

IJARAH

Period Of Lease Begins With Delivery Of Property Or Service

Does the lease, and the obligation of rent, begin with the finalization of the lease agreement or with the delivery?

The lease itself, and the obligation of rent, begins with the delivery (and usability) of the leased property or service, not with the finalization of the agreement.

Ijarah of Consumable

May I create an Ijarah agreement of a consumable item?

The leased asset should not be a consumable item, like food, whose quantity reduces with consumption, but rather a durable, like machinery or property, whose market value might depreciate, but quantifiably remains the same.

Leased Property (Or Service) May Only Be Used For Intended Purpose

Is it permitted to use the leased property or service for purposes other than the ones identified in the lease contract?

The property (or service) may only be used for its intended purpose, or as agreed upon with the lessor.

Leased Property

May the lessor sell all or part of the leased property to a third party during an existing lease contract?

The lessor may sell all or part of the leased property to a third party during the lease. The property may only be sold if ownership is also transferred to the new lessor. The original lessor may not sell only the right to receive rent and still maintain ownership.

Ijarah: Basics Of Liability Distribution

How is the liability for damage distributed between the lessor and the lessee in an Ijarah agreement?

The lessee is liable for damage to the property caused by wear and tear, and other factors within the lessee's control while the lessor is liable for damage resulting from ownership, barring lessee negligence.

Lease Period

When does the lease period begin?

The lease, which may even be fixed for a future date, commences with the delivery (and usability) of the leased property or service.

Sub-Leasing Leased Property Or Service

May the lessee sub-lease the leased property or service to a third-party?

The lessee may sub-lease the property or service to a third party with the lessor's permission. In the Hanafi school the sub-lease may only be at a rate less than or equal to the original lease, though the lessee may charge a higher rent if, with the lessor's permission, he increases the property's value by developing it. In the Shafi'i and Hanbali schools no such condition applies and the lessee may agree any amount of rent with the sub-lessee, assuming the lessor permits sub-leasing.

The Termination Of Lease

What events result in termination of the lease?

The lease terminates when one or more of the following events occur:

1. the property or service becomes worthless;
2. both parties mutually decide to terminate the agreement;
3. one party unilaterally terminates the lease if the other party contravenes the agreement.

When the lease terminates:

1. the lessor reclaims physical possession of the leased asset and continues sole ownership;
2. the lessor may demand compensation from the lessee to the extent of any damage to the leased property;
3. the lessor may not demand that the lessee pay any of the remaining rent;
4. the contract may not stipulate in the agreement that the property transfers to the lessee upon termination, as a gift or otherwise, because the Shariah forbids that one contract condition another; in this case, a lease contract conditioned by a transfer of property contract.

Some scholars allow that, in a separate contract, the lessor may unilaterally promise to sell at a specified price or gift the leased property to the lessee. Upon termination, the lessee may opt to take ownership of the property, but the lessor may not force the transfer. The lessee, on the other hand, may enforce the lessor's promise.

Penalties On Late Rental Payments

In case of late payment, can the lessor charge the lessee a penalty?

If the lessee is late in paying rentals, the lessor may not gain any benefit from a penalty, because the money becomes a debt, and any receipt in excess of a debt is riba. Rather, the contract may stipulate that in the event of delayed payment, the lessee must pay a certain amount to a specified charity.

The Lessor's Obligation To Pay For Insurance

Whose responsibility is it to pay for any legally required insurance and who is entitled to receiving any payout from the insurer?

The lessor is obligated to pay any legally required insurance on the leased property; any payout by the insurer should go to the lessor and the net amount (i.e. total payout less total premiums paid) should be given away in charity to avoid riba.

Wrongfulness Of Trading Rental Claims Without Transferring Ownership

What is said of trading rental claims without transferring the proportionate ownership of the leased asset?

Ownership, not the right to claim rent, represents the tradable portion of the certificate. The Shariah permits the trading of assets, not of money, for profit, and a rental claim is a receivable that represents money. So trading rental claims without first transferring ownership is forbidden. But it is acceptable for many buyers seeking ownership and many sellers seeking profit to trade Ijarah certificates like common securities in a capital market.

Restrictions On Rental Usage

May the owner put restrictions on the usage of the rented property or service?

The owner is entitled to specify how the property may or may not be used or the rented service conducted.

Cancelling Rent

May one of the parties to the rental contract, before the expiration of the rental period, cancel the rental contract unilaterally?

It is impermissible for the tenant or the owner to cancel the rental contract before the expiration of the rental period without the consent of the other party.

Commencement Of The Lease

Is the commencement of the lease, and the resultant rental obligation, according to usage or according to the terms of the contract?

