

BANQUE DU LIBAN

Basic Circular No 97 addressed to Banks

Attached is a copy of Basic Decision No 8954 of January 19, 2005 relating to Musharaka or Participation operations carried out by Islamic banks.

Beirut, January 19, 2005

The Governor of the Banque du Liban

Riad Toufic Salamé

Basic Decision No. 8954

Musharaka or Participation operations carried out by Islamic banks

The Governor of the Banque du Liban,

Pursuant to the Code of Money and Credit, notably the provisions of Article 70 thereof;

Pursuant to the provisions of Law No 575 of February 11, 2004 relating to the Establishment of Islamic Banks in Lebanon, notably the provisions of Article 4 thereof; and

Pursuant to the Decision of the Banque du Liban Central Council taken in its meeting of January 12, 2005,

Decides the following:

Article 1: Definitions:

For the purpose of implementing the provisions of this Decision, the following expressions shall mean:

Musharaka: The assets provided by a bank and an agent (or agents) in equal or different proportions to establish a new project or participate in an existing one, with a view to share the resulting profits, in such a manner that each party owns a share in the capital in proportion to its contribution.

The Musharaka is either constant or diminishing, and takes the form of companies or entities in which the Participation or the Musharaka of Islamic banks does not entail any unlimited liabilities¹.

Constant

Musharaka: The Musharaka in which the share of the partner (or partners) in the project capital remains constant throughout the Musharaka duration as specified in the contract.

Musharaka

muntahia

bil tamlik

or Diminishing

Musharaka: The Musharaka in which the bank grants the other partner(s) the right to gradually purchase its share, in such a manner that the bank's share diminishes, while that of the other partner(s) increases until the latter becomes (the latter becomes) the sole proprietor(s) of the project capital.

¹ This paragraph was amended by Article 1 of Intermediate Decision No 9104 of August 11, 2005 (Intermediate Circular No 89).

Participation: The Musharaka in which the bank acquires shares, securities or rights that represent an ownership in the capital of another institution or establishment.

Article 2²:

Islamic banks are prohibited from entering on their own account, directly or indirectly, in any Musharaka or Participation, unless the following conditions are cumulatively met:

-if Islamic banks use either their equity capital, or the deposits complying with paragraphs 1 and 2 of Article 307 of the Code of Commerce, with the depositors' written approval.

-if these Participations or Musharaka do not entail any unlimited liabilities for the Islamic bank.

Article 3:

The Musharaka contract must, at least, expressly and accurately include the following elements:

1. The object of the Musharaka.
2. The volume, form (in cash or in kind) and the contributed proportion of the capital.
3. The duration of the Musharaka.
4. The rights and obligations of the parties, particularly those empowering the bank to monitor and follow up the Musharaka operations, in case the agent is exclusively entrusted with their management.
5. The method of allocating profits and losses, which must be set as undivided percentages and not as a fixed amount, so that loss is split according to each partner's contribution in the capital, and no contrary provision is authorized.
6. The guarantees given by the agent against any failure or negligence in the management of the Musharaka operations, in case he is entrusted with any such management.
7. The procedures and conditions for terminating the Musharaka and partitioning its assets.

Article 4 :

The Musharaka contract may not include any text granting any of the contracting parties the right to recover its share in the capital. However, in case of a diminishing Musharaka, the recovery conditions must be stipulated in a document separate from the initial Musharaka contract.

² This paragraph was amended by Article 2 of Intermediate Decision No 9104 of August 11, 2005 (Intermediate Circular No 89).

Article 5:

Assets resulting from the liquidation of the Musharaka or Participation operations may not be held by an Islamic bank for more than six months from their acquisition date. The Central Council may impose on the Islamic bank any measure deemed necessary for the liquidation of these assets.

Article 6:

In addition to the provisions of this Decision, Islamic banks are governed, unless otherwise provided for, by all the provisions, regulations and principles concerning non-Islamic banks.

Article 7:

This Decision shall enter into force upon its issuance.

Article 8:

This Decision shall be published in the Official Gazette.

Beirut, January 19, 2005

The Governor of the Banque du Liban

Riad Toufic Salamé