

Received: 10 January 2024, Accepted: 15 February 2024DOI: <https://doi.org/10.33282/rr.vx9il.131>

Research Review of the “Salam” Islamic Financing Method in Pakistani Islamic Banks: A Case Study of Bank of Khyber and Meezan Islamic Bank

Adnan¹

PhD Scholar, Department of Islamic Studies, University of Peshawar

Dr. Saleem Khan²

Lecturer, Department of Islamic Studies, University of Peshawar

Abstract

Salam, also known as Salaf, is a well-known Islamic term referring to a trade transaction wherein an individual commits to providing specific characteristics of an item to the buyer at a future date. This transaction, also termed "Bai Al-Salam," entails payment of the item's price in advance at the contract's initiation, with the item delivered later. Upon migrating to Madinah, Prophet Muhammad (peace be upon him) encountered such transactions. Rather than outright prohibition, he implemented fundamental reforms to ensure fairness. Certain farmers and manufacturers may lack the funds required to purchase seeds, fertilizers, tools, raw materials, or labor. Islam provides them the opportunity to sell their produce or goods before readiness, enabling them to acquire funds without resorting to borrowing. It's noteworthy that this permission constitutes an exception to the general rule prohibiting the sale of non-existent items, rooted in the Prophet's practice. An additional benefit of this permission is alleviating concerns about finding a buyer, as the sale concludes beforehand. This benefits both buyer and seller, with the agreed-upon Salam price typically lower than immediate-payment prices. Moreover, if the seller desires further sale, they can choose an opportune marketing time. This article also addresses the usage of Salam by some Islamic banks for financing small and medium enterprises. This application, termed "parallel Salam," involves the bank entering into a Salam contract with a third party, with repayment coinciding with the initial Salam contract. In parallel Salam, the shorter period results in a higher price, mutually benefiting both parties. Nonetheless, this method sees limited use in our country's Islamic banks. Instead, most sellers are designated as agents, a practice incompatible with Shariah principles.

Keywords: *Shariah-compliant, Bai Al-Salam, parallel Salam, Islamic banks, manufacturers*

Salam is a non-profit financial system designed to meet the financial requirements of farmers and manufacturers. While some Islamic banks leverage it effectively, there are instances where these banks engage in agreements that are either lenient or reckless, resulting in Shariah violations. The objective of this study is to discern the practices within Bank of Khyber and Meezan Islamic Bank that adhere to Islamic principles, as well as those that exhibit Shariah flaws. Furthermore, the aim is to establish a balanced system conducive to societal peace following necessary reforms.

Literal and terminological definitions of Salam

The term "Salam" in Islamic finance denotes a contract wherein the buyer pays the price of specific goods in advance, with the delivery of the goods deferred. The seller commits to providing specified goods to the buyer at a future date, in exchange for an advanced price fully paid at the time of the contract. Linguistically, "Salam" means "to give" or "to deliver" and is also utilized in the sense of "loan" in Arabic. It is said:

”أسلم الثوب للخياط”¹

"I gave tailor cloth"

Al-Mutarrizi² says:

”أسلم في البر” meaning to sell wheat with deferred payment. This term is derived from "Salam." Its original form is ”أسلم الثمن فيه” with the 'hamza' (ء) omitted.³

Both Salam and Salaf refer to the same concept. According to language experts, both terms denote a sale wherein the price is paid in advance, and the commodity is delivered at a later specified date, while the capital is taken possession of at the time of the contract.⁴

In Firuz al-Lughat, the definition of Salam is given as:

"To pay the price of something in advance."⁵

In terminology, Salam is a sale in which the obligation is binding, and its exchange is made immediately. Salam is also referred to as a pre-paid contract. Conversely, Bai' Ajil is a sale where the price of a specific item is paid in cash, and the goods are delivered later. In other words, it can be said that the price is paid in advance, and the goods (sold items) are delivered at a specified future date.⁶

Scholar Ibn Hajar Asqalani says:

¹ Ibn Manzur, Jamal al-Din, Abu al-Fadl, Muhammad ibn Mukarram ibn Ali (Alimah), "Lisan al-Arab," Dar Sader, Beirut, 1414 AH, Mada: "Ghurur."

² Your kunya is Abu al-Fath, and your name is Burhan al-Din Nasir ibn Abdul-Sayyid Abi al-Makarim ibn Ali. You are a scholar, a lexicographer, and a jurist of the Hanafi school. You were born in the region of Khwarezm in Gorgan, according to the Islamic calendar, in 538 AH, which corresponds to 1144 AD. In 601 AH, you came to Baghdad. You wrote books on jurisprudence and lexicons. You passed away in Khwarezm in 610 AH, which corresponds to 1213 AD. (Al-Zirkili, Khayr al-Din ibn Mahmud ibn Muhammad ibn Ali ibn Faris, "Al-A'lam," Dar al-Ilm Lil Malayin, 2002 CE, Vol. 7, p. 348.)

³ Al-Mutarrizi, Abu al-Fath, Burhan al-Din Nasir ibn Abdul-Sayyid Abi al-Makarim, "Al-Mughrib fi Tartib al-Mu'arrab," Dar al-Kutub al-Arabi, Beirut, n.d., Bab al-Sin al-Muhmalah, Entry: Salam, Vol. 1, p. 234.

