

COMBINING MUSHARAKAH WITH MUDARABAH

Overview

A contract of mudarabah normally presumes that the mudarib has not invested anything to the mudarabah. He is responsible for the management only, while all the investment comes from rabb-ul-mal. But there may be situations where mudarib also wants to invest some of his money into the business of mudarabah. In such cases, musharakah and mudarabah are combined together. For example, A gave to B \$ 100000/- in a contract of mudarabah. B added \$ 50000/- from his own pocket with the permission of A. This type of partnership will be treated as a combination of musharakah and mudarabah. Here the mudarib may allocate for himself a certain percentage of profit on account of his investment as a sharik, and at the same time he may allocate another percentage for his management and work as a mudarib. The normal basis for allocation of the profit in the above example would be that B shall secure one third of the actual profit on account of his investment, and the remaining two thirds of the profit shall be distributed between them equally. However, the parties may agree on any other proportion. The only condition is that the sleeping partner should not get more percentage than the proportion of his investment.

Therefore, in the aforesaid example, A cannot allocate for himself more than two thirds of the total profit, because he has not invested more than two thirds of the total capital. Short of that, they can agree on any proportion. If they have agreed on that the total profit will be distributed equally, it means that one third of the profit shall go to B as an investor, while one fourth of the remaining two thirds will go to him as a mudarib. The rest will be given to A as "rabb-ul-mal."

Musharakah & Mudarabah as Modes of Financing

In the foregoing sections, the traditional concept of musharakah and mudarabah and the basic principles of Shari'ah governing them have been explained. It is pertinent now to discuss the way these instruments may be used for the purpose of financing in the context of modern trade and industry.

The concept of musharakah and mudarabah envisaged in the books of Islamic Fiqh generally presumes that these contracts are meant for initiating a joint venture whereby all the partners participate in the business right from its inception and continue to be partners upto the end of the business when all the assets are liquidated. One can hardly find in the traditional books of Islamic Fiqh the concept of a running business where partners join and leave the enterprise without affecting in any way the continuity of the business. Obviously, the classical books of Islamic Fiqh were written in an environment where the large scale commercial enterprises were not in vogue and the commercial activities were not so complex as they are today. Therefore, they did not generally dwell upon the question of such a running business. However, it does not mean that the concept of musharakah and mudarabah cannot be used for financing a running business. The concept of musharakah and mudarabah is based on some basic principles. As long as these principles are fully complied with, the details of their application may vary from time to time. Let us have a look at these basic principles before entering the details:

1. Financing through musharakah and mudarabah does never mean the advancing of money. It means to participation in the business and in the case of musharakah, sharing in the assets of the business to the extent of the ratio of financing.
2. An investor / financier must share the loss incurred by the business to the extent of his financing.
3. The partners are at liberty to determine, with mutual consent, the ratio of profit allocated to each one of them, which may differ from the ratio of investment. However, the partner who has expressly excluded himself from the responsibility of work for the business cannot claim more than the ratio of his investment.

4. The loss suffered by each partner must be exactly in the proportion of his investment.

Keeping these broad principles in view, we proceed to see how musharakah and mudarabah can be used in different sectors of financing:

