

**Shari'ah Standard No. (34)**

## **Hiring of Persons**



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***IN THE NAME OF ALLAH, THE ALL-MERCIFUL, THE MOST MERCIFUL***

All praise be to Allah, the Lord of all the worlds, and blessings and peace be upon our master, Muhammad, and his household and all his companions

## **Preface**

This Standard aims to indicate the Shari'ah rulings on hiring of persons in its two distinct forms which include: hiring in the sense of obtaining the services of a private employee (*Ajir Khas*), as well as hiring in the sense of obtaining the services of a shared employee (*Ajir Mushtarak*). The service could also be either a defined task, or a future service which needs to be specified through detailed terms of reference. The standard also covers the relevant controls that Islamic financial institutions (Institution/Institutions)<sup>(1)</sup> should observe when the institution is the employee and when it is the employer.

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(1) The word (Institution/Institutions) is used here to refer, in short, to Islamic financial institutions including Islamic Banks.

## Statement of the Standard

### 1. Scope of the Standard

This standard covers hiring of the service/work of persons between the institution and other institutions or individuals. The standard covers the cases when the institution is the employee and when it is the employer. However, the standard does not cover other contracts such as Mudarabah, investment agency, Musaqat, Muzara'ah, Mugharasah, and Istisna'a.

### 2. Definition of the Term "Hiring of Persons"

It refers to the contract through which a service/work of a natural or a legal person is obtained against a specific amount of pay. The service thus obtained could be specific or a future one that needs to be specified through detailed terms of reference, such as educational, health and consultancy services.

### 3. Pledge to Hire a Service

- 3/1 There is no Shari'ah prohibition against having a framework agreement to regulate the process of hiring between the institution and the client. Such agreement may comprise the general conditions which govern the relationship between the two parties, whereas there should be a separate hiring contract for each operation, signed by both parties. Under such framework agreement the two parties may also perform operations through exchange offer and acceptance with due reference to the general conditions stipulated in the agreement.
- 3/2 The institution has the right to ask the client who pledges to hire its services to pay a specific amount to be retained by the institution as a guarantee for the seriousness of the client in executing his pledge and honoring any commitments that may result from it. In case of withdrawal from the part of the client the deduction from this guarantee amount should not exceed the actual harm caused to the

institution. The guarantee amount can either be kept as a deposit with the institution without being disposed of, or invested on behalf of the client through Islamic Mudarabah or investment agency, or frozen in a current account owned by the client and guaranteed by the institution. The institution and the client may also agree at the time of signing the contract to consider the guarantee amount as a prepaid installment of the cost payable by the client. [see Shari'ah Standard No. (9) on Ijarah and Ijarah Muntahia Bittamleek, item 2/3]

#### **4. Concluding a Contract for Hiring of Persons**

- 4/1 A contract for hiring of persons can take place in any form that normally indicates it. It can be concluded verbally, in writing or through modern means of communication.
- 4/2 The two parties of the contract (the employer and the employee) should be legally competent (capable of awarding and accepting agency), otherwise the contract cannot be concluded.
- 4/3 A private employee, who works for and under the supervision of a single employer, has no right to work, at the same time, for anyone else, except on permission of his former employer. Unlike a private employee a shared employee who works for more than one person and who is not supposed to work for a specific person at a specific time, is not subject to such restriction.
- 4/4 The private employee should be informed about the hiring period and the type of work he is supposed to do in general, while the shared employee should be informed about the work, its type, and specifications. The specific period within which the work has to be done could also be added, and in that case the employee has to do the work within that specific period. When no specific period for doing the work is referred to in the contract, resort should be to normal practice.
- 4/5 A private employee is not responsible for damage, unless it is due to his own transgression, negligence, or breach of a stipulated condition.