⁴ Al-Ba'li, Abu Abdullah Shams al-Din Muhammad ibn Abi al-Fath, "Al-Matali' ala al-Faz al-Muqna'," edited by Mahmoud al-Arna'out, Maktabat al-Sawadi for Distribution, Riyadh, Saudi Arabia, 1423 AH, 2003 CE, Book of Sales, Chapter of Salam, Vol. 1, p. 293.

⁵ Firuz al-Din, "Firuz al-Lughat," Firuz Sons Private Limited, Lahore, n.d., Entry: Salam, p. 807.

⁶ Sarakhsi, Muhammad ibn Ahmad ibn Abi Sahl, Al-Mabsut, Dar al-Ma'arifah, Beirut, 1414 AH, 1993, Vol. 12, p. 124. Al-Kasani, Ala al-Din, Abu Bakr ibn Masud ibn Ahmad, Badai al-Sanai fi Tartib al-Shara'i, Dar al-Kutub al-Ilmiyyah, Beirut, 1406 AH, 1986 CE, Vol. 5, p. 201. Ibn Abidin, Muhammad Amin ibn Umar ibn Abdul Aziz, Radd al-Muhtar ala al-Durr al-Mukhtar, Dar al-Fikr, Beirut, 1412 AH, 1992 CE, Vol. 4, p. 212. Ibn Rushd al-Hafid, Abu al-Walid Muhammad ibn Ahmad ibn Muhammad, Bidayat al-Mujtahid wa Nihayat al-Muqtasid, Dar al-Hadith, Cairo, 1425 AH, 2004 CE, Vol. 3, p. 217. Ibn Qudamah, Abu Muhammad Muwaffaq al-Din Abdullah ibn Ahmad ibn Muhammad, Al-Mughni, Maktabah al-Qahira, 1388 AH, 1968 CE, Vol. 4, p. 207.

مَوْصُوفٌ فِي الدِّمَّةِ وَالسَّلْمِ شَرْعًا بَيِّعُ⁷

"The legal meaning of Salam is to undertake the responsibility of selling something based on specified qualities".

'Salam' is pronounced with a 'lam' sound and its meaning and concept are similar to 'salaf'. According to Allama Shawkani⁸, it refers to 'a transaction of buying and selling in which the seller agrees to deliver the specified item to the buyer on a future date and the buyer pays the full price in advance at the time of the contract.'

Definition of Salam according to Imams of jurisprudence

Due to differences of opinion among jurists regarding its valid conditions, variations exist in its definition. Consequently, the Hanafi and Hanbali schools, requiring the condition for its validity that possession of the commodity must be taken in the contract session and payment be deferred, seek to prevent cash Salam. A definition accommodating both these conditions is thereby provided. Ibn Abidin has said:

”بَيِّعُ آجِلٍ وَهُوَ الْمُسَلَّمُ فِيهِ بِعَاجِلٍ“⁹

"To buy goods by paying cash and taking delivery later is known as Bai' al-Salam."

In the Journal of Justice, it is explicitly stated in section (123) that Bai' al-Salam is the sale of a debt through cash. Al-Iqna' mentions, "Bai' al-Salam is contracting on something that is a liability and taking possession of it at the price in the contract."¹⁰

The Shafi'i school of thought, which has stipulated the condition of possession of the principal in the contract session for the validity of Salam and has deemed both cash and credit Salam permissible, defines it as follows:

"Salam is a contract on an object that is obligatory on the seller and is exchanged for cash."

Another definition of Salam is given as:

”هُوَ عَقْدٌ عَلَى مَوْصُوفٍ بِدِمَّةٍ مُؤَجَّلٍ بِثَمَنٍ مَقْبُوضٍ بِمَجْلِسٍ عَقْدٍ“¹¹

"This is a contract that is based on a known commodity which is possessed by the seller and the price is paid in advance in the contract session."

The Hanafi and Hanbali schools do not impose the condition that the commodity must be possessed by the seller in the contract because they consider cash Salam permissible. Ownership, which prohibits cash Salam but does not require full possession of the commodity in the contract, allows a delay of two to three days to facilitate the transaction. Salam is defined as follows:

”انه يبيع يتقدم فيه رأس المال ويتأخر المثمن لأجل“¹²

"Salam is a sale in which the price is paid in advance, while the commodity (being sold) is delivered later."

The pillars of Salam

The pillars of Salam according to the majority of jurists are three:

1. The offer and acceptance (i.e., the contract).

⁷ Al-Asqalani, Abu al-Fadl Ahmad ibn Ali ibn Hajar, Fath al-Bari Sharh Sahih al-Bukhari, Dar al-Ma'arif, Beirut, 1379 AH, Vol. 4, p. 428.

