

GUARANTEE

Circumstances That Discharge Guarantor Of His Obligation

Under what circumstances is the guarantor discharged of his obligation?

Guarantees last the duration of the obligation unless:

1. the creditor cancels the obligation;
2. the obligation transfers to another obligor, in which case the guarantee itself cancels; or
3. the creditor cancels the guarantor's obligation but continues to maintain the obligor's obligation.

Situations When Guarantors Are Not Required To Fulfill Contract

Under what circumstances are guarantors not obliged to fulfill a contract on behalf of an obligor?

Guarantors are not obliged to fulfill a contract on behalf of an obligor unable to do so if either:

1. the obligation is not yet due, or
2. the creditor grants a period of respite and now asks for fulfillment of the obligation during the period of respite.

Guaranteeing For Conventional Bank

Is it permissible for an Islamic bank to guarantee the work a client intends to do for a conventional bank?

It is not permissible for an Islamic bank to guarantee equipment, buildings or contracts for any form of work a client intends to do for a conventional bank.

Charging For Guarantee

Is it lawful to charge a fee for providing a guarantee?

It is unlawful to charge a fee for providing a guarantee. If providing the guarantee actually incurs cost, such as for services, it is lawful to charge a fee but not for issuing the guarantee itself.

Demanding Guarantee

When a client forwards a request for the purchase of goods and the bank decides that it requires a guarantee before going through with a Murabaha, is it permissible to seek a check of guarantee from the surety?

It is permissible for the bank to seek a check of guarantee from the surety upon the receipt of which a letter will be issued to him explaining that the check will only be cashed in case of non-payment by the client. Even if one payment is delayed, all subsequent payments will fall due.

Obtaining Guarantee From the Purchase Pledger

What is the Shariah ruling with regard to obtaining a guarantee from the purchase pledger in a Murabaha sale to ensure the arrival of merchandise in good condition?

It is permissible from a Shariah perspective to obtain a guarantee from the purchase pledger in a Murabaha sale to ensure the arrival of merchandise in good condition.

Guarantees From Conventional Banks

Is it permissible for an Islamic bank to request its client to present a guarantee from a conventional bank in order to close a deal?

It is not permissible for an Islamic bank to request its client to present a guarantee from a conventional bank.

Fees In Proportion To Value

May the fees of the bank increase or decrease with the value of a guarantee particularly when the services required for each guarantee differ in proportion to its value?

It is not lawful to charge a fee for issuing a letter of guarantee since it is a contract for which compensation is not taken. It is permissible however to charge a fee for the effort expended by the bank in the process of issuing a letter of guarantee for actual services.

Voluntary Guarantee In Mudarabah

Is it permissible for the manager in a Mudarabah to voluntarily guarantee the capital investment?

It is not permissible for the manager to guarantee the capital investment in a Mudarabah because he cannot be held responsible for the loss of capital unless he is guilty of willful negligence or dishonesty. It is lawful, however, to have a third party guarantee the Mudarabah capital.

Fees For Suretyship And Agency

Is it permissible to charge fees for both suretyship as well as agency covered in the letter of guarantee?

A letter of guarantee covers both suretyship and agency. It is not lawful to charge a fee for suretyship however it is permissible to charge a fee for agency. Costs for issuing a letter of guarantee include the collection of information about the client and his business, a study of the project for which the guarantee is issued and related expenses customary in such practice.

Fees In Proportion To Amounts Guaranteed

When issuing a letter of guarantee, is it lawful to link the fee to the value of the guarantee and the period for which it is to remain valid?

It is not lawful to take a fee for merely providing a guarantee, however, it may be charged in return for actual services like the preparation of studies, professional consultation and the provision of administrative services.

Guaranteeing Client's Payments

What is the Shariah ruling with regard to the bank issuing letters of guarantee on behalf of its clients to individuals or financial institutions?

It is lawful for the bank to issue letters of guarantee on behalf of its clients, however, it is not lawful to take a fee in return for the guarantee unless the fee is based on actual expenses. The bank should take every measure to ensure that the letter of guarantee is not issued to institutions dealing in interest.

A Surety's Sharing In Profits

Is it lawful for a client holding an investment account with the bank to stand surety for an institution seeking financing for a Murabaha deal from the bank? May he seek a share of the profits earned from the institution's commerce in the goods guaranteed to the bank?

The client's suretyship for the institution is lawful. The bank freezes the client's account for the amount owed to it by the institution on the condition that the returns from the investment during the period of the freeze accrue to the client.

It is not lawful however for the client to share in the profits of the institution in return for its suretyship as suretyship is a voluntary contract.

Percentage Based Fees

Is it lawful to charge a percentage based fee for documentary credit or letters of guarantee?

It is not permissible for the bank to charge a percentage-based fee for letters of guarantee or documentary credit. It is lawful, however, for it to charge an amount for the services it offers to its clients. Such a sum may vary with the value of the guarantee or documentary credit in accordance to the differing degrees of administrative services required.

Permissibility Of Two Parties Guaranteeing Each Other In Contract

Is it permissible for a party to guarantee the principal or profit of another party in a contract?

It is impermissible for any party to guarantee the principal or profit of another party in a contract. A third party may, however, serve as guarantor.

The Merchant's Request With Regard To Paying The Bank A Percentage Of The Value Of The Goods

Is it permissible for the merchant or the importer to pay the bank a 20% profit margin on the deal in order to guarantee the transfer of the value of the goods to the exporter within a month? If not, what is the Shariah compliant way of executing such a transaction?

It is not lawful for the importer to pay the bank 20% as profit margin on the deal in order to guarantee the transfer of the value of goods to the exporter as that would be analogous to the importer borrowing the price of the goods from the bank at that rate. The Shariah-compliant way of executing the transaction is by means of a Musharakah. The bank becomes the merchant's partner in the ownership of goods by purchasing a portion of the goods in foreign currency. Thereafter, each has the right to contract for a commercial partnership which accords both partners the right to dispose of all the goods and share profits on the basis of an agreement between them. In this way the merchant is able to transfer the price of the goods to the exporter in foreign currency paid by the bank. If a loss occurs, it is absorbed by partners in proportion to their share of investment capital.

Permissibility Of Guaranteed Capital

Are guaranteed capital products permissible, namely Euro funds with guaranteed capital in life insurance?

No. Also conventional life insurance is impermissible. This is not to be confused with the allowance of third-party guarantees which are allowed in some cases. Please read AAOIFI's Shariah Standard on guarantees for more information.