawamilah 2008).

6. Musharakah Mutanaqisah with Partnership through Shares

This is where the financial institution and the partners' shares are ascertained in the partnership in terms of shares representing total value of the subject matter of partnership- asset for example-, each of the partners receives certain portion of returns/profit realized from the asset. The partner has right to acquire a specified portions of his shares to the bank yearly wherein the financial institution's portion of share reduces continuously until the partner acquire all the shares. Thus, the sole ownership of the asset transfers to the partner without reserve (International Association of Islamic Banks 1982; Islamic Fiqh Academy 2004; al- Kawamilah 2008; al-Imrani 2010).

7. Musharakah Mutanaqisah through Mudharabah

This is where the financial institution provided the capital for a particular project and the partner provided the service. The profit is share between them with promise from the financial institution to own the project through Musharakah Mutanaqisah scheme (International Association of Islamic Banks 1982; Islamic Fiqh Academy 2004; al- Kawamilah 2008; al-Imrani 2010).

5. Steps in the practical applications of musharakah mutanaqisah

Musharakah mutanaqisah is considered as its counterparts in investment activities and financing, musharakah mutanaqisah follow different and several steps in its implementation. They vary according to type and nature of the project intended to be established. Similarly, they differ from one bank of the other (al-kawamilah, 2008). The explanations of these steps are as follows:

5.1 Requests for Financing with Musharakah Mutanaqish:

1. The seeker of Musharakah Mutanaqisah to proceed to the Islamic financial institution requesting partnership in an investment project based on Musharakah al-mutahiyah bi al-tamluk together with his economic feasibility/profitability study of this project, and compulsory documents such as ownership title of the land or something similar to that, the financial institution would accept on this proposal and would explain to him Islamic processes for financing investment project in regards to the financial institution and would follow special procedures for it (al-Murzouki 2000; al- Kawamilah 2008).

2. The financial institution would study the project from different perspectives so that it may reach agreement of financing with Musharakah Mutanaqisah from the following:

- Lack of conformity of the project with trade or doing things that are forbidden or in opposite Islamic philosophy.
- Economic feasibility and benefit for guarantee so that the project would be profitable for the financial institution.
- The financial institution affirming for the benefit of the project that it would yield profits and benefit for the residents/ nation through the social feasibility study.
- The financial institution examines the capacity of the customer (partner) from physical capacity, managerial, and his credit worthiness, and affirmation of his trust worthiness (al- Kawamilah, 2008).

The study of the customer's conditions from different angles as follows:

The objective of studying the customer's condition: this is to ascertain issues such as:

a- His debt payment records so that the bank would be assured of recouping back its rights from the profit and its capital at the pre-agreed periods.

b- His credibility regarding honesty and trust worthiness so that the bank would gave the partnership capital to the customer on the subject matter of contract agreed upon, and assurance of the bank on acquiring important information that are compulsory for studies, and information regarding the execution of special duty that are realized from the profit and loss.

c- How well and successful the customer could manage the project based on his experience and specialization in the area of activities in commercial services in general.

d- Obtaining information from the credit bureau centre for the public from the management of centre for credit risk in the central bank.

e- Obtaining of certificate from commercial registry or department of companies with his conditions in payments if any.

f- His credibility if payment of fees, insurance, bills such as electricity, water, and services wages etc. through calls to these places to obtain his previous account.