⁸ Abu Ali Muhammad bin Ali bin Muhammad Shawkani, also known as Badr al-Din Shawkani, was a renowned scholar, jurist, commentator of the Quran, mujtahid, and hadith expert from Yemen. He is counted among the distinguished scholars and jurists of the Ahl al-Sunnah wa'l-Jama'ah. He was born in the village of Hajrah Shawkani in the city of Sana'a, Yemen, in 1173 AH. He grew up in Sana'a, became a judge in Sana'a in 1229 AH, and remained a judge until his death in 1250 AH. Al-Zarkali, Khayr al-Din ibn Mahmud ibn Muhammad ibn Ali ibn Fares, Al-A'lam, Vol. 3, p. 180.

⁹ Al-Buhuti, Mansur ibn Yunus ibn Salah al-Din, Kashf al-Qina 'An Matn al-Iqna', Dar al-Kutub al-Ilmiyyah, Beirut, year of publication unknown, Volume 3, page 289.

¹⁰ Al-Rafi'i, Abdul Karim ibn Muhammad, "Fath al-Aziz bi Sharh al-Wajiz," Dar al-Fikr, Beirut, year of publication unknown, Volume 9, page 206.

¹¹ Al-Dasuqi, Muhammad bin Ahmad bin 'Arifah, Hashiyat al-Dasuqi 'ala al-Sharh al-Kabir, Dar al-Fikr, Beirut, n.d., Chapter on Salam, vol. 3, p. 195

¹² Al-Jurjani, Ali bin Muhammad bin Ali al-Zayn al-Sharif, Kitab al-Tarif, Dar al-Tunisia, 1971, pp. 59-67

2. The contracting parties (i.e., the seller and the buyer).
3. The subject matter (i.e., the commodity and the price).

Terms related to Salam:

- Rab al-Salam and Muslim: The buyer is called "Rab al-Salam" and "Muslim."
- Muslim ilayh: The seller (vendor) is called "Muslim ilayh."
- Muslim fihi: The commodity (goods) is called "Muslim fihi."
- Ras al-Mal: The price (the amount paid in advance) is called "Ras al-Mal."

Investigation of Salam Transactions in Pakistani Islamic Banks (Bank of Khyber and Meezan Islamic Bank)

Introduction to Bank of Khyber: The Bank of Khyber, initially established as a regional bank for conventional banking under the Provincial Assembly Act XIV in 1991, attained the status of a scheduled bank in September 1994. Its head office is located in Peshawar, and it operates 175 branches across Pakistan. Among these, there are 84 individual branches dedicated to Islamic banking, along with a total of 39 Islamic desks within conventional banking branches, offering Islamic banking services and financial facilities. In addition to conventional and Islamic banking services, the Bank of Khyber provides microfinance and agricultural facilities. It occupies a distinctive position among other banks, being one of the five banks offering services under the government's supervision.

Modes of Investment in Bank of Khyber: Islamic banking offers two types of investment modes for small, medium, and large-scale investments:

- Short-term investment facilities
- Long-term investment facilities

1. Short-term Investment Facilities:

Banks generally offer short-term financing through Murabaha, leasing, and also provide facilities in Musharakah, manufacturing, and Salam contracts.

Murabaha:

Through this contract, consumers often buy daily necessities, raw materials, medicines, or animals, etc., and sell them at a profit, receiving installments from consumers.

Leasing:

Sometimes consumers do not want to become the owner of something temporarily, so Bank of Khyber directly rents out items such as vehicles, machinery, or premises. These items remain the property of the bank until the lease term ends, after which they are sold to the customer through a sales contract.

2. Long-Term Investment Facility**DM (Musharakah)**

Under Islamic banking, the Bank of Khyber offers a permissible form of partnership called 'Musharakah', allowing them to engage in business with their customers through joint ownership or partnership contracts. For instance, the bank and the customer jointly purchase an item such as a car or property, after which the bank leases its portion to the second partner, i.e., the customer, who pays rent according to the agreed schedule. Moreover, the bank extends the facility to its partner to gradually buy the bank's share over time, thereby becoming the sole owner of the shared items.

There are two types of partnership or company ownership:

1. Joint Ownership:

In this type, two or more individuals jointly purchase something, receive it as a gift, or become its owners through inheritance. Their rights and responsibilities are specified by law or contracts.

2. Partnership on Contract:

In this type, two or more individuals mutually agree to share their rights over property or assets. Buying shares in a joint-stock company allows a person to become a joint owner in the company.

1. Joint Ownership:

Joint ownership entails two or more individuals jointly purchasing something, receiving it as a gift, or inheriting ownership. The principle dictates that no partner can utilize their share without the consent of the other party, and each partner is deemed a stranger to the share of the other partner. Each partner reserves the right to sell their share to another partner, lease it out, or even sell it to a third party with mutual agreement, and they can also receive rent for it. Profits and losses from the joint property are distributed among the partners based on their respective shares.

Buying shares in a joint stock company allows a person to become a joint owner in that company.

2. Partnership on Contract:

1. By purchasing shares in a joint stock company, a person becomes a joint owner in that company.
2. It requires only management and credibility. This is called "partnership on contract," and nowadays, franchising is an example of this.

Partnership on Contract is when two or more individuals settle their financial rights through mutual consent and agreement.

There are two types of partners: In the first type, each partner may assume the role of both owner and worker (working partner), solely an owner, or solely a worker. In the second type, all partners become owners and are reliant on the company, with all management delegated to one or several partners or outsiders, devoid of any intervention in ownership or benefits, akin to modern joint-stock companies.

