



## **PRESENTATION**

**In**

**Pre Conference Workshop**

**On**

***Financing and Investment on the Basis of  
Contractual Musharaka (Shirkatul 'Aqd)***

**At Islamabad, Pakistan on February 20, 2016**

**RIPHAH INTERNATIONAL UNIVERSITY ISLAMABAD**

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# Introduction to Shirkah, Musharaka

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# Shirkah Defined

- **Sharing / merging**
- Commingling by two or more persons either their wealth / capital / goods / money or work or obligations to:
- Cooperate with one another – to help in difficult times, to manage the risks jointly
- Earn a profit or a yield, and to share the loss if any according to their proportionate ownership.
- Share in appreciation / depreciation in value – benefiting / loosing.

# Nature of Shirkah

- Shirkah fil 'Urooz
- Shirkah in ownership without making the joint property a tradable item
- Shirkah for business / in trading – Commercial partnership – Shirkah al 'aqad:
  - Shirkah by services / expertise- fil 'amal
  - Shirkah by capital- Shirkah al Maal

# Shirkah Esteemed

## Hadees-e-Qudsi

- “Allah (SWT) has declared that He Shall be a partner in a business between two Mushariks until they indulge in cheating or breach of trust” esteem

# Shirkatulmilk

- This type of shirkah is generally through inheritance, or through gift to more than one persons. It is called **Ghair Ikhtiari** (i.e. without option or choices- Partnership in 'Ain al Maal only- No investment /business as Mutual activity- with Amal al mushtarak).
- Shirkah with an objective of pooling of capitals for purchase of joint property which each of the partner cannot buy individually- **Ikhtiari** (i.e. by option / choice).

# Shirkatulaqd

- This is the general type of Shirkah which means:
- “A partnership effected by a mutual contract in which the partners join together with different contributions, work or obligation for the purpose of earning profit”- Commercial Partnership.
- For the purpose of brevity: it may also be translated as “Joint commercial enterprise.” or Contractual Musharakah.



# Types of Contractual Musharakah

- Each of the above three types of Shirkat-ul-Aqd are further divided into two types:

## **Shirkat-Al-Mufawada (Capital & labour at par):**

- All partners share capital, management, profit, and risk in absolute equals. It is a necessary condition for all four categories to be shared amongst the partners

## **Shirkat-ul-Inan :**

- A more common type of Shirkatul-Aqd where equality in capital, management or liability might not be equal; might be equal in one case but not in all respects.

# Musharakah

- The term Musharakah has been introduced recently by the scholars / experts in Islamic finance.
- It is normally restricted to Shirkat-ul-amwal with Shirkah al Inan, where two or more persons invest capital in a joint commercial venture in varying amounts.

# FEATURES of SHIRKATUL AQD

Shirkatul Amwal:

- Mixing of Capital – collective / joint ownership
- Use of Capital in Enterprises
- Rights and Responsibilities
- Sharing

# Timing of Shirkah Contracts

- Permanent Musharaka: Not bound with a time period - Shares of Joint Stock Companies.
- Temporary (Redeemable) Musharaka: for limited time period, e.g. PTCs or Musharakah based TFCs;
- Diminishing Musharaka: one partner promises to buy the share of the other partner gradually until the title to the property is completely transferred to him.

# Main Profit Sharing Rules

1. Ratio or the basis for sharing profit should be decided in the beginning of partnership.
2. Ratio can be changed with mutual consent for subsequent period.
3. Profit should be allocated in **percentages of earning and not in a sum of money or a percentage of the capital or investment**
4. It is not necessary for sharing profit according to proportionate capital contribution.
5. The partner may at the later stage agree to change the profit sharing ratio, and on the date of distribution, a partner may surrender a part of his profit to another partner.
6. One partner can cap his share of profit – Tiers profit.

# Profit Sharing Rules..

7. Profit ratio can either be fixed or variable according to the tiers.
8. The final allocation of profit is not allowed to be based on expected profit. However, permissible to distribute a provisional profit, subject to final settlement after actual or constructive liquidation.
9. Partners may decide not to distribute a portion of profit  
– Creation of various reserves .
10. Loss has to be borne in proportion of the capital provided.

# Guarantee in Shirkah al 'aqd

- Guarantee of capital, part of capital, profit or part of profit from one partner to other is not allowed.
- Such guarantee if given becomes invalid.
- Guarantee or Security can be asked for only misconduct or negligence of partner (s).
- A third party may provide a guarantee to make up losses of one or all partners.
- This third party should not have more than 50% stake in guaranteed entity.

# Application of Shirkah al aqd

- **Fund Management – Stocks Business**
- **Project Financing**
- **Financing of a Single Transaction**
- **Running Musharaka**
- **Securitization of Musharaka**