

## 19. ISTIJRAR

Istijrar means purchasing goods from time to time in different quantities. In Islamic jurisprudence Istijrar is an agreement where a buyer purchases something from time to time; there is no offer or acceptance or bargain each time. There is one master agreement where all terms and conditions are finalized. There are two types of Istijrar:

- Whereby the price is determined after all transactions of purchase are complete.
- Whereby the price is determined in advance but the purchase is executed from time to time.

The first kind is relevant to Islamic financing. It is permissible with the following conditions.

1. In the case where the seller discloses the price of goods at the time of each transaction; the sale becomes valid only when the buyer possesses the goods. The amount is paid after all transactions have been completed.
2. If the seller does not disclose the price of the subject matter to the buyer each time, but the contractors know that it is being sold at market value and the market value is specified and determined in such a manner that it does not vary and it does not lead to differences between the contractors.
3. If at the time of possession, the price of the subject matter is unknown or the contractors agree that whatever the price will be, the sale will be executed. However, if there is a significant difference in the market price and the agreed price, it may cause conflict. In such a case, at the time of possession, the sale will not be valid. However, at the time of settlement of the payment, the sale will be valid.

The validity will relate to the time of possession. Therefore the ownership of the buyer in the subject matter will be proved from the time of possession. After the payment of price the buyer's usage of the subject matter will be valid from the time of the possession.

As far as the use of Istijrar in Islamic banks is concerned, at present they are involved in four kinds of activities, namely Murabaha, Ijarah, Mudarabah and Musharakah. Out of these four, the concept of Istijrar can be applied to only the first three cases, due to the reason that Istijrar cannot be applied to borrowers of the bank. However, the same concept can be applied to the suppliers of the borrower. In this case, the bank enters into a Murabaha with the suppliers on the basis of Istijrar. The bank enters into an Agreement to Purchase with the suppliers (which are mainly trading companies) that it will purchase assets from them at a market price or at a predetermined discount from the market price. Whenever the bank has a new customer, it can purchase the assets from the suppliers on the basis of Istijrar and sell it onwards to the customer on the basis of Murabaha.

It may very well be that the bank enters into a pseudo-Istijrar agreement with the suppliers rather than a true one. This is the case when the bank enters into an agreement with the customer that it is going to sell certain assets in a certain quantity to them within a specified time period. The customer

may then purchase the assets from the banks in tranches rather than at once and complete the whole purchase within the specified time period in order to complete the agreement.

The above type of Istijrar is referred to as Istijrar with pre-agreed sale due to the reason that the customer purchases a given amount of assets from the bank over a period of time but the price of the assets purchased is always known before the sale. Given the above, there is no difference of opinion between the Shariah scholars as far as accepting this type of transaction as Bai-Ta'ati is concerned. However, the use of Ta'ati in case of a Murabaha transaction is not acceptable, as it leads indirectly to Riba in case the bank does not take possession of the assets before they are sold to the customer. Hence if Ta'ati is to be used in this case, then the only way to do it is that the bank should purchase the assets some time before selling it to the customer. This would ensure possession that is not just constructive but the bank would have title to the assets before they are sold to the customer.

Given that the above conditions are complied with to their full extent, Istijrar can be used in case of a Murabaha.