

Analysis of Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI) Shariah Standardization on Salam

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Abstract

Unlike spontaneous sale transaction, there are certain exceptional transactions of exchange in Islamic Law of contract where the goods in future can be sold, termed as Salam and Istisna. These transactions have been standardized by Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI) in its Shariah Standards. This research paper encompasses the definition and scope of Salam and the views of scholars regarding such contracts in detailed discussion. It answers the question that what is the basis for the Standard of Salam and Parallel Salam and whether it is in accordance with the Shariah or not. Furthermore, the analysis of these transactions with regard to AAOIFI and their basis for adoption of the same are being discussed in detail. Salam, the 10th Standard¹ of the Shariah Standards is being discussed in the paper in the light of available literature.

Key Words: Salam, Islamic Law, Islamic Banking, Contract, Parallel Salam, Bai Salam, Shariah Standard, Muslam Fih

Introduction

There are many aspects of contract under Islamic Law. It classifies it into different types. One classification is on the basis of its price. It has four types. Wadhia, (وضعية) Taulia (توليه) Murabaha (مرابحه) and Musawama. (مساومه)²

- i. Wadia: resale at a discount from the original cost.³
- ii. Taulia: resale at a stated original cost with no profit or loss to the seller.⁴
- iii. Murabaha: resale at fixed surcharge or rate of profit on the stated original cost.⁵
- iv. Musawama: *sale in which a seller sells his goods without disclosing cost and profit.*⁶

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One classification is on the basis of its legality which are permissible and impermissible contract. Permissible contract is further divided into binding contract, and suspended contract. Impermissible are also divided into two types which are void and irregular contract⁷

Last but not the least, contract is classified on the basis of the commodity itself. It has four types which are Muqiza, (مقائضه) Sarf, (صرف) Salam (سلم) and Bih Mutlaq (بيع مطلق) viz absolute sale.⁸

- i. Muqiza: the sale of goods for goods, or barter trade.⁹
- ii. Sarf: the sale of money for money or money changing.¹⁰
- iii. Salam: the sale in which the price is paid in advance and the articles are delivered on future date.¹¹
- iv. Bih Mutlaq: the sale of goods for money.¹²

Since this research focuses on the last classification and in the last classification, it focuses on Salam Contract therefore it is discussed in pretty much detail.

Literal Meaning of Salam

Salam literally means to give, to handover¹³

Definition

Bai Salam (Arabic بيع سلم, more accurately transliterated as Bai us Salami) is an Islamic contract in which full payment is made in advance for specific goods (often agricultural products) to be delivered at a future date.

Salam means a contract in which advance payment is made for goods to be delivered later on. The seller undertakes to supply some specific goods to the buyer at a future date in exchange of an advance price fully paid at the time of contract.¹⁴

It is defined as. "A form of trade wherein the vendor agrees to deliver items at a date in the future in exchange for an advanced market price, made in cash" is another definition of Salam in Islamic Finance.¹⁵

So it meant that Salam is that type of a contract in which the customer pays for the goods in anticipation and the supply is deferred to a mutually agreed future date. It is a sale in which the price agreed on is paid in advance.

When the history is looked upon, it gets evident that at the time of the Holy Prophet SAW fruits as well as dates used to be sale in advance after the Prophet Hijrah to Madina. The same would be delivered in one, two or three years. At that time such a deal included purchase of these goods without specifying their quality or weight.' 'Hence the transaction was based on uncertainty (Gharar), as the production of fruits was dependent on natural circumstances. This would sometimes lead to unpredictable results, unfavorable to either of the parties.' 'In Medina, the companions asked the Prophet (ﷺ) for guidance, which he

granted, but only under specific circumstances, and called it Salam". The Islamic law provides for the body of things, the rights associated with it and their conveyance to others, hence it is imperative that these to be defined for the purpose of understanding the concept of Mal. Mal can be things which can attach to itself rights and duties.¹⁶ There are other rights that are vague and immaterial in nature (like trademarks and intellectual property) but are considered as Mal. 'Fiduciary money¹⁷ can also be considered as Mal.'

