

# ISTISNA

## **Financier's Rejection Of Goods In Istisna**

*Can the financier cancel the Istisna contract in case the goods delivered do not conform to the specific instructions given by the financier?*

The financier reserves the right to reject products not manufactured to specification, though must accept items manufactured equal to or superior to expectations. The contract may be cancelled unilaterally by either party before manufacturing commences, but not after.

## **Tying Price And Delivery In Istisna**

*May the price of the istisna good be linked to the timeliness of its delivery?*

Both parties may agree to link the price of the product with the timeliness of its delivery; and the financier is entitled to unilaterally cancel the contract if the production period exceeds some pre-agreed duration, though it is recommended for the financier to grant the manufacturer respite.

## **The Financier May Also Be Manufacturer In Istisna Agreement**

*May the financier in an Istisna agreement play the role of a manufacturer?*

It is permissible for the financier to play the role of manufacturer: for example, a financial intermediary like a bank can enter into an Istisna agreement with a home buyer whereby the bank agrees to build the house (by hiring a contractor in a separate agreement) and the buyer agrees to buy the house; the bank assesses its cost and adds its profit and sells the house to the buyer, whether in installments or as a lump-sum before, during or after production.

## **Istisna For Natural Products**

*Is it permissible to sell agricultural products under an Istisna contract?*

The Istisna contract is valid for manufactured goods, not agricultural products. However, if agricultural products are subjected to manufacturing that transforms them from their natural state—such as juice extracted and processed from fruit—it would be permissible.

## **Responsibility Of Seller In Istisna**

*What is the seller responsible for in an Istisna with respect to the asset prior to delivery?*

The seller bears all responsibility related to ownership of the asset prior to its delivery to the purchaser. This includes responsibility towards any damage to the asset, maintenance expenses, and, if necessary, insurance.

## **Deferred Sale Under Istisna Contract**

*Is it permissible to contract with a party and accept advance payments for an asset that is under construction and will be delivered upon completion?*

It is permissible to contract an Istisna agreement in which an under-construction sale asset will be delivered in the future upon completion, while the sale price is paid in installments from the date of the contract.

## **Receiving Share Of Manufactured Product As Consideration In Istisna Contract**

*Is it permissible to finance a party by manufacturing a mutually agreed upon item and retaining part of the manufactured product as consideration?*

It is permissible in an Istisna to manufacture a mutually agreed upon item and retain, as consideration, a specified share of the manufactured product. This share may be sold in the market, with the difference between the financing and the sale representing the profit.

## **Agent Managing Construction Work In Istisna**

*Is it permissible for a bank to appoint a third-party as an agent to manage and hand over a construction assignment in an Istisna?*

It is permissible for a bank to appoint an agent to oversee the construction project, approve payments to the contractor, and receive the completed work and deliver it to the bank's client.

## **Construction Work Under Istisna Contract**

*Is it permissible for a landowner to hand over his land to someone who promises to construct on the*

*land—undertaking all expenses and related costs—and hand over the completed project?*

Such an arrangement is permissible under an Istisna contract, based on the following procedure/conditions:

The land owner would hand over his land to the other party (the ‘contracting party’) who will build over the land any structure mutually agreed upon.

Both parties to the contract (i.e. the land owner and the contracting party) agree on a lump sum price that is to be paid, without separately specifying the cost and the profit. Part of the price may be paid beforehand as advance with the remainder being paid upon completion of work—in bulk or in installments.

In general it should be noted that Istisna allows for a lot of flexibility on price, so that if mutually agreed upon by the parties involved, virtually any payment schedule can be arranged, as long as the price is known and established beforehand.

The contracting party will bear all expenses relating to building and construction, including all expenditure on project execution.

The contracting party will be solely responsible for arranging and managing all agreements with contractors, and for the supervision of the work carried out by these contractors.

The contracting party will be responsible for handing over the completed project to the land owner.

Handover of the complete project would constitute providing delivering the project in the absolute final completed form embodying all the major and minor specifications as agreed upon between the land owner and the contracting party.

As an example, let us assume the contract between the land owner and the contracting party specified the construction of a fully-finished building of apartments.

Hence, upon delivery, the building and all of its apartments must be fully complete in every way, as must be all other aspects of the building, such as for example the parking facilities, all utility provisions (electricity/gas/water/telephone/internet/TV/cable connections, etc), and in general all features of the building that were agreed upon in the Istisna contract.

### **Supervising Of Construction Work Under Istisna**

*In the case of a bank carrying out construction work for a client under an Istisna, is it permissible for*

*the bank to make a separate agreement with the client agreeing to supervise the contractor's implementation of the contract?*

It is permissible for a bank to draft a separate contract agreeing to represent the client in supervising the contractor's implementation of the contract, provided that such a contract is kept separate from the bank's contract with the contractor and the bank's Istisna contract with the client.

