

AGENCY

Agency Contract For Murabaha

Why is an agency contract executed for a Murabaha?

Since Islamic banks do not have the expertise or the manpower to actually purchase the asset, they appoint the client as an agent to procure the asset from the supplier on their behalf. The client as the bank's agent acts as a trustee and utilizes the money given by the bank for the intended purpose, which is to buy the specified Murabaha goods. Throughout the period of agency the customer acting as agent executes on behalf of the bank and, barring negligence, during this period the bank assumes the risk of asset ownership.

Agency Agreements

How many kinds of agency agreements are there?

There are four types of agency agreements:

- The *disclosed agency agreement*, where the agent discloses to a third party that he represents a principal with whom he shares all the rights and obligations associated with the contract.
- The *undisclosed agency agreement* where the agent does not disclose the fact that he represents a principal. All the rights and obligations pertaining to the contract are possessed by the agent alone.
- The *specific agency agreement*, which is made for the procurement of specific goods and refers to a one time contract.
- The *global agency agreement*, which is conducted for the procurement of goods at different stages of a contract and at different times.

With this agreement, the financial institution appoints an agent to purchase goods for it from time to time without establishing a new agency each time.

Using Agency Agreement For Portfolio Management

Can we use agency agreements for portfolio managers?

In a portfolio management contract, the investor requires the investment manager to invest funds in various Shariah-compliant ventures. In such a contract, profit and loss is not shared between the

investor and the agent but the agent is remunerated for his services. This fee may be paid as a fixed lump sum or as a percentage of investment, but not as a percentage of profit. The investment agent may also be given a performance-based bonus for achieving required returns and, in such a case, the contract becomes a hybrid of the agency agreement and the Mudarabah.

Duties Of Agent Commissioned On Behalf Of Grantor

What acts may the commissioned agent perform on behalf of the grantor?

Commissions are fiduciary relationships in which the agent acts on behalf of the grantor in:

- a. contractual dealings: buying, selling, trading, leasing, transferring, canceling, deferring, renting, borrowing, lending, repaying a debt, guaranteeing, collateralizing, and the like;
- b. Legal dealings: litigating, conducting a marriage or divorce, witnessing, establishing proof, punishing, and the like;
- c. Religious dealings: performing hajj or umra, distributing zakat and charity, and the like;
- d. Personal dealings: gifting, running errands, and the like.

Agent's Contravention Of Specific Instructions

What does an agent's failure in conforming to his grantors specific instructions result in?

Contraventions to the specific instructions of a commission render transactions related to the commission invalid, unless the instructions are not specific and the result is a favorable one (e.g. when something is sold for a higher price or when something is bought for a lower price, unless specified otherwise), in which case the sale is valid.

Assigning Multiple Agents To Same Or Separate Commissions

Can one grantor assign two or more agents to the same or separate commissions?

It is permissible for one grantor to assign two or more agents to the same or separate commissions. When two or more agents are assigned to the same commission, they must transact it together unless the grantor permits otherwise.

Fees For Processing Documents

Is it lawful to take a service charge for processing documents as an agent for a payer or payee bank?

It is lawful for the bank to accept a fee for the services it performs as an agent on behalf of the payer or payee bank.

Fees For Agency

Can the bank in its capacity as an agent of another firm take a nominal percentage in return for its collecting sums of money for that firm?

It is lawful for the bank to serve as an agent for another firm in which case it is permissible for it to accept a fee in return for its agency.

Concurrent Agency

Can the bank appoint an agent for the purpose of both buying and taking delivery?

Yes, the bank can appoint an agent for the purpose of both purchasing and taking delivery.

Single Agency For Different Operations

Is it permissible to appoint one person as an agent for two different operations, i.e. to make a purchase on behalf of the bank or to sell to a client on credit?

There is no legal impediment to granting agency to one person for purchasing and then selling.

Identifying Oneself As Agent

Is it necessary that an agent specify at the time of purchase that he is the bank's agent?