The first type of partnership on contract has six forms:

- Both parties contribute capital and both parties engage in work.
- One party contributes capital and the other party engages in work. This is also called "Mudarabah".
- Both parties contribute capital, but only one party engages in work.
- Both parties engage only in work. This is also called "Musharakah al-Sina'ah," such as partnership in various services, like lawyers, engineers, doctors, or professionals sharing work.
- Only management and credibility are involved. This is also called "Shirkat al-Wujuh." Nowadays, franchising is an example of this.
- One party engages in work and the other party contributes capital and effort. This type of partnership is not permissible.

The principles of partnership on contract are as follows:

1. The capital should be such that it can be owned, and it should not be in cash but in goods. There are three ways to form this type of partnership:
 - One party tells the other party, "I have exchanged one-fourth of my goods for three-fourths of your goods, provided that both are of the same kind or of equal value." Then this common property is turned into partnership capital.
 - In the second method, their market value is determined, and the proportion of both in the common capital is determined, and then joint ownership is established based on this proportion. This is also called "constructive liquidation."
 - All goods are sold in the market, converted into cash, and then participation is made in it. This is called "actual liquidation."
2. If currency is designated as the capital, it is not necessary for the currency to be physically present, but the partnership is formed by taking it under responsibility.
3. Each partner is the agent and trustee of the other, so the partnership of a minor or a person of unsound mind is not valid.

4. The rate of profit distribution should be stated clearly; if there is any ambiguity, the partnership will be void.
5. The profit obtained will be shared equally among all partners, such as fifty percent, forty percent, etc. A specific amount of profit should not be specified for any partner, such as one thousand rupees. Similarly, any portion of the invested capital should not be specified as profit, for example, if it is specified that each partner will receive ten percent of their capital as profit, the partnership will be void.
6. There is no limit to the number of partners.
7. The company's property is entrusted to the partners.
8. Each partner will be included in the profit or loss. Allocating total or partial profit or loss to one partner is invalid.
9. The partnership will be void if the right to receive profit is derived from a guarantee, property, or act, and the amount of profit is according to the mutual agreement. There is no profit without a mutual agreement on the guarantee or property. Therefore, it is possible that one partner has more property but less profit, and the other partner has less property but more profit.
10. Loss is incurred according to the guarantee or property and cannot be objected to. Therefore, a loss is not incurred on a guarantor, because in a guarantee, neither is it his property nor is he responsible.
11. A partner cannot receive wages by being an employee in partnership activities.

Salam

The Bank of Khyber also offers a system for farmers or industrialists to purchase goods or installments for their daily needs, expenses, or the manufacture of products. If they possess commodities suitable for Salam transactions, they can enter into a Salam contract. In this arrangement, the bank provides a predetermined amount to these industrialists or farmers in advance, and later, the item is delivered in accordance with Sharia rules and regulations. All conditions and regulations required for a Salam contract are adhered to in this agreement. Initially, under this Salam contract, the Bank of Khyber provided assistance to the Pakistan Agricultural Storage and Services Corporation.

Manufacturing

The Bank of Khyber also provides facilities for the development of large-scale industries, mills, and industrial estates under Islamic banking. Sometimes, the desire to construct new buildings, equip them with modern facilities, or produce goods from raw materials requires new machinery and technology, which exceeds the capacity of individual or personal ownership. Therefore, the bank assists these customers either as a guarantor or financially, enabling them to successfully acquire the desired item. Additionally, it plays a pivotal role in national development by offering support at the government level for the construction of apartments, machinery, mills, roads, colleges, hospitals, and procurement of necessary machinery.

Since the topic is related to the Salam contract, only a detailed discussion regarding the practical implementation of the Salam contract at Bank of Khyber is required among the above-mentioned facilities.

Procedure for a Salam Contract at Bank of Khyber:

According to our understanding and possible efforts, the stages involved in a Salam contract in Islamic banking at Bank of Khyber, from inception to completion, are as follows:

Assessing the customer's request and their financial status:

Customers who wish to avail themselves of the Salam facility submit an application to the bank. Upon receiving the application, the authorized officers of the bank verify the financial status of the customer, the nature of their business, their relationships, and their payment conduct obligations. This verification process typically involves consultation with relevant authorities, associates, family members, and financial institutions to ensure the client's eligibility for entering into a Salam contract. Subsequently, the customer is provided with a detailed explanation of all the terms and conditions of the Salam contract. Once the customer

understands and agrees, they are informed of the approved limit, and a general agreement is signed, known as the Master Salam Agreement.

The basic contract of Salam (Master Salam Agreement)

It contains all the basic information related to Salam, including terms and conditions, laws and regulations, details regarding the subject matter, date, place, and specifications according to quantity and quality.

Payment of the principal amount by the bank

As per the agreement, the bank takes the required capital from the customer and issues a promissory note to them. The customer spends this amount according to their needs. At the specified time, they become the guarantor for the acquisition or availability of the promised item.

