

LEASING SERVICES BASED ON ISLAMIC FINANCE IN UZBEKISTAN

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Abstract. *This article describes the opportunities and specific aspects of the leasing service, as well as the ways and importance of adapting this service to Islamic financing, in the wide introduction of Islamic finance services, a field with great potential demand in Uzbekistan.*

Keywords: *Islam, finance, leasing, AAOIFI, Ijarah, standards, penalty, fine.*

In his Address to the Oliy Majlis and the People of Uzbekistan on December 29, 2020, the President of the Republic of Uzbekistan Shavkat Mirziyoyev said, "The time has come to create a legal basis for the introduction of Islamic financial mechanisms in our country. For this, experts from the Islamic Development Bank and other international financial institutions will be invited".

On April 20, 2022, the Law of the Republic of Uzbekistan "On non-bank credit organizations and microfinancing activities", was issued. This Law was the first time in Uzbekistan that the concept of "Islamic financing" had a legal basis and gave impetus to the development of Islamic finance in our country. The provision of services related to Islamic financing by microfinance organizations is legally allowed, in which it is envisaged to give loans to individuals up to 50 million soums, and to legal entities up to 300 million soums.

It should be noted that among the traditional types of financing, the closest type to Islamic financing is the leasing service.

Renting agreement, which today is called "leasing", was not originally used as a financing method like Murobaha. It was simply an agreement to give the right to use the property of one person to another person for an agreed period, based on a certain payment. Later, however, some financial institutions began to use leasing as a financing method instead of providing long-term interest-based loans. There is a type of lease called a "finance lease" that lacks several key features of a real lease.

By the time interest-free financial institutions began to operate, leasing was a well-known method of financing throughout the world. Soon, Islamic financial institutions also realized that rent can be used for interest-free financing and that this is not against the Sharia. Thus, leasing has been accepted by Islamic financial institutions, but many of them have not focused on the fact that "financial leasing" has more similarities to the practice of interest-bearing finance than to practical (real) leasing. For this reason, they started to use the models of leasing contracts used by traditional financial institutions without any changes, although a number of their terms were not in accordance with the Islamic rules (Shari'ah).

As mentioned above, initially there was no leasing financing method / product. However, a lease can be used for financing subject to certain conditions. Of course, this does not end with changing the word "interest" to "rent" and "mortgage" (that is, a loan received in exchange for pledging real estate) to "rented property". There are significant differences between a lease and an interest-bearing loan, and in order to conclude a lease agreement that can meet the requirements of Islam, it is necessary to comply with all the terms and conditions related to leasing mentioned in the first part of our article on leasing. Below we outline the main differences between modern financial leasing and Ijarah (Islamic permissible leasing).

The dictionary meaning of leasing is the temporary use of a property on the basis of a contract and for a certain payment. Today, enterprises are mostly told to lease some equipment and machines with the right to buy them later.

Unlike a sales contract, a lease can also be entered into with the condition that it begins on a specific date in the future (for example, the lease is entered into on January 1, 2022, but it becomes effective on March 1, 2022, and the lease also begins on March 1).

So, although in Islamic rules it is forbidden to sell something in advance, it is allowed in Ijarah, of course, in this case, the payment of rent also begins after the property being leased is delivered (presented) to the lessee.

In most forms of "finance leasing", the lessor financial institution purchases the leased property through the lessee. In this case, the lessee buys the property on behalf of the lessor, and the lessor transfers the price of the property to the seller (that is, the supplier of goods) either directly or through the lessee.

Some leases provide that the lessor takes effect from the date of payment, regardless of whether the lessee has taken possession of the property. This means that the responsibility (responsibility) of the lessee (under the lease) begins before taking possession of the leased property. But this is not allowed in the Islamic rules, because it is like taking rent for the money given to the client, that is, it is the same interest (riba).

The correct way according to the Islamic rules is as follows: the execution of rent payments begins after the lessee takes possession of the property, not from the date of payment for the leased property. If the supplier of the goods delays the delivery of the goods after receiving the payment in full, the lessee shall not be responsible for this period.

"Taiba Leasing" Company, subsidiary company of ICD (The Islamic Corporation for the Development of the Private Sector), has established a service of Ijarah (Islamic leasing) for customers, in which customers have the opportunity to return funds through an interest-free leasing contract, i.e., the purchase of equipment in installments with the company's premium on them. Under similar conditions, the "Uzbeklizing" company and several private companies (IMAN, UZARO, ALIF SHOP) have launched services for the sale of automobiles, real estate and household appliances on the basis of payment in installment (Murabaha).