### **Profit As Percentage Of Cost In Istisna Contract**

*Is it permissible to set profit as a percentage of cost in an Istisna?*

It is not permissible to measure profit as a percentage of the cost in an Istisna contract.

### **Offering Istisna Customer Lower Spot Price And Higher Deferred Price**

*Is it permissible for a bank to offer an Istisna customer the option to pay either a lower spot price or a higher deferred price?*

Only prior to the final agreement, it is permissible for the bank to give its customer the option of either paying a standard spot price or a higher deferred price. The customer must choose one option prior to execution and the contract must explicitly mention the chosen contract price and corresponding manner of payment, whether spot or deferred.

### **Deferred Delivery Of Published Works Purchased Under Istisna**

*Is it permissible to purchase published works under an Istisna contract with deferred delivery and advance payment?*

It is permissible to purchase published works under an Istisna contract and to defer delivery. Payment may be either advance or deferred. It is also permissible to lower the price for deferring delivery.

### **Istisna Requestor Being Appointed As Manufacturer**

*Is it permissible for the Istisna requestor himself to manufacture what he requests?*

It is not permissible for the Istisna requestor himself to manufacture what he requests.

### **Bank Appointing Requestor As Contractor**

*Is it permissible for a bank to appoint the Istisna requestor as the contractor?*

It is not permissible for a bank to appoint the Istisna requestor (its client) as the contractor, since this would be akin to the Istisna requestor being appointed as the manufacturer, which is impermissible.

### **Post-Contract Government Regulation Causing Additional Costs In Istisna**

*Which party in an Istisna bears any additional costs imposed by government regulation after the contract is signed?*

It is permissible to add a clause in an Istisna contract stating that additional financial commitments resulting from new government regulations imposed during the contract are the liability of the Istisna requestor.

### **Bank Obtaining Discounts From Contractor In Istisna**

*Is it permissible for a bank to obtain discounts with a construction contractor in an Istisna without passing the discounts on to the requestor?*

It is permissible for the bank to obtain discounts from the contractor without passing them on to the requestor since these are two separate contracts: one contract between the bank and the Istisna requestor and the other between the bank and the contractor.

### **Bank Obtaining Discounts From Subcontractor In Istisna**

*Is it permissible for a bank to take a share in discounts offered by a subcontractor to a lead contractor in an Istisna?*

The subcontractor is hired by the lead contractor and the bank is not a party to the contract between them. It would not be permissible for the bank to benefit from such discounts.

### **Contracting With Client Who Failed To Honor Previous Contracts With Other Parties**

*Is it permissible for a bank to contract with a client to finance construction on land owned by the client in case the client had already contracted with a contractor to construct on the same land but failed to honor that contract?*

It is permissible to contract with such a client. The client must first be asked to rescind its previous contract with the contractor according to the terms and conditions set out in that contract. The bank has absolutely no liability with regards to the previous contract since it was not a party to it.

Any outstanding debts are considered the responsibility and liability of the customer. Once the previous contract is terminated, the bank shall draft a fresh contract with the client. Due care should be taken to verify solvency of owner and ability to pay on due date. The bank is under no obligation to hire the contractor who was previously hired by the client.

### **Advance Payment To Contractor In Istisna**

*Is it permissible for a bank to make advance payment to a contractor in a contract of Istisna while the Istisna requestor, upon completion of the contract, pays the bank the contractor's fee plus an additional agreed-upon percentage as the bank's profit?*

Such a transaction is not permissible since the additional percentage is akin to interest. The correct method of payment in an Istisna contract is for the bank to contract an independent Istisna contract with the client for an agreed lump sum amount, while contracting with a contractor to undertake manufacturing for an agreed amount which is lower than the amount receivable from the client. The difference between the amount due to the contractor and the amount receivable from the client is the bank's profit.

### **Cost Of Subsequent Changes To Asset Manufactured Under Istisna**

*In the event that a bank's Istisna client requests changes to a manufactured asset, who pays?*

The parties to the Istisna contract may alter the contract and clearly specify the amount payable for the agreed-upon changes. The bank should not commence such changes before revising the Istisna contract and agreeing upon the price.

### **Conditions For Reducing Price Of Istisna Subject Matter Due To Delay In Delivery**

*What are the conditions for which the price of the Istisna subject matter may be reduced as a result of a delay in delivery?*

The conditions for which the price of the subject matter of an Istisna may be reduced as a result of a delay in delivery are

1. The delay must not be a result of circumstances outside the seller's control.
2. The calculated amount of reduction in price per day of delay and per unit of the subject matter must be fair and appropriate.