The availability of the promised item and the bank's actual possession of it are ensured by the seller's (Muslim Ela) side

According to the agreed-upon time, the customer is obligated to deliver the desired items to the specified location and inform the bank of their availability and possession. Upon acquiring actual or constructive possession of the goods, the bank either immediately sells them to a pre-prepared customer through a sale contract or a parallel Salam contract. In the event of a delay in selling, the bank is obliged to take necessary measures to safeguard the goods until they are sold.

The contract of agency (Wakalah) is used by the bank to sell the Salam goods.

The bank typically lacks market experience in Salam goods, prompting it to enlist the services of an agent to sell the goods to interested buyers, thereby enabling it to earn profit along with the original capital from this contract. The bank may opt to engage an experienced individual from the market as its agent or appoint a new agent through a separate contract (a contract of agency) for its client who provided the Salam goods. According to Islamic law, this fee can be either charged or provided without charge, but the Bank of Khyber stipulates a fixed agency fee for this service.

Wakalah

Definition of Wakalah

In legal terms, "Wakalah" refers to the act of entrusting someone else to carry out a task or act on one's behalf. It involves delegating a task that a person can do themselves but chooses to have someone else do on their behalf. This concept is commonly known as "agency" in English. Examples of tasks that can be delegated through "Wakalah" include buying and selling, leasing, collecting debts, and making payments.

The need for a power of Wakalah

The need for legal representation arises in daily business situations where we may not have the expertise or ability to handle a matter ourselves. Another person may have the experience and skills to handle the matter more effectively. In such situations, it is better to have the expert handle the work rather than attempting it ourselves. On the other hand, the work may not be of a nature that requires a permanent employee. Buying and selling of property, buying and selling of shares, import, and export are common tasks. Usually, there is less involvement in property purchase, while trade is quite large. In such situations, it is appropriate to seek the services of experts in the field.

The legal evidence for Wakalah

In the incident of the People of the Cave, evidence of legal representation is found. When these people woke up from sleep, the Quran tells us that they appointed one among them as a representative to buy food (Al-Kahf 18:19). Similarly, in various hadiths, you (peace be upon you) also assigned tasks to the companions. It is evident that in Islamic law, legal representation is present and established.

The fundamental principles of Wakalah

The detailed Shariah rulings regarding legal representation involving multiple parties are as follows:

Partners in a Wakalah case

There will be two individuals or parties involved in a legal representation case. One who is assigning the work is called the "principal" or "client," and the other who is carrying out the assignment is called the "agent" or "attorney."

It is necessary for both the principal and the agent to be rational and conscious. If a person is underage or unable to understand the matter due to mental issues, this arrangement cannot be established between them.

The nature of the work

When assigning a task to someone else, the following points should be kept in mind:

- It is necessary that the person has the choice to do the task themselves. A task that someone cannot do themselves cannot be delegated to an agent.
- The task must be legally and religiously permissible. For example, appointing an agent to commit murder, theft, seduction, etc., would not be permissible.
- The task must be one that can be delegated. Tasks that cannot be delegated, where the responsibility lies solely with the person, cannot be delegated. For example, appointing an agent to pray or to testify would not be permissible. Keeping these points in mind, a task can be assigned to someone else based on agency, such as buying and selling, borrowing, giving gifts, and mortgage transactions.

The responsibilities of Wakeel

It is essential for Wakeel to consider the following points in their capacity as Wakeel:

- Adhere to the instructions given by the client.
- Perform the task diligently, meaning to use their full professional skills. Be sincere to the one who assigned the work and do not disclose their business secrets.
- The attorney should perform the task themselves. The client also expects the attorney to do the work themselves, so the attorney should not delegate it to someone else. If the task is delegated, the client should be informed.

The effects of work done based on Wakalah

The effects of work performed based on legal representation depend on the terms outlined in the contract. For instance, if a Wakeel sells a client's land, it becomes the attorney's responsibility to manage tasks such as receiving the land's price, delivering possession of the land, and handling any legal issues that arise regarding the land. In this scenario, the attorney is accountable for enforcing the rights and obligations outlined in the contract, such as claiming the price in the land sale and taking possession of the land, while the client remains indirectly involved in these matters.

There are other types of contracts where the attorney acts not on their own behalf but on behalf of the client, as in the case of a marriage contract. If someone appoints a Wakeel to arrange their marriage, the consequences of the marriage become the client's responsibility. Consequently, the client assumes responsibility for providing accommodation, food, and meeting other obligations arising from the marriage, and the attorney cannot be held accountable for them.

Conclusion of a power of Wakeel

The power of attorney will terminate in the following circumstances:

1. Mutual consent of both parties.
2. Termination by either party giving notice.
3. Completion of the task assigned.
4. The task assigned becomes impossible. For example, if the item that was supposed to be sold by the attorney is destroyed.
5. If either party becomes incapacitated or passes away.

The fee of the Wakeel

Wakeel can charge a fee for their services. The fee can be a fixed amount or can be paid in installments. The amount of the fee can also vary depending on the nature of the work. For

example, in property buying and selling transactions, a percentage of the transaction amount is often charged, such as 2% or 3% of the transaction amount.

Types of Wakalah in the market

Brokers

In markets, there are different types of people whose job is to buy and sell things. In reality, they have information about the market. They know who is selling which thing and who is buying. Using this information, skills, and connections, they work for people.

