

SHIRKAH

Presented By:

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MEANING OF SHIRKAT

- The word shirkah is used in the literal sense to mean mixing or mingling. Shirkah or Partnership implies an underlying idea of mixing share in such a way that one of them cannot be distinguished from the other. In its technical sense, shirkah signifies a relationship that exists between contracting parties to participate in a particular asset or property without common business intention or with common intention to engage in business with respect to such asset or property.

EVIDENCE OF SHIRKAT

- FROM QURAN

- {فَابْعَثُوا أَحَدَكُمْ بِوَرِقِكُمْ هَذِهِ إِلَى الْمَدِينَةِ فَلْيَنْظُرْ أَيُّهَا أَزْكى طَعَامًا فَلْيَأْتِكُمْ بِرِزْقٍ مِنْهُ وَلْيَتَلَطَّفْ وَلَا يُشْعِرَنَّ بِكُمْ أَحَدًا (19) [الكهف: 19]}

- Now send one of you with this silver (coin) of yours to the, so let him bring you provision from it, acity, then let him see which of them has purest foodnd let him behave with gentleness, and by no means make your case known to any one:

EVIDENCE OF SHIRKAT

- FROM QURAN

- According to Imam Abu' Bakar Jassas (May Allah mercy on him) the above mentioned verse indicates three important points:
 - 1. Their funds were contributed on Shirkah basis.
 - 2. It also indicates permissibility to buy goods from Shirkah Based Funds.
 - 3. It also gives validity to utilize food stuff which was purchased by Shirkah based funds, though one gets more and other less.

EVIDENCE OF SHIRKAT

- FROM HADITHS

- سنن أبي داود (256/3)
- عن أبي هريرة، رفعه قال: "إن الله يقول: أنا ثالث الشريكين ما لم يخن أحدهما صاحبه، فإذا خانه خرجت من بينهما."
- 3383. It was narrated from AbU Hurairah
- "Allah, Exalted is He, says: 'I am the third of two partners so long as one of them does not betrays the other; but if he betrays him then I depart from among them.'"

COMPARISSION OF EQUITY BASED MODES OF FINANCING WITH INTEREST BASED SYSTEM

- **First point:**
- In interest based economic system, lender lends its money to the borrower and feels free, as he asks for risk-free return on his investment. While comparing it with Shirkah based investment, both parties share their risk and reward.
- In Shirkah both parties remain conscious/ alert regarding risk and return of the business.

COMPARISSION OF EQUITY BASED MODES OF FINANCING WITH INTEREST BASED SYSTEM

- **Second point:**
- Interest based economic system is based on injustice, because in this system lender never considers the fact that if borrower fails to generate profits, borrower will totally be bound to return principle along with interest, even he suffers losses.
- And in case if borrower earns huge profit, he is only liable to pay fixed return to the lender (e.g. 15% only); and whole profit can be enjoyed by themselves (i.e. 85%, the remaining portion of the profit).
- On the other hand, interest amount recovered / charged is included in the cost of goods sold.
- The Shirkah is based on justice. Financier and borrower both enjoy earned profits and suffer losses.

COMPARISSION OF EQUITY BASED MODES OF FINANCING WITH INTEREST BASED SYSTEM

- **Third point:**
- In interest based economic system money circulates in few hands, that's why poor becomes poorer and vice versa (rich become richer).
- While in Shirkah money disperses/ circulates in the society.

COMPARISSION OF EQUITY BASED MODES OF FINANCING WITH INTEREST BASED SYSTEM

- Forth point:
- In interest based lending system, some times lender appreciates where borrower realizes returns as delayed as possible. Like in Credit Card.
- While in Shirkah it is not possible to think so

Hindrance - Implementing Shirkah

- Risk of loss
- Dishonesty
- Secrecy of the business
- Client's unwillingness to share profits
- Lack of support from the State, Laws, Judiciary system & Economic system

Types of Shirkah

SHIRKAH

SHIRKAT UL MILK
2 TYPES

SHIRKAT UL Aaqd
3 TYPES

Optional (ikhtiyari)

Compulsory (Ghair Ikhtiyari)

Shirkat-ul-WojooH

Shirkat-ul-Aamal

Shirkat-ul-Amwal

Shirkat-ul-Mufawadah

Shirkat-ul-Ainan

Shirkat-ul-Mufawadah

Shirkat-ul-Ainan

Shirkat-ul-Mufawadah

Shirkat-ul-Ainan

SHIRKAT (PARTNERSHIP)

