

MUDARABAH AND THE PAKISTAN PERSPECTIVE

By

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Mudarabah is a kind of partnership, wherein one party provides finance to the other for the purpose of carrying on trade – the party who provides the finance, is called the “*Rabb al-Mal*”, whereas the other party who actually works for the *Mudarabah* is called the “*Mudarib*” – on the condition that the profit will be shared by both the parties on the basis of an agreed ratio; and in case of loss the same shall be borne by the *Rabb al-Mal* and not the *Mudarib*.

Lane in his Arabic –English Lexicon defines the *Mudarib* as “One who is employed by another to traffic for him with his (the former’s) property, on that condition.”

***Mudarabah* and the Qur’an**

The word *Mudarabah* is based on *Bab al Mufa’alah* whose inherent quality is the *Musharakat*, that is, the minimum two persons or parties joining together in a certain act or deed. The word *Mudarabat* has been derived from its root “*darbun*”. The word *darb* in its several derivatives, has been used in various verses of the Holy Qur’an (For detail see Notes and References Sr. No. 1-58 appended hereto).

The word *daraba’* as used in the Qur’an literally mean set forth, propound, make (comparisons), put forth, set up, draw, strike, invent, take away, use, show forth, beat, hold up, put up, pitched over, (see “notes and References”, the verses quoted under Nos. 1-10, 14-18, 20, 21, 22-26, 28-36, 38-56, and 58). It has also been meant travel, journey (through the earth), go abroad in the Cause of Allah (Nos. 11, 12, 13, 19), move about [in the land, seeking (for trade or work) (No. 57)].

The jurists, particularly the Hanafis, have based the validity of *Mudarabah* contract on the several derivatives as used in the Qur’an from the word *daraba*. It may, however, be stated that the said derivatives, denote

trading, in general, a commercial activity, not restricted alone to the form of *Mudarabah*, but the jurists seem to have derived the basis of *Mudarabah* from the several verses of the Qur'an (Supra).

Mudarabah and the Hadith

As regards *Hadith* literature, there seems to be no tradition from the Holy Prophet (PBUH) quoted in Sahih al-Bukhari, Sahih al-Muslim, Jami al-Tirmizi, Sunnan Al-Nasai. In fact, there is no Chapter therein on the subject of *Mudarabah* or *Qirad* as was commonly known in Hijaz.

There is, however, a Chapter in the Sunnan Abi-Daw'ud, but the two traditions mentioned therein do not appear to be connected with *Mudarabah* even remotely.⁵⁹

There is, however, a Chapter direct on the subject titled as *Shirakah* and *Mudarabah* in the Sunnan Ibn Majah.⁶⁰ There is one tradition in the said Chapter but the same is stated to be weak and not reliable on the basis of *Sanad* (authority), as two of the narrators Nasar b. al-Qasim and 'Abdul Rahim are *majhul*, (their credential not known).

There is, however, a *marfu'* tradition, related to the Holy Prophet (PBUH) in Sunnan al Kubra' by Bayhaqi.⁶¹ But Imam Bayhaqi has himself stated it to be a weak tradition, as according to Imam Yahya b. Mu'in, one of the narrators, namely Abdul Jarud Ziyad b. Al-Munzar is a *Kazib* (liar).

The incident relating to the commercial contract between Hadrat Muhammad (PBUH) and Hadrat Khadijah (R.A.), entered into some 15 years before the declaration of his Prophethood, has also been narrated in some well known works on *Sirah* and history. But, a critical analysis of the said narrations will show that it was not the contract of *Mudarabah*, but that of fixed *Ujrah* (labor charges).

It is, however, true that Hadrat Khadijah (R.A.), a pious and wealthy lady of Makkah, used to enter into contracts with other persons, on the basis of *Mudarabah* as well as fixed *Ujrah*.

It appears that the learned authors on *Sirah* who stated the dealing to be that of *Mudarabah* did not have all the narrations before them. Probably, they had before them the incomplete narration as stated in *Sirah* Ibn Hisham.⁶² The

said narration gained so much popularity that it was adopted by other writers on Sirah and history.

The modern scholars on Islamic economics and banking, while dealing with the subject of *Mudarabah*, the commercial transaction/dealing of Hadrat Muhammad (PBUH) with Hadrat Khadijah (R.A.) have also stated it to be the case of *Mudarabah*.

However, the commercial dealing of Hadrat Khadijah (R.A.) with Hadrat Muhammad (PBUH) was on the basis of fixed *Ujrah*, and not *Mudarabah*, as will be evident from a close study of the narration, with different *Isnad* (authorities) which again describe the incident in different wordings, narrating the incident, which predominately go to show that it was a case of fixed *Ujrah and not Mudarabah*.⁶²

However, there are , a number of *Athar* (sayings of the revered companions of the Holy Prophet) which go to show that *Mudarabah* contract was in vogue among the Arab which was not disapproved by the Holy Prophet. So, *Mudarabah* contract can be said to be established by Sunnat al Taqir of the Holy Prophet (PBUH), that is, a deed having been performed in presence or knowledge of the Holy Prophet who did not show his disapproval to it, and maintained it.

In pre-Islamic period, the *Mudarabah* contract was prevalent on the condition that profit was to be shared on the basis of agreed ratio between *Rabb al-Mal* and the *Mudarib* or *A'mil*. However, in case of loss it was to be borne by the *Rabb al-Mal* only. This basic and fundamental principle of *Mudarabah* was maintained by the Holy Prophet. There were, however, added or imposed certain conditions to the contract of *Mudarabah*, in the light of the teachings of Islam, which have been discussed in detail by the jurists and are to be found in the book of *Fiqh*.

Mudarabah and the Islamic Fiqh

In classical jurisprudence and law, *Mudarabah* signifies a contract of partnership, of which one party, the provider of capital (investor) being denominated as *Rabb al Mal* shares in the profit at a certain ratio; and the other party denominated as *Mudarib*, too, shares in the profit, at a fixed ratio, as return or gain for utilization of his time, skill and labor, inasmuch as he gets

benefit of his own labor. In case of loss, however, it is to be borne by the *Rabb al Mal* exclusively, and this is the most peculiar feature of the *Mudarabah*.

Participation in the profit, at a ratio, mutually agreed, is an essential ingredient of the contract. A *Mudarabah* contract cannot, therefore, be concluded without determining participation in the profit, at a certain ratio.

Contract of *Mudarabah* has been recognized by the *Shari'ah* on account of necessity; since many people have property (*Mal*), and other possess the necessary skill without owning the required property (*Mal*); hence, such contracts have been made lawful for the purpose of putting together interest of the 'haves' and the 'haves not'.

The *Mudarib* receives the property "*Mal*" as a trustee, because he takes possession of the same at the desire of the proprietor. He is neither a borrower nor a purchaser or a pawnee. The provisions of Islamic law relating to trust (*amanah*) will, therefore, be attracted to the various incidents of *Mudarabah*.

The *Mudarib* acts also as an agent of the *Rabb al-Mal* in regard to deal with the property, according to the general or specific directions of the *Rabb al-Mal*. When, therefore, any profit is earned, the *Rabb al-Mal* and the *Mudarib* are joint sharers in it, on the basis of the agreed ratio, inasmuch as it earned jointly from the property, assets and stock of the one and the labor of the other.

If a contract of *Mudarabah* for some reason is held to be invalid, it does not become void. It turns into a labor-hiring contract, because the *Mudarib* acts for the *Rabb al-Mal* as its agent/manager, with regard to the stock; the profit which is stipulated to be shared by him may be accounted for his labor. Such being the case, the *Mudarib* becomes entitled only to an *Ujrah*, hiring charges adequate to his labor, proportionate to the property/stock.

However, the *Mudarib* who acts in contravention of the directions, general or specific, of the *Rabb al-Mal* becomes a usurper, since he transgresses willfully with respect to the property of another. In such a situation, he renders himself liable to *daman*, as *ghasib*.

In principle, the contract of *Mudarabah*, is valid only with respect to stock/ property in respect of which a contract of partnership is valid.

In a valid contract of *Mudarabah* nothing is due to the *Mudarib* in the event of there being no profit. It may further be mentioned that the property/stock of a valid contract of *Mudarabah* is not to be replaced by the *Mudarib*, in case of its loss or destruction; that is, *daman*, indemnification is not incumbent upon the *Mudarib* for loss of profit or property, not resulting due to his negligence.

A stipulation that whatever profit may accrue shall be shares between the *Rabb al-Mal* and the *Mudarib* accordance to their agreed ratio; but in case of loss, it shall fall, partly or in the entirety, to the lot of *Mudarib* will be invalid. However, the stipulation that the loss occasioned in the due course of *Mudsarabah* shall be borne exclusively or partly by the *Mudarib*, such a condition shall not render the contract of *Mudarabah* as null and void, but only the condition shall be ineffective, because the condition will be regarded as redundant.

It is a requisite condition in *Mudarabah* that the *Rabb al-Mal* delivers the stock to the *Mudarib* because, it being in the nature of a trust, *Amanah*, it must be in his sole possession and in no respect it can be allowed to be in possession of the *Rabb al-Mal* so that the *Mudarib* may be able to enter into necessary transactions with regard to it.

A condition of managing the *Mudarabah* by the *Rabb al-Mal* of the property/ stock invalidates a contract of *Mudarabah* because, where such a condition exists, the property/stock can never be possessed solely by the *Mudarib* and thus, the object of the contract, namely, participation in the profit becomes difficult to achieve. Thus, so long as the property/stock is continued in possession of the *Rabb al-Mal*, no delivery of it to the *Mudarib* can be certified.

