

Shari'ah Standard No. (50)

**Irrigation Partnership
(Musaqat)**



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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 explain the Shari'ah rules and requirements for Irrigation Partnership (Musaqat) and its applications in the activities of Islamic financial Institutions.⁽¹⁾

(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 the Shari'ah rules and requirements for Irrigation Partnership (Musaqat) and its applications in the activities of Islamic financial institutions. It does not cover other forms of agricultural partnership as they have separate Shari'ah standards dedicated to them.

2. Definition of Irrigation Partnership (Musaqat)

A contract between the owner of an orchard or its usufruct and a worker (irrigator) agreeing to share the produce according to specific ratios stipulated at the time of contract.

3. Permissibility and Description of the Contract

Irrigation Partnership (Musaqat) is a permissible contract that becomes binding on commencement of the work or if mutually agreed between the two parties not to terminate the contract before its expiry.

4. Elements of Irrigation Partnership

- 4/1 Offer and acceptance should be exchanged explicitly or implicitly by means of a recognised form of indication.
- 4/2 Each of the two parties should be legally competent.
- 4/3 The relevant trees should be identified, arable (productive), and in need of irrigation and plant husbandry.

5. Conditions of Validity (Prerequisites)

- 5/1 The contract should stipulate for each party a predetermined, defined, indivisible share of the produce.
- 5/2 The work should be restricted to the husbandry of the crop and trees. The owner may not (in this contract) demand any additional work from the worker (irrigator).

- 5/3 The contract is valid until the time of harvest or for a defined period in which the crop is normally enough for harvest.

6. Duties of the Worker (Irrigator)

- 6/1 The worker (irrigator) is obligated to care for the trees and crops as per agreement with the owner and customary requirements, including:

6/1/1 Carrying out plant husbandry by watering, pollinating, fertilising, weeding, maintaining and cleaning irrigation channels, pruning, controlling pests, harvesting and performing seasonal work that is usually required for each type of tree.

6/1/2 Not commissioning or subcontracting a third party to carry out his work without the permission of the owner. If he does so, the owner of the trees has the option to ratify the third party contract or reject it.

- 6/2 The worker (irrigator) may employ others to assist him to carry out part or all of the contracted work.

- 6/3 The worker (irrigator) acts in a fiduciary capacity and is not liable for any loss arising from other than wilful misconduct, negligence or breach of the terms of the contract. In such a case, he is liable to indemnify the owner against any actual loss caused, but remains entitled to his share of the crop.

7. Duties of the Owner of the Trees

The owner should facilitate for the worker (irrigator) full access to the trees (subject of contract), and remove any impediments which may hinder the work of the worker (irrigator).

8. Joint Duties of the Worker (Irrigator) and the Owner of Trees

- 8/1 After harvesting, the worker (irrigator) and the owner are obligated to take care of the crop, each in proportion to his share. Prior to harvesting, the worker (irrigator) is obligated to take care of the crop unless custom or a term of the contract dictates otherwise.

- 8/2 The worker (irrigator) and the owner are responsible for the expenses of the Irrigation Partnership in proportion to their shares, including any Takaful insurance, unless they agree otherwise.
- 8/3 The worker (irrigator) is solely responsible for performing the work customarily undertaken by workers (irrigators) in similar Irrigation Partnerships and such work does not entitle him to any increase in his share of the crop as he is already contractually obligated to carry it out. If he hires others to perform his work, their wage is his sole responsibility and should not be taken from the overall crop. The worker (irrigator) may hire, on the account of the Irrigation Partnership, others to perform work that is customarily beyond the scope of his duties.
- 8/4 If the worker (irrigator) refuses to complete the term of the Irrigation Partnership after commencing work or entering into the contract, the owner should demand performance from him. If the worker (irrigator) stops working before the crop materializes he is not entitled to any share. If he stops working after the crop materializes but before it is ready for harvest, a third party should be hired to complete the work and his wage should be deducted from the worker's (irrigator's) share after the crop is harvested and sold. If the worker's (irrigator's) share is not sufficient to pay the third party's wage, the worker (irrigator) must make up the difference. If the worker's (irrigator's) share of the crop is more than the third party's wage, he keeps the difference.
- 8/5 In an Irrigation Partnership (Musaqat) that is due to terminate when the crop materializes or is ready for harvest, if the owner does not enable the worker, and this occurs before the crop materializes, then the owner shall be requested to enable the worker (irrigator) to complete his work. If the owner does not enable the worker (irrigator), then the worker (irrigator) shall be entitled to a wage at the market rate for similar work. If this occurs after the crop materializes, the worker (irrigator) is entitled to his stipulated share of the crop.