- **Shirkat-ul-Milk (Joint ownership)**
- Joint ownership of two or more persons in a particular property with out common commercial intention.
- **SHIRKAT-UL-AQD**
- This the second type of shirkah which means
- “a partnership effected by mutual contract ” for the purpose brevity it may also translated as “ joint commercial enterprise”.
- AAOFI defined in the following words.
- Sharikat al-'Aqd (contractual partnership) means an agreement between two or more parties to combine their assets, Labor or liabilities tween two or more parties to combine their assets, labor or liabilities for the purpose of making profits

Types of Shirkat-ul-Milk

• 1. Shirkat-ul-Milk Optional (Ikhtiary)

- This comes into operation by the option of parties
- e.g., purchase of asset with mutual consent.

2. Shirkat-ul-Milk Compulsory (Ghair Ikhtiary)

- This comes into operation without any action taken
- by the parties e.g., ownership of heirs on the
- inherited property. (JOINT OWNERSHIP IN PROPERTY)

Basic Differences between Shirkat-ul-Aqd and Shirkat-ul-Milk

- 1. In Shirkat ul Aqd both parties create partnership for sharing profit earned by Shirkah asset, while in Shirkat ul milk both partners do not intend to earn profit from Shirkah asset.
- 2. In Shirkat ul Aqd, each partner is an agent of others while in Shirkat ul Milk each partner is stranger with respect to other's share.
- 3. Aqd is necessary in Shirkat ul Aqd, whereas it is not necessary for counterparties of Shirkat ul Milk to execute Aqd.

	SHIRKAT-UL-AQD	SHIRKAT-UL-MILK
Definition	<ul style="list-style-type: none"> •Aqd is necessary •Commercial intention exist (joint venture) 	<ul style="list-style-type: none"> •Aqd is not necessary •Commercial intention not exist (joint ownership)
Nature	<ul style="list-style-type: none"> •Direct Contract •It is only voluntarily. 	<ul style="list-style-type: none"> •Indirect Contract •It may be involuntarily.
Parties	<ul style="list-style-type: none"> •Both are 'partners'. •Both are agents of each other. <i>(representative & liable for each other)</i> 	<ul style="list-style-type: none"> •Both are 'co-owners'. •Both are strangers.
Subject Matter	<ul style="list-style-type: none"> •Fixed assets, currencies, debts 	<ul style="list-style-type: none"> •Debts not allowed in optional Shirkat-ul Milk
Profit Ratios	<ul style="list-style-type: none"> •Profit ratios are not supposed to be proportional to ownership (if degree of participation is same). 	<ul style="list-style-type: none"> •Profit ratios are supposed to be proportional to ownership.
Exit Strategy	<ul style="list-style-type: none"> •Exit of one partner cannot be made on pre-agreed price as it results in guaranteeing capital/profits. 	<ul style="list-style-type: none"> •Allowed.

Meaning of Commercial Intention

- **1.**
 - It includes revenues generated from sale/purchase of goods/services or rental contracts. (not necessary to be (maal-e-tijarah)
- **2.**
 - It doesn't include 'capital gain' which is natural in Shirkatul Milk.
- **3.**
 - Commercial intention is the criteria, not generation of profit itself (like any monetary benefit got unintentionally on Shirkatul Milk based property).
- Commercial intention & Aqd
 - **1.** When both are combined (in Shirkatul Aqd).
 - **2.** When both are missing (in compulsory Shirkatul Milk).
 - **3.** When Aqd is there, but not commercial intention (in optional Shirkatul Milk)

Important Points

- 1.
 - AAOIFI does not consider the partnership between depositors in liability side and between bank & customer in asset side (DM) as “Shirkatul-Milk” ,
but in Pakistan the partnership between depositors in liability side and between bank & customer in asset side (DM) as “Shirkatul-Milk
- 2.
 - A Leasing company introduced Sukuk which represented rented cars whereas rentals were distributed among Sukuk holders as per ownership ratio. It was Shirkatul Aqd.
- 3.
 - **GOP Ijarah Sukuk are introduced under Sale & Lease Back, in which shirkat is made not on rents/profits of the Asset (like motorway). Rather, one partner agrees to pay rentals to other one. Hence, incase no profits are generated from the Asset, the Ijarah relationship b/w the two partners will remain intact.**

Important Points

- **4.** When Asset of Shirkatul Milk is sold out for liquidation, it will be considered as termination of Shirkah.
- **5.** When Asset/inventory of Shirkatul Aqd is sold out for profits, capital is not withdrawn i.e. Shirkat is not liquidated but is continued. Whereas asset of Shirkatul Milk is sold out for liquidation/capital withdrawal. Here, generated profit is 'capital gain' not intentional profits.
- **6.** When Asset of Shirkatul Milk is rented out, Milk is considered as converted into Aqd.
- **7.** When Business is inherited by heirs, and heirs intends to continue the business, it will be Shirkatul Aqd.