If the contract of *Mudarabah* is unrestricted as to time, place or other circumstances, the *Mudarib* is at liberty to act and deal with the property/stock according to his discretion. Since the object of acquisition of profit cannot be accomplished except by trade, a contract of *Mudarabah*, of course, will extend to all matters ancillary or incidental thereto.

It will not be lawful for a *Mudarib* to grant a loan to any one out of the *Mudarabah* property/stock, although the *Rabb al-Mal* might have stated to him “at according to your own discretion”, because the latitude is given with respect to such things as are related to trade whereas loaning the *Mudarabah* property/stock is not necessarily connected with trade; it is a gratuitous act. By

giving the loan, the object of *Mudarabah*, that is, earning profit cannot be obtained, as to receive back more than that was lent, falls in the category of *Riba*, which is not lawful in the *Shari'ah*.

The property/stock being subject matter of *Mudarabah*, is meant for trade and, therefore, a *Mudarib* may give the stock which is the subject of it, by way of *Mudarabah* to another provided the *Rabb al-Mal* has authorized him to act to his discretion. The discretion should, nevertheless, be exercised judiciously. However, the *Mudarib* cannot deviate from any restriction imposed on him in the contract of *Mudarabah*. For example, if the *Rabb al-Mal* restricts his *Mudarib* is not allowed to establish its Branch in another city. However, the restrictions to any particular part of a city will be invalid; because a city, notwithstanding the distances of its areas is like on place, unless stipulated under an express exception to a part of the city. If the *Mudarib* violates instructions imposed by the *Rabb al-Mal* in a contract of *Mudarabah*, the *Mudarib*, in that case, becomes responsible for the property/stock. A *Mudarib* may be restricted, in its transactions, to particular persons as it may be founded on the particular credibility in business of the person to whom it relates.

A *Mudarib* cannot entrust a property/stock, the subject of *Mudarabah*, to another by way of *Mudarabah* without the consent of the *Rabb al-Mal*. So, it will not be lawful for a *Mudarib* to make over the property/stock to another by way of *Mudarabah* without the consent of the *Rabb al-Mal*, unless he should have empowered him to act in the manner. Hence, it is necessary either that an express permission should have been given or an absolute and unrestricted authority has been delegated to the *Mudarib* in this respect. The provisions of Islamic Law relating to Agency (*Wakalah*) will be attracted to such a situation.

If a person gives property/stock to another by way of *Mudarabah*, on condition of the half of the property, and with permission to give him the said property/stock to another person in the way of *Mudarabat* and he, accordingly, gives the said property/stock to another person by way of *Mudarabah* on condition of one-third of the profit and the second *Mudarib* employs staff and earns profit upon it, in that case half of the whole profit will go to the *Rabb al-Mal*, one-third to the primary *Mudarib* and one-sixth to the second *Mudarib* in giving the stock to him by way of *Mudarabat* as in giving the stock to the second *Mudarib*, by way of *Mudarabat* was lawful as he had prior consent of the *Rabb al-Mal*.

The contract of *Mudarabah* may be restricted, in its operation to a particular period. In such a case the contract of *Mudarabah* becomes a nullity at the expiration of that period. It will, therefore, be operative in the same manner as a restriction to a particular place or to a mode of sale.

The contract of *Mudarabah* may be for a fixed period or at will. In case the *Mudarabah* is for a fixed period it will come to an end automatically by efflux of time. There is, however, some difference of opinion on this point among the several schools of *Fiqh*. The Hanaifs and the Hambalis do favor the idea of forming a *Mudarabah* for a fixed period whereas the Shafi'is and Malikis are opposed to this view. In case, no period is fixed and the contract is terminable at will at the option of either party, a notice from the retiring party will be necessary to be given to the other party. In that case, the final accounts will be drawn up and the profit will be shared according to the agreed ratio and in case there is a loss it will be borne exclusively by *Rabb al-Mal* at the close of *Mudarabah*. If the assets are available in ready cash there will be no difficulty in determining the profit and loss but if the assets or part thereof are in the shape of stock/property, the same shall be sold by the *Mudarib* so as to liquidate those assets for the determination of the actual profit and loss.

In my humble opinion, the view of Hanifis and Hanbalis allowing the *Mudarabah* to be for a fixed period or for particular adventure, the present market conditions and practices provide a justification for it. If the contract of *Mudarabah* is left for its determination, at the whim of either party it may prove disadvantageous to the *Mudarib* or the *Rabb al-Mal*.

If at the dissolution of contract of *Mudarabah* the stock consists of debt, the *Mudarib* shall be compelled to recover and collect them, in case any profit under the contract of *Mudarabah*, has been acquired. But, if no profit has been earned, it is not incumbent on the *Mudarib* to receive and recover those debts, as, on dissolution of the contract his engagement becomes voluntary, for the recovery of those debts. The *Mudarib* in such a situation, will authorize the *Rabb al-Mal* to recover those debts as those have occurred during the *Mudarabah*. However, in the contract of *Mudarabah* all the losses occurred in respect of the stock is to be counted for or against the profit, as the case may be. In case the amount of loss exceeds the profit the responsibility for sharing in the loss will not be that of the *Mudarib*. The *Rabb al-Mal* only shall bear the entire loss. Similarly, if the *Mudarib* has received certain amounts of money, out of *Mudarabah*, in expectation of profit, but afterwards, on final accounting or otherwise the *Mudarabah* is found to have suffered loss, the *Mudarib* will have

to return the portion of the amount, received by him during continuation of the contract of *Mudarabah* as part of the expected profit.

It will be improper to distribute the profit of *Mudarabah* on the basis of the gross profits. The profits realized through *Mudarabah* should not be distributed until all expenses have been paid. Final accounting should be undertaken against the net profit of the *Mudarabah* operation and the profit should be distributed between the *Rabb al-Mal* and the *Mudarib*, in accordance with the agreement and after making provisions for unpaid taxes.

Distinction between *Mudarabah* and *Musharakah*

There are some differences between *Mudarabah* and *Musharakah* which are enumerated as under:

1. (a) In *Musharakah* all the partners (*Shuraka*) two or more, as the case may be, may provide finance and run jointly the commercial/industrial enterprise;
(b) all the partners may work for its;
(c) all the partners share in profit and loss both, at the agreed ratio, proportionate to their respective investments.
2. In case of *Musharakah*, the partners may fix to draw some amount of money periodically and that the partners' drawings are to be accounted for/adjustable at the time of the close of the accounting year, unlike *Mudarabah* where no such concept of drawing exists, except that a *Mudarib* may draw from the *Mudarabah* for daily expenses of food and travelling/conveyance, in certain situations. This principle is based on the rationale that the *Mudarib* may not be able to earn any profit in the *Mudarabah*, inspite of exerting his best efforts.

The jurists have stated the distribution of profit during the continuation of *Mudarabah* as invalid (*la yajuzu*) and have held it to be repugnant to the concept of *Mudarabah* itself, as it is probable that in a contract of *Mudarabah*, the business may fail and the capital investment itself may be lost. It may, therefore, warrant that there should be no

distribution of profit during continuance of *Mudarabah* contract; which can be determined at the termination/dissolution of the contract itself.

In case of appreciation in the value of the *Musharakah* assets the excess in value shall be shared by all the persons according to the ratio of investment.

In case of dissolution of *Musharakah*, mutual partnership, the liabilities shall be shared by all the persons according to their ratio of profit.

However, in case of loss, their liability is unlimited, that is, if the liabilities exceed the assets, the partners will be held liable to meet the excess liabilities from their own sources.

Distinction between *Mudarabah Riba*

The first distinction between a contract of *Mudarabah* and *Ribawi* contract is, that in *Mudarabah* there is no guarantee from the *Mudarib* that on the determination of *Mudarabah* contract, or earlier, the Investor (*Rabb al-Mal*) will get back his capital investment, in its entirety, whereas in a *Ribawi* transaction it is imperative that the owner of capital will receive back his money in full with a fixed return. The rationale of this difference is that the capital, in a contract of *Mudarabah* is a kind of trust (*amanah*) with the *Mudarib*, which, not being his property, does not enter into his ownership; it remains the property of the *Rabb al-Mal* throughout. The rule relating to an *amanah* in the Islamic jurisprudence is that the subject matter of *amanah*, if lost or destroyed on account of an unintentional or humanly uncontrollable cause, the *amin* (trustee) is not required to pay any *daman* (compensation) for it. On the contrary, the money, being the subject matter of *riba* in a *Ribawi* transaction goes out of the ownership of the lender and enters into the ownership of the borrower, and on the expiry of the appointed time, it is incumbent on him to return the same with the amount of interest thereon.

The second distinction between a *Mudarabah* and a *Ribawi* contract is that of *Mudarabah* the earning of profit is not certain, whereas in a *Ribawi* contract, the excess amount payable on the principal amount is certain, and assured to be paid to the lender.

The third distinction, in the case of profit out of *Mudarabah* contract, is that the excess amount on the principal is determined on the basis of ratio; it is

not at the rate of monthly or annual return, as fixed in a *Ribawi* contract, irrespective of the fact whether borrower has earned out of it a profit or not.

According to the classical view of the jurists, if the investor, in a contract of *Mudarabah*, is assured that his capital will be safe and secured like a loan and he shall get profit, notwithstanding any loss in the business, which will be paid and continued to be paid to him at certain fixed rate, whether monthly or annually and that the payment/distribution of profit shall be a continuing phenomena between the parties, it is not, in essence, a *Mudarabah* contract. It become a *Ribawi* contract.

