



COLLEGE OF LAW AND GOVERNANCE

SCHOOL OF LAW

**SETTLEMENT OF INTEREST-FREE BANKING DISPUTES UNDER ETHIOPIA
BANKING LAW: A COMPARATIVE STUDY**

LL.M IN COMMERCIAL AND INVESTMENT LAW

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JIMMA ETHIOPIA

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This is to certify that the thesis entitled: settlement of Interest-free banking disputes under Ethiopia banking law: a comparative study; was submitted in partial fulfillment of the requirement for the degree of Master of Law (LLM) with a specialization in Commercial and Investment Law to the Post Graduate Program of Jimma University School of Law, has been carried out by Hasen Reshad under our guidance. Therefore, we recommend that the student fulfilled the requirements and hence hereby can submit the thesis to the school.

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DECLARATION

I HasenReshad hereby declare that the thesis entitled “settlement of Interest-free banking disputes under Ethiopia banking law: a comparative study;” is my original work and has not been presented for a degree in any other university, and all sources of material used for this thesis have been duly acknowledged.

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Abstract

One of the most emerging trends in global economics is the idea of interest-free banking and finance. Interest-free banking in the global landscape has emerged as an alternative banking system. It was established based on the ethos and values of Islam and is governed by the rules of Sharia law. Ethiopia is actively working for financial inclusion, especially under the country's financial inclusion policy, which focuses on the inclusion of Muslim interests in financial institutions. This has begun with permission given for interest-free banking, followed by Islamic insurance, and now interest-free microfinance. The government introduced interest-free banking in 2011 by enacting two directives: 1) the Directive to Authorize the Business of Interest-Free Banking No.SBB/51/2011; and 2 the Directive to License and Authorize Interest-Free Banking Business No.SBB 72/2019. In addition, these directives oblige the application of Islamic laws for interest-free banking transactions. The aim of this research is to investigate the legal framework for dispute settlement of the interest-free banking regulation in Ethiopia in line with Islamic perspectives. By using comparative methods of analyzing rules, this research has investigated and analyzed legal deficiencies. Furthermore, the study employs non- doctrinal methodology to identify the practical procedure for dispute settlement in interest-free bank in Ethiopia. The author has found that the existing legal framework is not adequate to settle disputes in the case of interest-free banking, Interest free banking dispute settled by conventional laws which are against Islamic finance principles and a dispute settlement mechanism for interest-free banking is not included in Ethiopian banking regulations. As a result, the author recommended major points in order to provide a solution to the major legal problems identified by this research that surround dispute settlement of interest-free banking, as well as making a solution to dispute settlement of interest-free banking in Ethiopia.

Keywords; Interest-free banking, Ethiopia, Dispute settlement

Acronyms

NBE	National bank of Ethiopia
IFB	Interest free bank
AD	Alternative dispute resolution
IDB	Islamic Development Bank
PLS	Profit and Loss Sharing
IFI	Islamic financial system
SAW	Solollahu AlehWossollam
ADR	Alternative dispute resolution
IFSB	Islamic Financial Service Board
AAOIFI	Auditing and Accounting Organization for Islamic Financial Institutions
BCFS -	Basel Committee on Banking Supervision
IMF	International Monetary Fund
BIS	Bank for International Settlement
IDB	Islamic Development Bank
ADB	Asian Development Bank
IFSB-	Islamic Financial Service Board
IDBG	Islamic Development banking group
IITFC	International Islamic Trade Finance Corporation
ICD	Islamic Corporation for Development of the Private Sector
IRTI	Islamic Research and Training Institute
IB	Islamic Development Bank

ICIEC	Insurance Corporation for Investment and Export Credit
UK	United Kingdom
KLRC	Kuala Lumpur Resolution Centre for Arbitration
FMB	Financial Mediation Bureau
BMB	Banking Mediation Bureau
IMB	Insurance Mediation Bureau
FMB	Financial Mediation Board
IBF	Islamic Banking and Finance
MAS	Monetary Authority of Singapore
FSA	Financial Services Authority

DEFINITION OF TERMS

The researcher was providing some crucial essential phrases and ideas utilized in the study together with their meanings and settings for ease of comprehension of the research issue, because the interest-free banking norm is an emerging notion in the Ethiopian environment.