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2 TYPES**

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Types Of Shirkat-ul-Aaqd

- **(1) Shirkat-ul-Amwal**
- **(Partnership in capital)**
- Where all the partners invest some capital into a commercial enterprise.
- Profit is generated from capital.

Types Of Shirkat-ul-Aaqd

- (2) Shirkat-ul-Aamal
- (Partnership in services)
- Where all partners jointly undertake to render some services for their customers.
- Capital may be there, but Profit is not generated from capital, rather from 'services'/skills offered.

Types Shirkat-ul-Aaqd

- (3) Shirkat-ul-Wojoooh
- (Partnership in goodwill)
- Where the partners have no investment at all, they purchase commodities on deferred price by their goodwill and sell them on spot.(Imam Abu Hanifa RA)
- Skills are there but profit is not generated from skills/services. Rather, it is generated from ‘{ ضمان }’the liability)

Types Shirkat-ul-Aaqd

- (3) Shirkat-ul-Wujooh
- (Partnership in goodwill)
- Sometimes, in Shirkatul Amwal, there is involvement of Shirkatul Wujooh. Like both invests but one has goodwill in the market, so increased profit ratio may be set for him.
- Similarly, involvement of Shirkatul Aamal is there in Shirkatul Amwal.

Types Shirkat-ul-Aaqd

1-Shirkat-ul-Mufawadah:

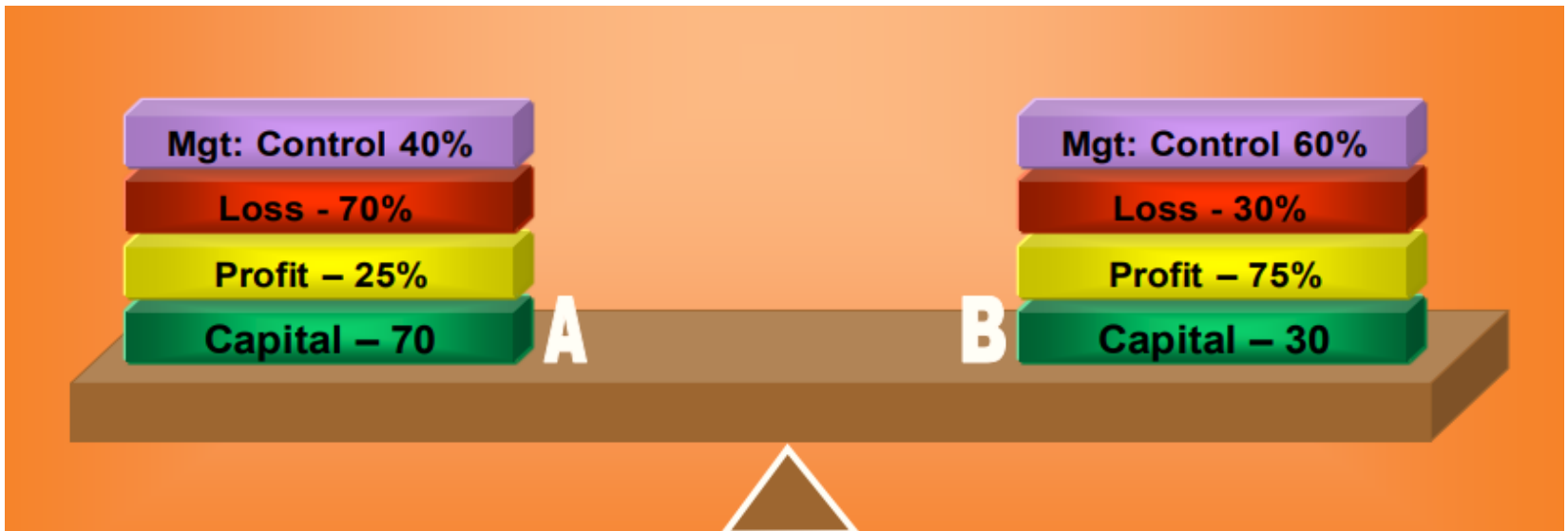
Where capital, profit, loss and management are equal among the partners though skills/goodwill of the partners differ.