- 4/6 A shared employee is absolutely responsible for damage, unless it is caused by an evitable factor. This, however, does not hold true in the case of an investment agent who is permitted to utilize the money. Unlike the shared employee who has to guarantee what he is paid to work on, the investment agent does not guarantee, except in case of transgression or negligence.
- 4/7 The contract for hiring of persons is a binding contract, which none of the two parties can terminate or amend without the consent of the other, except in case of contract breaching, or due to an emergent excuse, or because of inevitable circumstances.
- 4/8 For a private employee, the beginning of the hiring period should be specified. The hiring period should start at the time of signing the contract, except when the two parties agree on a specific date for its beginning. Hiring in the latter case is known as (deferred hiring), or hiring that has to be executed in the future.
- 4/9 When a private employee fails to report to work on the date specified in the hiring contract he shall be entitled to no pay for the period between the specified and actual dates of work commencement (the pay for the absence period should be deducted from his total pay). The employer in this case shall have the right to terminate the contract, unless the two parties agree on a compensatory period at the end of the contract period.
- 4/10 For a shared employee, a certain period for performing the work may be specified. When the shared employee fails to do the work during that period, the employer has the right to terminate the contract or a new period can be agreed upon.
- 4/11 There is no Shari'ah prohibition for any of the two types of employees (private and shared) to receive 'Arboun (Earnest Money) at the time of signing the contract. If the hiring contract is implemented, the amount of earnest money should become a prepaid part of the employee's pay, otherwise the earnest money should go to the employee. However, when the contract is not executed the employee



is preferably supposed to take from such earnest money only the portion which compensates the actual harm caused to him.

## **5. Subject Matter of Hiring Contract**

The subject matter of the hiring contract is the service/work and the pay.

### **5/1 Rulings pertaining to the service/work**

5/1/1 The service/work of the employee which constitutes a subject matter of the contract should be well known, accomplishable and permissible in Shari'ah.

5/1/2 It is permissible to determine service in terms of a specific work to be done or a specific period of service, or in terms of both. If the employee is able to do all the work within the specified period, he becomes entitled to the whole pay. If he is able to do only part of it during the period, his entitlement to the pay will depend on two probable outcomes. If the part of the work he has done during the period is in fact useless and cannot be benefited from the employee shall become entitled to no pay. If the accomplished part of the work is useful and can be benefited from, and the employer is unwilling to extend the period, the employee shall become entitled to the amount normally paid for similar work (*Ajr al-Mithl*).

5/1/3 When a person is hired for doing a specific service/work, the employer has no right to hire out the service/work of such person to a sub-employer, unless the contract permits sub-hiring, or this has been agreed upon by the two parties. If the hired service/work is specifically defined and has to be delivered in the future, the employer in this case has the right to hire out to someone else an identical service/work (Parallel hiring). [see Shari'ah Standard No. (17) on Investment Sukuk, item 5/2/10]

5/1/4 The employer should stick to utilizing the work/service of the hired person as per the permissible conditions that have been agreed upon.

5/1/5 When the hiring contract relates to a specific service, the employee (the institution) should own the service and have the ability to deliver it. Hence, it is impermissible for the institution to sign a contract with the client before it possesses the service and becomes in a position to perform actual or constructive delivery.

5/1/6 Hiring can be for performing a future service that is well described and specified to the extent which leaves no room for ambiguity and dispute. In that case the employer does not have to own the required service before signing the contract. Consequently, an agreement may be reached for performing the service at a specific time in the future, with due consideration to the ability of the employee to own the service and become able to deliver it on time, by himself or through someone else. The pay for the service here should not necessarily be made in advance, unless the contract is a Salam or Salaf contract. If the employee happens to deliver a service that does not conform to what has been agreed upon, the employer has the right to reject it and insist on having a service that conforms to specifications.

## **5/2 Rulings pertaining to the pay**

5/2/1 The pay, whether in cash, or in-kind or in the form of a service, should be well known to the extent that leaves no room for dispute. It can be either fixed or variable according to a method which is well known to the two parties.