Provision of capital based on Wakalah

Just as one can act as a Wakeel for various tasks, one can also serve as a Wakeel for suitable investments. The Wakeel may charge a fee for discovering investment opportunities, managing investments, and handling transactions. The remainder of the profit or loss from the investment will belong to the individual providing the capital.

In our financial system, mutual funds operate based on the concept of legal representation. Among these funds, those operating under the supervision of renowned scholars and with the protection of Shariah contracts allow investments to be made.

Issue number 1:

It is essential to be familiar with a legal issue that under the contract of Salam, the Muslim seller cannot become the buyer of the same commodity again because it is considered impermissible due to being a type of bai al-aina.

Issue number 2:

Because combining two permissible contracts is also prohibited in Shariah. Since the Hadith mentions "Two sales in one sale involve usury"¹³ therefore, the contract of Salam and the contract of agency will always be separate from each other.

Wakeel can sell goods of various kinds through Salam transactions, obtain funds, and make payments to banks on behalf of clients

After the contract of agency is concluded, the Wakeel's fee is determined. Additionally, to incentivize the Wakeel to promptly sell the items, a certain amount is offered as a reward. If the mentioned items are sold within the specified period and the obligations are fulfilled, the Wakeel will receive an additional amount along with the agreed fee. However, in the event of a delay, this reward will be reduced according to the predetermined rate, which is known as a penalty clause.

Introduction to Meezan Bank

In 1997, Al-Meezan Investment Bank was established as an entity solely for managing Mutual Funds. Mutual Funds refer to pooled investments by several investors, managed professionally to invest in various avenues such as bonds, shares, money markets, etc.

In 2002, the Prime Minister of Pakistan, Zafarullah Khan Jamali, visited the bank and was impressed by its operations. Subsequently, the bank was granted a commercial banking license, and thus, Pakistan's first full-fledged Islamic bank came into existence in 2002 under the name Meezan Islamic Bank.

Meezan Islamic Bank's founder, Mr. Irfan Siddiqui, was also the former Managing Director of Al-Meezan Investment Bank. The bank was inaugurated by the President of Pakistan, Pervez Musharraf. Renowned Islamic scholar, Mufti Taqi Usmani, was appointed as the bank's first Shariah advisor, under whose supervision all policies, principles, and rules were established.

Meezan Islamic Bank operates approximately 800 branches nationwide and is engaged in Islamic banking in nearly 30 industries and sectors. The bank uses various modes of Islamic

¹³

Al-Shaybani, Abu Abdullah Ahmad bin Muhammad bin Hanbal, Musnad Imam Ahmad bin Hanbal, verified by Shu'ayb al-Arna'ut, Mu'assasat al-Risalah, Beirut, 1421 AH, 2001 CE, vol. 6, p. 270

finance and investment, such as Ijarah, Murabaha, Musharakah, Mudarabah, Tijarah, and Salam.

On the liabilities side, the bank primarily uses Murabaha and Qard (interest-free loan) modes. On the asset side, the bank operates in various modes, with Ijarah being the most prominent, followed by Murabaha, Musharakah, Mudarabah, Tijarah, and Salam. Additionally, the bank employs various modes for income and revenue generation.

Since the research article pertains to Bai' al-Salam (forward sale), the discussion in the following lines will be about Salam. It is essential to understand that goods are of two types:

1. Valuables
2. Perishables

1. Valuables

"Qeemiyat" is the plural of "qeemi" which is attributed to price. "Qeemi" refers to goods in trade whose value is estimated based on their equivalent price, as it does not have any inherent quality that can be determined for it to be compared to, meaning there is no other thing like it that can be its alternative.

Technical Definition

Items that lack equivalence in the market, or if they possess it, their value fluctuates due to inherent differences among them, such as animals and property, fall into this category. Jurists have categorized properties in various ways, one of which is based on whether their equivalents with organized attributes are available in the market. Examples include pieces of a specific type of cloth or cars of the same model from a particular company. Such properties are termed "Mithliyat" (fungible) because their counterparts with organized attributes are readily available in the market, resulting in uniform values. Conversely, some items lack counterparts with organized attributes in the market, leading to variations among them and subsequently in their values. For instance, animals of the same species, such as sheep and goats, differ in weight, shape, and taste of meat, making their values distinct. Therefore, these properties are classified as "Qimiyat" (non-fungible), necessitating the determination of their value in the prevailing currency for buying and selling. Some schools of thought, such as the Maliki School, designate fungible properties as "Muqawimat" and non-fungible properties as "Muqawimat" within their respective contexts.

2. Perishables

"Mithliyat" is the plural form of "Mithli" which is derived from "Mithl," meaning similar or equivalent. It is used to indicate equality between two things.

Technical Definition

Anything that has no significant difference in the market as compared to its counterpart, i.e., its price is not different due to any reason, is called a 'Mithliyat' or a 'Mithli.'

"Mithliyat" refers to those things that are dependent on traditional standard units, such as weight, size, length, or count. It can be said that "Mithliyat" are those in which the individuals or parts are similar to each other in such a way that some are interchangeable without any significant difference. And because of the absence of differences, the price does not vary, such as with dates, bananas, and numerical equivalents like oranges and eggs. The opposite of "Mithli" is "Ghair-Mithli," which includes animals, goods, properties, numerical differences, etc., and is called "Qeemi" or "Aini."