Types Shirkat-ul-Aaqd

2-Shirkat-ul-Ainan:

Where the partners are unequal in the one of above.



Shariah Rules Of Shirkat-ul-Milk

- 1.
- Each partner is stranger with respect to the share of the others.
- 2.
- The partners are not allowed to undertake any act of clearance with respect to the other's share except with the latter's permission.

Question: Haq-u-Shufa' in which Shirkah?

- 3.
- Profit & loss (if any i.e. unintended) will be according the ratio of ownership.
- 4.
- Every partner has the right to sale/gift/lease to the
- extent of his share.

Shariah Rules Of Shirkat-ul-Milk

- 5.
- One partner can promise to purchase the share of other partner at any price, may be at face value, market value or pre-agreed price. The promise may be in form of % of share, or promise of Hiba. However, if pre-agreed price is gateway (heelah) towards interest, it is not allowed.

Shariah Rules Of Shirkat-ul-Milk

- 6.
- Expenses related to ownership will be borne by all partners according to the ratio of ownership. One partner may be borne on behalf of the other and recover it later. However, if the expense is not related to seeking ownership of relevant asset, like it is related to legalize the property, such expense may be borne by one party.

Shariah Rules Of Shirkat-ul-Milk

- 7.
- If a property jointly owned by two partners there may be different ways to take benefits from it as follows:
- a) Distribution may be according to timing.
- b) Distribution may be according to place.
- c) All partners may use it jointly without physical distribution. The distribution is allowed to violate ownership ratios like under point 'b'. However at the time of termination of Shirkah, either sale proceeds are distributed OR valuation of the property will be conducted and property will be distributed as per ownership ratios.

Shariah Rules Of Shirkat-ul-Milk

- 8.
- Final distribution of jointly owned asset, is the only way to terminate Shirkat-ul-Milk.

Shariah Rules Of Shirkat-ul-Aaqd

RULES OF SHIRKAT-UL-AAMAL

(Partnership in services)

- 1.
- Every partner is agent of other partners therefore:
 - a) No need to get permission of other partners for any business act.
 - b) The other partner of the business is bound to comply the terms of contract with business's customer if agreed by one partner.
 - c) Customer has right to claim to each partner.
- 2.
- Profit may be agreed at any ratio.

Shariah Rules Of Shirkat-ul-Aaqd

RULES OF SHIRKAT-UL-AAMAL

(Partnership in services)

- 3.
- Loss will be distributed exactly at the same ratio at which profit is shared, as principally there is no investment in Aamal.
- Example of loss: when one partner has to compensate actual loss of the customer suffered not due to negligence of the partner.
- 4.
- If investment is required to run Shirkat-ulAamal, there may be four following scenarios:

Shariah Rules Of Shirkat-ul-Aaqd

RULES OF SHIRKAT-UL-AAMAL

(Partnership in services)

- **a)** All partners invest in form of cash or kind or tools and both are working partners:
 - It is permissible according to Shriah and any ratio of profit may be agreed.
 - Asset purchased by investment (cash) will be jointly owned by partners (Shirkat-ul-Milk). •
 - If investment is in shape of fixed assets (kind/tools), it will remain in the ownership of that each investor separately (i.e. no Shirkah in such kind/tools).
- Now, the partner having high-efficiency tool may be given higher profit ratio, or may receive its rent from Business.

Shariah Rules Of Shirkat-ul-Aaqd

RULES OF SHIRKAT-UL-AAMAL

(Partnership in services)

- **b)** One is investor and both are working partners:
 - It is permissible according to Shariah and any ratio of profit may be agreed.
 - Asset purchased by investment will remain in the ownership of that particular investor. He can charge its rent. Or considering the investment, his ratio of profit may be higher than other. Both (a) and (b) are permissible in view of all Imams.

Shariah Rules Of Shirkat-ul-Aaqd

RULES OF SHIRKAT-UL-AAMAL

(Partnership in services)

- **c)** One is working partner, investment from both partners: (if one is not sleeping partner, then it is same as 'a') • It is not permissible in the view of Imam Abu Haneefah, Malik and Shafei. Because no Shirkah exist in services/skills. And there is no concept of Sleeping Partner in Shirkat-ul-Aamal. • However, according to Imam Ahmad's view, it is permissible.