5/2/2 The pay can be determined for the work as a whole so that the employee becomes entitled to it after doing all the work, or it can be determined in installments and the employee becomes entitled to each installment at the relevant stage of the work done. The pay can also be determined on the basis of a specific period, after which the employee becomes entitled to it, or such period can be divided into sub-periods and the pay determined accordingly. Furthermore, the pay can be determined on the basis of both the work and the period,

and the employee becomes entitled to it when he performs the work within the specified period. [see item 5/2/9]

- 5/2/3 The pay becomes obligatory when the two parties sign the contract, and payable on delivery of the service/work or making it available (when the employee puts himself at the disposal of the employer even if the employer has not yet assigned a task to him). After signing the contract, there is no Shari'ah prohibition against forwarding the pay as a lump sum amount, or in installments.
- 5/2/4 The pay can be variable, yet the amount of pay for the first period should be known. Following the first period, it is permissible to use an accurate indicator for predetermination of the pay for the successive periods. However, such indicator should be known to both parties and mutually agreed upon, for avoidance of dispute. This indicator which replaces the specifically determined pay for the period should have an upper and a lower limit.
- 5/2/5 It is permissible, on the consent of the two parties, to amend the pay of future periods (the periods in which benefiting from the service has not yet taken place), whereas the unpaid amounts of pay that relate to past periods become a debt obligation owed by the employer, and hence it is impermissible to stipulate a condition for increasing such amounts (rescheduling).
- 5/2/6 The pay can be determined as a percentage of the output (e.g., 10%) or a part of the thing to be made.
- 5/2/7 It is permissible to stipulate in the contract that in case of default by the employer in the settlement of any installment, or when he refrains from doing so without a reasonable excuse and after a sufficient period of notification; all other installments shall become due and eligible for premature settlement. However, the employee in this case does not own the prepaid installments finally until he completes the work of the whole hiring period. [see Shari'ah Standard No. (8) on Murabahah, item 5/1]

5/2/8 It is impermissible to make a condition which leads to any increment in the pay agreed upon, in case of default by the employer. Nevertheless, the contract may include a pledge by the employer to donate, in case of default, a percentage of the pay for charitable purposes. Such donation should entirely go to charitable purposes, under the supervision of the Shari'ah Board of the institution.

5/2/9 It is permissible to agree upon more than one rate of pay, as when the two parties agree that if the work is done within a certain period the pay will be this much, and if it is done in another (shorter) period the pay will increase to that much. Similarly, two different rates of pay can also be linked to two different places, types, or specializations, of the work to be done.

#### **6. Guarantees for Provision of the Pay and the Service**

6/1 The employee has the right to obtain the permissible guarantees in their different forms so as to document his eligibility for receiving the pay. Likewise, the employer has also the right to obtain such guarantees for receiving indemnity in case of any transgression or negligence or breach of the contract from the part of the employee. The ruling here is, in fact, similar to that on documentation and collateralization (Rahn), suretyship (Kafalah) transfer of right (*Hawalat al-Haqq*) and set-off (Maqassah). [see Shari'ah Standard No. (5) on Guarantees, item 2/3]

6/2 It is permissible to state in the contract that the pay has to be made in advance, deferred, or in installments. In case of premature termination of a contract in which the pay has already been made in advance, the two parties should resort to settlement. When the employee accepts any period of delay for a pay that has to be settled in advance, such acceptance should be considered as a respite which the employee has willingly granted to the employer, and hence it can by no means be considered as a right of the latter. Due attention shall be given here to item 5/2/2.

## **7. Commitments of the Employee and the Employer**

### **7/1 Commitments of the employee**

7/1/1 The private employee has to render his service to the employer and observe the period of hiring during which he should not be absent, except on permission of the employer, or to perform a recognizable duty. Similarly, the shared employee has to perform the work as agreed upon, and within the stipulated period, if any.

7/1/2 In principle, the employee is supposed to do the work by himself since he has been hired to perform a specific work required from him, unless the contract stipulates otherwise. This, however, does not hold true in case of hiring someone to do a future service/work that has been specifically defined. In this latter case, what needs to be catered for is observation of all the specifications mentioned in the contract.