***Mudarabah/Musharakah* in the Modern Context**

As stated earlier, *Mudarabah* is a financial contract which has been in vogue among the Arabs since before the advent of Islam. It used to be a two-party contract. In modern context, it has developed to be a mode of financing, as an alternate to *riba*. The Islamic banks and financial institutions have also involved themselves into the composition of *Mudarabah*. It has thus, turned into a tripartite contract in the nature of co-partnership, namely, the individual depositor or depositors with the bank, who authorize the bank to utilize their deposits on the basis of profit and loss sharing. Such depositors may be termed as *Rabb al-Mal* and the bank, acting as their agent. The bank on entering into a contract with another person for carrying on actual *Mudarabah* between the bank as investor and the other person as entrepreneur, thereby establishing the relationship of *Rabb al-Mal* and the *Mudarib*.

There is a common view which is also shared by me, that there should be no difficulty in applying the principles of *Musharakah* to the modern financial system by restructuring the same on Islamic lines to any project of financing permissible under the *Shari'ah*. Some reservations have, however, been shown in the case of following the old concept of *Mudarabah* inasmuch as the investor has to bear all losses and the person managing the business/industry stands absolved of bearing any loss, occurring in the normal course of business.

Some of the classical jurists have also stated that the validity of the contract of *Mudarabah* is against the *Qiyas*, the analogical deduction, and it is a principle of Islamic jurisprudence that if the validity is limited and restricted to that thing alone. Its validity cannot be extended to other things, analogous or similar to that thing. As observed by the classical jurists the validity of a

Mudarabah contract relates to the business, that is, sale and purchase of merchandise. It cannot, therefore, be extended to other than business (trade and commerce). Thus, according to classical jurists, a contract of *Mudarabah* will not be valid for establishing an Industry or constructing a building. IN other words, the capital of the *Mudarabah* cannot be invested in an Industry or agriculture.

However, in the modern context, as the present commercial activities have been immensely widened and enlarged thee should be no difficulty in applying the concept of *Mudarabah* in the case of an industry or a project, provided, the principles governing the *Mudarabah*, according to *Shari'ah*, are adhered to. If the whole project, say, relating to establishing an industry or construction of a building is financed by a single investor and a contract is entered into with *Mudarib*, one or more persons, it appears to be easy and simple and should present no difficulty in carrying on the same. In case, there are more than one investors, the capital invested by them may be divided in units and profit may be shared by them according to their ratio of the investment, made by each of them.

The difficulty may, however, arise in case one or more investors desire to be disassociated from the *Mudarabah* in a going concern. In that case, the question of valuation of the assets of the going concern will pose a question. The share of the outgoing party or parties, as the case may be, may either be sold to an outsider, if other parties agree, or the remaining parties may purchase the share of the outgoing party or parties. Such incidents are not to be found in the classical literature of *fiqh* on *Mudarabah*. Evidently these are the creations of modern system of trade and industry which present a number of complexities.

However, if the *Mudarabah* has not commenced, its business and the magnitude of the project is huge involving a large number of subscribers and each subscriber is issued *Mudarabah* ownership certificate representing the amount of investment made by him in the said *Mudarabah*, such *Mudarabah* certificates are generally negotiable in the open market, that is, readily available for sale and purchase. It may, again, involve two situations; that the assets of the *Mudarabah* are liquid or non-liquid.

In the first situation, when all the assets are in the nature of liquid, that is, cash in hand/bank balance, advances receivable or loans recoverable, the *Mudarabah* certificates, in such situation, will not be negotiable in the eye of *Shari'ah* except at part value or, in other words, face value, because it will

tantamount to “exchange of money for money” which must be equal in value; the excess amount received, while negotiating *Mudarabah* certificate, in such a situation, will turn into a *Ribawi* transaction.

In the second situation, a *Mudarabah* certificate where the assets of the *Mudarabah* company consist of non-liquid only (like land, building, machinery etc.), it will present no difficulty in the eye of *Shari’ah* for trading them in the market as every certificate holder is an owner to the extent of the proportionate share in the *Mudarabah* and, therefore, negotiating a *Mudarabah* certificate, in such a situation, will be valid in the eye of *Shari’ah*.

There is, however, difference of opinion among the jurists, in the case of *Mudarabah* having assets, both liquid as well as non-liquid. According to *Shari’i* such a certificate of *Mudarabah* cannot be negotiated unless the non-liquid portion of the *Mudarabah* is separated. The Hanafis are, however, of the opinion that if the *Mudarabah* consist of liquid and non-liquid both, it is negotiable. However, the consensus seems to be that if the non-liquid assets are more than 50% the *Mudarabah* certificates are allowed to become negotiable.

In the classical literature a Contract of *Mudarabah* comes to an end by the death of either party. However, as *Mudarabah* has now been given a separate juristic personality, it may continue its existence, notwithstanding the death of a party, if the contract so provides or the Instrument so declares.

***Mudarabah* in Pakistan Perspective**

In Pakistan, in June 1980, as an alternate to *riba*, the Federal Government took, as a first step, to introduce the *Mudarabah*, as an Islamic mode of investment, by promulgating *Mudarabah* Companies and *Mudarabah* (Floatation and Control) Ordinance, 1980 and the *Mudarabah* Companies and *Mudarabah* Rules, 1981 made under Section 41 of the said Ordinance, published in the Gazette of Pakistan, Extraordinary, Part I, dated 26-06-1980 and the Gazette of Pakistan, Extraordinary Part II, dated 26-01-1981 respectively.

Under Section 42 of the Ordinance it was specifically provided that the provisions of the said Ordinance shall override other laws and shall have effect notwithstanding anything contained in the Companies Act, 1913 (VII of 1913), or any other law for the time being in force, (now Companies Ordinance, 1984).

A glance through the various provisions of the *Mudarabah* Ordinance and the Rules made thereunder will reveal that the Ordinance is procedural in

nature It provides for the conditions for the incorporation of *Mudarabah* raising of *Mudarabah* Fund and its operations, maintenance of the statutory books of accounts and preparation of returns, distribution of profit and reserves, borrowing power and security, administration and legal control, cancellation of registration and winding up, penalties and punishment for fraudulent trading and for not keeping proper accounts. A separate Chapter has been added to the said Ordinance providing for, inter alia, capitalization of profits, increasing *Mudarabah* Fund, exemption from tax and indemnity etc.

In *Mudarabah* the shareholders, who subscribe to the *Mudarabah* Fund, are the owner of the *Mudarabah*. The *Mudarabah* has its own legal status and is recognized in law to be a separate entity.

The shares certificate holders, although owners of the *Mudarabah* and are admitted to the list of subscribers to the *Mudarabah* Fund, are not admitted to its membership, unlike a Company or a Corporate Body. In other words, it has not been given the status of an Association of Persons, engaged in a business; with the result that law does not provide for any statutory meeting, ordinary meeting or extraordinary meeting of the shareholders. They have not right to elect Directors, or appoint Auditors, to approve accounts or even to declare profits, dividends; whereas the shareholders of a Company of a Corporate Body are free to act and participate in the business affairs of a Company or a Corporate Body; the Certificate holders of a *Midarabah* are not so authorized under the law.

However, the *Mudarabah*, by fiction of law, as enforced in Pakistan, envisages two legal persons, giving them legal entities; the *Mudarabah* Company and the *Mudarabah* Business. It recognizes two classes of owners: the Company's Shareholders and the *Mudarabah* Certificate Shareholders. The Company's Shareholders, as an association of Persons have the right of Association, whereas the Certificate holders of a *Mudarabah* have no such right.

In the case of Multiple *Mudarabah*, the law envisages a number *Mudarababs*; the *Mudarabah* Companies and the *Mudarababs*. The Company's Shareholders and the Certificate holders of each of the *Mudarababs*, each one being distinct from every one, in a cosmic fashion, considered as an ordered totality.

In order to give an Islamic color to a *Mudarabah* it has been provided in the law that a *Mudarabah* shall not do any business which is opposed to the Injunctions of Islam. Registrar of *Mudarabah* Companies has been empowered not to issue permission for the flotation of a *Mudarabah*, unless Religious Board appointed by the Federal Government has certified that the *Mudarabah* applied for is not a business opposed to the Injunctions of Islam. The Religious Board shall consist of three members of whom one is the Chairman. The Chairman shall be a person who is or has been, or is qualified to be a Judge of a High Court. The other two members shall be religious scholars. The terms of office of each member has been fixed to be for three years, unless he resigns or is removed from the office earlier. Details as to the Constitution of Religious Board and its working have been provided in the Rules. However, there seems to be no provision in the Ordinance or Rules made thereunder to overview the actual working of the *Mudarabah* Business by the Religious Board.

It is an undeniable fact that two vital alternates or substitutes to *riba*, *Mudarabah* – *Musharakah* – have failed to attract Islamic Banks and Financial Institutions during the last twenty years. If I may say so, the response has been too poor, at least in the case of Pakistan. I know it, that it was through the personal efforts of General Zia, the then President of Pakistan, that during 1980-1985 only few *Musharakah* agreements between the Banks and the private parties could be finalized and that could only be done after the banks made certain relaxations in the original Draft Agreement of *Musharakah*, prepared by them. There are certain valid reasons for it, namely:

- (a) Lack of mutual trust.
- (b) Leakage of trade secrets.
- (c) Short-term arrangement.
- (d) Risk of disclosure of the high rate of profits.
- (e) Political maneuvering and pressure on banks/financial institutions.
- (f) Frequent changes in Banks Regulations, particularly by the State Bank of Pakistan.
- (g) Unending issuance of S.R.Os by Central Board of Revenue.
- (h) The practice of double account keeping by trades for avoiding taxation.
- (i) Demanding from time to time fresh guarantees and securities by the banks/financial institutions.