Shariah Rules Of Shirkat-ul-Aaqd

RULES OF SHIRKAT-UL-AAMAL

(Partnership in services)

- **d)** One is investor and other is working partner:
- It is not permissible in the view of Imam Abu Haneefah, Malik and Shafei.
- -It is not Mudarabah...!
- -It is not Shirkat-ul-Amwal
- -It is not Shirkat-ul-Milk
- However, according to Imam Ahmad's view, it is permissible using Qayas on 'Muzara'a'.

Shariah Rules Of Shirkat-ul-Aaqd

RULES OF SHIRKAT-UL-AAMAL

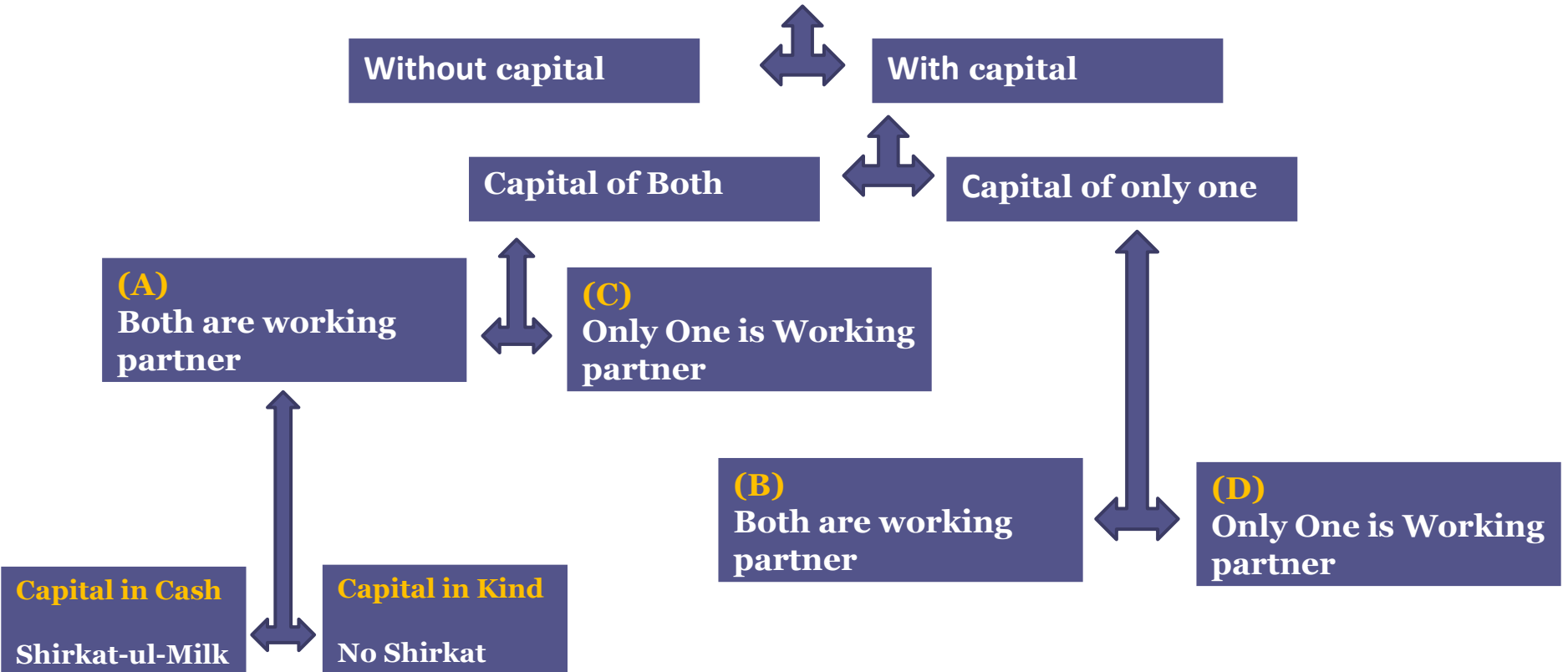
(Partnership in services)

- **Current Practices**

- a) Relationship of Hospitals with Lady Doctors who checks their patients through ultrasound machines in the premises of hospitals whereas fee earned is distributed as per agreed ratios.(as mentioned in 'c').
- In case hospital provides staff, expense of staff is borne by hospital and not borne by both partners.
- Hence, the relationship doesn't fall under any type of Shirkah.
- b) Petrol pump: where one gives plot as his share of investment and other gives petrol which he sells and both partners share profits as per agreed ratios.
- Solution: Ijarah on fixed rental, not with sharing profits.