According to Islamic commercial law, besides the classification of Mal or property into moveable and immovable, tangible and intangible, there is another significant classification, that is, ascertained (Ayn) and unascertained (Dayn). Mansoori has defined the same with updated criteria in ascertained items or Ayn in contracts in which one of the parties deliver a specific or certain property, also known as non-fungible or unique items. Property which cannot be specified is called a Dayn. It usually involves fungible items. "An obligation or duty of one party to another that must be satisfied by the payment or delivery of an amount of that property that may be compared in relation to the consideration is known as a Dayn in legal terminology.¹⁸'

Salam, on the other hand, was subjected to certain severe requirements. To secure the rights of people, the Prophet (ﷺ) regulated the nature of transaction. He (ﷺ) ordained: "Whoever pays money in advance for fruit to be delivered later, should pay it for a known quality, specified measure, and weight of dates or fruit of course, along with the price and time of delivery". Through Salam contract, the vendee gets delivery of the things/goods while makes the payment later.¹⁹'

"Salam is a type of trade in which a buyer pays an advanced price in exchange for a seller agreeing to provide certain items later.' 'Advance cash is used as payment; however, the delivery of the purchased items is delayed.' 'The English equivalents to "Rabb-us-Salam" and "Muslam ilaih" are the buyer and seller, "ra's-ul-mal" for ready money, and "Muslam fih" for bought item".²⁰ When various prerequisites are fulfilled, Salam is allowed.'

For a valid Salam contract, vendor needs to be enjoying goods delivered to him. There are three requirements that follow: firstly, the seller must have the ownership, that is, the Usufruct, meaning thereby that a thing not in existence (Madum) cannot be made subject of sale properly.' 'Secondly, the vendor needs to have gained its ownership. Lastly, mere ownership cannot be sufficient unless he also has the possession of it. Resultantly, the goods need to be in possession of the seller.²¹ The idea about non-existing subject matter in Shariah is subject to exemptions of Istisna and Salam.²² In both cases, the sales are unique and exceptions to the general rule in their nature and are, therefore, allowed by Islamic legal literature.

1. Views of Jurists on Salam Contract

Some of the points on which different jurists vary are being discussed in the following:²³

- The goods which are the subject of conveyance need to be available at commercial lever as per the Hanafi School while it has been held by others that the availability of goods is not a condition for the purpose²⁴ They believe that it only needs to be available at the time of delivery.'
- According to the Hanafi and Hanbali Schools, there must be at least a duration of thirty days among the agreement and date of delivery. Salam is not applicable when the delivery date is scheduled earlier than a month in advance. To avoid the control of price, the goods need to be delivered no prior a month.
- According to Imam Malik, the duration of 14 days is enough for the transaction as the least duration. While this position has been rebutted by Hanbali and Shafi jurists. The only requirement, he argues is, that at that time of conveyance explicitly specified that is why a minimum time cannot be specified. If both sides agree, they can set a delivery date at any time. As a result, there is no way to specify a minimum amount of time. The parties may agree on any delivery date.'

2. Salam and Ordinary Sale

In order for a person to vend a commodity per Islamic law, he must meet three criteria, that is, for a complete sale, the possession, title as well as the physical control of the commodity.²⁵ All of these three requirements can be found in Salam except that product is not yet acquired by the seller.' 'Therefore, there are a few peculiarities in this type of contract. For example, the time on which the products would be delivered needs to be specified while it is not required for a sale. Following are the points of difference among these two:'

1. In order to contract a valid Salam, whole amount needs to be paid by the vendee to the vendor otherwise it will resemble a debt-to-debt contract which has been altogether not permitted by the prophet (ﷺ).²⁶ That is why all the jurists have consensus that the whole fee needs to be submitted at the time of contract. As per the view held by Imam Malik, the time of few days could be granted but that is not a requirement, just a favor.'
2. Salam may differ based on the variety as well scope of the goods. When the value or consideration of a commodity cannot be ascertained by depiction, the same cannot be subject to Salam.
3. Salam could be valid on the ground that certain goods were provided from a certain place. The same can be termed as irregular, if a vendor consents to supply sugarcane of a particular origin, this happens as a chance may be there that sugarcane of the specified origin may be damaged prior to its delivery.
4. The product which is subjected to Salam needs to be properly identified so that no problem arises leading to disagreement. That is why, there must be full disclosure of information in this regard.