- **Criterion and indicators for Study of the Customer's Conditions: is summarized as follows** (Lasheen, 2003):

First Criteria: Personality or Reputation: This would allow them to know the customer's credit worthiness, truth, trust in his financial dealings. These would be through the following indicators:

a- His credibility in payments of his responsibilities at the right times, this could be clarified through the followings:

- His previous dealings with the bank if any.
- Records from other banks the customer dealt with.
- Request of lists of dealers with the customer from suppliers, employees and obtaining from them information such as his relationship methods with them. As it is possible obtain their accounts movements with him in order to ascertain how he fulfills his responsibilities with them.

b- Trust, and honesty: This could be obtained through:

- Tax certificates that he pays for taxes and how he attended to its dictate.
- Extent of cases in courts between him and the people dealing with him and the judgment for or against him.
- Extent of his enjoyment with good reputation in competitive market.
- Payments of zakat if applicable in the country through zakah resolutions if such is not available it has to affirm he pays his zakah of his wealth through investigation into his accounts.
- Extent of his constant solat because as Umar bin al-khattab wrote to his worker in Ijaz: "the best of your life to me is solat anyone who cares about it and cares for it has protected his religion, anyone who ignored it would have something similar to it value as painful loss".

Second Criteria: Capacity: this is after obtaining and ascertaining the extent of adequate experience, specialization or relevant rehabilitation for the customer in the area of service activities in the subject matter of partnership here are two scenarios: first assumption: that this partnership is the beginning of the customer's activity, here in is compulsory that there is a rehabilitation relevant rehabilitation relating to the activity e.g. civil engineer would start his activities in area of citation/field or a doctor in establishing of hospital etc. The second scenario: That the customer has for real activity. At the beginning it is vital to affirm that the services are in the area of the activities, then affirmation that he succeeded in this area. This is by basic criteria at the level of profits which is realized in his activities with regards that profit is analogy to the end success of the projects. Therefore, it is requested from the customer to present his lists of returns for many previous years from statutes account, and analysis of information contained in it that are enough for its certainty (Lasheen, 2003).

Third Criteria: Financial Capacity: this is the extent of his capacity on management of his wealth through his provision to the bank an assurance of recoument of his rights at the appropriate time. Similarly, volume of personal resources represented in net ownership rights with regard that it represents the original commitment to repay the bank's rights. Information on this can be obtained through the study and analysis of all information in every weight. Likewise, lists of cash returns from customer's investments/establishments. Thus, he would be required to provide the last evaluation as requested by laws.

Fourth Criteria: Securities: the purpose from securities in partnership is to cater for adverse period where the customer would not be able or mismanagement of funds and its protection that is with securities/collateral which the customer provided to the bank from wealth or personal guarantees. The study of guarantee can be attained by the following criteria (Lasheen, 2003):

a- Extent of equivalency between the guarantee/collateral and the value of project.

b- Extent of relevancy of guarantees with the customer's condition.

c- Kinds of guarantees/collaterals

c- If it is personal guarantee it is vital to know the condition of the guarantor or surety in order to ascertain his trust.

e- Assurance on the extent of possibility of liquefaction of guarantee of property presented.

3. if the financial institution show its interest and agreement to enter into this project described in terms of Musharakah Mutanaqisah and would make agreement with the partner and would start the applying the service (al-Marzouqi 2000; al-Kawamilah 2008).

5.2 Application of Financing Resolution:

After acceptance of financing resolution the specialist in the area of studying effective partnership contract would send it for application and follow up which would announce to the concerned people the requirements for preparation of compulsory predicates for the contract. upon its availability conditions of the partnership contract is done wherein the partner signed on it and the financial institution's representative signed on it and each partner have the original copy of the contract and opening of a special account for operation of the partnership. If the operation of the partnership includes importation of an article from overseas the risk reliance on documentation for opening reliance for operation of partnership.

By the bank resolution to agree on partnership the following issues are stated as follows:

1. Ascertain each partner's shares.
2. Ascertain the required responsibilities such as mortgage property for instance, for the benefit of the financial institution to protect the rights of the institution from natural loss arising from market behavior, destruction of project, or other changes that are difficult to resolve.
3. Signature of the contract by the two parties.
4. Opening special account for the partnership.
5. Defining managerial conditions, which are mostly the rights of the project's owner. Among important things is that he should be efficient for that professional and methodological because he must be capable on reduction of costs of project to the probable lower amount from his other projects accounts if any. Keep bills dates for sales and purchases, the one which shows prices which he paid, inform the bank of any changes that he come across and provisions of resolution on the progress of project, and deposits any related project's funds in the bank until it become frozen without presentation and should honor stated dates for execution of the project.
6. States the mode of profit sharing however loss would be based on capital contributed.
7. Agreement that the financial institution would transfer its share to its partner and specification of transfer (al-Marzouqi, 2000).