7/1/3 In hiring of persons, it is permissible to stipulate a penalty code indicating a specific amount which the employee should pay to the employer in case of delay in performing the work/service within the specified period. The amount to be thus paid has to be determined with due consideration to normal practice as well as justice.

### **7/2 Commitments of the employer**

7/2/1 The employer shall observe the following:

- a) Payment of the pay in advance, on deferred payment basis, or in installments as agreed upon. In the absence of agreement on a specific form of payment, the due pay should be paid after rendering the complete service to the employer, or on expiry of the hiring period in case of private employment. When a due pay is delayed by the employer in spite of notification the employee has the right to stop work or prevent the employer from utilizing the service that has already been done.

- b) Provision of facilities/requirements to the employee, if the work to be done so requires, or when provision of such facilities and requirements is stipulated in the contract.

## **8. Emergencies, Termination, Expiry and Renewal of Hiring Contracts**

### **8/1 Emergencies of hiring**

8/1/1 A private or shared hiring contract which relates to the employee in person as per normal practice, shall be terminated on the death of the employee, or when the employee loses his entire legal competence, or when - due to injury or sickness - he becomes unable to work anymore or for a period which is normally considered to be too long for the employer to tolerate. Such contract shall also be terminated when the employee-institution encounters liquidation, bankruptcy, or freezing of activities.

8/1/2 When the employee refrains from delivery of the service as required, and fails to present the suitable alternative as agreed upon, the employer has the right to terminate the contract and demand indemnification for the actual harm caused to him by the act of the employee.

### **8/2 Termination, expiry and renewal of hiring contracts**

8/2/1 In specific hiring, when the service/work becomes completely useless the contract becomes null and void; whereas when it is partially useless the employer has the right to terminate the contract. If, instead, the service/work that has become useless pertains to hiring on the basis of future delivery of a well defined service, the contract shall remain valid, and the employee, in this case, has to deliver a similar service.

8/2/2 The hiring contract can be terminated on the consent of its two parties, yet none of them has the independent right of its termination, except for a contingent excuse or *force majeure* situation. The employer has the right to terminate the contract on the existence of a defect that makes the service useless. The



contract can also be terminated on the basis of a conditional option (*Khiyar al-Shart*), by the party who has stipulated such option, and within its specified period.

8/2/3 The employee has the right to stipulate termination of the contract when the employer fails to make or delay payment of the pay agreed upon, or when the employer does not pay one installment or more of such pay (*Khiyar al-Naqd*).

8/2/3 On the consent of the two parties, the hiring contract can be terminated before its effectiveness.

8/2/3 Hiring comes to an end at the end of the contract period, yet it remains when it is needed for a reasonable excuse or for avoidance of harm. In case of continuation, hiring shall be for a pay to be agreed upon between the two parties, otherwise the normal pay for similar services should be applied.

8/2/6 The hiring contract can be renewed for another period, whether renewal is to be declared before expiry of the original contract, or to take place spontaneously. For spontaneous renewal, a condition is to be stated in the contract indicating that the contract shall spontaneously become renewed on the commencement of a new period, if none of the two parties notifies the other about his disinterest in renewal.

## **9. Date of Issuance of the Standard**

This Standard was issued on 28 Jumada II, 1429 A.H., corresponding to 2 July 2008 A.D.

## **Adoption of the Standard**

The Shari'ah Board adopted the Standard on Hiring of Persons in its meeting No. (21) held on 24–28 Jumada II, 1429 A.H., corresponding to 28 June – 2 July 2008 A.D., in Dar Al-Taqwa Hotel, in Al-Madinah Al-Munawwarah, Kingdom of Saudi Arabia.



## **Appendix (A)**

### **Brief History of the Preparation of the Standard**

In its meeting No. (14) held on 21-23 Rabi' I, 1426 A.H., corresponding to 30 April – 2 May 2005 A.D., the Shari'ah Board decided to issue a Shari'ah standard on Hiring of Persons (usufructs of services).