The lease, and the resultant rental obligation on the lessee, commences according to the contract, not according to usage, provided the leased asset is usable at the time the lease period commences. If the rental period has begun, but the tenant has not begun using the property (provided the asset is available to use), the tenant is still obligated to pay rent.

Lessor's Right To Withhold Leased Asset

Under what circumstances may the lessor exercise his right to withhold the leased asset?

The lessor is entitled to withhold the leased asset if the lessee delays payment, as long as the benefit from the usufruct of the property or the execution of services has already occurred, unless parties on both sides agree.

Events Resulting In The Cancellation Of The Lease Agreement

When is the lease agreement cancelled?

The lease agreement is cancelled if:

1. the tenant or the owner pass away;
2. the tenant or the owner agree to cancellation;
3. the property or service rented out is of unacceptably low quality.

Advanced Deposits

Is it permissible to pay an advanced deposit on a lease to the lessor and can the lessor withhold it if the lease agreement is cancelled before it begins?

It is permissible to pay an advanced deposit to the lessor, but it is impermissible for the deposit to be withheld by the lessor if the lessee cancels the agreement before its commencement.

Lessee's Liability For Loss

When is the lessee liable for loss?

The lessee is responsible only for loss, damage or theft resulting from his own negligence, but not otherwise; it is improper for the lessee to make a general promise to pay for all loss, damage or theft before any even occurs, or to make such a promise after a loss, damage or theft occurs but when the cause is still unknown.

Legality Of Ijarah

What are some of the legal bases for the permissibility of Ijarahs?

The Quran states, "And if they suckle your (offspring), give them their recompense." (Al-Talaq: 6) And the Prophet Muhammad (Allah bless him and grant him peace) said, "He who hires a worker must inform him of his wage." (Al-Bayhaqi from Abu Hurayra)

Islamic jurists have been in consensus on the legal validity of Ijarah from the time of the Prophet (Allah bless him and grant him peace) stating that Ijarah makes it possible to lease assets to those who are in need of them, thereby making it a suitable and profitable transaction for both parties—the lessor gets consideration in exchange for leasing his asset while the lessee is able to acquire and use an asset that he would otherwise not have been able to.

Usufruct As Subject-Matter Of Ijarah Contract

Why is usufruct, rather than the asset being leased, treated as the subject-matter of an Ijarah contract?

Usufruct is treated as the subject matter of an Ijarah contract because its utilization is the purpose of leasing the asset. The contract is being drawn only so that the lessee is authorized to benefit from the usufruct of the asset being leased. The asset is not being transacted, the right to use the asset is.

Timing Of Ijarah

When does the contract of Ijarah come into effect?

Unless otherwise agreed, an Ijarah contract comes into effect immediately after the conclusion of the contract. It is permissible to defer an Ijarah to a future date agreed upon by both parties.

Contingent Ijarah

Is it permissible to make an Ijarah contingent on the occurrence of a future event?

It is not permissible to make the contract of Ijarah contingent on the occurrence of a future event. However, it is permissible to make specific provisions within the Ijarah contract contingent upon the behavior of either party. This entails, for example, that both parties may agree to reduce the rent in the event of early payments by the lessee.

Leasing Usufruct Of Jointly-Owned Asset To Partner Or Third Party

Is it permissible for the owner of a jointly-owned asset to lease the asset to his co-owner?

It is permissible for a co-owner to lease his share of the jointly-owned asset to another co-owner or to a third party.

Ijarah Of Asset Providing No Independent Utility

Is the Ijarah of an asset permissible when it does not provide any utility independently but is only used in conjunction with another asset?

It is permissible to lease assets that are not capable of giving benefit as independent units – such as machinery parts which do not function independent of the machine they belong to. However, if the lease is one that ends in ownership (Ijarah Muntahia Bittamleek), it would not be permissible to lease such assets.

Ijarah Rental Payments In Kind

May Ijarah rental payments be made in kind?

Similar to a regular sale transaction, Ijarah rental payments may be made in cash or in kind. Any

valid consideration in a contract of sale may be agreed upon as rent in a contract of Ijarah.

Deferred Ijarah Rental

Is it permissible to defer Ijarah rentals to a mutually agreed upon date?

It is permissible to defer Ijarah rentals by mutual consent of the contracting parties.

Usufruct As Consideration For Ijarah Rental

Is it permissible to agree upon usufruct to be used as consideration for an ijarah rental?

It is permissible for Ijarah rentals to be paid in the form of usufructs.

Benchmarking Ijarah Rentals

Is it permissible to benchmark Ijarah rentals?

This relates to whether it is permissible to omit specifying the Ijarah rentals at the time of executing the contract; instead, agreeing on an “equivalent rent” that is either benchmarked against a known and acknowledged standard or is identified by expert appraisal. Islamic jurists are at a consensus that, while it is necessary to fix the amount of rental for the first period of rental payment, the rentals for the remaining period may be benchmarked against known and acknowledged standards or be open to expert appraisal.