- ✓ IJMAA; Consensus of Muslim scholars
- ✓ Qiyas: analogy
- ✓ Gharar: Any act of uncertainty.
- ✓ Hadeeth; A record of Muhammad's or his companions' words or deeds, along with the tradition of their chain of transmission or the sum total of these traditions.
- ✓ Haram: is against the law and viewed as a serious offence. A haram action is one that Allah will punish; therefore staying away from haram activities like drinking and gambling will bring rewards.
- ✓ Baitul-mal- means state or country.
- ✓ Fiqh:-Islamic jurisprudence, often known as the study of religious law, is the process of interpreting the Sacred Law, or shari'a.
- ✓ Halal:"Things allowed by the Sharia"
- ✓ Maysir- meaning to gamble, from a hazardous game played before Islam.
- ✓ Ijarah: Financing: funding for lease.
- ✓ Istisna: Financing: funding for building and plant construction.
- ✓ Mudharabah: (Trust finance) is collaboration between a bank and a client in which the client or entrepreneur manages the investment while the bank provides the funding for the project.
- ✓ Mudarib: Manager of the Mudharabah partnership's entrepreneurial activities (trust funding).
- ✓ Murabaha Financing: Cost plus profit margin finance for working capital.
- ✓ Musharakah/Musyarakah :(Partnership Financing) describes an investment partnership where all participants split earnings from a project according to a set ratio, while losses are split according to the amount of money contributed.
- ✓ Prohibition: As per the Sharia Principle, commercial engagements are prohibited.

- ✓ Qard- is an altruistic loan (interest-free).
- ✓ Deposits to be invested by the bank for cost-effective financing on the advice of the depositor client are known as "restricted investment deposits."
- ✓ Riba/usury:- interest
- ✓ Salam is an upfront payment.
- ✓ Standalone: a banking convention operating independently.
- ✓ Sharia Committee: a team of independent Sharia Scholars in charge of monitoring the compliance aspect of the IFB.
- ✓ Sharia Principle: Islamic law.
- ✓ Sunna: The way of life prescribed in Islam, based on the teachings and practices of Muhammad and the exegesis of the Qur", or Muhammad's way of life, viewed as a model for Muslims.
- ✓ Unrestricted Investment Deposits: Pool of deposits to be independently deployed by the bank for any financial financing without any intervention of the depositor.
- ✓ Wadiah Deposit: A return-free deposit for safekeeping.
- ✓ Wakalah: The use of an agency.
- ✓ Takaful, which means "mutual support," is the cornerstone of the Muslim idea of insurance or solidarity.
- ✓ Rabb al-mal is the financier or owner of capital in a mudaraba partnership contract (also sahib al-mal).

- ✓ Zakat is a religious tax or almsgiving that is required by the Holy Qur'an. It is one of Islam's five pillars.
- ✓ Every time the name of the prophet Mohammed is said, Solallahualehwossollom (SAW) bestows blessings and peace on him. It is equivalent to the expression "peace and blessing be upon him."
- ✓ Ijima, one of the four sources of law in Sunni Islam, is an agreement among jurists based on the Holy Qur'an and Sunna.

CHAPTER ONE

1.1 Background of the study

One of the new ideas in the global financial system is the concept of interest-free banking and finance.¹ It grows as an alternative banking system that is in correspondence with the values and ethos of Islam and governed by the principles of Sharia law, which requires not charging interest and avoiding any unethical practices in achieving its goals and objectives.² Islamic banking is a system of banking that goes parallel with the principles of Sharia law³, which prohibits the payment or acceptance of interest fees for loans of money (reba or usury) for specific terms. It also prohibits investing in businesses that provide goods or services considered against Sharia principles (haram). These include businesses like those that sell alcohol or engage in taboo practices, as well as those that produce media gossip columns or pornography, which are contrary to Islamic values. The sources of Islamic sharia are divided into two categories: primary and secondary sources.⁴ Among primary sources, the Quran and the Sunnah of the prophet Mohammed are good examples. The secondary sources are the consensus of Muslim scholars (Ijmaa), analogy (Qiyas), and the intellectual effort of scholars (Ijtihad).⁵ Sharia has primary and secondary objectives. The primary objectives include the protection of religion, life, progeny, intellect, and wealth. The secondary objectives include launching fairness and equality; preserving peace and safety; encouraging of mutual help, social security, and solidarity, collaborating in encouraging goodness and preventing evil actions, and promoting the keeping of global moral values.⁶

¹AkmeHailu, Challenges and Prospects of Islamic Banking for Resource Mobilization in Ethiopian Commercial Banks, St. Mary's University, 1 (2015).