It is not a Shariah requirement that the agent specify at the time of purchase that he is serving as the bank's agent. However, for purposes of documentation it is better for the agent to do so.

The Extent Of Agent's Liability

Is the agent responsible for merchandise for as long as it remains in his possession before selling it?

An agent is not considered a guarantor except in cases of shortcoming or transgression. Merchandise in his possession is considered a trust.

Agent And Surety

Is it lawful for an agent to be a surety as well?

If the contract of agency is inclusive of both delivering goods and collecting the money paid for them, it will be lawful for the agent to be a surety as well. If the contract is limited to transacting, with no agency to collect payments on behalf of the principal, then it will be unlawful for the agent to act as both agent and surety.

When Buyer's Agent Is Seller's Agent

Is it lawful to appoint an intermediary who will be the agent for the buyer and the seller at the same time?

It is lawful to appoint an intermediary who will be the agent for the buyer and the seller at the same time. It is important that the agent restrict his dealings to the terms of the agency agreement.

Permissibility Of Not Informing Buyer Or Seller About Supplier

Is it lawful for the intermediary agent to buy and sell without informing either the buyer or the seller about the party from which the merchandise is bought and the party to which it was sold?

It is lawful for the agent to not disclose to the buyer or the seller the identity of the party from which the merchandise is bought and the party to which it is sold. It is essential however, that the agent does not transgress the limits of his agency either. If the agent sells at a price lower than the one specified by the principal, the transaction will be suspended and remain conditional upon the principal's approval. If the agent buys at a higher price than the one specified by the principal, the transaction will go through but will be binding on the agent and not the principal.

Settlement Of Price For Agent In Sale Or A Purchase

Is it a condition that a price be agreed upon by at least one of the two principals and that these instructions be given in advance?

The setting of the price for an agent in a sale or a purchase is not a condition to the validity of the

agency however, if the principal does specify a price and the agent exceeds it, the rulings pertaining to the relevant agency agreement will apply, i.e. the transaction will go through but be binding on the agent and not the principal. If the agent sells the merchandise at a price lower than the one specified by the principal, the transaction will remain suspended and conditional upon the approval of the principal.

Agency For Bank

Is it permissible for the bank to charge its clients an agency fee for the management and lease of their property, the cost of maintenance and repairs, administration of legal matters in addition to expenses such as postage, phone calls, faxes, telegraphs etc?

It is permissible for the bank to charge its clients an agency fee for managing their property that would include all the mentioned costs and expenses.

Agency Rates For Bank

Is it permissible for the bank to alter its agency rates represented in its schedule or to add new rates for new services?

It is lawful for the bank to alter agency rates and make them effective from the date they are changed on the condition that the client is informed in advance. The client has the right to dispute any such changes within a fixed number of days based on which the bank exercises the right to either accept the client's objection or to invalidate its contract with him.

General Terms Of Agency

Is it lawful for the bank to grant agency to someone to sell goods on its behalf to different parties, if the lowest price for the sales and the time within which all payments are to be collected is specified?

An agency accepts conditions related to time, place, deeds, amounts and deadlines in addition to all other conditions agreed to between the principal and the agent. The agent must make every effort to realize the rights of the principal, however, he is not be responsible for any loss unless he is guilty of negligence or deliberately acting contrary to the conditions stipulated by the principal.

When Agent Becomes Guarantor

Is it lawful for the principal to stipulate that the agent may not sell what he is authorized to sell except at spot for cash and if he sells for credit, he will become the buyer's guarantor?

It is lawful for the principal to stipulate that the agent not sell except for cash and if he does sell for credit, that he become the buyer's guarantor for the sale price in the event that the buyer defaults on his payment.

Stipulating The Means Of Delivery

If a company appoints an agent, is it lawful to stipulate that the agent only ship the goods in one of the company's own freighters?

It is permissible for a principal to stipulate that an agent only use the principal's means of transport.