5. Furthermore, the price of a product needs to be consented upon in clear terms so that no ambiguity follows.
6. Specific time and day of conveyance also needs to be made clear.²⁷

‘Salam contracts need to satisfy the above requirements both in the duration as well as deliver. Likewise, the vendee must accept the commodity of it is properly delivered and is the exact commodity and pay the price of the goods as agreed to. Although if it does not conform the standards, the vendee has the right to reject the same.

Salam: An AAOIFI Shariah Standard

The AAOIFI, based in Bahrain, came into being as result of the agreement of association to which many Muslim countries are parties.²⁸ The Organization has been tasked with preparation, improving and guiding of Standards for working of worldwide regulation of finance. The AAOIFI being recognized and assisted by various organizational entities like supervisory and regulatory bodies, has adopted a great number of Standards covering accounting, auditing, Shariah and governance worldwide. These standards are being followed at world at large by almost entire prominent IFIs. The Organization has also launched substantial and comprehensive amount of harmonization of transnational Islamic business banking.²⁹ The AAOIFI has primarily been brought into being in order to ensure that the rules made and promulgated by Islamic Finance are being followed.³⁰ The authorities including those for supervision and regulation have been defined by the Organization’s guiding manuals not limited to the governance and investment but also Shariah regulations.

AAOIFI supervises practice of banking sector, especially Islamic, in order to ensure that participants of organization adhere to the rules as well as restraints in this regard set out by Islamic law. For example, in Islamic Banking, the assortment of Riba or interest has been prohibited while bearing the risk of losses along with profits in a business transaction is commended. The Organization has adjusted and revised from time to time the practices of Islamic finance as the Arab countries have been the one influencing in this regard in the past. It was incorporated for the purpose of preparation of Standards consisting primarily of auditing, ethics, management, Shariah and accounting. The organization has been leading in the course of development and production of standard practices for the proper operation of Islamic Financial Institutions as well as monetary institutes in order to conform with Islamic Banking principles, which is the basic purpose of the AAOIFI and is based on the teachings of Islamic Law.

The restrictions ad requirements in relation to concluding Salam, the basis, revisions, modifications which may arise in it are laid out in the AAOIFI’s Salam standard.’ It also covers the Salam Sukuks and procedure adopted for their issuance. It has been revised and amended in order to meet the changing needs of time. It lays ground for whole lot related circumstances and variations. Various rules of procedure have been adopted to take Salam as a standard encompassing the format, criterion and relations to it as well as Salam Fih.³¹

The concept of Salam as per the given Standard No. 7 of AAOIFI has been discussed in the following paragraphs under different headings.

1. Scope of the Standard

In the meeting of AAOIFI in Makkah on 4-8 December 2001A.D the Shariah Board decided to give priority to the preparation of Shariah rules for Salam and Parallel Salam. In Pakistan it was adopted by SBP on July 04, 2022 through IBD Circular No. 01 of 2022.

The Salam as issued by the AAOIFI as a Shariah Standard covers different aspects of Salam. Its legality, the sources from which the same has been obtained and the Shariah basis for the same in addition to its legality has been discussed by the AAOIFI.³² The Shariah basis in terms of Muslam Fih has been carried out by the Standardization process of the AAOIFI and the minimum time of delivery of the same has been given under the issue. In particular, the changes to the Muslam Fih receives special attention of the Standards. The AAOIFI regulates the creation as well adoption of Salam.

The Standard on “Salam” was adopted by the Board on May 23, 2001, in Makkah. According to Board, it was decided to restructure the existing rules and bring them into the criteria for Salam as a Standard in their 8th gathering. During its fifth meeting the Shariah Board received a revised exposure document containing Shariah norms. The members included IFIs’ reps from around the globe as well as Shariah scholar’s adept with the knowledge of Shariah. The committees established for this purpose reviewed the same and provided written as well as argumentative basis for and against the standard.³³ The Standard, which has been adopted by the AAOIFI has been taken on the basis of Salam as defined by Fiqh literature in Islam. The same has been taken as a yard stick for making and adopting the Standard. There are procedural differences in Salam and for that reason, Parallel Salam is done for the purpose of organizing the product in the light of Islamic Fiqh. It is also evident that the transaction of Salam has been changed as presently, Salam is transacted between customers and bank rather than between the individuals.