9. Division of Produce

9/1 In principle, all recurring produce of the trees should be shared as part of the crop, such as fruits, palm leaves etc. unless the parties agree to restrict their sharing arrangement to just the fruits.

9/2 The worker (irrigator) is entitled to his share of the crop on an indivisible basis as soon as it materializes.

10. Contingencies in Irrigation Partnerships

10/1 If the crop does not materialize at all or is completely destroyed by a natural disaster, the worker (irrigator) is not entitled to anything. If the natural disaster destroys only part of the crop, the parties divide what remains according to their stipulated shares.

10/2 If the crop does not materialize during the stipulated term, the worker (irrigator) has the option either to stop working or to continue his work without a wage until the crop materializes and thereafter takes his share. If he stops working without a valid excuse, he foregoes his right to a share of the crop when it materializes. If he has a valid excuse, he is entitled to the portion of his share that corresponds to the period of time worked in proportion to the total time the crop took to materialize.

11. Trees Belonging to Third Parties and Usurped Trees

11/1 If it transpires that the trees belong to a third party, the crop will then belong to him (the third party). In this case, the worker (irrigator) is entitled to a wage or compensation from the other party (the usurping party) at the market rate for similar work but not exceeding (what would have been) his share of the crop.

11/2 If the worker (irrigator) enters into an Irrigation Partnership (Musaqat) with a party who, unbeknown to the worker (irrigator), has usurped the trees, then the produce, if any, will belong to the owner of the trees and the worker (irrigator) will be entitled to a wage at fair market rate. But if the worker (irrigator) knew that the trees were usurped, then he is not entitled to any remuneration.

12. Termination of Irrigation Partnership Contract (Musaqat)

The Irrigation Partnership (Musaqat) contract terminates upon the occurrence of any of the following:

- 12/1 Harvest and division of the crop, if the Irrigation Partnership was linked to the produce of a specific season.
- 12/2 Completion of the agreed term and division of the crop in accordance with Item 10/2.
- 12/3 Death of the worker (irrigator) or liquidation of the institution carrying out the work if the Irrigation Partnership (Musaqat) contract stipulates that the work is non-assignable. If there is no such stipulation, the successor has the option to complete the work on the same terms, either himself or by hiring workers (irrigators), in return for the deceased's (or liquidated institution's) share of the crop. If the successor chooses not to complete the work, the owner may complete the work himself or by hiring others and upon materialization of the crop, the successor of the worker (irrigator) is entitled to receive a wage at the market rate for similar work for the period of time worked by the deceased (or liquidated institution) but not exceeding his (or its) stipulated share of the crop.
- 12/4 Death of the trees that are the subject matter of the contract or inability of the trees to bear fruit.
- 12/5 Passing of a season without any fruit.

13. Revocation of Irrigation Partnership Contract (Musaqat)

- 13/1 Irrigation Partnership (Musaqat) contract is revocable by mutual consent of the two parties (Iqalah).
- 13/2 The owner can revoke the contract in the following situations:
 - 13/2/1 When the worker (irrigator) is unable to perform the work, in which case the following apply:
 - 13/2/1/1 If the worker (irrigator) is unable to work for a reason outside his control, such as an illness, he is entitled to receive a wage

at the market rate for similar work for the period of time worked.

13/2/1/2 If the worker (irrigator) is unable to work for a reason within his control, he is entitled to receive a wage at the market rate for similar work for the period of time worked. He is also liable to indemnify the owner for actual loss suffered, as determined by experts.

13/2/2 When the worker (irrigator) stops working and it is not possible to enforce him (to fulfil the terms of the contract).