- (j) Bank preferential share in the profit.
- (k) Bearing singly by the Company all documents charges and the fees, such as project examination fee, monitoring fee and Commission etc.
- (l) Discretionary power of the bank in the case of winding up of the Company.
- (m) Taxation laws.

Due to all these risks and rigorous, indicated above, a tradesman prefers to borrow loan from the Banks/Financial Institutions on the agreed rate of interest.

It may be pointed out that the Islamic Banks and the Financial Institutions during the last about two decades have not been able to bring in any visible change in the economic structure of the Muslim countries where they have been operating. The for most reason seems to be that the Islamic financial system is only a side track, without effecting the main stream of the old economic system based on the western concept in these centuries. The step taken by various Muslim governments in the direction of Islamic Banking/Financing System has proved, in fact, to be an eyewash as an umbrella to suppress the upsurge/uprising of the Islamic Movements. In fact, the governments of the countries did not provide the necessary concessions and reliefs, particularly in the matters of taxation, for the Islamic Banking/Financial System. The Islamic Banks/Financial Institutions have been working, within the limited financial resources under all constrains, and struggling for their coexistence, side by side, with the conventional system of Banking, prevalent in the Society. They are not, therefore, able to create any impact on the current system of Banking and Finance.

In some cases, it has been observed that the mode of *Mudarabah* financing, as an alternate to *Riba*, has worked only as a fund-raising device. In early eighties there was mushroom growth of Investment Companies in Pakistan, particularly in Karachi e.g. Messrs. Alliance Motors, Messrs. Samad Dadabhoy, which carried on their business on large scale with wide publicity to attract members of the public to invest their money in such Companies assuring them far higher returns than the Schedule Banks, on the basis of *Mudarabat*. Millions of people including widows, pensioners and other invested billions of Rupees with such Companies. For some time, the Companies paid to them the return, in the name of profit, at a much higher rate of interest than the Scheduled Banks used to pay. But the said Companies, by and by, started disappearing

from the scene, transferring in foreign countries. The Government of Pakistan, or for that matter, failed and neglected to take notice of those “fake” Investment Companies, at the proper time, inspite of wide publicity, although he said Companies continued to operate, unlawfully in utter disregard to the provisions of Banking Companies Ordinance, 1962 and other laws in force in Pakistan.

In conclusion, I may append a number of documents obtained with the courtesy of Securities and Exchange Commission of Pakistan Islamabad (vide their letter No. 6(53) R.M. 93-335, dated 15th July, 1999) listed below as Appendix A, B, C, D and E. A cursory glance of the said documents will show that the dividend distributed by various *Mudarabahs*, registered in Pakistan during last 18 years (4th June, 1981 to 30th June, 1999), excepting few *Mudarabahs* only, the rest have either distributed no dividend for years together or have distributed a negligible amount of dividend, some time below the rare of interest offered by the Schedule Banks, not even equal to the rate of inflation. This is perhaps, sufficient to indicate the present state of *Mudarabahs* in Pakistan.

APPENDIXES:

- “A” Statement of *Mudarabah* Companies and *Mudarabah* registered in Pakistan up to 30-06-1999 (pages 3).
- “B” *Mudarabah* doing leasing business up to 30-06-1999.
- “C” Statement of Dividend distribution by *Mudarabahs*.
- “D” Proforma of *Mudarabah* Sale Agreement (Pages 5).
- “E” Proforma of *Musharakah* Investment Agreement (Pages 8)/

Dr. (Tanzilur Rahman)

July 24, 1999

NOTES AND REFERENCES

1. Seest thou not how God sets forth a parable? – A goodly word like a goodly tree (S.XIV:24).
2. God sets forth the parable (of two men: one) a slave under the dominion of another; He has no power of any sort; (S.XVI: 75).
3. God sets forth the parable: of two men: one of them Dumb, with nor power of any sort; (S.XVI:76).
4. God sets forth the parable: a city enjoying security and quiet, abundantly supplied with sustenance; (S.XVI:112).
5. He does propound to you a similitude from your own; (S.XXX.28).
6. And he makes comparisons for Us, and forgets his own Creation: He says, “Who can give Life to bones. And decomposed ones?” (S.XXXVI:78).
7. God puts forth a parable – A man belonging to many partners at variance with each other; (S.XXXIX:29).
8. When news is brought to one of them of what he sets up as a likeness to Most Gracious, his face Darkens; (XLIII:17).
9. God sets forth, for an example too the unbelievers, the wife of Noah – and the wife of Lut; (LXVI:10).
10. And God sets forth as a example to those who believe; (LXVI:11).
11. O ye who believe; when ye go abroad in the cause of God, investigate carefully (S.IX: 94).
12. When ye travel through the year, there is no blame on you if ye shorten your prayers (S.IV:101).
13. If ye are journeying through the earth, and the chance of death befalls you; (S.XIV:45).
14. Ye were clearly shown how we dealt with them; and we put forth (many) Parables in your behoof; (S,XIV:45).
15. Then We draw (a veil) over their ears, for a number of years, in the Cave, (So that they heard not); (S.XVIII:11).

16. To each one We set forth Parables and examples; and each one We broke to utter annihilation (for their sins); (S.XXV:39).
17. Verily We have propounded for men, in this Qur'an every kind of Parable; (S.XXX:58).
18. We have put forth for men, in their Qur'an every kind of parable, in order that they may receive admonition; (S.XXXIX:27).
19. When they are travelling through the earth or engaged in fighting. "If they had stayed with us, they would not have died, or been Slain"; (S.III:156).
20. See what similes they strike for thee: but they have gone astray, and never can they find a way; (S.XVII:48).
21. See what kinds of comparisons they make for thee; but they have gone astray, and never a way will they be able to find; (S.XXV:9).
22. And they say, "Are our gods best, or he?" This they set forth to thee, only by way of disputation; (S.XLIII:58).
23. Invent not similitudes for God: for God knoweth, and ye know not; (S.XVI:74).
24. Shall We then take away the Message from you and repel *you), for that ye are a people transgressing beyond bounds? (S.XLIII:5).
25. And such are the Parables We set forth for mankind, but only those understand them who have knowledge; (S.XXIX:43).
26. Such are the similitudes which we propound to men, that they may reflect; (S.LIX:21).
27. God disdains not to use the similitudes of things, lowest as well as highest; (S.II:26).
28. Thus doth God (by parables) show forth Truth and Vanity; (S.XIII:17).
29. Thus doth God set forth parables; (S.XIII:17).
30. So God sets forth parables for men, in order that they may receive admonition; (S.XXIV:25).
31. God doth set forth Parables for men: and God doth know all things. (S.XXIV:35).

32. Thus does God set forth for men their lessons by similitudes; (S.XLVII:3).
33. Draw their veils over their bosoms and not display their beauty; (S.XXIV:31).
34. Should not strike their feet in order to draw attention to their hidden ornaments; (S.XXIV:31).
35. If thou couldst see, when the angels take the souls of the Unbelievers (at death) (How) they smite their faces (S.VIII:50).
36. But how (will it be) when the angels take their souls at death, and smite their faces and their backs? (S.XLVII:27).
37. Others travelling through the land, seeking of God's bounty; (S.LXXIII:20).
38. And remember Moses prayed for water for his people; We said: "Strike the rock with thy staff"; (S.II:60).
39. We directed Moses by inspiration, when his (thirsty) people asked Him for water: "Strike the rock with thy staff"; (S.VII:160).
40. Set forth to them the parable of two men: for one of them We provided two gardens of grapevines; (S.XVIII:32).
41. Set forth to them the similitudes of the life of this world: it is like the rain which We send down from the skies; (S.XVIII:45).
42. Travel by night with My servants, and strike a dry path for them through the sea; (S.XX:77).
43. Then We told Moses by inspiration: "Strike the sea with thy rod"; (S.XXVI:64).
44. Set forth to them, by way of a parable, the (story of) the Companions of the City. Behold, there came apostle to it; (S.XXXVI:13).
45. "And take in thy hand a Little grass, and strike therewith: and break not (thy oath)"; (S.XXXVIII:44).
46. Smite ye above their neck; (S.VIII:12).
47. And smite all their fingertips off them; (S.VIII:12).
48. So We said: "Strike the (body) with a piece of the (heifer)". Thus God bringeth the dead to life; (S.II:73).

49. Admonish them (first) (Nest) refuse to share their beds, (And last) beat them (lightly); (S.IV:34).
50. O MEN Here is a parable set forth Listen to it; (S.XXII:73).
51. When (Jesus) the son of Mary is held up as an example, behold, thy people raise a clamor threat (in ridicule); (S.XLIII:57).
52. So a wall will be put up be twixt them, with a gate therein within it will be Mercy; (S.LVII:13).
53. They were covered with humiliation and misery; they drew on themselves the wrath of God; (S.II:61).
54. Shame is pitched over them (like a tent) wherever they are found (S.III:112).
55. They draw on themselves wrath from God, and pitched over them is (the tent of) destitution;(S.III;112).
56. Therefore, when ye meet the unbelievers (in fight), smite at their necks; S.XLVII:4).
57. (Charity is) for those in need, who, in God's cause are restricted (from travel), and cannot move about in the land, seeking (for trade or work); (S.II:273).
58. Then he turn upon them, striking (them) with the right hand; (S.XXXVII:93).

