Challenges of Civil Partnership Contracts in Interest-Free Banking Operation

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Abstract

Considering the need to examine the question of contract used in Islamic banking, this article tries to discuss mutual and conflicting influences of partnership contract in an integration for provision of banking facilities, which mainly to consolidate the dominance of banks over customers, and explaining that the partnership contracts are unfair and imposed, and presenting provisions of the contract that make it unrealistic, introduces the need to review the structure of these contract to be more compatible with religious teachings. In addition, definitive earnings forecast at the time of conclusion of the contract is unfair and relies on pledges obtained as well as the customer urgency and dependence on bank loans, is an obvious objection to these contracts, which undermines the legitimacy of the economic and banking system in the country. The remarkable point in this type of contract that should be noted is related to loans that are provided in the form of administered funds and from place of amendments in the country's annual budget under agency of banks, since these funds are apart from the relationship between banks and depositors, but are still granted in the form of the customary partnerships of banks, and no solution has been devised for them.

Keywords: contract, partnership, banking, usury (interest), the Central Bank of Iran.
Introduction

Non-interest banking law, after being hastily passed in 1983, considers civil partnership contracts as a way of legitimate and religious interaction of customers and banks, and different instructions about its amendments were passed by Money and Credit Council, including implementation of civic partnership guidelines and its amendment based on the Directive 1249 /h.b dated on 2014.11.08, and partnership contract integration in Directive 206546 dated on 2013.10.9 noted by Reference and Study Bureau of the Central Bank's (Hassanzadeh, 2013 and Valinejad, 2013).

With more than 23 years of experience in the banking system and a history of attendance in legal and administrative units, the researcher explains the course of action and components of Partnership Contracts in a short essay, and believes that even unification of the partnership contracts for banks, despite law and legal objections, including obtaining irrevocable delegacy from clients, insertion of peace contract in several parts of it, and the changing nature of partnership contract from the necessity of permits, as well as lack of presentation of signed contracts to the customer are its legal deficiencies that have been mentioned below.

Statement of the Problem

For the first time, Article 28 of the Law on non-interest banking operations explained and prescribed the conclusion of partnerships contracts for use in banks, and defined civic partnership as mix of cash or non-cash contributions to natural or legal persons to profit from the contract signed. In real civic partnership, according to legal principles, each of the partners share the profits and losses in proportion to their share, unless one or a few of them have higher contribution in exchange for further actions. Partners must agree with each other to determine how to manage common property, and at the same time each partner is entitled, to assign his/her contribution to third parties without the consent of the other partners. However, the Iranian banking Partnership Contracts do not recognize this right, since guarantees and pledges are taken from persons involved as note or Cheque. In other words, the delegation right is voided, since it is denied from the partner in the mortgage contracts, and bank resists against change in these commercial documents, and in the event of legal action against these commercial documents, the initial signatories would be litigated, and it is not effective transfer of bank’s rights to the initial signatories (Massoudi, 2008 and Khademi, 2015).

Continuing legal order on partnership, capture and surrender of communal property sold is subject to the approval and consent of the partners. However, this right is usually taken from the partner at the beginning of a civil partnership contract in the form of a condition of the mortgage document, which is apart from domestic civil partnership contract. Moreover, any partner may request at any time to make division of joint property. Secondly, partnership is a permissible contract; therefore, the partner can demand distribution to announce his/her will to terminate it, or withdraw the permission to manage the partnership. In addition, if each of the partners dies or becomes incapacitated, the other joint partners are not allowed to occupy the property (Massoudi, 2008).
It is noted in Article 7 of the interest-free banking Law that in order to create facilities for expansion of various productive, commerce, or service sectors, banks can supply part of the capital or the resources required for these plans as partnership. Plan which is demanded for partnership should be monitored by the bank to ensure the original capital and profits expected by the bank can be settled at the designated time or not. The maximum partnership contribution of the bank is equivalent to 80% of total partnership capital, and since management of partnership and application and performance of its measures are referred to the applicant, the law obliges the banks to monitor the enforcement of contracts. So, in partnership contracts, payment is usually conducted in stages and in accordance with the progress of the project. It is necessary to explain that technical and economic feasibility studies of projects are usually written by experts of the bank (which of course do not have expertise in all fields) in credit fundamentals, and given that enough time and expertise is not considered in their preparation, all statistics figures, and forecasts are solely based on nominal capacity without taking into account the realities and problems in implementation of the work, and most of them get failed. Recession of companies and factories in industrial estates, issuance of judicial judgments against manufacturing and industrial units, which every day is printed in widely circulated newspapers as sales of surplus property of the banks explains this chaotic situation. Experience has shown that in the discussion of supervising the execution of contracts, lack of proper regulatory practices by the banks is not positive, and act as a deterrent leverage in the progress of the partnership, since at the time when the bank's expertise is not provided, the project is facing a delay in the payment order of the share of partnership, and this delay will affect the profit partnership period and may be faced with increase in the price of materials and disrupting in the determined plans of the project. Given that it is conditioned that the partner should pay all potential excess costs out of his/her own pocket, the partner will face problems in injecting finance to the project and the partnership may actually fail (Elsan, 2012 and Khademi, 2015).

However, there is a fact that should not be considered insignificant. The interest-free banking regulations, especially in the Partnership Contracts, due to the inherent function of the bank, after termination of the partnership, the bank cannot still remain as owner of some part of the property resulting from the partnership. As indicated in the Civil Code, based on the contract made, the client's requirements in terms of buying the partnership share and ownership equity of the bank should be inserted in the contract, and the client should be require to buy the partnership share based on the bank’s assessment calendar, and if refusing, the bank should be allowed to do the deal and sell its share of partnership to the client. Of course, there is a condition that lets the bank's management to complete the partnership to that would never be realized in case of issuing the judicial executive. It is certain that the bank assessment calendar in terms of banking regulation is based on the principle that the result of bank’s assessment includes the original facilities granted plus interest accrued at the time of partnership, and possible fines and damage chargeable to the customer's account (Massoudi, 2008). A point that is noteworthy about the partnership is that partnership contract requires the both parties to share profits and losses in final, and on the other hands, funds used by banks to grant facilities are in fact the amount of money that has been invested in the bank by the people, and the bank is committed to refund the original money, and in some accounts, to pay dividends. Thus, if we consider that losses should be shared between the bank and its partner, this is incompatible with the nature of banking operations, and will face banking issues with problems and disorders, and will endanger power
of the bank. So, if it were provided in the contract that the bank does not share losses resulting from partnership, and should make profit in any case, it is not compatible with requirements of partnership contract, and what is actually concluded is to grant a loan, that backed by pledges such as location of the project and independent mortgage contract, guarantees partnership profit and origin of the facilities in any case.

An important point in this regard is that in these contracts, it should be mentioned that these loans are granted in the form of managed funds and based on notes projected in the annual budget of the country with agency of the banks. In this case, since these funds are apart from the relationship between banks and depositors, they are still granted in the form of common partnerships of the bank, and no alternative has been considered for them.
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