² Nobel Demissie, Factors affecting the implementation of interest-free banking in Ethiopia: The Mediation Role of Customer Involvement, Addis Ababa University, 1 (2019).

³ Mohamed MuhumedOlad, Islamic Banking: Prospects, Opportunities, and Challenges in Ethiopia, Addis Ababa University, 1(2012).

⁴ Gait, A.H., and Worthington, A.C., "An Empirical Survey of Individual Consumer, Business Firm, and Financial Institution Attitudes Towards Islamic Methods," School of Accounting and Finance, University of Wollongong, Working Paper 8, 2007. <https://ro.uow.edu.au/accfinwp/8>

⁵SuadiqMehammed Hailu and Dr. Nissar Ahmad Yatoo, Islamic finance in Ethiopia: current status, prospects, and challenges, International Journal of Islamic Banking and Finance Research ,Vol. 6, No. 1, 2 (2021).

⁶*Id.*

The Sharia principle is a pillar for Islamic financial transactions and must be in compliance with basic Sharia provisions in the dispute resolution process.⁷ Legal infrastructure, such as effective regulatory, substantive laws as well as an appropriate adjudicative form for parties to resolve disputes relating to Islamic financial transactions, is very important for answering disputes arising from Islamic financial transactions. These are realized by having competent lawyers and judges that are equipped with sound knowledge and expertise in both Sharia and conventional law. The main difference between religious courts and conventional banks in dispute resolution is that religious courts apply their own procedures, which are based on the principle of sharia, and have competent lawyers and judges who are equipped with sound knowledge, whereas conventional banks do the reverse. The interest-free bank was based on Islamic banking service models. Among these models, the Islamic banking window service is a business model in which conventional banks offer Islamic banks' products and services from their existing branch network.⁸

Subsidiary/branch Islamic banking is the commercial banking unit that offers sharia-compliant products and services only in that specific branch. It is a semi-independent office of a bank that engages in banking activities such as accepting deposits or making loans at facilities away from the bank's home office.⁹

Full-fledged Islamic banking service refers to a conventional bank that has operated an Islamic window for some time and has gathered a sizeable customer base for its Islamic banking service activities. It may decide to establish an Islamic subsidiary or even fully convert it into a full-fledged Islamic bank.¹⁰ Despite the growth of Islamic banking worldwide, like other African countries, the Ethiopian banking industry in the past has used the traditional banking system due to a lack of supportive regulatory and policy regimes. Most importantly, the regulatory and policy regimes were meant to facilitate the establishment of Islamic financial institutions. Because the Muslim community believes that banking with conventional banks is contrary to their religious faith, a large number of potential Muslim customers are not banking with the existing conventional banks available in the country.

⁷ Aisha Nadar, *Islamic Finance and Dispute Resolution: Part 1*, Arab Law Quarterly, Vol. 23, No. 1, 1-29, 8 (2009).

⁸ Akmel Hailu, *super note 1*, at 10.

⁹ *Id.*

¹⁰ *Id.* at 11.

The case for establishing an interest-free banking system as an alternative banking system for the Muslim community started in 2008¹¹ with the promulgation of the Banking Business Proclamation. Based on this proclamation, the first interest-free bank (ZamZam Bank) was officially launched with founding shares in 2010. After the National Bank of Ethiopia issued a directive in 2011,¹² the motive for establishing fully-fledged Islamic banking stopped. Rather, the directive has only opened the door for existing commercial banks to create an interest-free window alongside their operations. The directive came into force in October 2011, but the interest-free banking window in Ethiopia started only in September 2013.¹³