(Translation by Abdullah Yousuf Ali).

59. Abu Dawud; *Sunan*, Vol. 2, p.124, Matba Majidi, Kanpur, (India), 1345 A.H.
60. Ibn Majah; *Sunan*, Chapter entitled *Al-Shirkah wal Mudarabah*.
61. Al-Bayhaqi; *Sunan al Kubra*, Vol. 6, p.111, 118, Hyderabad Daccan, India, 1342 A.H.
62. Ibn Hajr Al-Asqalani; *Tahzib al Tahzib*, Vol.3, p.386, Hyderabad, India, 1325 A.H.
63. Ibn Hisham: *Sirah*, Vol.1, p.199, Egypt, 1355 A.H.
64. Ibn Sa'd: *Tabat*, Vol.1, pp.82-83, Lyden, 1333 A.H..

MODARABA COMPANIES AND MODARABA UP TO 30-06-1999*

Sl.#	NAME OF MODARABA COMPANY	DATE OF REGISTRAT ION	MODARABA FLOATED	DATE OF AUTHORIZAT ION	DATE OF SUBSCRIPTI ON	DATE OF COMMENCE MENT OF BUSINESS
1.	Bankers Equity Ltd.	04.06.81	Twin Tower <i>Modaraba</i>	29.07.81	18.08.81	20.10.81
2.	Pakistan Paper Sack Corp. Ltd.	11.11.82	Nil	Nil	Nil	Nil
3.	Thal Jute Mills Ltd.	11.11.82	Nil	Nil	Nil	Nil
4.	Habib <i>Modaraba</i> Management Ltd.	17.11.83	First Habib <i>Modaraba</i>	31.12.84	18.02.85	19.03.85
5.	B.R.R. Investment Services Ltd.	07.08.84	BRR Capital <i>Modaraba</i> BRR Second <i>Modaraba</i>	16.05.85 19.10.89	14.10.85 18.03.90	17.11.85 11.04.90
6.	National Development Leasing Corp.	16.01.85	Nil	Nil	Nil	Nil
7.	Grindlays Services of Pakistan (Pvt.) Ltd.	13.03.86	First Grindlays	20.05.87	16.06.87	02.08.87
8.	Al-Mal Corporation	21.10.86	<i>Modaraba</i> Al-Mali <i>Modaraba</i> Al-Tijarah	07.06.87 27.03.91	08.07.87 09.06.91	23.08.87 14.07.91
9.	National <i>Modaraba</i> Company (Pvt.) Ltd.	23.08.87	First National <i>Modaraba</i>	19.03.89	01.08.89	15.08.89
10.	National Technology Development Corp. Ltd.	19.11.87	LTVC <i>Modaraba</i>	09.03.89	21.06.89	07.09.89
11.	ARKS <i>Modaraba</i> Management (Pvt.) Ltd.	09.12.87	Nil	Nil	Nil	Nil
12.	E.A. Management (Pvt.) Ltd.	18.04.88	B.F. <i>Modaraba</i>	15.03.89	11.06.89	23.07.89
13.	D.G. <i>Modaraba</i> Management (Pvt.) Ltd.	23.02.89	First D.G. <i>Modaraba</i> (Wound up)	25.07.90	10.03.91	13.01.91

* With the courtesy of Securities and Exchange Commission of Pakistan, Islamabad.

4.	I.B.L. <i>Modaraba</i> Management (Pvt.) Ltd.	27.04.89	First IBL <i>Modaraba</i>	19.10.89	03.10.90	15.02.90
5.	Tawakkal Management (Pvt.) Ltd.	18.07.89	First Tawakkal <i>Modaraba</i>	19.10.89	20.09.90	18.10.90
6.	Providence <i>Modaraba</i> Limited	05.08.89	First Providence <i>Modaraba</i>	18.10.90	17.06.91	21.07.91
7.	Prudential Capital Management Ltd.	26.08.89	First Prudential <i>Modaraba</i> Second Prudential <i>Modaraba</i> Third Prudential <i>Modaraba</i>	19.10.89 14.03.90 31.07.91	04.12.89 02.05.90 01.10.91	19.12.89 16.05.90 28.10.91
8.	United <i>Modaraba</i> Management (Pvt.) Ltd.	28.11.89	United <i>Modaraba</i>	15.07.92	05.09.93	10.01.94
9.	A.R.T. <i>Modaraba</i> Management (Pvt.) Ltd.	30.12.89	First Tri-Start <i>Modaraba</i> Second Tri-Star <i>Modaraba</i>	25.07.90 15.09.91	22.10.90 15.12.92	01.01.91 14.01.93
0.	Technology Venture (Pvt.) Ltd.	13.03.90	First Mehran <i>Modaraba</i>	29.07.90	22.10.90	07.11.90
1.	Habib Bank Financial Services (Pvt.) Ltd.	30.04.90	First Habib Bank <i>Modaraba</i>	25.07.90	18.02.91	16.03.91
2.	Royal Management Services (Pvt.) Ltd.	11.06.90	First Pak <i>Modaraba</i>	08.08.90	15.07.91	10.09.91
3.	National Industrial Management (Pvt.) Ltd.	17.09.90	Industrial Capital <i>Modaraba</i>	27.03.91	05.06.91	20.06.91
4.	Crescent Business Management (Pvt.) Ltd.	21.10.90	First Crescent <i>Modaraba</i>	25.03.91	15.06.91	24.07.91
5.	Universal Management (Pvt.) Ltd.	30.10.90	First Interfund <i>Modaraba</i>	25.03.91	09.05.91	09.06.91
6.	Premier <i>Modaraba</i> Management (Pvt.) Ltd.	10.11.90	First Premier <i>Modaraba</i>	27.03.91	10.07.91	10.08.91
27.	UDL <i>Modaraba</i> Management (Pvt.) Ltd.	08.01.91	First UDL <i>Modaraba</i> Second UDL <i>Modaraba</i>	27.03.91 12.05.91	13.05.91 Not Floated	16.06.91 Not Floated
8.	Professionals <i>Modaraba</i> Manag. Co. (Pvt.) Ltd.	03.02.91	First Professionals <i>Modaraba</i>	12.05.91	27.07.91	30.07.91
9.	Chartered Management Services (Pvt.) Ltd.	21.04.91	Unicap <i>Modaraba</i>	31.07.91	06.07.91	17.11.91
0.	Constellation Management Co. (Pvt.) Ltd.	10.07.91	First Constellation <i>Modaraba</i>	08.08.91	26.09.91	30.10.91
1.	Hajveri <i>Modaraba</i> Management Co. (Pvt.) Ltd.	17.08.91	First Hajveri <i>Modaraba</i>	25.09.91	01.11.91	21.11.91
2.	Islamic Investment Bank Ltd.	18.08.91	First Islamic <i>Modaraba</i>	17.05.92	26.06.94	21.09.94

3.	Premier Financial Services (Pvt.) Ltd.	28.08.91	First Equity <i>Modaraba</i>	25.09.91	08.12.91	11.01.92
4.	Schon Management (Pvt.) Ltd.	29.08.91	Schon <i>Modaraba</i>	25.09.91	16.11.91	01.01.92
5.	Crescent <i>Modaraba</i> Company Ltd.	31.08.91	First Elite Capital <i>Modaraba</i>	26.09.91	28.11.91	30.12.91
6.	Trust Management Services (Pvt.) Ltd.	31.08.91	Trust <i>Modaraba</i>	25.09.91	24.10.91	12.11.91
7.	Fidelity Capital Management (Pvt.) Ltd.	31.08.91	First Fidelity Leasing Mod.	25.09.91	06.11.91	05.12.91
8.	Confidence <i>Modaraba</i> Management (Pvt.)Ltd.	24.09.91	First Confidence <i>Modaraba</i>	27.04.92	25.08.92	08.09.92
9.	Crescent Financial Services (Pvt.) Ltd.	09.09.91	First Cres Fund <i>Modaraba</i>	Nil	Nil	Nil
0.	Al-Noor <i>Modaraba</i> Management (Pvt.) Ltd.	14.10.91	First Noor <i>Modaraba</i>	04.05.92	19.10.92	02.11.92
1.	Ibrahim <i>Modaraba</i> (Pvt.) Ltd.	07.01.92	First Ibrahim <i>Modaraba</i>	04.05.92	27.01.93	06.03.93
2.	Al-Zamin <i>Modaraba</i> Management (Pvt.) Ltd.	07.01.92	Al-Zamin Leasing <i>Modaraba</i>	26.04.92	21.06.92	27.07.92
3.	Excell Services (Pvt.) Ltd.	11.01.92	First Excell <i>Modaraba</i>	19.05.92	Not floated	Not floated
4.	Allied Management Services (Pvt.) Ltd.	13.01.92	First Allied Bank <i>Modaraba</i>	15.07.92	17.01.93	15.03.93
5.	Dewan Mustaq Business & Financial & Management (Pvt.) Ltd.	15.01.92	First Dewan <i>Modaraba</i>	27.04.92	Not floated	Not floated
6.	Punjab <i>Modaraba</i> Services (Pvt.) Ltd.	23.01.92	First Punjab <i>Modaraba</i>	14.07.92	25.09.92	23.12.92
7.	National Wide <i>Modaraba</i> (Pvt.) Ltd.	04.02.92	First Indus <i>Modaraba</i>	05.10.94	Not floated	Not floated.
8.	Al-Ata Management Services (Pvt.) Ltd.	13.02.92	Al-Ata Leasing <i>Modaraba</i>	04.05.92	14.07.92	16.08.92
9.	Equity International (Pvt.) Ltd.	04.05.91	Equity International <i>Modaraba</i>	29.09.92	18.08.93	31.10.93
0.	General <i>Modaraba</i> Services (Pvt.) Ltd.	23.02.92	First General Leasing <i>Modaraba</i>	22.08.92	18.05.94	27.06.94
1.	Guardian Management (Pvt.) Ltd.	03.03.92	Guardian Leasing <i>Modaraba</i>	22.08.92	18.05.94	27.06.94
2.	PICIC Fund Management Services (Pvt.) Ltd.	07.06.92	PICIC <i>Modaraba</i>	26.05.93	Not floated	Not floated