On 29 Jumada I, 1426 A.H., corresponding to 6 July 2005 A.D., the Secretariat General decided to commission a Shari'ah consultant to prepare a study on Hiring of Persons (usufructs of services).

A joint committee composed from Shari'ah Committees (1) and (2) held a meeting in the Kingdom of Saudi Arabia, on 7 Jumada I, 1427 A.H. corresponding to 3 June 2006 A.D. The joint committee discussed and cleared the study, and asked the consultant to prepare the draft of the standard.

In a further meeting of the joint committee, held on Thursday 21 Sha'ban 1427 A.H., corresponding to 14 September 2006 A.D., in the Kingdom of Bahrain, the draft of the standard was discussed and the consultant was requested to introduce necessary amendments in the light of the discussions and observations of the meeting.

In its meeting No. (19) held in Makkah Al-Mukarramah on 26–30 Sha'ban 1428 A.H., corresponding to 8-12 September 2007 A.D., the Shari'ah Board discussed the draft of the standard and introduced the changes that it deemed necessary.

In its meeting No. (20) held in the Kingdom of Bahrain, on 4-8 Safar 1429 A.H., corresponding to 11-15 February 2008 A.D., the Shari'ah Board discussed once again the draft standard and introduced further changes.

The Secretarial General of AAOIFI held a public hearing in the Kingdom of Bahrain on 8 Jumada II, 1429 A.H., corresponding to 12 June 2008 A.D. More than 30 participants attended the session as representatives of central banks, institutions, and accounting firms. The session was also attended by Shari'ah scholars, university teachers and other interested parties. Several observations were made in the session, and duly responded to by the members of the Shari'ah Standards Committees (1) and (2).

In its meeting No. (21) held in Al-Madinah Al-Munawwarah, on 24–28 Jumada II, 1429 A.H., corresponding to 28 June – 2 July 2008 A.D., the Shari'ah Board discussed the draft standard, introduced the changes that it deemed necessary and adopted the Standard.

## Appendix (B)

### The Shari'ah Basis for the Standard

- Hiring of persons is permissible according to Qur'an, Sunnah (Prophetic Traditions) and Ijma' (consensus of Fuqaha). In Qur'an this is emphasized in the Verse stating: {*"Then if they give suck to the children for you, give them their due payment"*}<sup>(2)</sup>

As far as Sunnah is concerned, permissibility of hiring of persons can be derived, for instance, from the Hadith of the Prophet (peace be upon him) in which he said: *"The most eligible of whatsoever you have got a pay for, is the Book of Allah"*.<sup>(3)</sup> This in addition to many other Hadiths. In this regard, Al-Bukhari presented a whole chapter on Ijarah (hiring) which comprises 22 sections, and so did Abu Dawud, as well as other Sunnah scholars who referred to several Hadiths on the subject within other chapters.

Similarly, Ijma' (consensus of Fuqaha) on permissibility of hiring of persons is said to have been reached since the time of the Sahabah (companions of the Prophet, peace be upon him), as well as the time of their successors and the founding leaders of the schools of Fiqh. In this respect Al-Kasani said: "As regards Ijma' of the Ummah (Muslim Nation) it had been reached before the existence of the deaf....."<sup>(4)</sup>

- Permissibility of a pledge which is binding to only one party is supported by a number of Shari'ah proofs which support honoring of contracts, pledges and promises, in addition to what has been emphasized by some Shari'ah scholars. On this regard, the International Islamic Fiqh Academy issued its

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(2) [Al-Talaq (Divorce): 6]; and see: *"Jami' Al-Bayan"*, by Al-Tabari, verified by Mahmoud Shakir, Dar Ibn Hazm, [28: 181].

(3) *"Sahih Al-Bukhari"* with *"Fath Al-Bari"* [4: 452-453].