This situation forced the board of directors of ZamZam Bank to call an extraordinary meeting to disclose and discuss the fate of the bank after such an arbitrary decision by the NBE. To that effect, they discussed the issue with the government and NBE officials to get Islamic banking permission. Additionally, they wrote a letter to the government to get a solution to the issue, but they did not achieve it and were concerned the decision was against their constitutional right.¹⁴ Though a change has occurred in Ethiopian politics, the need to establish fully-fledged interest-free Islamic banking by the shareholders of ZamZam Bank and the Muslim community remains intact.¹⁵ To that effect, they wrote an open letter to the leaders of the new government, immediately after his assignment. In turn, the new government took immediate measures. As a result, NBE, with the ambition of promoting higher financial inclusion and carrying out IFB safely and soundly, came up with the directive that replaces the former directive that governs IFB. In its definitional part, the directive defines "IFB business" as a banking business in which mobilization or advance of funds is undertaken in a manner consistent with Islamic law or Sharia Principles in its definitional part.¹⁶ This paved the way for the establishment of fully-fledged Islamic banks like ZamZam Bank (the first IFB in Ethiopia), followed by Hijra Bank. Zad Bank offered shares to the public. Kush and Huda's banks are working in progress to come into the

¹¹ Ethiopian Banking Business Proclamation, No, 592/2008, Article 22(2).

¹² Ethiopian Banking Business Directives No. SBB 51/2011, Article 2(3)

¹³ Debebe Alemu, 'Factors Affecting Customers to Use Interest-Free Banking in Ethiopia,' MA thesis, Addis Ababa University, 14 (2015)

¹⁴ Muluken Yewondwossen, 'Zemzem becomes first Islamic Bank' Capital news report, May 27 (2019) <https://www.capitalethiopia.com/news-news/zamzam-becomes-first-recognized-islamic-bank/?fbclid=IwAR2LJZrieGfhakIg-m0Ty33VFWECau5uajB7TsXjv6iHZjCDpagw2xMwTwY>

¹⁵ *Id.*

¹⁶ Ethiopia Banking Business directive No. SBB 72/2019.

picture of Islamic banking in Ethiopia. Therefore, this study aspires to assess dispute settlement by interest-free banks in Ethiopia.

1.2 Statement of the problem

Dispute resolution in Islamic banking is also gaining more attention these days and could be seen as a good sign in the financial sector. In a legal system, disputes may be viewed as an indicator of vigor rather than weakness, so long as they are resolved effectively and efficiently. Today's legal certainty is said to be crucial to the rule of law. Dispute resolutions in a healthy legal system will lead to evolution in the law over time, often with a positive knock-on effect. Landmark judgments may not only reshape policies but also lead to improvements in risk management practice or fairer outcomes for customers.¹⁷ The legal framework for dispute resolution regarding Islamic banking as practiced in most states seems to be insufficient, particularly in its application and interpretation of sharia.¹⁸ Moreover, the jurisdiction of the judiciary, which is determined by statute and the law of land, also limits and affects the result of adequacy; dispute resolution in Islamic banking is also gaining more attention these days and could be seen as a good sign in the financial sector. In a legal system, disputes may be viewed as an indicator of vigor rather than weakness, so long as they are resolved effectively and efficiently. Today's legal certainty is said to be crucial to the rule of law.

Dispute resolutions in a healthy legal system will lead to evolution in the law over time, often with a positive knock-on effect. Landmark judgments reshape policies, improve risk management practices, and produce fairer outcomes for customers.¹⁹ The legal framework for dispute resolution regarding Islamic banking as practiced in most states seems to be insufficient, particularly in its application and interpretation of sharia.²⁰ Moreover, the jurisdiction of the judiciary, which is determined by statute and the law of land, also limits and affects the result of adequacy; consequently, sharia compatibility in the enforcement of financial contracts and dispute resolution becomes a legal risk.

¹⁷ Abdul Rasheed Ghaffour, Practical aspects of dispute resolution in Islamic finance facilities,1(2017).

¹⁸ Umar A. Oseni and Dr. Abu Umar Faruq Ahmad, Dispute resolution in Islamic finance: A case analysis of Malaysia, 8th International Conference on Islamic Economics and Finance , 1. https://www.iefpedia.com/english/wp-content/uploads/2011/12/Abu.Umar-Faruq.Ahmad_.pdf

¹⁹ Abdul Rasheed Ghaffour, Practical aspects of dispute resolution in Islamic finance facilities,1 (2017).