3.	Financial Link Limited	04.07.92	Financial Link <i>Modaraba</i>	30.01.93	09.01.94	10.02.94
4.	Clip Management (Pvt.) Ltd.	09.08.92	First Clip <i>Modaraba</i>	Nil	Nil	Nil
5.	Safeway Business Management (Pvt.) Ltd.	09.08.92	First Investor <i>Modaraba</i>	Nil	Nil	Nil
6.	Olympic <i>Modaraba</i> Co. (Pvt.) Ltd.	09.08.92	Nil	Nil	Nil	Nil
7.	Sitara <i>Modaraba</i> Management (Pvt.) Ltd.	09.08.92	First Sitara <i>Modaraba</i>	Nil	Nil	Nil
8.	Masood <i>Modaraba</i> Management (Pvt.) Ltd.	09.08.92	Nil	Nil	Nil	Nil
9.	Pakistan Industrial Development Financial Services (Pvt.) Ltd.	29.09.92	First IDBP <i>Modaraba</i>	18.11.93	Not floated	Not floated
0.	Paramount Investments Ltd.	15.10.92	First Paramount <i>Modaraba</i>	26.06.94	14,12,8=94	17.01.95
1.	NIT Management Services (Pvt.) Ltd.	17.10.92	First Nit <i>Modaraba</i>	02.06.94	Not floated	Not floated
2.	Dadabhoy <i>Modaraba</i> Management (Pvt.) Ltd.	14.12.92	First Dadabhoy <i>Modaraba</i>	30.01.94	31.07.94	16.10.94
3.	Custodian Management (Pvt.) Ltd.	14.12.92	First Custodian <i>Modaraba</i>	28.02.94	17.05.94	07.07.94
4.	A.R. Management Services (Pvt.) Ltd.	09.01.93	First Imroz <i>Modaraba</i>	27.09.93	01.01.94	01.03.94
5.	Greaves <i>Modaraba</i> Services (Pvt.) Ltd.	11.10.93	Greaves <i>Modaraba</i>	08.06.94	Not floated	Not floated
6.	United Bank Financial Services (Pvt.) Ltd.	05.03.94	First UBL <i>Modaraba</i>	Not floated	Not floated	Not floated
7.	Regent <i>Modaraba</i> Manag. (Pvt.) Ltd.		First Regent <i>Modaraba</i> (Wound up)	15.11.94	Not floated	Not floated
8.	National Bank <i>Modaraba</i> Manag. (Pvt.)Ltd.	12.10.94	First National Bank <i>Modaraba</i>	07.11.95	Not floated	Not floated
9.	Muslim Com. Financial Services (Pvt.) Ltd.	28.07.94	Nil	Nil	Nil	Nil

MODARABA DOING LEASING BUSINESS UP TO 30.06.1999*

Sl. #	NAMES OF MODARABAS DOING LEASING BUSINESS
1.	Al Ata Leasing <i>Modaraba</i> 1 st
2.	Al Noor <i>Modaraba</i> 1 st
3.	Al Zamin Leasing <i>Modaraba</i>
4.	Allied Bank <i>Modaraba</i> 1 st
5.	B.F. <i>Modaraba</i>
6.	B.R.R. <i>Modaraba</i>
7.	Confidence <i>Modaraba</i> 1 st
8.	Constellation <i>Modaraba</i> 1 st
9.	Crescent <i>Modaraba</i> 1 st
10.	Elite Capital <i>Modaraba</i> 1 st
11.	Equity <i>Modaraba</i> 1 st
12.	Fidelity Leasing <i>Modaraba</i> 1 st
13.	Financial Link <i>Modaraba</i>
14.	General Leasing <i>Modaraba</i> 1 st
15.	Grindlays <i>Modaraba</i> 1 st
16.	Guardian Leasing <i>Modaraba</i>
17.	Habib Bank <i>Modaraba</i> 1 st
18.	Habib <i>Modaraba</i> 1 st
19.	Hajveri <i>Modaraba</i> 1 st
20.	IBL <i>Modaraba</i> 1 st
21.	Ibrahim <i>Modaraba</i> 1 st
22.	Industrial Capital <i>Modaraba</i>
23.	Interfund <i>Modaraba</i> 1 st
24.	Islamic <i>Modaraba</i> 1 st
25.	Long-Term Venture Capital <i>Modaraba</i>
26.	Mehran <i>Modaraba</i> 1 st
27.	<i>Modaraba</i> Al-Tijarah
28.	Pak <i>Modaraba</i> 1 st
29.	Professionals <i>Modaraba</i> 1 st
30.	Providence <i>Modaraba</i> 1 st
31.	Prudential <i>Modaraba</i> 2 nd
32.	Prudential <i>Modaraba</i> 3 rd

* With the courtesy of Securities and Exchange Commission of Pakistan, Islamabad.

3.	Prudential <i>Modaraba</i> ^{1st}
4.	Punjab <i>Modaraba</i> ^{1st}
5.	Schon <i>Modaraba</i>
6.	Tri Star <i>Modaraba</i> ^{1st}
7.	Trust <i>Modaraba</i>
8.	Twakkal <i>Modaraba</i> ^{1st}
9.	UDL <i>Modaraba</i> ^{1st}
0.	UNICAP <i>Modaraba</i>
1.	Unity <i>Modaraba</i>

MODARABA DOING LEASING BUSINESS UP TO 30.06.1999*

Sl.#	NAME OF MODARABA	1995	1996	1997	1998	B.UPVAL- 30.6.98
1.	Al Ata Leasing <i>Modaraba</i> 1 st	11.00	Nil	Nil	Nil	13.31
2.	Al Noor <i>Modaraba</i> 1 st	5.00	Nil	7.50	5.00	10.93
3.	Al Zamin Leasing <i>Modaraba</i>	12.50	Nil	17.00	Nil	12.49
4.	Allied Bank <i>Modaraba</i> 1 st	Nil	22.50	15.00	15.00	11.71
5.	B.F. <i>Modaraba</i>	Nil	Nil	Nil	Nil	Nil
6.	B.R.R. Capital/ Int. <i>Modaraba</i>	Nil	10.00	11.00	11.00	13.30
7.	Confidence <i>Modaraba</i> 1 st	Nil	15.00	10.00	10.00	11.86
8.	Constellation <i>Modaraba</i> 1 st	Nil	5.50	6.00	5.00	10.69
9.	Crescent <i>Modaraba</i> 1 st	Nil	Nil	Nil	Nil	Nil
10.	Custodian <i>Modaraba</i> 1 st	Nil	Nil	Nil	Nil	4.13
11.	Dadabhoy <i>Modaraba</i> 1 st	5.00	Nil	Nil	Nil	10.13
12.	D.G. <i>Modaraba</i> 1 st	3.75	Nil	Nil	Nil	Nil
13.	Elite Capital <i>Modaraba</i> 1 st	Nil	Nil	Nil	Nil	7.82
14.	Equity Int. <i>Modaraba</i> 1 st	5.00	10.00	Nil	Nil	Nil
15.	Equity <i>Modaraba</i> 1 st	5.00	7.50	13.00	Nil	11.89
16.	Financial Link <i>Modaraba</i>	Nil	Nil	Nil	Nil	0.71
17.	Fidelity Leasing <i>Modaraba</i> 1 st	Nil	Nil	Nil	11.50	11.14
18.	General Leasing <i>Modaraba</i> 1 st	Nil	2.80	Nil	Nil	9.19
19.	Grindlays <i>Modaraba</i> 1 st – Cash	Nil	19.00	22.00	22.00	15.82
	- Bonus	-	-	8.00	Nil	Nil
20.	Guardian Leasing <i>Modaraba</i> 1 st	0.75	Nil	Nil	Nil	7.00
21.	Habib Bank <i>Modaraba</i> 1 st	Nil	20.00	15.00	15.00	11.62
22.	1 st Habib <i>Modaraba</i>	Nil	15.00	10.00	7.50	13.11
23.	Hajveri <i>Modaraba</i> 1 st	3.00	14.00	12.50	10.00	11.36
24.	IBL <i>Modaraba</i> 1 st	Nil	Nil	10.00	Nil	10.04
25.	Ibrahim <i>Modaraba</i> 1 st	5.50	11.00	9.00	10.00	11.38
26.	Imroz <i>Modaraba</i> 1 st	65.00	62.50	55.00	50.00	16.90
27.	ICM <i>Modaraba</i> 1 st	Nil	Nil	Nil	Nil	8.50
28.	Interfund <i>Modaraba</i> 1 st	Nil	Nil	Nil	Nil	Nil
29.	Islamic <i>Modaraba</i> 1 st	7.50	7.50	10.00	Nil	10.75

* With the courtesy of Securities and Exchange Commission of Pakistan, Islamabad.

0.	LTV Capital <i>Modaraba</i> 1 st	Nil	20.00	Nil	Nil	Nil
1.	Mehran <i>Modaraba</i> 1 st	Nil	Nil	Nil	Nil	2.19
2.	Al-Mali <i>Modaraba</i> 1 st	Nil	11.00	6.00	Nil	10.81
3.	Al-Tijarah <i>Modaraba</i>	Nil	Nil	Nil	Nil	3.51
4.	National <i>Modaraba</i> 1 st	Nil	Nil	Nil	Nil	2.33
5.	Pak <i>Modaraba</i> 1 st	Nil	Nil	5.00	Nil	8.83
6.	Paramount <i>Modaraba</i> 1 st	Nil	10.00	10.00	Nil	11.03
7.	Premier <i>Modaraba</i> 1 st	Nil	Nil	Nil	Nil	Nil
8.	Professionals <i>Modaraba</i> 1 st	Nil	Nil	12.50	Nil	11.34
9.	Providence <i>Modaraba</i> 1 st	Nil	8.00	Nil	8.00	10.86
0.	Prudential <i>Modaraba</i> 1 st	Nil	Nil	Nil	Nil	Nil
1.	Prudential <i>Modaraba</i> 2 nd	Nil	Nil	5.00	Nil	9.13
2.	Prudential <i>Modaraba</i> 3 rd	Nil	Nil	Nil	Nil	6.06
3.	Punjab <i>Modaraba</i> 1 st	Nil	20.00	Nil	Nil.	12.07
4.	Schon <i>Modaraba</i>	Nil	Nil	Nil	Nil	Nil
5.	Twakkal <i>Modaraba</i> 1 st	Nil	Nil	Nil	Nil	Nil
6.	Tri Star <i>Modaraba</i> 1 st	Nil	Nil	Nil	Nil	11.56
7.	Tri Star <i>Modaraba</i> 2 nd	Nil	Nil	Nil	Nil	11.33
8.	Trust <i>Modaraba</i>	7.00	Nil	Nil	Nil	14.75
9.	UDL <i>Modaraba</i> 1 st	Nil	Nil	Nil	Nil	12.07
0.	UNICAP <i>Modaraba</i>	Nil	Nil	Nil	Nil	10.39
1.	Unity <i>Modaraba</i>	Nil	Nil	Nil	Nil	10.00

In the Name of Allah, The Merciful, The Compassionate *
“Whereas Allah permitteth trading the forbiddeth usury”

MORABAHA*
(PURCHASE AND SALE)

MORABAHA SALE AGREEMENT

THIS *MORABAHA* AGREEMENT made at _____ this the _____ day of _____ in the year 19____, between _____ a *Modaraba* registered under the *Modaraba* Companies and *Modaraba* (Floatation and Control) Ordinance, 1980, having Registered Office (Principal Place of Business) at _____ herein after referred to as the “CLIENT” (which expression, where the context shall so admit, mean and include, its, successors-in-interest and assigns) of the ONE PART; AND any bank/financial institution, a banking company incorporated in Pakistan/ abroad and as a local/foreign company and bank registered in Pakistan, having principal Office at _____ hereinafter called the “BANK” (which expression, where the context shall so admit mean and include its successors-in interest and assigns) of the OTHER PART;

WHEREAS the Client, by its application, dated _____ (which shall be read as set out herein and integral part hereof) requested the Bank to acquire the item of goods mentioned therein and to sell the same to the Client through *Morabaha* facility/ transactions;

AND WHEREAS the _____ approved the Client’s above referred application, following the review of the information stated by the Client in the application, on terms and conditions hereinafter contained;

* With the courtesy of Securities and Exchange Commission of Pakistan, Islamabad.

NOW THEREFORE THIS AGREEMENT WITNESSES AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS UNDER:

1. That the Client's application, dated _____, referred herein above, shall be read as set out herein and forming integral part hereof, the contents of which the Client reiterates and declares as true and correct and binding on it.
2. That unless there be or is anything repugnant in the subject or the context;
 - a) 'goods' mean the articles, things or the commodity that the Client wishes and requests the Bank to firstly acquire with title and then to sell it to the Client and as more fully described in the supply order;
 - b) 'specifications' mean the technical or such other description (if any) as appertain to the goods and as are contained in the Supply Order;
 - c) 'supply order' means the confirmed order of the supplier in respect of supply of the goods to the Bank and affirmed by the Clients in respect of all its terms, conditions and especially price;
 - d) "Morabaha Sale Price" means the price payable by the Client to the Bank with respect to the Goods as specified on Exhibit" _____"hereto calculated to include the actual price paid by the Bank in respect of item plus actual expenses, such as communication, administrative expenses, tax and customs duties borne by the Bank in respect of the Goods as specified in the Goods Cost List (Exhibit "_____") and in addition a return (profit) of the Bank agreed upon between the two parties.
 - e) "Due dates" mean the dates on which any part of the *Morabaha* sale price is due and payable by the Client to

the _____ according to the schedule annexed as Exhibit
“_____” hereto;

- f) “Specific Currency” means the currency in which *Morabaha* is payable by the client to the _____ on Due Dates according to the schedule annexed as Exhibit “_____” hereto.
3. The Client hereby undertakes to execute the Purchase Order on notice of arrival at the point of destination specified in the Supply Order. The _____ shall then deliver the Goods or documents of the representing the same to the client. The Client shall have a right to inspect (himself or through an independent surveyor) the Goods to ensure that the Goods correspond with the specifications, within maximum 7 days after receipt of notice of arrival at the point of destination specified in the Supply Order.
 4. The Client shall pay the *Morabaha* Price in the Specific Currency and on or prior to the Due Dates to the _____.
 5. The Client has approved all terms and conditions of the Supply Order by which the _____ takes title of the Goods sold to the Client. Therefore, the _____ assigns to the Client all its rights relating to warranties against the supplier thereunder. As a consequence, the Client is entitled to any claim against the suppliers as appropriate and the _____ shall provide all assistance necessary to enable the Client to effectively pursue any claim against the supplier.
 6. As security for the due and prompt performance of all the obligations of the Client hereunder, the Client shall furnish to the Bank the guarantees or collateral described in Exhibit _____ hereto and the _____ will not be obligated to perform any of its obligations under this Agreement until the mentioned guarantee documentation has been delivered to the _____.

7. The Client shall be responsible for any damages occurring as to the Goods after taking possession of the same or shipment documents.
8. Any party breaching a financial obligation hereunder shall indemnify the other for the actual damage resulting from such breach, unless such breach was caused by war, civil disturbance or other force majeure which shall excuse the breaching party's failure to perform. Assessment of damages to be paid to either party shall be determined in the following manner:
 - a) Damages payable to either party for the late payment of amounts due from the other party shall be assessed on the basis of the average rate of return for the Investment Accounts of the _____ in the relevant period. If no return is realized, during this period, in the Investment Accounts no damages shall be paid with respect to delay in payment of amounts due.
 - b) Any damages related to other actual loss caused by either party to the other shall be assessed by the Arbitration panel in accordance with Law of the land.
 - c) Damages shall include attorneys fees and other cost of collection.
- 8-A. The client agrees to pay to Bank a penalty of Rs. _____ per day on all sums not paid by client to Bank when due and owing under the provisions of this Agreement.
- 8-B. The penalty contemplated hereunder shall not from part of the income of _____. The amount recovered on account of 'Penalty' shall be deposited in 'Penalty Account' to be separately maintained by _____ and the amount so available in the said account shall be utilized in charitable and religious purposes recognized by '*Sharia*' and in this account the amount available

and disbursement thereof shall be specifically audited and certified by the Auditors along with other accounts.

ARBITRATION

9. In the event of any dispute between the parties, that is not amicably resolved, regarding this agreement or the implementation thereof, on notice of either party, the dispute shall be submitted to Arbitration under Arbitration Act, 1940. Each party shall name an arbitrator and the two so named shall nominate a third and the decision of the majority will prevail. If the two nominated arbitrators fail to nominate a third or if any party fails to nominate his own arbitrator, within the period provided for by arbitration regulations such arbitrator shall be nominated by the court. Any award shall be final and binding on both parties and may be publicized or enforced as the successful party deems appropriate.
10. As Islamic finance requires mutual trust and respect of Due Dates and in the event that the client shall be in default in any obligation to pay a sum of money due under this Agreement or under any other contract or agreement between the _____ and the Client, the _____ may by notice to the Client declare all the unpaid amounts immediately due and payable.
11. a) This Agreement may be amended or any term or condition waived only in writing executed by persons duly authorized, provided that no term or condition which has the effect of materially altering the agreement or which is otherwise repugnant to *Sharia*' shall be added, deleted or waived.
b) The Exhibit of this Agreement shall be considered as an integral part hereof.

- c) This Agreement has been executed in two original counterparts. Each page of this Agreement and each Exhibit has been initiated.
- d) Subject to the terms of this Agreement, this Agreement shall be governed in accordance with the laws of the place of the incorporation of the _____.

For & on behalf of

MANAGER

For & on behalf of

Dated: _____

-
- - Insert name of city.
 - - Insert date.
 - - Insert name of the *Modaraba*.
 - - Insert address.
 - - Insert the word 'Bank'.