13/3 The worker (irrigator) is entitled to revoke the contract if the owner refuses to allow him to work. [see item 8/5]

14. Zakat Due on Irrigation Partnership (Musaqat)

See Shari'ah Standard No. (35) on Zakat, item 5/4/9.

15. Some Applications of Irrigation Partnership (Musaqat) in Financial Institutions

15/1 The institution may enter into Irrigation Partnership (Musaqat) contracts with the owners of trees and then hire workers (irrigators) to carry out the work.

15/2 The institution can own trees and enter into Irrigation Partnership (Musaqat) contracts with other parties to carry out the work.

16. Date of Issuance of the Standard

This Shari'ah Standard was issued on 21 Safar, 1434 A.H., corresponding to 4 January 2013 A.D.

Adoption of the Standard

The Shari'ah standard on Irrigation Partnership (Musaqat) was adopted by the Shari'ah Board in its meeting No. (34) held during the period of 20-21 Safar, 1434 A.H., corresponding to 3-4 January 2013 A.D.

Appendix (A)

Brief History of the Preparation of the Standard

On 24 Dhul-Qādah 1431 A.H., corresponding to 30 November 2010 A.D., the Secretariat of AAOIFI decided to commission a Shari'ah consultant to prepare a juristic study on Irrigation Partnership (Musaqat).

In its meeting No. (30) held in the Kingdom of Bahrain, on 24-26 Jumada II, 1432 A.H., corresponding to 27-29 May 2011 A.D., the Shari'ah Board discussed the exposure draft of the standard and introduced the changes it deemed suitable.

In its meeting No. (31) held in the Kingdom of Bahrain, on 22-24 Dhul-Qādah 1432 A.H., corresponding to 20-21 October 2011 A.D., the Shari'ah Board also discussed the exposure draft of the standard and introduced the changes it deemed suitable.

In its meeting No. (32) held in Al-Madinah Al-Munawwarah, on 8-9 Rabi' II, 1433 A.H., corresponding to 1-2 March 2012 A.D., the Shari'ah Board continued its discussions on the draft exposure of the standard and introduced the changes it deemed suitable.

The Secretariat of AAOIFI held a public hearing in the Kingdom of Bahrain on 16 Jumada II, 1433 A.H., corresponding to 7 May 2012 A.D. The public hearing was attended by representatives of central banks, institutions, auditing firms, Shari'ah scholars, academics and others interested in this field. The members of the Shari'ah Board and the Shari'ah Standards Committee responded to a number of observations and comments raised by the participants.

In its meeting No. (33) held in Makkah Al-Mukarramah on 19-21 Shawwal 1433 A.H., corresponding to 6-8 September 2012 A.D., the Shari'ah Board

discussed the changes proposed at the public hearing and introduced the changes it deemed suitable to the draft exposure of the standard.

In its meeting No. (34) held in the Kingdom of Bahrain on 20-21 Safar 1434 A.H., corresponding to 3-4 November 2013 A.D., the Shari'ah Board discussed the exposure draft of the standard, introduced the changes that it deemed suitable and adopted the standard.

In its meeting No. (35) held in Al-Madinah Al-Munwwarah on 22-23 Shawwal 1434 A.H., corresponding to 29-30 September 2013 A.D., the Shari'ah Board continued its discussions on the exposure draft of the standard, and introduced the changes it deemed suitable, and adopted the standard.

Appendix (B)

The Shari'ah Basis for the Standard

Permissibility of Musaqaat and Its Rationale

- The basis for the permissibility of Musaqaat is the Sunnah, Ijma' and common sense. From the Sunnah, there is the Hadith narrated by Ibn Umar that the Prophet Muhammad (peace be upon him) gave the land of Khaybar to its inhabitants to work on and cultivate in return for half of its yield (fruits and plants).⁽²⁾

Based on Ijma', the companions (may Allah be pleased with them) practiced Musaqaat in Khaybar until Umar (may Allah be pleased with him) evacuated them therefrom, without any objection from whosoever. Ijma' or consensus (by Four Schools of Fiqh) as to permissibility of Musaqaat was cited by prominent scholars Al-Bisyawi, Ibn Hazm and Al-'Utabi, Muwaffaq Al-Din Ibn Qudamah, Shams Al-Din Ibn Qudamah and Al-Shamakhi, the author of "*Ghayat Al-Bayan*", Ibn Muflih and Al-Buhuti.⁽³⁾

On the basis of common sense, Musaqaat fulfils the interest of both parties, and is associated with no harm.