Altering Ijarah Contract To Modify Rental Period

Is it permissible to alter an existing Ijarah contract in order to change the period of rentals from yearly to monthly and so forth?

It is permissible to alter an existing Ijarah contract in order to change the frequency of rentals. However, this should not have any effect on any liabilities outstanding from the date of the contract.

Obligation Of Lessor To Deliver Leased Asset

What is the lessor’s obligation with regards to delivering the leased asset?

The lessor is obliged to deliver the asset and all associated leased items necessary to transfer the usufruct to the lessee and leave it to the lessee's disposal until the end of the lease term. Any accident that hampers the lessee from utilizing the usufruct—not being an accident caused by the lessee—must be corrected by the lessor.

Defect In Leased Asset

What is the liability of contracting parties in case any defect is found in the leased asset?

A defect is defined as a compromise or diminishment of the usufruct. In such a case, the lessee has the option to rescind the contract. The lessee may, however, continue to use the usufruct provided he is paying the agreed-upon rentals.

Obligations On Lessee Regarding Leased Asset

What are the obligations of the lessee regarding the usage of the leased asset?

The lessee should utilize the leased asset according to the customary practice by which similar assets are used. He should take all measures to preserve it from any damage or defect. The lessee is entitled to derive benefit from the usufruct in the manner provided for in the contract. The lessee may not utilize the usufruct in a manner that is beyond the scope of the Ijarah contract.

Liability Of Lessee Regarding Damage To Leased Asset

What is the liability of the lessee regarding damage to the leased asset?

The leased asset is in the possession of the lessee as a trust and damage resulting from the lessee's negligence is borne by the lessee.

Leased Asset Being Used For Unlawful Purposes

What should a lessor do upon becoming aware of a lessee's intention to utilize a leased asset for unlawful purposes?

If the lessor becomes aware of a lessee's intention to utilize a leased asset in unlawful ways, he should rescind the contract. Any rental payments earned before rescission are lawful for him to accept, while all subsequent rentals are unlawful. However, if the core purpose of the Ijarah contract is lawful—such as leasing a car—the Ijarah is not rendered unlawful by any sins on the part of the

lessee.

Maintenance Of Leased Asset

What is the liability of the lessor and the lessee regarding the maintenance of the leased asset?

The leased asset is in the ownership of the lessor and is rented to the lessee as a trust in return for its usufruct. Therefore, the maintenance of the leased asset is the responsibility of the lessor. The lessee is entitled to reimbursement of all maintenance expenditures made by him with the permission of the lessor, either in the contract or otherwise. However, if the lessee pays for maintenance of the leased asset without the permission of the lessor, he is not entitled to compensation. It is important to note that maintenance here is referred to as major maintenance (ie. engine overhaul) according to customary practice for that particular asset. Minor maintenance (ie. cleaning) would typically be the responsibility of the lessee, depending on the customary practice of that particular asset.

Maintenance Responsibility On Lessee

What is the legal status of a lease contract that makes maintenance of the leased asset the responsibility of the lessee?

An Ijarah contract that makes the lessee responsible for the maintenance of the leased asset is considered void.

Responsibility Of Lessor and Leased Asset Defect

What is the responsibility of the lessor if a defect is found in the leased asset?

It is the responsibility of the lessor to undertake all necessary repairs that enable the lessee to make use of the asset in accordance with the terms of the Ijarah contract. Whether the defect occurred after the execution of the contract, or was present on the contract date unbeknownst to the lessee, is of no consequence.

Repair Of Known Defect In Leased Asset Existing At Contract Date

What is the liability of the lessor regarding defects in the leased asset existing on the contract date and known to the lessee?

The lessor is not obliged to repair any defects existing on the contract date and known to the lessee

unless stipulated otherwise in the Ijarah contract.

Rights Of Lessee In Case Of Default In Repair Of Leased Asset

What are the rights of the lessee in case the lessor refuses to repair the defects in the leased asset?

The lessee has the right to rescind the Ijarah contract in case the lessor refuses to repair any defects in the leased asset that occurred either after the contract date or were existing at the contract date but were unknown to the lessee.

Charging Lessee With Insurance Of Leased Asset

Is it permissible for the lessor to charge the lessee with the insurance of the leased asset?

It is permissible for the lessor to include a clause in the Ijarah contract making the lessee responsible for insuring the leased asset.

Maximum Term Of Ijarah Contract

What is the maximum term of an Ijarah contract?

There is no maximum time limit for an Ijarah contract.

Obligation Of Rent In Case Usufruct Does Not Meet Expectations

Is the lessee obliged to pay lease rentals if the usufruct does not meet expectations?