For its fifth meeting, the Fatwa and Arbitration Committee to consider comments submitted an exegesis obtained from the commentaries of participants and the data collected from information received from community participation. Legitimacy of Salam is recognized by early as well as contemporary Faqihs.’ Islam’s Messenger Muhammad (ﷺ) hadith ‘provided exception to Salam as long as the conveyance of commodity and price are specified and Muhammed (ﷺ) discovered that people there would make payment of commodities which would be delivered later running over a span of 1 to 3 years.³⁴ It afforded delivery without specifying the value and quantity of a product.’

Salam Financing and Shariah Issues

In ‘Salam, payment can be advanced by banking companies when an agreement for the delivery of produce of specific kind, quality, and quantity on a specified prospect time. A farmer can evade assistance’ of money lenders taking advantage of this kind of contract.

For example, in Pakistan, in the recent times through conventional system, the money is lent to farmers based on interest and one of the various reasons is the security of money lenders 'having charged high interest rates. Various issues impede the operation of Salam contract.' From the agreement of Salam until the same is executed or implemented, there are numerous things that are impeding it.

Such as the nature of contract having a degree of Gharar in it (absence of knowledge) as the contract involves future performance which involves uncertainty.

Some of the practical concerns raised by different Islamic finance authors include the following: Why Salam contracts are not adopted is apprehension of dishonesty on part of farmer to perform his contract duly. Similar operational problems may arise with Salam finance including the failure to adequately convey Salam financing to potential clients and the incapacity to supervise farmers to assure quality and quantity of crops. Further, there is a lot of risk associated with the Salam. Absence of socialization and understanding of the contract is still another reason for its non-adoption. There are other issues such as problem of beneficence clause according to which aggrieved party is only compensated when the prices drop radically. Such clause has affected the repayments difficult and is also against the concept of Salam in Islamic law.³⁵ Furthermore, it has been noted that repayments is also one of the problems as farmers are unsatisfied in 90 percent of cases while the farmers do not repay when they have the ability to pay. The problem of providing collaterals by farmers because of poverty is yet another issue.

In Pakistan, Salam has been introduced at small scales covering only sugar mills, poultry and the same has not impacted the farming and such like industries because there are problems with Shariah interpretation and processing issues.³⁶ The above-mentioned problems add up to the deplorable situation of the Standard and, therefore, there is drastic fall in the financing of farmers and other manufacturers in the country and such could be overcome with active involvement of State. Some of the specific issues discussed in the books of finance are given below.

a. Muslam Fih and duration: A requirement

The delivery of Salam contract is considered to be fraught with challenges, the minimum time of delivery is one of such issue. The Shariah Standardization faces the challenge of difference of opinion in the adoption of normal delivery time. 'According to Hanafi and Hanbali schools, delivery is necessary after a month of agreement. Salam is not valid if the delivery date is scheduled more than a month in advance. They contend that they ought to be entitled to do so when farmers and traders access it equally.'

'The transaction can fix a prior date and the same is not prohibited by law. At the current times, many scholars term it as more appropriate.³⁷ There needs some level of certainty from the concerned quarters including the superior court so that specific time of delivery be decided, and speculation be avoided. Also, there is need of consensus of Ulema on the issue of minimum time of delivery.

b. Changes to Muslam Fih

The contract of Salam can be affected in respect of goods which can be quantified, portioned and categorized if Riba is not committed. Among the objects of which changes in numbers make minimal effect are those produced by companies who can produce commodities in approximate quantities that can be recognized through patents and trademarks established standards and are readily accessible at all times. So, Jewelry and antiques are not permitted on the list either. Therefore, Muslam Fih cannot be mandated to originate from a certain area.³⁸ In case, there are minor ambiguities, the same can be ignore if it is not defeating the purpose of the contract.’

Acceding to the literature on Salam by the AAOIFI, as long as the Standard on Salam and Parallel Salam is considered, Muslam Fih needs to be acquired before the same is being delivered, when not mentioned in the contract, the vendee has the right to change the same with other commodities except for cash. But the same needs to be compatible. Also, it needs to be asserted that the values of both the products are the same. In the event of consent, the whole of Salam contract can be rescinded. It might be rescinded partly in case of half of the Muslam Fih is remanded back.