Its permissibility may also be deduced in analogy with Mudarabah.

- The basis for bindingness of Musaqaat once it has been entered into or undertaken is the overarching Quranic Verse: **{“O you who believe! Fulfil (your) obligations”}**.⁽⁴⁾

(2) Related by Al-Bukhari, Chapter on Muzara'ah for half of the produce, and so on. Also, related by Muslim, Chapter on Musaqaat for part of the fruits and plants.

(3) See "*Al-Mukhtasar*", Al-Bisyawi, (P. 291); "*Al-Jami*", Abu Al-Hasan, [49: 4]; "*Al-Muhalla*", [8/230]; "*Al-Diya*", [18: 245]; "*Al-Mughni*", [5: 549-552]; "*Al-Sharh Al-Kabir*", [5: 557]; "*Al-Idah*" [6: 233]; "*Al-Bahr Al-Ra'iq*" [8: 64]; "*Al-Mubdi*" [5: 46]; and "*Kashf Al-Qina*" [3: 533].

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

Elements of Musaqa Contract

- The basis for stipulating legal competency in a Musaqa contract is the Prophet's Hadith: *"The Pen has been lifted from writing the deeds of three: The one who is asleep until one wakes up, the child until he/she becomes pubescent and the insane until he/she becomes sane"*.⁽⁵⁾
- The basis for the necessity for identification of trees (subject matter of the contract), and the stipulation of the trees being arable (productive) in usual circumstances is avoidance of Gharar. Trees that are not arable (productive) do not fit the purpose of Musaqa.
- The basis for the stipulation of irrigation and cultivation of trees is that work is one of the requisite elements of the contract (Arkan), and Musaqa is invalid in the absence of one of its requisite elements.

Prerequisites of Validity

- The basis for specification of a predetermined, common share for both parties to the contract is the Hadith narrated by Ibn Omar that the Prophet (peace be upon him) gave the land of Khaybar to its inhabitants to work on and cultivate in return for half of its yield (fruits and plants). The specification of lump-sum compensation will divert the contract away from the features of Musaqa. The determination of a known compensation is meant to avert impermissible obscurity (Jahalah).
- The basis for the confinement of work to fruit growing and tree cultivation is that this what entails work in Musaqa; if another form of work is stipulated in the contract, such a stipulation shall contradict the very nature of the contract, as it only fulfils the interests of one party at the expense of the other.
- The basis for making the term of Musaqa equal to the period ending with the time the produce materializes or over a term enough for the produce to materialize is the rules of justice in Shari'ah so that the trees owner does not exclusively benefit from the produce while the worker receives nothing. The produce is what the contract is meant to achieve after all, and therefore it is impermissible that the worker is devoid of his/her rights by shortening the term of Musaqa.

(5) Related by Abu Dawud in the Chapter on an insane stealing or becoming liable to punishment.

Obligations of the Worker (Irrigator)

- The basis for the worker's obligation to undertake normal care of the trees and for the produce of fruits is that the people of Khaybar were entrusted with the work, without anyone else being sent by the Prophet (peace be upon him) to take up some of Musaqaat works.
- The basis for the prohibition of sub-contracting in Musaqaat without prior permission is that the trees are not the property of the worker (irrigator), nor the worker is authorized by the owner of trees to do so. And notwithstanding, the owner may not accept that the worker (irrigator) assigns the Musaqaat contract to a third-party irrigator.
- The basis for the permissibility of using the services of hired hands or the like by the worker (irrigator) is the general condition cited by the Prophet (peace be upon him) to the people of Khaybar that "they may seek the services of hired hands, but only at their own expense". However, the worker's responsibility/liability shall not cease to exist.⁽⁶⁾
- The basis for the Musaqaat worker acting in a fiduciary capacity (rather than a position of liability) is that he/she is an agent on behalf of the owner in preservation and care of trees and fruits.