Salaf is done exclusively and only in Mithliyat, whether it is natural similarity or artificial.

The process of Bai Salam in Meezan Islamic Bank is quite different from the Bank of Khyber, and its details are as follows:

1. **Submission of Request:** The applicant (Muslim) submits a request.
2. **Applicant:** In Meezan Islamic Bank, the applicant can be a farmer, landowner, or industrialist. Landowners apply for Salam to meet their agricultural needs, while industrialists apply for Salam to meet their industrial needs.
3. **Financial Status Check:** The financial status of the applicant is checked to ensure they are not a defaulter and are capable of fulfilling their obligations with the bank.

4. **Risk Department:** The risk department ensures that the goods for which Salam is being contracted can be sold in accordance with Islamic law and can be used for lawful purposes.
5. **Sharia Department:** After all these checks, the Sharia Department approves or rejects the case. If the case is approved, a written agreement is prepared for complete action from start to finish, called the process flow.

Process Flow

The process flow is a type of contract document that sequentially lists:

- Customer's responsibilities.
- The method of fulfilling obligations according to Sharia.
- How the bank will pay the customer.
- The Sharia-compliant method and time for this financing.
- Different stages of receiving payment back from the customer in case of default.
- Who will bear the risk.
- Other expenses related to the goods, such as rent and warehouse charges.

In Meezan Islamic Bank, special consideration is given to ensuring that the mentioned goods can be secured through Takaful (Islamic insurance) rather than conventional insurance. The responsibility of conducting Takaful lies with the bank's customer.

CAD Department's Role:

The CAD department ensures the correct adherence to the process flow. In the event of any irregularity, it becomes the CAD department's responsibility to consult with the Sharia department. Additionally, the CAD department is tasked with generating computerized receipts for the sale of goods by customers, facilitating the determination of price, quantity, and time of sale. If there are doubts regarding the authenticity of a transaction, the CAD department conducts visits to the customer and engages in discussions with the customer and other authorized officers. The outcomes of these discussions are then forwarded to the Sharia department for the resolution of any disputes.

Parallel Salam

When an Islamic bank enters into a Salam contract with a customer, ensuring that a specified quantity of the commodity will be delivered to the bank at a specified future date, the bank may opt to sell this commodity to another party to prevent delays in payments. In doing so, the bank, initially the Rab-ul-Salam in the original transaction, assumes the role of Muslim-ilaih in this subsequent transaction. This process is termed Parallel Salam and is a common practice in Islamic banks aimed at averting delays in payments in Salam transactions.

Currency Salam

When a bank needs to make a payment in a foreign currency on future dates, it buys the foreign currency from another bank at a specified rate, paying in Pakistani currency on the current date. The bank receiving the Pakistani currency on the current date is obligated to provide the agreed-upon foreign currency on the specified future date. In this transaction, the bank providing the Pakistani currency acts as the Rab-ul-Salam, the foreign currency as the Muslim Fiyah, and the bank receiving the foreign currency as the Muslim-Ilaih. The quantity of foreign currency is predetermined, and the Muslim-Ilaih bank is bound to make the payment to the Rab-ul-Salam bank in the same quantity. If the rate of the foreign currency increases or decreases, all responsibilities lie with the Muslim-Ilaih bank. Consequently, if the rate of the foreign currency has increased, the bank incurs a loss, and if it has decreased, it gains. The purpose of Currency Salam is to mitigate fluctuations in the rate of foreign currency. The Rab-ul-Salam bank secures itself from such fluctuations through advance payments. Currency Salam finds utility in large-scale imports and exports involving payments in foreign currency.

In Meezan Islamic Bank, Salam transactions involve both natural and artificial commodities. Natural commodities include crops such as wheat, barley, and sugarcane, while artificial commodities encompass sugar, matches, and animal feed. A specific unit is assigned to all

these commodities; for instance, for crops like wheat and barley, the unit is Mann or ton, for sugarcane, it is a certain quantity, and for matches, it is a bundle. This determines the weight-based condition, ensuring the contract's smooth fulfillment by specifying the description and a specific time.

Exclusive Features in the Salam Contract of Bank of Khyber and Meezan Islamic Bank

There are several differences between Bank of Khyber and Meezan Islamic Bank in their Salam contracts, which are detailed as follows:

- Bank of Khyber was established approximately 8 years before Meezan Bank. However, Bank of Khyber has more branches compared to Meezan Bank.
- Both banks share the common practice that the applicant submits the application first, and the bank assesses its financial nature. However, the difference is that Bank of Khyber's authorized officers handle this, while Meezan Bank has a separate department called the Risk Department for this purpose.
- Both banks have Shariah boards that review the commodities involved in Salam contracts. However, Meezan Bank has a separate Shariah Department for this purpose.
- The document prepared for the complete execution of the contract from start to finish is called the Master Agreement in Bank of Khyber, while in Meezan Bank, it is referred to as the Process Flow.
- In the case of selling the Muslim Fihri, the rupees are paid by the bank instead of the customer. This principle is common to both banks. However, if the customer pays from their pocket, Meezan Bank puts the benefit in a Welfare Trust, for which they have already started a Welfare Trust organization called Ehsan Trust.
- In Meezan Bank, there is a CAD (Centralized Accounting Department) department for arranging the income of process flow segments, which keeps the Shariah Department informed in every transaction. However, there is no such department in Bank of Khyber.
- Meezan Bank engages in Salam contracts not only with natural but also with artificial commodities. However, Bank of Khyber has only engaged in Salam contracts with wheat so far, and they intend to expand to other commodities in the future.
- Meezan Bank engages in Salam contracts in foreign currency as well, while Bank of Khyber does not.