(4) *"Bada'i' Al-Sana'i"*, Muassasat Al-Tarikh Al-Arabi, Beirut, 1421 A.H. [4: 16].

resolution No. 40-41 (2/5 & 3/5) on Enforceability of Pledge in Murabahah.<sup>(5)</sup> The rulings stated in that resolution also hold true in the case of pledge in hiring and other similar dispositions.

- Permissibility for the institution to receive an amount from the party who pledges to hire its services (seriousness margin), is based on need and interest. A similar Fatwa (Shari'ah opinion) has been issued in this regard by the Unified Shari'ah Supervisory Board of Al Baraka Group.<sup>(6)</sup> That Fatwa is relevant to the case of hiring.
- Enforceability of the hiring contract is derived from the verses and Hadiths which instruct people to honor contracts, as when Allah, the Almighty, says: *{“O you who believe! Fulfill (your) obligations...”}*.<sup>(7)</sup> besides the general consensus among fiqh scholars on enforceability of hiring,<sup>(8)</sup> since it is a contract which facilitates ownership through exchange of two objects.
- The ruling that the period of hiring should be specified stems from the fact that non-specification could result in prohibited Gharar (uncertainty) and Jahalah (ignorance) which lead to dispute. Prohibition of sales which involve Gharar (uncertainty) has been emphasized by well verified Hadiths.<sup>(9)</sup> Therefore hiring of persons shall not involve Gharar, because, in essence, it is a sale of service/work.
- Permissibility of hiring of persons for doing deferred services is based on the practice of the Prophet (peace be upon him) when he and Abu Bakr hired a man from Bani Al-Dail to serve them as a guide, after three days.<sup>(10)</sup> Moreover, hiring is a time-based contract and therefore its object can be delivered in the future.
- Permissibility of taking 'Arboun (Earnest Money) is derived from what Omar did in the presence of Sahabah (companions of the Prophet, peace

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(5) The Journal of the Academy, Issue No. (5), Vol. (2), (pp. 754 and 965).

(6) Fatwa No. (9/10) of the Unified Shari'ah Board of Al Baraka.

(7) [Al-Ma'idah (The Table): 1].

(8) *“Al-Fatawa Al-Hindiyyah”* [4: 410]; *“Al-Sharh Al-Kabir”* [2: 4]; *“Al-Rawdah”* [5: 173]; and *“Al-Mughni”* with *“Al-Sharh Al-Kabir”* [6: 20].

(9) *“Sahih Muslim”* [5: 3]; and *“Sunan Abu Dawud”* (H: 3376).

(10) *“Sahih Al-Bukhari”* with *“Al-Fath”* [4: 443], Al-Matba'ah Al-Salafiyyah.

be upon him), and adopted by Ahmad. On this regard, The Islamic Fiqh Academy of Makkah Al-Mukarramah has also issued its resolution No. 72 (3/8).

- Sub-hiring is permissible because when the employer owns the service/work he becomes able to transfer it to someone else.
- The ruling that a hiring contract can be conditional is based on the Hadith of the Prophet (peace be upon him) which indicates: *"Muslims are at their conditions, except a condition that permits what has been prohibited or prohibit what has been permitted."*<sup>(11)</sup>
- The ruling that hiring for a specific service is impermissible before owning and possessing the service, is reached by analogy to prohibition of selling things that one does not own, and the Hadith which has been narrated by Hakim Ibn Hizam stating: *"Don't sell what you do not have"*.<sup>(12)</sup>
- Permissibility of signing a hiring contract for a service to be delivered in the future, is judged by analogy to Salam, and because that does not lead to dispute. According to the Shafi'i and Hanbali scholars the pay should not necessarily be made in advance.
- A private employee should not guarantee what he works on, except in case of transgression, negligence, or breach of a condition. This is actually the general principle in trust-based contracts; in addition to that, the contract comprises an interest for the employee since he will receive the pay. In case of transgression, negligence, or breach of condition the act results in harm, and hence the employee has to indemnify the employer, as per the directives of the Prophet (peace be upon him) who said: *"No harm, and no reciprocal harm"*.<sup>(13)</sup>
- The ruling that a shared employee has to guarantee what he works on, is based on what has been reported about some of the Sahabah (companions of the Prophet – peace be upon him) who emphasized that this has to be so,

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(11) Related by Al-Bukhari: *"Fath Al-Bari"*, *"Kitab Al-Ijarah"* [4: 451]; and *"Abu Dawud"* with *"Awn Al-Ma'bud"* [9: 516].