The lessee is obliged to pay lease rentals as long as the usufruct of the leased asset is at his disposal. However, he reserves the right to rescind the contract in the event that the usufruct does not comply with the terms of the Ijarah contract, after which no monthly rentals are due.

Withholding Lease Asset In Case Of Default In Lease Rental

Is it permissible for the lessor to withhold the leased asset if the lessee defaults on his lease payments?

It is permissible for the lessor to reclaim the leased asset if the lessee defaults on lease payments, though he would not be required to do so and could grant respite.

Lessee Sub-Leasing Leased Asset

Is it permissible for the lessee to sublet the leased asset?

It is permissible for the lessee to sub-lease the leased asset if the Ijarah contract does not prohibit it. The lessee is free to sublet at any rate, whether the same, higher, or lower.

Rescission Of Ijarah Contract In Case Of Damage Or Theft Of Leased Asset

Is it permissible for the lessor to rescind the Ijarah contract in case of damage or theft of the leased asset?

The lessor reserves the right to rescind the Ijarah contract in case of excessive damage to or theft of the leased asset.

Multiple Ijarah Contracts For Single Leased Asset

Is it valid to have multiple Ijarah contracts for a single leased asset? What is the status of such contracts?

It is permissible for contracting parties to draw multiple, concurrent, independent and periodical Ijarah contracts for the same leased asset, without any one being contingent on the other. Only the first contract is binding upon both parties. The subsequent contracts are considered supplementary and may be rescinded unilaterally.

Rescission Of Ijarah Contract In Case Of Defect In Leased Asset

What are the rights of the lessee regarding the rescission of an Ijarah contract when the leased asset contains defects?

If the leased assets contains or develops defects, the lessee may rescind the Ijarah contract, return the leased asset to the lessor and demand compensation for the period of defect. However, if the defect does not hinder utilization of the usufruct, the lessee may not rescind the Ijarah contract.

Similarly, if the defect is removed immediately by the lessor, before the lessee rescinds the contract, the lessee may not rescind. An expert technical opinion may be taken to determine whether the contract may be rescinded due to a particular defect in the leased asset. The lessee is permitted to exercise his above mentioned rights only in the case of an Ijarah of a specific leased asset.

Lease Rentals Upon Rescission Of Contract

What is the status of lease rentals due to the lessor at the time of the rescission of the contract?

The lessee is obliged to pay all lease rentals that were accrued up to the point of rescission, but not those outstanding after rescission.

Differentiating Between Invalid And Void Ijarah Contract

Is there any difference between an invalid Ijarah contract and a void Ijarah contract?

Islamic jurists have not differentiated between the two. A contract is prohibited if it does not fulfill the requirements of the Shariah, and prohibition necessitates non-existence of the contract. In an invalid or void contract, if the lessee benefits from the usufruct, or if time elapses during which the leased asset could have been utilized, the lessee pays equivalent rent, assessed as being the rent of similar usufruct.

Termination Of Ijarah Contract

When is the Ijarah contract deemed to have terminated?

The Ijarah contract is deemed to have terminated either by the contractual terms, one of the party's rescission, or the termination of the possible usufruct of the leased asset through theft, destruction, or the like.

Leasing Of An Asset To Multiple Lessees

Is it permissible for the lessor to contract an Ijarah with more than one lessee for the same asset?

It is permissible to lease the same asset to more than one lessee. If the lease terms are of identical duration, both lessees are entitled to utilize the usufruct during that period.

Status Of Advance Payment By Lessee In Contract Of Ijarah Involving Gradual Sale

What is the status of advance payments in a contract of Ijarah involving the gradual sale of an asset to the lessee?

Advance payment by the lessee in such a contract is considered a trust which the lessee gives in order to convey his seriousness to fulfill his promise of purchasing the leased asset at the end of the lease term. It is not considered part of the rental payment. If allowed for in the contract, the lessor may keep this advance payment should the lessee fail to honor his promise.

Charging First Month's Rent In Advance In Ijarah

Is it permissible for the lessor to charge the first month's rent in advance from the lessee?

The lessor may charge the first month's rent in advance only provided that the leased asset was purchased and received at the time of the contract.

Absolving Lessor From Responsibilities

Is it permissible to include a clause in an Ijarah contract absolving the lessor of all responsibilities towards the leased asset such as maintenance?

It is not permissible to include provisions in an Ijarah contract that absolve the lessor from his responsibilities towards the leased asset.

Recourse In Case Of Delayed Lease Payment By Lessee

What recourse is available to the lessor if the lessee delays lease payments?

The lessor has the right to charge late payment fees. This charge may consist of an administrative charge and a late-payment penalty where administrative charges are the right of the lessor while the late-payment penalty is paid to a designated charity.