Obligations of Trees Owner

- The basis for the necessity to enable unfettered disposal of the trees for the worker is to allow the worker to perform his duties as per the contract.

Joint Obligations of the Worker and the Owner of Trees

- The basis for the joint responsibility of the owner of trees and the worker for the preservation of fruits before harvesting is that the owner may take the fruits after harvesting. However, before harvesting, the worker alone shall be responsible for the trees and fruits because the owner has granted him unfettered access to the trees.
- The basis for the division of expenses between the owner and the worker (from their respective shares) is that it is more just (closer to justice) so that no harm is inflicted upon either party because of the other.
- The basis for obligating the worker to complete the work is that Musaqaat is a contract that becomes binding upon commencement of work, so that

(6) Related by Muslim, Chapter on Musaqaat for part of the fruits and plants. Also, related by Abu Dawud, Chapter on Musaqaat.

neither party shall have the right to revoke it unilaterally. And the basis for the non-entitlement of the worker to any compensation in case he stopped the work before materialization of the produce is that he abandoned his obligation toward completion of work and is thus not entitled to receive a share of the produce before materialization. And if the produce materializes, then another hand may be hired to complete the work at the expense of the worker because in such a case the worker (Al-Musaqi) is entitled to receive a share and shall not be deprived of it, and he shall complete the work, and such an obligation shall not be considered fulfilled unless work is completely carried out. Otherwise, the wage of the hired hands shall be deducted from the share of the worker (Al-Musaqi).

- The basis for obligating the owner of trees, in case he prevented the worker from carrying out the work of Musaqa, to completely fulfil the contract is that the Musaqa contract becomes binding upon commencement of work or upon commitment of non-revocation (of the contract). And in the event that the owner revokes the contract before the produce materializes, the basis for obligating the owner to pay out the prevailing market wages is that the time and effort of the worker shall have to be compensated. And in the event that the owner revokes the contract after the produce materializes, then the worker is only entitled to his share in the produce (but not the prevailing market wages).

Division of the Produce

- The basis for the inclusivity of division of recurring produce is that the worker contributes with his work to the produce and thus shall not be deprived of his respective share. This roughly conforms to the standpoint of Ibadis and Malkis jurists, and coincides with the opinion of some of Hanifis. It has reported that Abu Said Al-Khudri opined that the worker deserves a share in the palm racemes and cotton straws, unless there is a customary practice ('Urf) or a condition (Shart) to the contrary. Abu Amr Al-Qurtubi also said: "Torn palm leaves and fibers and cords shall be shared by both parties according to their respective shares in the fruits", and this conforms to the law of equity.⁽⁷⁾

(7) "*Bayan Al-Shar'*" [40: 292 and 296]; and "*Al-Kafi*" [2: 107].

- The basis for specification of the worker's share as a common share is the Hadith narrated by Rafi' on the authority of Hanzhalah Ibn Qays Al-Ansari who said: *"I asked Rafi' Ibn Khadij about paying the rental of a land in gold and silver. He answered: 'There is no objection to it, as people in the times of the Prophet (peace be upon him) used to pay rental for plants growing on water ravines/flumes/gullies and high points of streams and some sorts of plants. However, the Prophet (peace be upon him) prohibited such practices because the produce was not properly identified: Some of it used to grow and some used to perish, and people, at that time, were confined to this kind of rentals'".*⁽⁸⁾
- The basis for the entitlement of the worker to his respective share upon materialization of the produce is that he has contributed to the materialization. It is the opinion of some of Shafis and the majority of Hanbalis, and it is also followed by Imamis.⁽⁹⁾

Contingencies in Musaqa

- The basis for non-entitlement of the worker to anything (reward or compensation) if the produce perished or destroyed by a natural disaster is that one of the effects of partnership entails that the subject-matter of division is the produce. Therefore, if the produce perished or destroyed, then there shall be no division. The same applies to the division of remaining produce in case of partial destruction due to a natural disaster.
- The basis for granting the worker the option, in case of non-materialization of the produce during the predetermined period of time, either to carry on his work gratis, or to stop working and lose his share in the produce, is as dictated by the rules of equity. The owner of trees benefits through keeping his trees, even if there is no produce. Any worker with an acceptable excuse is an exception, where he shall be entitled to his share for the worked period of time, as dictated by the rules of equity.