In the event that it is Musharakah Mutanaqisah with Ijarah it would be like the following:

- Participation in rental of the purchased article for the third party, wherein each one of them has the right to collect equivalent of their finances in the asset from replacement of rent or on rental party (financier) of its share to the customer (partner).
- The customer (partner) purchase its partner's share (financier) gradually based on time table agreed upon. Whenever the customer's shares increases in the project or asset the financier's shares reduces in the same amount of increase. As such the percent of rental replacement would reduce until exist of the financier is completed and replacement of the customer its position in shares in the partnership asset (al-Marzouqi, 2000).

5.3 Ancillaries of Musharakah Mutanaqisah Financing:

The follow-up would start after resolution of financing and starting of compulsory application processes in order to ease the work. This is where the employee in-charge of this financing follow-up. This is to ascertain the smooth execution of the work according to the program and conditions agreed upon in the contract. Transfer of the original contract from the place of work and present it to the financial institution's management and provide any professional experience or managerial specifically for the partnership contract. in accordance to his capacity during the partners' execution of their duties and operation of partnership.

Suraj mentioned that propulsion of management of diminishing partnership based on the work done on it on the part of the partner financier equivalent additional from the profits stated from the inception which the course of the work in future appointed in the contract and slot it under bank's financing. However, this rule does not restrict the bank from pre-conditioning the other party partnership in the management with appointment his type either into project management committee or supervision committee (Suraj, 1994).

The follow-up would be successful through means such as:

1. **Field Follow-up:** This is through several visitations to the site and personal meeting with partner and consultations of files and partnership deeds and warehouse inventory.
2. **Official Follow-up:** This is through request for resolutions from the partner on the progress of the work, and request for measurements and financial benchmark and follow-up of development at the site (al-Marzouqi, 2000).

5.4 Clearance and Sharing of Profits in Musharakah Mutanaqisah:

At the end of partnership term and analogy of the profits realized and distributed would be based on the profit sharing conditions agreed upon in the contract. It is important for us to differentiate in distribution of profits between cash profits which would be distributed as agreed and equivalent profits in landed property which belongs to the partnership. The equivalent profits would be valued in cash or returns from the capital. This would be possible by collation of returns' account (rental accounts, operation, and profit and loss). in the same way, relief of risks for the professional risk managers would benefit the termination of partnership. Wherein the results would be profit or loss. The sharing of profit however is based on pre-agreement between the parties. Loss nonetheless would be shared according to the capital contributed. If the loss is as a result of inefficiency, negligence, or none compliance with the conditions agreed upon the partners is responsible for the loss that arises the financial institution has right to claim for damages that befell it (Suraj,1994; al-Marzouqi,2000) .

6. Conclusion

Musharakah Mutanaqisah is very much in line with the teaching of the Shari'ah and yet can derive economic achievement for the parties involved in it. This investment model should be more encouraged by Islamic financial institutions in order to achieve the ultimate objective of these institutions. Although some may argue that this model is actually being utilized by the banks but in actual practice it has been neglected by these institutions. The researcher believes that it is time for Islamic financial institutions to implement and practice this model with the aims as outlined in their gazettes. Musharakah will enable the Muslim communities not only to mobilize their internal resources but also stand on their own two feet in matters of finance and save them from going to conventional financial institutions, where the paying of interest is a curse. In the formation of Musharakah, according to the true spirit of the Shari'ah, Muslims will increase their financial position to maintain themselves, their families and other s and pay their charitable dues during the journey of this life towards the eternal life of the hereafter.

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