More than 90 percent of the population of Uzbekistan is Muslim, and this fact alone shows how much interest there is in Islamic financing in Uzbekistan. We know that in Islam, profiting by giving money at interest is prohibited, while the traditional financing system relies on interest. If Islamic financing services are offered to the people and companies who do not want to use interest loans and similar financing services, it will increase the desire of businesses to increase their production volume, allow them to bring new equipment, and as a result, this will be a great impetus for the further growth of the economy of Uzbekistan. One of the main criteria for the widespread introduction of Islamic finance services in Uzbekistan can be implemented by making changes and additions to following Laws "On the Central Bank of the Republic of Uzbekistan", "on banks and banking activities", tax codes and other legal documents, or by adopting a separate law. In addition, it is necessary to strengthen the practical work on the training of personnel in this field in Uzbekistan. It is also important to increase the literacy of the population in this regard, because the population that does not have enough knowledge about Islamic financing, it leads to misunderstanding or misinterpretation of its difference from conventional financing.

Among the types of Islamic finance, the "lease" service is very close to the traditional leasing

service, but it is necessary to work under certain conditions, namely:

- 1) Equipment or goods purchased for lease should not be in prohibited areas (alcohol or cigarette equipment, production of pork products, etc.).
- 2) Penalties should not be levied, and even if levied it should be only for the purpose of increasing responsibility, in which case the levied penalty amount should go to charity.
- 3) Lease payments must begin upon acceptance of the leased object by the lessee.
- 4) If two different transactions, such as sale and then re-lease, should be reflected in separate contracts.

Given that the issue of fines is one of the most controversial issues, the Fatwa Committee of Kuwait Finance House, one of the most respected organizations in the field of Islamic finance today, has issued the following fatwas on the calculation of fines for late payments related to debt obligations arising from contracts related to Islamic finance. conclusions can be made:

- Charging a fine on account of any unpaid debt is considered "riba" and is against the rules of Islamic jurisprudence. However, taking into account the scope of Islamic Financial Institutions (IFM) practices, not imposing penalties on individuals and legal entities that fail to make payments on time is to prevent large amounts of non-payments or at least late payments, and to prevent greater damage caused by deliberate late payments. allows the collection of fines;

- Collected fines must be spent exclusively for charitable purposes and cannot be included in IFM's income, used for financial, investment or other purposes;

- Funds received from the penalty account have the right to be used to cover the direct costs incurred to collect the overdue debt (for example, Court, attorney's fees, foreclosure costs). However, these costs are strictly prohibited from including the acquisition of a lost interest (that is, a profit that has not been earned);

- However, if the customer proves that the payment was not made on time due to the deterioration of his economic and financial situation, that is, due to objective reasons, it is not possible to impose a fine on such a customer;

- If there are other effective ways to regulate customers than fines (for example, collection of collateral, prosecution of defaulters, blacklisting), they should use this method.

According to the legislation of Uzbekistan (article 25 of the Law of the Republic of Uzbekistan "On the Contractual and Legal Basis of the Activities of Business Entities" dated August 29, 1998), the supplier (contractor) pays a penalty to the buyer (customer) in the amount of 0.5% of the unfulfilled part of the obligation for each day of delay, but the total amount of the penalty should not exceed 50% of the cost of undelivered goods, uncompleted works or services. Payment of the penalty does not relieve the breaching party from compensation for damages caused by late delivery of goods, incomplete delivery, non-performance of work or non-performance of services.

As mentioned above, the lessor may not specify the penalty in the contract, but may later raise questions during tax audits, because according to the law, even if the clause about the penalty is not specified in the contract, here the lessor can receive a certain amount of money, and this amount is taken as income and it may result in tax liability.

Research methodology

Methods such as systematic analysis were used in the process of scientific study, analysis and research of the topic. The study of existing scientific research on the introduction of Islamic finance, comparison of different experiences, economic comparison and analysis, logical thinking, scientific abstraction, information grouping methods were widely used.

Analysis and discussion of results

The main difference between Islamic finance and conventional finance is that Islamic finance incorporates profit and loss sharing and real asset based financing. In other words, Islamic financing is based on partnership and cooperation.

