

ISTISNA (Order Contract)

'Istisna' is the second kind of sale where a commodity is transacted before it comes into existence. It means to order a manufacturer to manufacture a specific commodity for the purchaser. If the manufacturer undertakes to manufacture the goods for him with material from the manufacturer, the transaction of istisna' comes into existence. But it is necessary for the validity of istisna' that the price is fixed with the consent of the parties and that necessary specification of the commodity (intended to be manufactured) is fully settled between them.

The contract of istisna' creates a moral obligation on the manufacturer to manufacture the goods, but before he starts the work, any one of the parties may cancel the contract after giving a notice to the other. However after the manufacturer has started the work, the contract cannot be cancelled unilaterally.

Al-Istisnā Al-Tamwīlī, which is used by Islamic banks, consists of two separate istisnā contracts. The first is concluded between the beneficiary and the bank, in which the price is payable by the purchaser in future, in agreed installments and the bank undertakes to deliver the requested manufactured commodity at an agreed time. The second istisnā contract is a subcontract concluded between the bank and a contractor to manufacture the product according to prescribed specifications. The bank would normally pay the price in advance or during the manufacturing process in installments. The latter undertakes to deliver the product to the bank on the date prescribed in the contract, which is the same date as that stated in the first istisnā contract. The original purchaser (i.e., the bank's client) may be authorized to receive the manufactured commodity directly from the manufacturer.