Making Lessee Liable To Pay Future Rentals Upon Rescission

Is it permissible to include a clause in an Ijarah contract that makes the lessee liable to pay all remaining rentals in the event of rescission?

It is impermissible to include any clause that forces the lessee to pay all remaining rentals in the event of rescission. The proper procedure is to either continue with the contract until the end of the stipulated lease term or for the lessor to approve rescission, take back possession of the leased asset and relinquish claims to any further lease rentals.

Promise To Purchase Leased Asset At End Of Lease Term

Is it valid to include in the Ijarah contract a promise from the lessee to purchase the leased asset at the end of the lease term?

A promise to purchase a leased asset should be kept independent of the contract of Ijarah. However, if done separately, it would be permissible to enter into this unilateral promise at the same time as the Ijarah.

Registering Leased Asset In Name Of Lessee

Is it permissible to register the leased asset in the name of the lessee?

In general, the leased asset is owned by the lessor and should be in his name. However, in certain cases, the asset may be registered in the name of the lessee. This may be done for regulatory reasons or to make use of available exemptions. However, in such a case, a counter-bond is customarily taken from the lessee.

Time-Share Leasing Contracts

What is a time-share leasing contract and is it permissible?

A time-share lease contract is a permissible leasing structure where the lessor leases the same asset to multiple lessees for different time-periods, with none of the time periods overlapping with one another.

Assigning Of Usufruct By One Lessee To Another In Time-Share Lease Contract

Is it permissible for a lessee to assign the usufruct of the leased asset to another lessee of the same asset in a time-share lease contract?

The lessee may transfer the usufruct of the leased asset to another lessee of the same asset with the permission of the lessor. In such a case, the original contract between the lessor and the lessee to whom the usufruct is transferred is considered rescinded and a new contract is entered into.

Responsibility Of Lessor In Ijarah

In relation to the leased asset, what is the lessor responsible for?

With regards to the leased asset, the lessor is responsible for:

- The risk associated with the leased asset, during the entire period of lease, belongs to the lessor. It is the lessor's responsibility to replace the leased asset in case of any damage to it barring negligence on the part of the lessee.
- The major maintenance and insurance of the asset during the period of lease and the resulting expense is the lessor's responsibility entirely.
- At the time of the establishment of lease rentals, the lessor may cover his insurance cost, however, once the rentals have been fixed, any increase in the insurance premiums cannot be adjusted in the rental amounts to be paid by the lessee. The lessor will have to bear the additional insurance expense himself or adjust it to the rentals of the next ijarah term.
- The lessor may assume responsibility for insurance by making the client his agent to deal with the insurance company.

Rent In An Ijarah

What are the criteria for determining rent and remuneration in an Ijarah?

To determine rent and remuneration, the following criteria must be fulfilled:

- The Ijarah rental must be known and clearly defined. Different rentals may be established for different periods within an Ijarah or linked to a well known benchmark.
- Rental may be determined by the total cost of acquiring the leased asset. Once the rental amount has been fixed for a term of the Ijarah, there cannot be an increase in insurance costs. However, the rent for the remaining period may later be adjusted by mutual agreement to include the increased cost.
- The rental begins to accrue from the time the leased asset is delivered to the lessee and he is able to use it.
- Remuneration for a service Ijarah is determined in relation to time.

Floating Rental In Ijarah

What is a floating rental and what are the prerequisites for charging it?

A floating rental in an Ijarah refers to charging different rentals for different periods within the term of an Ijarah contract based on a well known and acknowledged standard or benchmark. In order to float rentals:

- The rent for the first period must be known. For instance, in the case of a 5 year lease for which the rent is to be paid quarterly, the rent for the first quarter must be known. Rent for subsequent periods may be set as floating rentals.
- The floating rental must be linked to a well known and appropriate benchmark and should be subject to a floor and a cap. For example the floor may be set at 9% and the cap at 18%. The rent may be allowed to float within these two limits.
- The rent based on the benchmark, must be decided at the beginning of each period, not at its end.
- It may be that during the period of lease, the benchmark ceases to be a reference any more as a result of a shift in market preference. In order to deal with such a situation, it is decided at the time of the agreement that in such a case, a new benchmark will apply.

Security In An Ijarah

How is an Ijarah secured?

The promise of the lessee to enter into a contract after the arrival of the asset is secured by the payment of a deposit known as the Haamish Jiddiah.

The Haamish Jiddiah is either set aside or deposited in a profit bearing account based on a Musharakah or a Mudarabah. The profit earned on it is given to the lessee.

If the client backs out from entering a lease contract, the bank may make up for its loss by entering into a new lease with another party or by selling the purchased asset.

If a new lease is established with another party, the difference between the cost of the asset and the sum of all the rentals with the new client are paid by the former lessee. If the asset is sold in the market, the lessee is expected to pay for the difference between the cost of acquiring the asset and its market price.

Furthermore, it is mandatory for the lessor to possess the asset or the usufruct of the asset in order to execute an Ijarah. If the bank is not in possession of the asset or its usufruct required on lease, it must acquire it from a third party.

The insurance of leased goods is an ownership related cost and is the lessor's liability throughout the period of the contract.

Rulings On Title Of Ownership Of Leased Assets

What is the ruling regarding the title of ownership of the leased asset?

Upon acquiring an asset, particularly for the purpose of an Ijarah Muntahayya bi Tamleek, the bank assumes the title of ownership.

When the lease expires, the ownership of the goods and their title is transferred to the client.

In certain cases, the asset may be registered in the name of the lessee early in the contract. This may be done for regulatory reasons or to make use of available exemptions. In such a case, a counter-bond is taken from the lessee to authenticate actual ownership.

The bank, as the owner, is responsible for the asset throughout the period of the lease. The client merely possesses the legal title of ownership for purposes of practicality alone. The insurance of leased goods is an ownership related cost and is the lessor's responsibility throughout the period of the contract.

Transfer Of Ownership Of Leased Asset

What are the ways by which the leased asset may be transferred to the lessee?

If a transfer of ownership is to take place at the end of an Ijarah, a document separate and independent of the Ijarah contract must be prepared.

The transfer of ownership may take place in one of the following three ways:

1. The lessee may undertake to buy the asset at the end of the period of lease for a certain amount that is mutually decided between both parties at the beginning of the contract. This amount may be the actual cost of the asset or any other nominal value.
2. The lessor may undertake to gift the asset to the lessee at the end of the Ijarah period.
3. The lessee may even purchase the asset during the period of the lease by making a complete payment of all the rentals owed by him or alternatively, the lessor may allow the lessee to purchase the asset at its market value.

Default In Ijarah

How does a financial institution deal with default in an Ijarah?

Like all other Islamic financial contracts, a penalty for a default in payment cannot be enforced. It is permissible for the lessor to maintain a security or collateral which can be liquidated in order to recover any outstanding debt. The creditor is permitted to make up for direct and actual costs through this liquidation.

Advance Rent In Ijarah

Is it permissible for the lessor to receive advance rent for an Ijarah?

It is permissible for the lessor to receive advance rent for an Ijarah. The advance rental is called arbun and may be retained by the lessor if the lessee backs out of the lease agreement before the expiry of its term. Although it is preferable that only the actual loss be made up for from the advance rent by calculating the difference between the rental received and the rental that would have been received had the lease remained effective.

Transfer Of Corpus And Usufruct In Ijarah

What is the difference between the transfer of the corpus and the transfer of usufruct in an Ijarah?

The transfer of the corpus refers to a change in ownership, while the transfer of usufruct refers to a change in the right to use something. The transfer of ownership of an asset to a third party refers to the transfer of both its corpus and its usufruct. If the usufruct is already leased to another party it may not be transferred, however, the rent based on this usufruct may be received by the new owner. The owner of the usufruct (ie. the lessee) may share the usufruct with a sub-lessee with the lessor's consent.

Responsibility Of Maintenance Of Leased Asset

Who is responsible for the maintenance of the leased asset?

There are two types of maintenance in an Ijarah:

- **Major Maintenance:** This refers to the maintenance that is necessary to ensure that the leased asset continues to exist and provide intended use. This type of maintenance is the lessor's responsibility.
- **Periodic Maintenance:** This refers to the regular maintenance related to the use of the asset. For instance, for a car given on lease, it is the lessee's responsibility to maintain proper oil and fuel levels.

If the leased car's engine ceases, it needs to be investigated whether the problem is a result of a manufacturing default, in which case it is the lessor's responsibility to have rectified, or if it is a result of gross negligence on the lessee's part, in which case the lessee is liable to pay.

Leasing To Riba-Based Bank

Is it permissible to lease to an interest-based bank so that it may open a branch?

A lease to a bank that is not Shariah-compliant must be avoided because such a lease would directly facilitate in an impermissible act, in this case interest-based banking.

Leasing To Companies Dealing Primarily In Interest

What is the Shariah ruling with regard to the lease of property to companies or institutions whose primary business is transacting by means of interest?

It is unlawful for a Muslim to aid in the impermissible, and leasing property to a company whose primary business is interest-based would be considered impermissible.

Leasing To Retailers Of Prohibited Items

What is the Shariah ruling with regard to leasing real estate to supermarkets, restaurants, hotels or tourist shops whose products may include Islamically prohibited items?

If the purpose of the lease is purely prohibited, like a bar or a nightclub, then the lease contract is prohibited because the subject of the contract itself is prohibited. It is lawful, however, to lease property to a business concern whose primary business is in lawful goods and services even if it is to a lesser degree supplemented by income from unlawful goods and services.