Shirkat-ul-Aamal-Summary

Shirkat-ul-Aamal



Shariah Rules Of Shirkat-ul-Aaqd
RULES OF SHIRKAT-UL- WOJOOH
partnership of credit worthiness or reputation
(liability partnership)

- 1.
- Every partner is agent of other partner so each can act in the business according to normal course of business and other is also responsible for the work undertaken.
- 2.
- The ratio of ownership may be different in a commodity purchased on credit.
- 3.
- Profit and loss will be according to ratio of ownership.

Shariah Rules Of Shirkat-ul-Aaqd

RULES OF SHIRKAT-UL- AMWAL

CAPITAL PARTNERSHIP

- Shirkat Ul Amwal Where all the partners invest some capital into commercial enterprise.

Shariah Rules Of Shirkat-ul-Aaqd

RULES OF SHIRKAT-UL- AMWAL CAPITAL PARTNERSHIP

- 1.
- Every partner is agent of other partners so each can do any beneficial work for business on behalf of other partners.
- 2.
- Partner cannot do any work/ activity in which there is apparent loss of business (Donation from business, extraordinary Qard etc.).
- Activities if divided are the scope of each partner..

Shariah Rules Of Shirkat-ul-Aaqd

RULES OF SHIRKAT-UL- AMWAL

CAPITAL PARTNERSHIP

- 3.
- It may be agreed that one partner may be sleeping partner and other may be working partner.
- 4.
- Any other person may be hired/ employed for business with mutual consent of all partners and his salary will be accounted for from business expenses. A part of profit may also be given to employee as incentive besides his salary.

Shariah Rules Of Shirkat-ul-Aaqd

RULES OF SHIRKAT-UL- AMWAL

CAPITAL PARTNERSHIP

- 5.
- If any partner works ‘additionally’ in place of employee, the ratio of profit maybe increased or a salary may be given considering his service. If one partner hires an employee to execute responsibilities of that partner, expense of employee should be borne by the partner, not by Shirkah.
- 6.
- The profit can be distributed at any ratio agreed by mutual consent.

Shariah Rules Of Shirkat-ul-Aaqd

RULES OF SHIRKAT-UL- AMWAL

CAPITAL PARTNERSHIP

- 7. Ratio of profit may differ from ratio of capital/
Investment
- 8.
 - The ratio of profit of sleeping partner will not be more than the ratio of his investment.
- 9.
 - Loss will be suffered according to the ratio of investment.

Shariah Rules Of Shirkat-ul-Aaqd

RULES OF SHIRKAT-UL- AMWAL

CAPITAL PARTNERSHIP

- 10.
- Capital & Asset of Shirkah is Amanat, therefore if loss is occurred due to negligence of one partner, he will be responsible. Other partner will not share that loss.
- 11.
- Security can be asked from partner to cover the loss in case of his misconduct or negligence.
- (Q)
- Only principal will be covered, not profit. Profits of void Murabahas in Islamic Banks are compensated to Mudarib Pool incase banks repeats the mistake.

Shariah Rules Of Shirkat-ul-Aaqd

RULES OF SHIRKAT-UL- AMWAL

CAPITAL PARTNERSHIP

- 12.
- Every partner can promise to purchase the share of other partner at Market Price or at price agreed at the time of sale. It is not allowed that a fixed price is agreed at the time of promise to guarantee principal/profit/both/their portion.
- 13.
- Capital of Shirkat-ul-Amwal may be in cash or in shape of commodity. If it is in shape of commodity its market value at the time of entering partnership will be taken.

Shariah Rules Of Shirkat-ul-Aaqd
RULES OF SHIRKAT-UL- AMWAL
CAPITAL PARTNERSHIP

- 14.
- Capital must be specified (Maaloom).
- 15.
- Capital must be existing. Future Shirkah or Deferred Shirkah is allowed.
- 16.
- Debt cannot be capital of Shirkah. However if debt is a nominal part of capital, it is allowed, e.g. in case of merger of companies.

