AL-IJARAH AL-MAWSUFAH FI AL-DHIMMAH: THEORY AND APPLICATIONS

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THEORY AND APPLICATIONS

by
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SUMMARY

Forward *ijārah* is a newly introduced financing tool used for different financial services by individuals and Islamic financial institutions (IFIs). IFIs currently provide a financing product for home under construction based on the mushārakah mutanāqisah partnership (MMP) whereby forward *ijārah* is applied as a sub-contract. There is a consensus on legality of forward *ijārah*. The parameters of forward *ijārah* are constituted from rules of both *ijārah* and *salam*. Forward *ijārah* is allowed to be used along with other valid contracts in hybrid mode as long as it fulfills the criteria put forward by scholars. The book also shows that although usufruct is not a valuable asset in its originality according to Ḥanafī School, usufruct of *ijārah* is excluded from being a valueless asset on the basis of exception regardless of whether it is *ijārah* of a particular object or usufruct in liability. In addition, if the rental is fixed it comes out of being debt in liability, albeit it is not handed over. Therefore, immediate payment is not obligatory in forward *ijārah*. The issue that contradicts *Sharīʿah* principle is that the bank does not bear any risk; rather, it considers the rental paid by customer for forward *ijārah* during the construction period as the compensation for the failure of *istiṣnāʿ*, and the customer also cannot charge the developer for abandoned house. The possible solution for the issue is that the bank should share the risk according to its portion in partnership as well as the customer can refer to the developer to charge the compensation for his actual failure in *istiṣnāʿ*. Therefore, the provision(s) should be added in the law of Islamic banking and finance that binds the developer to compensate the customer for his actual default.
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GLOSSARY OF ARABIC TERMS
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ABBREVIATIONS

AAOIFI: Accounting and Auditing Organization for Islamic Financial Institutions
AIMAD: Al-Ijārah al-Mawsūfah fi al-Dhimmah
AiTAB: Al-Ijārah Thumma al-Bay‘
BBA: Bay‘ bi thaman ājil
BNM: Bank Negara Malaysia
IFIs: Islamic Financial Institutions
IFSB: Islamic Financial Services Board
MMP: Mushārakah Mutanāqišah Partnership
PBUH: Peace be upon him
SAC: Shariah Advisory Council
SWT: Subḥānu wa Ta‘ālā (An expression praising the Creator of Universe- Allah, the Most High)