Some leasing companies offer leasing (Islamic leasing) services to customers, where customers have the opportunity to pay back funds through an interest-free leasing agreement, that is, the purchase of equipment in installments with the company's premium on them. Under similar conditions, Uzbeklizing, Taiba leasing companies and several private financial organizations have launched services for the sale of cars, real estate and household appliances based on term payment.

For the provision of Islamic financial services, a number of legal documents, including the "Civil Code", "Tax Code", "Central Bank of the Republic of Uzbekistan", "On Banks and Banking Activities", "On Guarantees for the Protection of Citizens' Deposits in Banks", " Making appropriate amendments and additions to the Laws on Leasing", "On Mortgage", "On Pledge" and other necessary regulatory documents based on international experience and standards of AAOIFI (Audit and Accounting Standards Organization for Islamic Financial Institutions) and other international Islamic organizations, as well as new regulations documents should be developed.

The experience of Malaysia can be effective in the wide introduction of Islamic finance in Uzbekistan, because today Malaysia is the country with the strongest development of Islamic finance in the world. The convenience for Uzbekistan is that traditional banks in Malaysia are providing Islamic finance services in parallel and without extra costs, if necessary, by providing 2 different services at one ATM. This is a very convenient and effective method. In this case, the money goes into common boxes in the ATM, and money is withdrawn from those boxes, but "accounting is done separately". This is in accordance with the requirements of Islamic finance, that is, in Sharia, special attention is paid to the origin of money.

In Uzbekistan today, the leasing organization "TAIBA-Leasing" provides "Ijarah" service (Islamic leasing) based on Islamic finance. Information on providing services to legal entities on the basis of "leasing" by "TAIBA-Leasing" organization is shown below:

Funding organization and amount (source of money)	100% subsidiary of Islamic Corporation for Private Sector Development
Type of service	lease
Term of financing	13-36 months
Amount of sales margin	17%
Payment	30% down payment
Late payment penalty	0.1% for every 1 day late (goes to charity)

Conclusions and suggestions. Today, there are many leasing companies in Uzbekistan. Only 2-3 companies among them are working under Islamic leasing conditions, and all the rest are working under conventional leasing conditions.

Leasing companies must have sufficient assets or provide a bank guarantee to obtain financing from international Islamic organizations. Also, the leasing organizations themselves can obtain capital for leasing by attracting additional funds to the Charter Fund on the basis of partnership. The main issue here is that if the leasing companies in Uzbekistan can properly establish the "Ijarah" (Islamic leasing) service, the number of their customers can increase, because business representatives who do not want to work under conditions that are not compatible with Islamic principles do not currently have enough leasing service offers.

The aim of this study is to make the following suggestions for including Islamic leasing, i.e. "Ijarah" service among all existing leasing company services:

- 1) Equipment purchased for lease should not be in prohibited areas (alcohol or cigarette equipment, production of pork products, etc.).
- 2) Lease payments must begin upon receipt of the leased item (for example equipment) by the Lessee.
- 3) If there was an agreement for two different processes, such as a sale and then a leaseback, then each process should be reflected in separate contracts.
- 4) The leasing organization must work with a local or foreign Islamic finance expert (or a Council of experts) on the basis of an outsourcing agreement and agree on new types of services (the expert or the Council must have sufficient competence and be independent in giving conclusions);
- 5) In the case of penalty (fine):
 - A fine must be collected based on the legislation of Uzbekistan;
 - the levied fine must be included in the income (according to the law);
 - determination and collection of the fine amount should be carried out only in order to increase the responsibility of the Lessee and taking into account his current financial situation;
 - A tax must be calculated and paid on the full amount of the levied fine in accordance with the procedure established by law;
 - in case of fine recovery (due to overdue payments), the amount of the recovered fine can be reimbursed to the Court and lawyers, and the expenses incurred in focusing the recovery on the bail;
 - all fines remaining after the payment of taxes and expenses specified in the two paragraphs above must be directed to charity.

All the above clauses should be reflected in the lease agreement. As far as possible, leasing organizations should not use traditional bank loans and try to find other sources of investment.

Some of the proposals for this research have not been covered in any scientific works in Uzbekistan before, therefore they are considered new, and their implementation in practice will certainly benefit many people and businesses.

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