²⁰ Umar A. Oseni and Dr. Abu Umar Faruq Ahmad, dispute resolution in Islamic finance: a case analysis of Malaysia, 8th International Conference on Islamic Economics and Finance , 1. https://www.iefpedia.com/english/wp-content/uploads/2011/12/Abu.Umar-Faruq.Ahmad_.pdf

In Islamic banking, the task of ensuring legal certainty is more complex for two reasons. First, Sharia principles include the permission of trade, avoiding gaharar and the prohibition of interest (riba), avoiding gambling and the chance of winning, profit and loss sharing, the requirement of zakat, and avoiding participation in prohibited investment, which is adopted from the Quran and Sunnah.²¹ And second, these prescriptions, written many centuries ago, must be applied to the context of modern finance.²²

Ethiopia, Proclamation No. 1159/2019²³ and Directive No. SBB/72/2019 provided Islamic banking with an interest-free banking window mechanism in 2011, and full-fledged interest-free banking will come into practice at the end of 2019.²⁴ Permitting full-fledged interest-free banking in Ethiopia is a good thing for those who have been requesting to engage in the business for several years; however, the challenges like the lack of a conducive legal framework, both substantive and procedural, and boldly the absence of a clear law as to the regulation of disputes under the law are a big problem for the success of the fully-fledged Islamic banks.²⁵ In addition to these, the above proclamation empowers the National Bank to issue a directive that prescribes additional conditions of licensing, supervision, and requirements to establish an interest-free bank.

This indicates that, without prejudice to the regulatory framework enacted by conventional banks, further guidance for Islamic banks will be decreed by the NBE. One of the basic questions that should come to one's mind at this point is whether interest-free banking principles are applicable under the guidelines prescribed in the banking business proclamations, which are ratified by the NBE, or not. Considering the proclamations related to banking business activities listed under Proclamation No. 592/2008²⁶ and its amendment, Proclamation No. 1159/2019, the special activities undergone by Islamic banks are not provided in the proclamation.²⁷ It's crystal clear that Islamic banks operate in compliance with sharia laws, which necessitates both substantive and procedural knowledge of sharia rules for smoother and more fruitful operation

²¹Dr. Aida Maita, "Arbitration of Islamic Financial Disputes," Annual Survey of International & Comparative Law: Vol. 20, Article 7, 37 (2014).

²²*Id.*

²³ Ethiopian Banking Business Directive No. SBB 72/2019, Article 59.

²⁴ Ethiopian Banking Business Directive No. SBB.72/2019.

²⁵ Ethiopian Banking Business Proclamation No. 1159/2019, article 59(1).

²⁶ Ethiopian Banking Business Proclamation, No. 592/2008, article 2(2).

²⁷ Ethiopian Banking Business Proclamation, No. 1159/2019, article 2(2).

and effectively administering the regulation of disputes in case disputes arise during the conduct of banking business.

The absence of a law that facilitates interest-free banks will, in turn, affect the performance of interest-free banking in Ethiopia and make the existing legal framework not appropriate and conducive for launching full-fledged interest-free banking. The lack of special substantive and procedural law that denotes special features for Islamic banking business creates a void in determining which laws should be applied to resolve disputes arising from interest-free banking transactions, as well as where the disputes should be taken, and the appropriate institutional choice. This is because, for the law's part, interest-free banks operate in the spirit of sharia-based laws and should be governed under the same law, which necessitates the entertainment of disputes under sharia law in the event a dispute happens. However, no such legal arrangements appear to have been made by our law as of yet, and the choice of the institution, which is related to the jurisdictional issue, where the cases must be taken, is also a point of lacuna, potentially leaving the subject matter unregulated or targeting it incorrectly to regulate it.

The reason behind this emanates from the absence of advanced knowledge of sharia laws to resolve the dispute that is going to arise from the transactions of Islamic banking. Further, even with the establishment of sharia courts in some regions, sharia court judges are not experts in the area since this is not the criteria for their recruitment. As the law stands today, this left a gap in the dispute settlement scheme for Islamic Bank's transactions in Ethiopia.

So, which law governs the disputed matter? Where is the dispute to be taken? Who are the appropriate organs or personnel that should entertain the case? Knowledge is mandatory, and several linked questions will arise. Accordingly, there arises a need for special substantive and procedural laws that would entertain cases of purely Islamic banking nature that would arise from transactions of these banks, which look for a guarantee under a stable legal framework to practice full-fledged interest-free banking in Ethiopia. Different jurisdictions, for example, the United Kingdom, Indonesia²⁸ and Malaysia, a country with the largest global share of global sharia-based economic banking and finance, use an independent sharia-based court in case a dispute happens. Thus, in Ethiopia, as the existing legal framework stands today, there appears to

²⁸AtharyanshahPuneri, dispute resolutions mechanisms for Islamic banks in Indonesia, *International Journal of Islamic Economics and Finance (IJIEF)*, 4(SI),153-180,155 (2021). DOI: <https://doi.org/10.18196/ijief.v4i0.10084>

be a wider gap to fill to create and have a comfortable environment to run fully-fledged Islamic banks, especially in the area of dispute settlement schemes, which is the subject matter of this research.