(12) Related by Abu Dawud in his *"Sunan"* (H: 3530); Al-Nasa'i in his *"Sunan"* [2: 225]; Ibn Majah in his *"Sunan"* (H: 2187), and Ahmad in his *"Musnad"* [3: 42].

(13) Related by Malik in *"Al-Muwatta'"*, *"Kitab Al-Aqdiyah"* [1: 464]; Ahmad in his *"Musnad"* [1: 313] and [5: 327]; and Ibn Majah in his *"Sunan"* [2: 784].

because the shared employee will be doing what he has been paid to do in the absence of the owner, besides the fact that the employee in this case is working for many employers rather than for a particular employer.<sup>(14)</sup>

- The hired service shall be permissible because what is prohibited by Shari'ah cannot be an object of a Shari'ah-recognizable contract. Moreover, impermissible hiring entails provision of support to wrongdoing and misbehavior; whereas Allah, the Most High, says: {***“Help you one another in Al-Birr and Al-Taqwa (virtue, righteousness and piety, but do not help one another in sin and transgression)”***}.<sup>(15)</sup>
- The pay for future hiring periods can be adjusted on mutual consent of the two parties, because such adjustment constitutes contract renewal for a coming period. No pay has yet become payable to the employee for that future period so that it can become a debt owed the employer, and consequently lead to prohibited rescheduling of debt. When, instead, such adjustment is done for an unsettled amount of pay which belongs to past periods, so as to extend the repayment period against an increase in the amount to be paid, adjustment in this case will lead to Riba (usury). The 11<sup>th</sup> Seminar of Al Baraka has already issued a Fatwa in this connection.<sup>(16)</sup>
- The ruling that the pay can be composed of two parts is based on Tradi (mutual consent), in addition to the fact that such arrangement neither violates the contract rulings nor does it encounter a Shari'ah prohibition.
- The pay can be in the form of a common share, because the pay in this form can be known, and will not lead to dispute or Gharar (uncertainty).
- Permissibility of stipulating in the contract that all outstanding installments of the pay shall become due in case of default by the employer in the settlement of any installment is based on Tradi (mutual consent), besides the fact that such a condition neither violates the contract nor does it encounter Shari'ah prohibition. The Prophet (peace be upon him) said: *“Muslims are*

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(14) *“Bada’i’ Al-Sana’i”* [4: 210]; *“Hashiyat Al-Dusuqi”* [4: 23]; *“Mughni Al-Muhtaj”* [2: 351]; and *“Al-Mughni”* with *“Al-Sharh Al-Kabir”* [6: 115].

(15) [Al-Maddah (The Table): 2].

(16) The Book on Resolutions and Recommendations of Al Baraka Seminar (11/2).



*bound by the conditions the make*".<sup>(17)</sup> In this regard the International Islamic Fiqh Academy has also issued its resolution No. 64 (2/7).<sup>(18)</sup>

