

PLEDGE

Difference Between Guarantee And Pledge

Is a guarantee different from a pledge?

A guarantee is a commitment that is made by one party in a contract whereas a pledge constitutes a fixed asset, reserved for the purpose of claiming a debt. It is not permissible to furnish a guarantee or a pledge in amanah, or trust, contracts such as Mudarabah, Musharakah and Wadia. However, a guarantee may be provided to mitigate risk in case of negligence or misconduct of either of the contracting parties.

Redemption Of Pledge

When can a pledge be redeemed?

The creditor is entitled to retain the entire pledge for any part of the unpaid debt unless partial redemption has been agreed upon. This also suggests that if a partial payment of debt has been made by the client, the creditor may retain the pledged asset unless stipulated otherwise in the contract. It is important to note that it is not permissible for the one maintaining the pledge to benefit from it while it is in his possession.

In case the pledged asset is destroyed, it is retained by the creditor as a trust. Any damage or destruction of the asset without any negligence on the part of the creditor does not affect the debt obligation in any way. In the case of loss or damage to the pledged asset due to the negligence of the creditor or a third party, the debt still remains. In such a case, both parties are entitled to agree on a set-off between the remaining debt and the amount of compensation due with respect to the pledged asset. It is also permissible for the debtor to have the pledged asset insured Islamically.

Liability Of A Pledged Asset

Who pays for the maintenance of a pledged asset?

The expense incurred in the maintenance of a pledged asset is borne by its giver while the necessary measures for the safe-keeping of the pledged asset are the responsibility of its keeper.