Trees Belonging to Third Parties and Usurped Trees

- The basis for the owner of trees being entitled to the fruits if it transpires that the trees belong to a third party is that in essence ownership of fruits shall

(8) Related by Muslim, Chapter on rental of lands, payment in gold and silver.

(9) *"Kashf Al-Qina"* [3: 538]; *"Al-Mughni"* [5: 576]; *"Al-Mubdi"* [5: 54]; *"Al-Rawdah"* [5: 160]; and *"Jami' Al-Maqasid"* [7: 376].

remain in the hands of the owner unless by virtue of a contract. However, the contract, in this case, is void. The basis for obligating the party who contracted with the worker to pay out the prevailing wage to the maximum of his stated share is that he worked on a commutative basis, and the contract was doubtful (not properly evidenced or documented); it is impractical to pay him the agreed compensation due to the ownership of the third party, who shall be entitled to the compensation; i.e., the prevailing wage, up to a maximum of his stated share because the contracting party did not commit to pay him more than his share, especially that no transgression was premeditated.

- The basis for entitlement of the owner of trees to take the fruits in case an usurper (Ghasib) of the trees contracted with someone else to carry out Musaqaat works is that the fruits remain, in essence, owned by the owner unless by a contract to the contrary. And the contract here is void. The basis for obligating the usurper (Ghasib) to pay the worker who was unaware of usurpation is that it is tantamount to a paid work (work on a commutative basis) associated with a doubtful contract; it is impossible to pay him the agreed compensation because it belongs to someone else, who shall be entitled to the compensation; i.e., the prevailing wage. The worker shall be deprived of any payment if he is aware of usurpation because in such a case he becomes a transgressor, and he is among those referred to in the Hadith: *"Ill-gotten sapling shall have no right therein"*.⁽¹⁰⁾

Termination of Musaqaat Contract

- The basis for termination of Musaqaat contract upon completion of produce and division of the crop or passing of the agreed period of time or of a season without any fruit is the application of the contract that entered into by the two parties.
- The basis for termination of Musaqaat contract upon the death of the worker or liquidation of the institution carrying out the work if Musaqaat was subject to the condition of work commencement solely by him or the institution is that the condition was not met. The basis for granting the heirs (either through inheritance, in general, or by transfer of ownership, in particular)

(10) Related by Al-Bukhari, Chapter on wasteland rehabilitation. Also related by Malik, Chapter on building on wasteland.

the option either to carry on the work as per the set conditions or to stop it is that the heirs or the owners of the institution have had legally inherited this right. The basis for their entitlement to the prevailing wage is that their testator was entitled to the compensation by virtue of his efforts. So if he had died before the produce materialized, then he shall be entitled to the compensation. The basis for limiting the compensation, which is the prevailing wage, to a maximum of the testator's share in the produce is that the owner of trees did not commit to pay more than the worker's share. And if continuation of work by the heirs does not entitle them to more than the share of their testator in the produce, then how shall they deserve more without work?

- The basis for termination of Musaqa contract upon perishing of trees, subject matter of the contract, or inability of the trees to bear fruit is the Hadith stating: *"There should be neither harm nor malice"*, because the worker will be excessively harmed if he is obligated to work gratis (without compensation).

Revocation of Musaqa Contract

- The basis for revocation of Musaqa contract by mutual consent of the two parties is the Hadith of Prophet Mohammad (peace be upon him) stating: *"Anyone who consents to revoke the contract upon the request of a regretting counterparty, Allah shall forgive his regretful sins on the Day of Judgment"*.⁽¹¹⁾
- The basis for obligation to pay the prevailing wage if the worker is unable to perform the work due to a reason out of his control is that the worker did exert an effort under a contract, therefore he shall be entitled to a compensation against that work, and that the work has not been performed in its entirety, and thus he is paid the prevailing market wage.
- The basis for liability of the worker to indemnify the owner for actual loss suffered for a reason within his control is that he caused such a loss, and therefore shall be liable.



(11) Related by Ibn Hibban, Chapter on Iqalah.