- Impermissibility of stipulating a condition for increasing pay overdues is based on the fact that any increment in such amounts (against extension of settlement period) is Riba (usury). In this connection, The International Islamic Fiqh Academy issued its resolution No. 133 (7/14).<sup>(19)</sup>
- Permissibility of applying two rates of pay (so that the employer would become entitled to the higher rate when he performs the work in the shorter period and vice versa) stems from the fact that such arrangement does not lead to Gharar (uncertainty) or Jahalah (ignorance). In addition to that, such arrangement had been Traditionally resorted to, and approved by a number of Fiqh scholars.<sup>(20)</sup>
- Permissibility of seeking payment guarantees, is similar to permissibility of Kafalah (suretyship) and *Tawthiqat* (documentations) in Islamic jurisprudence, besides the fact that request for guarantees here does not violate the rulings of the contract but rather confirms them, since guarantees are suitable for debt contracts.
- The contract becomes null and void when the service is completely or partially useless, because the outcome of the contract has not been accomplished, and the contract has not achieved its objectives. In addition to all that, the pay is supposed to be made against the benefit. In this respect, the International Islamic Fiqh Academy issued its Resolution No. 13 (1/3).<sup>(21)</sup> If, instead, the contract relates to a specifically defined service which has to be delivered in the future, the contract does not become null and void because the service in question will still remain as a debt, and the employee should be asked to provide a service that has the same specifications.
- The ruling that hiring will come to an end on expiry of the contract period or on the consent of the two parties, is based on the fact that a hiring contract

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(17) Reference has been referred to earlier.

(18) The Journal of the Academy, No. (6), (P. 193) and No. (7), Vol. (2), (P. 9).

(19) The Journal of the Academy, No. (14), Vol.(4), (P. 687).

(20) See: "*Al-Fatawa Al-Hindiyyah*" [4: 445] and "*Al-Mughni*" by Ibn Qudamah [5: 442].

(21) See: the Journal of the Academy, No. (2), Vol. (2), (P. 527) and No. (3), Vol. (1), (P. 77).

is a time-based contract and therefore, it expires at the end of the period. Similarly, a hiring contract is a consensual contract which starts and ends on the consent of the two parties.

- Permissibility of spontaneous renewal of the contract when it is stipulated as a condition or when agreed upon between the two parties, stems from the fact that such condition does not violate the rulings of the contract. The Prophet (peace be upon him) said: *"Muslims are bound by the conditions they make"*.<sup>(22)</sup>
- The basis for the commitments of the employee and the employer is that such commitments constitute essential requisites of the contract for hiring of persons. Moreover, such commitments are based on the agreement of the two parties. Both of these two justifications are unanimously accepted by Shari'ah scholars.<sup>(23)</sup>
- The ruling that a hiring contract which relates to the employee in person becomes null and void on the death, loss of legal competency or persistent sickness of the employee, is based on the fact that the object of contracting will, thus, become no longer existent. Consequently, there will also be no pay since the pay is to be made in exchange of the benefit. In addition to all that, this ruling conforms to normal practice.
- The ruling that a contract which relates to a future service does not become null and void on the death of the employee, is based on the fact that in this case the service, as a debt, is considered as existent.
- The pay shall become due even if the employer could not benefit from the employee who had put himself at his disposal. This ruling is based on the fact that the employee is entitled to the pay since he has been able to fulfill the condition of putting himself at the disposal of the employer, while the employer has no excuse for not benefiting from the services.
- Permissibility of terminating the hiring contract in case of contingencies is based on observation of need and necessity of avoiding hardship, in addi-

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(22) Reference has been referred to earlier.

(23) See: *"Bada'i' Al-Sana'i"* [4: 210]; *"Tabayin Al-Haqa'iq"* [5: 124]; Al-Dusuqi in *"Al-Sharh Al-Kabir"* [4: 23]; *"Mughni Al-Muhtaj"* [2: 351; and *"Al-Mughni"* with *"Al-Sharh Al-Kabir"* [6:115].



tion to normal practice. A Fatwa in this regard has been issued by the Board of Fatwa and Shari'ah Supervision of the Kuwait Finance House.<sup>(24)</sup>

- Permissibility for the employee to state a condition for termination of the contract when the pay is delayed is based on the fact that such condition is fair, and does not violate the rulings of the contract. The Prophet (peace be upon him) said: "*Muslims are at their conditions*".<sup>(25)</sup>



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(24) Fatwa No. (232) and No. (252).

(25) Reference has been referred to earlier.