Dissolution Of Ijarah Contract

If the lessee returns an item that has been leased during a period for which payment has already been made in advance, is it lawful for the bank to again lease the item before the period of the previous lease has expired?

If the lessee returns the item as a result of compelling circumstances, the remainder of the lease payment must be returned to the lessee since the lease will be considered to have been dissolved for a valid reason.

If the lessee returns the item merely because he wants to and the bank agrees to the return, the remainder of the lease payment must be returned to the lessee based on a mutual dissolution of the lease.

If the lessee stipulates that the item must remain in his name until the completion of the lease period

and not be leased to another then the remainder will not be returned and the item will remain at the disposal of the lessee until the lease expires.

Seeking Dissolution Of Contract After Lease Has Begun

If a lease contract is mutually dissolved before it expires, is it permissible for the bank to deduct a part of the lease and insurance payments?

If there are compelling circumstances that leave the lessee with no choice but to dissolve the contract then the Ijarah will be considered dissolved from that date. The lessor will be entitled to receive payment for the period of the contract's validity whereas the rest will be returned to the lessee.

Gifting Leased Asset To Lessee On Completion Of Lease Payments

Is it lawful for the lessor to promise the lessee to gift him the leased asset on condition that the lease is paid in full?

It is lawful in an Ijarah to promise to make a gift of the leased asset to the lessee when the lease expires on condition that all payments are made in their entirety.

Offering To Sell The Leased Asset At Specified Time For Specific Price

Is it permissible to issue an offer in which a time is specified for the sale of the leased asset at a certain price?

It is permissible to issue an offer in which a time is specified for the sale of the leased asset for a certain price. The one making the offer is legally bound to honour the offer for the duration specified and the other party may accept or refuse it during the same period.

Sub-Leasing At Higher Rate

Is it permissible to lease something for a certain rate and then to sub-lease the same to another for a higher rate?

It is lawful to lease something for a certain amount and then sub-lease it to another for the same amount or for more or less so long as the lessor permits it.

Once the right to the usufruct passes from the first lessee's disposal by means of a later contract of lease it is no longer lawful for the first lessee to use what has passed from his ownership and become a debt owed to him by another.

Leasing At A Daily Increasing Rate

Is it permissible for the lessor and the lessee to agree on a contract of lease for a daily rent amount which increases such that each day the rent is higher than the day before?

Such an Ijarah contract is lawful since the increase is a part of the original contract and does not arise as a result of a delay in payment, which would be prohibited.

Reverting Of Part Ownership

Is it permissible for the bank to lease automobiles to a company for a specified period of time on the condition that half the ownership of the automobiles will revert to the company after the lease period has been completed?

It is permissible for the bank to lease automobiles to the company however to revert half the ownership of the cars to the lessee company after completion of the lease period is subject to rules concerning the promise to purchase. A new sales contract, separate and independent of the previous lease agreement, must be entered into in the event that the cars are to be sold.

Leasing Shares In Projects

What is the Shariah perspective with regard to the bank leasing out shares in projects to its investors in return for a variable monthly or yearly lease?

The Shariah permits the bank to lease out its shares in projects to its investors in return for a variable monthly or yearly lease so long as it is against tangible assets such as real estate and equipment. The bank must also ensure its understanding of the principles of lease and the benefit it may gain by making the monthly or yearly rent variable.

Purchasing Leased Asset Before Termination Of Period Of Lease

Is it lawful for the bank to agree from the beginning of the lease that the lessee will purchase supplies and equipment from the bank at the end of any year from among the years of a lease contract?

It is not lawful for the bank to agree from the beginning of the lease that the lessee will purchase

supplies and equipment from the bank at the end of any year from among the years of a lease contract since it would create gharar (contractual ambiguity leading to dispute) about the duration of the lease period and when it is to begin. This, however, does not prevent the two parties from agreeing that the second party will have an option to choose at the end of the first year and at the end of each subsequent year within the lease period, to consider purchasing the leased equipment. If the lessee decides to purchase the leased equipment, he must agree to make the installment payments for the entire period he benefited from the usufruct of the goods. With the exercise of such an option by the lessee, the lease contract will stand immediately terminated.

Leases As Financial Rights

Is it lawful for the bank to sell leases considering these contracts represent financial rights?

It is not lawful for the bank to sell leases because it does not own the right to the usufruct of the leased goods which is the financial right possessed by the lessee during the period of the lease.

Transferring Ownership Of Corpus Of Leased Asset To New Buyer

Is it lawful for the bank to sell leased equipment and supplies to a new buyer who will continue to honour the lease concluded between the bank and the lessee?