MUSHARAKA INVESTMENT AGREEMENT*

THIS AGREEMENT is made at _____ this _____ day of _____ between _____, a company duly incorporated under the Companies Ordinance, 1984 having its registered office at _____ (hereinafter called the "Company" which expression shall where the context so admit include its successors-in-interest and assigns) of the One Part and _____ a *Modaraba* registered under the *Modaraba* Companies and *Modaraba* (Floatation and Control) Ordinance, 1980 having its registered office at _____ (hereinafter called _____ which expression shall the context so admit include its successors-in-interest and assigns) of the Other Part.

WHEREAS:

- 1) _____ at the request of the Company, has agreed to provide working capital to the Company on *Musharaka* sharing basis in terms of _____ letter, dated _____ which letter shall be deemed to form an integral part of this Agreement by reference.
- 2) The working capital to be provided by _____ referred to in para 1 above shall be utilized by the Company for _____ (hereinafter referred to as the "Project").

NOW, THEREFORE, the parties hereto by this Agreement do hereby agree, undertake and covenant as hereinafter appearing:

1. _____ hereby agrees to provide finance to the Company by subscribing to the redeemable Capital of the Company to the extent of Rs. _____ (Rupees _____)

* With the courtesy of Securities and Exchange Commission of Pakistan, Islamabad.

- _____ only) (hereinafter referred to as “_____ Investment”) for the purchase of raw material required for the Project, on terms and conditions contained herein.
2. The Company shall use _____ Investment only for working capital requirements of the Project as specified in clause I above and shall not divert or use it for any other purpose.
 3. The Company shall, as and when required by _____ issue *MUSHARAKA* Certificates in favor of _____ to the extent of the value of the _____ Investment, in form and substance and denominations as many from time to time require.
 4. The Investment of shareholders in the Company for the purpose of this Agreement is Rs. _____ (Rupees _____ only) (hereinafter referred to as the “Company’s Investment”). The Company hereby undertakes not to change the present shareholding, accumulated reserves of unappropriated past profits and/or management of the Company without the prior written consent of _____ during the subsistence of this Agreement.
 5. The Company shall not without the prior written consent of _____ make any borrowings or raise any funds either on short-term or on long-term basis from any source whatsoever.
 6. The company hereby convenient that on the basis of the past experience and data available with the company it is expected that after adding Investment in the project the total pre-tax profit from the total investment of the company and _____ shall be _____% (_____per month). The aforesaid rate of profit is hereinafter referred to as the “ projected rate of profit” of the company.

7. On the basis of projected rate of profit as per clause 6 above, the profit on _____ Investment is expected to be not less than _____% (_____ percent) per annum (hereinafter referred to as the “Provisional profit”).
8. The company hereby agrees to open, subject to prior written consent of _____, with a bank an account to be termed “*MUSHARAKA* Account” and keep the same in credit and irrevocably authorizes _____ to debit to it at the end of each calendar quarter the provisional profit as above calculated on the basis of daily product of _____ outstanding Investment.
9. The company shall perform all deeds and acts and fulfill legal requirements that may at any time and from time to time be necessary to implement this Agreement.
10. The company shall furnish to _____ within one month of the end of each quarter of its accounting year a report on the performance of the company and the profits earned during that quarter in such form as may be required by _____ from time to time.
11. The company shall execute documents and furnish all information which _____ may at any time require from the company.
12. For the purpose of this agreement annual accounts of the company shall be prepared by the company after allowing for depreciation and expenses to such extent as _____ may in its discretion to be exercised in consonance with generally accepted principles determine.
13. At the close of each accounting year the profits for that year determined in accordance with the accounts prepared under clause 12 hereof, shall be appropriated pro-rata towards the Investments of _____ and of the sponsors of the company mentioned in this Agreement.
14. On appropriations being made under clause 13 above if any amount is found to be due to _____ in excess of the provisional profit debited by _____ to

MUSHARAKA account under clause 8 hereof such excess shall be credited to a special reserve (hereinafter called “Participation Reserve”) to be created by the Company in its books of account.

15. If the amount debited by _____ to the *MUSHARAKA* account as aforesaid is found to be in excess of the share of profit determined to be due on appropriations as aforesaid such excess shall be debited to the “Participation Reserve”.
16. Upon termination of this agreement under clause 19 hereof a final account of profits due to or loss due from _____ shall be made up and settled between _____ and the company provided that if upon final account being made up and credit balance is found in the participation reserve, the sum so available in participation reserve shall be divided between _____ and the company in the ratio of _____.
17. The company shall provide to _____ within three months of the close of its accounting year a copy of its accounts prepared under clause 16 and also a copy of its audited balance sheet if different.
18. In the event that losses exceed profits over any accounting year of the *MUSHARAKA* and accumulation in the participation reserve fund is insufficient for all adjustment thereof, then the company may claim by serving a notice within four months of the closing of the account year from _____ refund of either the whole or part of the provisional profit debited by _____ to the *MUSHARAKA* Account so as to reimburse itself of the amount of net loss and _____ shall refund the amount so demanded within one month. It is hereby expressly agreed that in the event of the company not serving on _____ the required notice within four months of the close of the accounting year it shall be deemed to have waived its right to claim any refund and

admit that its minimum profit was such to entitle the _____ to a share equivalent to the amount debited to the *MUSHARAKA* Account under clause 8 aforesaid.

19. This Agreement is initially for a period of one year but shall be automatically renewed from year to year. Provided that _____ if at any time hereafter is of the opinion that company is conducting unauthorized business or is in breach of any covenant hereof or law, usage or business practice thereby the interest of the _____ is likely to jeopardized may without assigning any reason by notice to the company terminate this agreement in which event the redeemable capital shall forthwith be redeemed by the company together with _____ share of profit at the provisional rate under clause 7 hereof. In the event of company's failure to repay the same as aforesaid either in whole or in part the company will be liable to pay to _____ additionally a sum equal to twenty percent of the amount remaining unpaid as and by ways of liquidated damages.
20. In the even _____ share of profit in any two of the preceding three years being less than the provisional rate of profit _____ shall have the right to convert not more than twenty percent of its investment into ordinary shares of the company at a break-up value of the shares of the company determined in accordance with the rules prescribed under the Companies Ordinance, 1984.
21. The company shall issue the letters of allotment of shares as mentioned herein above within thirty days of demand by _____ and these shares shall be of the class of ordinary shares of the company and _____ shall have equal rights as enjoyed by other ordinary shareholders including rights of voting, transferring, subscription for right issue/bonus issue, dividends, etc., under the law governing Joint Stock Companies.

22. In case the company suffers losses during the period of Investment on account of mismanagement or otherwise and/or fails to repay _____ Investment and/or profit/compensation for any reason whatsoever, or fails to perform any of the covenants hereunder _____ may, besides other remedies available, proceed for liquidation of the company in order to realize its dues.
23. In case of the failure of the company to achieve reasonable profits or incurring loss due to mismanagement, negligence or fraud, breach of any term and condition contained herein or any law, rule or trade practice, _____ shall be entitled to claim liquidated damages by making reference to arbitration in accordance with the arbitration clause contained herein in clause 26.
24. In the even of the company making default in:
- i) payment of provisional profit;
 - ii) redeeming the redeemable capital when called upon to do so;
 - iii) performance of any of the covenants under this agreement.
- _____ shall have the right to exercise voting rights under clause 21 above to the full extent of the redeemable capital held by _____ pari-passue with ordinary shareholders of the company.
25. As security for repayment _____ investment together with profit and/or liquidated damages as aforesaid the company hereby agrees and undertakes to give the following security, the terms and conditions of which shall be such as _____ may determine:
1. Mortgage
 2. Hypothecation
 3. Pledge

- 25-A. The company agrees to pay to _____ a penalty of Rs. _____ per day on all sums not paid by company to _____ when due and owing under the provisions of this Agreement.
- 25-B. The penalty contemplated hereunder shall not form part that of the income of _____. The amount recovered on account of 'penalty' shall be deposited in "Penalty Account" to be separately maintained by _____ and the amount so available in the said account shall be utilized in charitable and religious purposes recognized by '*Sharia*' and in this account the amount available and disbursement thereof shall be specially audited and certified by the auditors along with other account.
26. In the event of any dispute between the parties, that is not amicably resolved, regarding this agreement or the implementation thereof, on notice of either party, the dispute shall be submitted to arbitration under Arbitration Act, 1940. Each party shall name an arbitrator and the two so named shall nominate a third and the decision of the majority will prevail. If the two nominated arbitrators fail to nominate a third or if any party fails to nominate his own arbitrator, within the period provided for by arbitration regulations such arbitrator shall be nominated by the court. Any award shall be final and binding on both parties and may be published or enforced as the successful party deems appropriate.

WITNESS:

SIGNATURE

1. Signature _____
 Name _____
 Address _____
 Signature _____
 N.I. Card No. _____

1. _____
 2. _____
 Authorized
 Common Seal

2. Signature _____
Name _____
Address _____
Signature _____
N.I. Card No. _____

1. _____
2. _____
Authorized
Common Seal

WITNESS:

SIGNATURE

1. Signature _____
Name _____
Address _____
Signature _____
N.I. Card No. _____

1. _____
2. _____
Authorized
Common Seal

2. Signature _____
Name _____
Address _____
Signature _____
N.I. Card No. _____

1. _____
2. _____
Authorized
Common Seal

- - Insert name of city.
- - Insert date.
- - Insert name company
- - Insert name of the *Modaraba*.
- - Insert address.