Profit Loss Ratios in Different Types of Shirkah

	SHIRKAT UL MILK	SHIRKAT UL AMWAL	SHIRKAT UL AAMAL	SHIRKAT UL WUJOOH
PROFIT	As per ownership	As agreed	As agreed	As per ownership
LOSS	As per ownership	As per ownership	As per Profit Ratio	As per ownership

RULES FOR PROFIT DETERMINATION

- 1. Profit will be agreed according to 'percentage' not in lump sum.
- 2.
- Agreed percentage must be a percentage of profit not of capital.
- 3.
- No guarantee can be given by the partners for the payment of profit or capital.
- 4.
- Third party can guarantee the profit or capital subject to:
 - a) Third party has no relation with the business.
 - b) This Guaranty will not be a part of Shirkah Agreement.
 - c) The third party will not charge any fee for the guarant (Q)

RULES FOR PROFIT DETERMINATION

- 5.
- Different partners may be given different weightages according to amount and period of their investment.
- 6.
- Both partners can agree that first 6-month profit e.g. will be distributed at ratio of 50%: 50% and next 6- month profit will be distributed at ratio of 30%: 70%.

RULES FOR PROFIT DETERMINATION

- 7.
- Partners may also agree that e.g. if profit is Rs. 100 million, it will be distributed at ratio of 50%: 50% and excess profit above Rs.100 million will be distributed at ratio of 70%: 30%.

RULES FOR PROFIT DISTRIBUTION

- 1.
- Before termination of Shirkah provisional profit can be distributed between the partners subject to final adjustment.
- 2. At the time of termination of Shirkah, if some part of capital is in shape of Illiquid (Fixed Assets) form, it will be sold to convert into Liquid or its market value will be taken and on the basis of market value both liquid and illiquid assets will be distributed.

RULES FOR PROFIT DISTRIBUTION

- 3.
- If illiquid asset is sold and transferred in liquid form, it is called “Physical Liquidation”.
- 4.
- If market value of illiquid asset is taken, it is called “Constructive Liquidation.”

RULES FOR PROFIT DETERMINATION

- 5.
- If dispute arises among the partners in physical or constructive liquidation then constructive liquidation will be preferable.
- 6.
- After physical or constructive liquidation, all direct and indirect expenses will be deducted from the total capital and Net Profit will be distributed.

RULES FOR PROFIT DISTRIBUTION

- 7.
- It is also permissible that only direct expenses be deducted and Gross Profit be distributed, indirect expenses will be borne by any one partner.

RULES FOR PROFIT DISTRIBUTION

- 8.
- After deduction of expenses, every partner will be given his principal amount.
- 9.
- The remaining amount will be profit, which will be distributed according to agreed ratio of profit.
- 10.
- After profit distribution one partner can give from his share to other partners subject to condition that it would not be conditional in Shirkah Agreement and this practice will not cause fixation of profit.
- 11.
- With mutual consent partners can establish reserves for future loss.

RULES FOR PROFIT DISTRIBUTION

- 12. If there are some partners in a business and one of them decides to leave the Shirkah (Partnership) and other partners want to continue the business, then the remaining partners may purchase the share of outgoing partner or a new person from outside may enter into the Shirkah (partnership) by purchasing the share of outgoing partner.

RULES FOR PROFIT DISTRIBUTION

- If Shirkah assets does not consist considerable size of fixed assets, other investors may purchase leaving partner's share paying him provisional amount subject to adjustment at the time of closing.
- If shirkah assets consist considerable size of fixed asset i.e. more than 10% then out going investor's share could be purchased at any price with mutual consent subject to the agreed price must be more than the ratio of cash and receivables in his share.

RULES FOR PROFIT DISTRIBUTION

- 13.
- In case, the partners are investing and withdrawing money from business all the time. The profit will be distributed on daily product basis (per Rupee / day) on average balance.)

Questions: (For Assignments)

- Q1. Question: Is 'Rehn' against Amanah permissible?
- Q2. In liability partnership Every partner can promise to purchase the share of other partner at Market Price or at price agreed at the time of sale. It is not allowed that a fixed price is agreed at the time of promise to guarantee principal/profit/both/their portion. " why "

Q . 3 When Aqd is there, but not commercial intention (in optional Shirkatul Milk), will Aqd be considered as "Nil" in

- terms of Shariah?
- Q4. You have read that " The third party will not charge any fee for the guaranty." But In Islamic banking charging the fee of guaranty. What is the Answer ?

- Q4.
- If one partner has commercial intention and other doesn't have, what is this contract?

Jazakallah u Ahsanaljaza