Salam in Pakistan: Theory and Practice

Salam was aimed at the assistance of farmers and traders having less than five acres of land in Pakistan³⁹’ introduced with the help of Agricultural Developmental Bank and commercial banks in 1979 by the then Government. The loans were for a maximum twelve thousand rupees for one-year duration. As a percentage of overall farm loans, non-interest advances grew from time to time. As a result of across-the-board abuse in loans via substitute lending, domestic lending interest free Riba were discontinued. Since then, no loans have been supplied by IFIs in Pakistan to these farmers. Banks used to offer only Riba free loans and that in turn took dangerous path as the farmers felt need of financial assistance⁴⁰ and for this purpose, SBP issued a circular for encouraging banks for lending on the basis of mark ups which is conversion kind of trust.

‘In 1991, supreme court of Pakistan held that buying back arrangements are illegal and hence directed the governments to create authorities to restructure the commercial division. Various decisions of Task force found that certain banks opened up Islamic branches while it also advised the creation of independent IFIs. That is why, currently there are many Islamic banks operating in the country.

In the late 2021, these banks have 18.6 per cent of all the capital in Pakistan in terms of their deposits.⁴¹’ Implementation of Salam and parallel Salam has been subject to various problems such as the lesser number of advances involves, the level of satisfaction, awareness of farmers and lack of training of officials of Islamic Banking Institutions. Also there seems to be lack of interest by state in these affairs and therefore, these tools have succumbed to the tests of time.

Conclusion

The Salam is one of Shariah Standards, AAOIFI has issued in regard to the transactions which need to be completed in respect of future goods especially in the form of crops and yields of the nature. The Shariah Standard covers the limitation of time, the conditions which need to be fulfilled and the changes that may later be brought in the transactions related to Salam. The paper attempts to cover the questions in detail that whether the basis for adopting Salam as a Shariah Standard, is in accordance with Legal theory in Islam. The opinions of numerous Muslim Jurists and the injunctions of Quran and Sunnah in addition to the various secondary sources that admit the Salam transactions have been made Shariah basis for these transactions. The Shariah rulings have been mentioned in the paper which encompass the all the aspects of Salam irrespective of the fact that certain conditions require special attention of the Organizations while other receives less attention. Resultantly, there are problems with the implementation of the Standard. It has been found throughout the paper that Shariah issues such as the lack of institutional security for the Standard and the alternatives in the form of improved Standardization of Salam is cry of the hour.

There are problems such as the Salam is practiced very little owing to its management. It has been observed in the preceding paragraphs that the problems like involvement of Riba in the actual operation, the uncertainty in the goods, the level of compensation, the non-involvement at lower levels of IFIs and Shariah interpretation by the institutions. These problems can be overcome if the level of awareness among the banking institutions on the level of participation of farmers and manufacturers is being stressed by the AAOIFI and governmental authorities of a country. In Pakistan, the State Bank of Pakistan can play a major role by educating and training the bankers to practice Salam so that the poverty-stricken people may readily acquire the interest free credit. Also, the process of acquiring payments need to be made easy and simple for common men and such like experiment⁴² by private sector such as Wasil Foundation have proved fruitful. Furthermore, the Salam is a product which could prove as the best promoter for the agricultural productivity in the country as the country has got a lot of potential in the industry and also replace Riba based financing.

Recommendations

The basis for Salam finds its place in the ancient as well as modern Jurisprudence and the AAOIFI has derived the same from various commentaries and suggestions of the participants. It is being recognized by both the modern and classical Islamic Jurists. The study has revealed that the basis for Salam could more be augmented by enticing trust in the parties to Salam as there is lack of trust among the parties for the delivery of goods in the future. The Standard should be more specific about the mode of delivery and should be backed up by some collaterals. There needs some awareness and socialization about the Standard in addition to removing the chances of more risk. It is recommended that clause 2/1 of the Shariah Standard No. 10 relating Salam may be amended in order to cover the active participation of IFIs in the product delivery. In the context of Pakistan, the SBP

should proactively involve financial institutions awareness about the trust and delivery issues in the Salam transactions.

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