It is lawful for the bank to sell the leased equipment and supplies to a new buyer since doing so does not affect the lease contract. Ownership of the usufruct is transferred by way of a lease whereas ownership in the object or corpus is transferred by way of a sale contract; each is separate and independent of the other. It must be ensured however that the sale does not affect the rights of the original lessee in any way.

The Purchase Of Leased Equipment

What is the ruling with regard to the bank purchasing a leased asset?

It is permissible for the bank to purchase a leased asset that is already under lease. The bank as the new owner assumes the responsibility of the owner's share of the maintenance which includes everything essential to the running condition of the leased item so that the usufruct it was contracted for remains available to the lessee.

When To Begin Payments In A Lease

The bank leases land for the purpose of building a branch office. The improvements on the land and

the construction of the branch office require two years before it can be opened for business. When is the bank required to begin lease payments on the land; from the time of possession or from the time the branch office is opened?

Payments are required from the lessee from the time of taking possession of the item leased from the lessor. In the case mentioned, payments will be due as soon as possession of the land is assumed by the lessee.

Payment Before Receipt

Is it lawful for the lessor to demand payment before delivering the leased asset to the lessee?

It is not lawful for the lessor to demand any payment from the lessee before the asset of lease is delivered to him and he is able to benefit from its usufruct.

Demanding Payment Prior To Asset Delivery

Is it lawful for the lessor to demand payment before delivering the leased asset to the lessee?

It is not lawful for the lessor to demand any payment from the lessee before the asset of lease is delivered to him and he is able to benefit from its usufruct.

Leasing Something Not Yet Existent

Is it lawful to lease a building for which detailed architectural plans exist before it is built, on the understanding that it will be handed over as soon as it is completed?

It is not lawful to lease a building for which detailed architectural plans are drawn but has not yet been constructed as such a lease would be the lease of something not yet existent. Such ambiguity about the description of the building and the time it will be ready for occupancy may lead to dispute.

Property In Leasing Funds

Will it be lawful to offer previously leased properties in an investment fund?

Leased properties are not suitable for offering in an investment fund since the usufruct of the real estate becomes the possession of the lessee with the signing of the lease contract and there is no

way thereafter for the owner of the property to sell his share in the usufruct or for a partner to have a right to the earnings on his share of it. This is because what the owner retains after the lease is the counter value of the usufruct or the debt that has become the liability of the lessee and it is not permissible to sell debt.

Leasing And Managing Leases

Is it lawful for Islamic companies to lease equipment like airplanes and heavy machinery to other institutions for a certain period of time, i.e. ten years and then after two years, sell the equipment along with the leases to another company, all the while continuing to manage the equipment for the life of the leases, collecting the lease payments and delivering them to the new owners?

It is permissible for Islamic companies to purchase equipment that carries already concluded lease contracts for it. The lease will continue for as long as was specified in the Ijarah agreement, which is a binding contract. The first lessor is permitted to manage the equipment by collecting the payments from the lessee and guaranteeing that the lessee will honour his financial obligations.

Conditions For A Sublease

What are the conditions that must be met in order to sublease an asset?

The usufruct of an asset may only be subleased by the lessee with the owner's consent. The revenue generated by the sublease is distributed among the lessees proportionate to their ownership in the usufruct of the leased asset. At the end of the lease period, the asset is retrieved by the lessees from the sub-lessees and then eventually from the lessees by the lessor.

Permissibility Of Sale And Lease Back

When is a transaction of sale and lease back permissible?

In order for a sale and lease back transaction to be Shariah-compliant, and not be analogous to a buy back, the period of lease before the asset is repurchased should be at least one year and the agreement to sell the asset must be separate from the contract of lease. Such a transaction is not ideal but is permitted in certain circumstances to facilitate the genuine needs of customers seeking to avoid interest-based transactions.

Difference Between Conventional Hire Purchase And Islamic Lease With Option To Purchase

Are the concept, structure and features of a hire purchase the same or legally and fundamentally different from an Ijarah Thumma Al-Bai, i.e. lease with the option to purchase?

No they are not the same. A conventional hire purchase is not permissible in Shariah because the sale occurs at the end of the hire period although it is entered into at the beginning of the hire period. The Shariah-compliant version of the hire purchase avoids this by either transferring ownership through a conditional promise or by a promise to sell on the part of the owner at a nominal price. So in short they are different legally and structurally.

Ijarah Asset Possession

In an Ijarah contract who has the asset's possession and ownership and when is it transferred and on what consideration?

In an Ijarah, the lessor is the sole owner of the asset. The lessee is given usufruct of the asset for a particular usage over a particular period of time. Depending on the Ijarah, ownership may either remain with the lessor after the lease period, or the lessor may enter into a separate contract to transfer ownership to the lessee.