In conclusion, it is evident that both banks are striving to promote Islamic banking. There is no detrimental aspect in the Salam contracts of both banks that could lead to disputes. Instead, to further strengthen the foundations of Islamic banking in these banks, assistance should be provided by the government so that these aforementioned banks can implement Islamic banking in a better manner.

Concerns

Customers and banks share concerns when conducting financial transactions in Islamic banks. Customers worry about avoiding excessive payments, while banks are concerned about recovery issues. In certain instances, customers encounter difficulties and obligations in payments. Therefore, banks should offer facilities, fulfill contracts to the best of their ability, and seek the simplest methods for recovery.

Future forms of Salam contracts:

1. Salam Contracts in the Pharmaceutical Industry

Given the substantial expenses incurred by pharmaceutical companies in the production of medicines and vaccines, which cannot be borne by a few individuals alone, initiating the industry can involve entering into Salam contracts with Islamic banks to cover these expenses. The conditions of Salam can be met by producing vaccines or specific medicines and introducing them to the market.

2. Salam Contracts in Steel Mills and Aluminum Industry

By discussing the Salam method in Islamic banks, it becomes evident that modern machinery, specific weights, qualities, and designated times can be arranged. Consequently,

Islamic banks can engage in Salam contracts with steel mills and aluminum industries, as the conditions of the Salam contract can be fulfilled.

3. Salam Contracts in the Agricultural Industry

The beginning of Salam was in dates, raisins, wheat, and barley. In the modern era, Salam contracts can be based on conditions in crops such as potatoes, rice, cotton, kapas, sports equipment, etc., and factories for these items can be established. Similarly, Salam contracts can be adopted in the production of pickles made from sugarcane and mangoes.

4. Salam Contracts in Future Trading

In the modern era, there has been a significant increase in speculative financial transactions, and in response, Islamic banking endeavors to counter them. Islamic banking has also demonstrated its presence in comparison to conventional banking practices. Consequently, Islamic banking paves the way for smoother paths for new types of transactions in the future. Given the conditions of the Salam contract, Salam can also be conducted in future trading.

Conclusion

Salam, also known as "Bai' al-Salam," is a permissible form of commercial transaction. It entails the seller's commitment to deliver a specific commodity with specified characteristics to the buyer at a future date, with the buyer paying the full price in advance at the time of the contract, and the commodity being delivered later or after a specified delay. Essentially, it involves buying a commodity with specific characteristics, agreeing on the price in advance, and paying the full amount at the time of the contract, with the commodity delivered later, known as Salam or Salaf.

These transactions are permissible according to the Quran, the Sunnah of the Prophet Muhammad (peace be upon him), consensus, and analogy. Selling something that does not yet exist is generally not permissible, except in the case of Salam. Islam has provided this facility to farmers or industrialists who may lack sufficient funds for seeds, fertilizers, tools, raw materials, and labor. By enabling them to sell their produce or goods before production or arrival, they can obtain funds without resorting to borrowing. One benefit of this arrangement is that it relieves individuals from the stress of selling their crops or production, while also benefiting the buyer.

When entering into a Salam contract, it is crucial to consider certain conditions and obligations, such as identifying the type and quantity of the capital and delivering the capital during the contract meeting. Similarly, the conditions of the Muslam Fiyah should include its being under guarantee, providing comprehensive descriptions, and specifying the time of delivery.

Islamic banks in Pakistan, such as the Bank of Khyber and Meezan Islamic Bank, enter into Salam contracts while adhering to these conditions. To ensure full compliance, Bank of Khyber employs a Master Agreement, while Meezan Bank has established a process flow under the name of Salam. This process flow outlines the nature of the Muslam Fiyah, determines whether Salam is permissible for the production in question, and assesses the suitability of the place, item, and person for the Salam contract. These assessments are conducted by authorized officers and departments. Based on the nature of the matter, the Sharia department applies the ruling of permissibility and executes the sale.

Periodically, evaluations of necessary items in Salam contracts are considered, such as the Muslam Fiyah contributing his own funds. If the Muslam Fiyah contributes from his own pocket, Meezan Bank channels the profits of this contract into the Ehsan Falahi Trust, thereby purifying the contract from interest. However, it is not appropriate to act as an agent alongside the Muslam Fiyah.

In conclusion, Salam is a non-interest-based financing method that benefits landowners, farmers, industrialists, and banks in various ways. Therefore, implementing this financing method in practice at the initial stage is crucial to maximize its benefits.