1.3 Objectives of the Study

The study has both general and specific objectives.

1.3.1 General objective

The general objective of the study was to analyze Ethiopian banking regulations in the settlement of disputes under interest-free banks.

1.3.2 Specific objectives

- To analyze the regulation of dispute settlement by interest-free banks in Ethiopia.
- To examine the inclusion or otherwise of the dispute settlement in the interest-free bank in Ethiopian banking regulation.
- To draw a lesson from other national jurisdictions on the regulation of dispute settlement in Islamic banking.
- Provide recommendations for effective implementation of dispute resolution.

1.4 Research questions

This research answers the following major questions:

1. Are the Ethiopian banking regulations adequate to settle disputes in the case of interest-free banking?
2. Is Ethiopian banking regulation established a particular forum for dispute settlement Islamic banking?
3. What are the lessons that Ethiopian banking regulation should drawn from the experience of other national jurisdictions?

1.5 Literature Review

In this chapter, studies were conducted to assess the dispute settlement system in Islamic finance. In the first section, dispute settlement in Islamic finance is illustrated in general, and in the second section, studies related to dispute settlement in Islamic finance in Ethiopia are reviewed.

One article written in Indonesian Islamic law provides that there are two alternative dispute resolution mechanisms that can be exercised in settling disputes involving Islamic financial institutions. These are conducted either through litigation or non-litigation. The litigation comes under the jurisdiction of the Religious Court. Based on the findings in the article, it was found that an alternative dispute resolution system is more effective for resolving Islamic bank disputes than traditional litigation in Indonesia.²⁹ The article would be of much help to my research in providing comparative parameters relative to Ethiopian non-interest-free banking dispute settlement.

Kedir Desiso: research on the title "treatment of Islamic banking in Ethiopia: a critical analysis of the legal and institutional frameworks" and its findings show that, even if some products of the Islamic banking system have governing provisions, others, like musharaka, mudaraba, and salaam products, have no governing laws, just as Ethiopian tax and investment laws have gaps in their application to the Islamic banking system.³⁰ The article would be helpful to my research for easily understanding Islamic finance and special Islamic products. This research differs from mine, which deals with dispute settlement in interest-free banking.

Alyu Abate: "The Regulation and Supervision of Interest-Free Banking in Ethiopia," which focused on how the windows of interest free banking will be regulated and supervised. He discussed Islamic economics, standard models of operation, regulatory and supervisory systems, and dispute resolution mechanisms for interest-free banking that did not include fully-fledged Islamic banking.³¹ But my research differs from Alyus' research in that; it critically deals with dispute settlement and interest-free banking under the existing legal framework in Ethiopia, which includes both interest-free banking at the window and full-fledged Islamic banking. In addition to this research, we looked into the suitability of the current legal framework for resolving disputes involving interest-free banks. Therefore, my research is different from the thesis written by Alyu.

²⁹*Id.* at 173.

³⁰KedirDesiso, Treatment of Islamic Banking in Ethiopia: Critical Analysis of Legal and Institutional Frame Works, Haramaya University,17 (2020).

³¹Alyu Abate, the Regulation and Supervision of Interest-Free Banking in Ethiopia, Addis Ababa University, 8(2016).

The other literature found on Islamic banking in Ethiopia was the research done by Debele Alamu on the factors affecting customers' willingness to use interest-free banking in Ethiopia and examining the willingness of Ethiopian customers to use interest-free banking. He's concluded that perceived relative advantage, perceived compatibility, the customer's level of awareness, and the subjective norm have a significant positive impact on the attitude towards interest-free banking.³² The research differs from mine, which deals with dispute settlement in interest-free banking under the existing legal framework in Ethiopia. Because of the research done by Debele Alamu about business research, which deals with the opinions of customers regarding the use of interest free banking in Ethiopia, it is different from my research.

1.6 Significance of the study

This study provides an in-depth analysis of the dispute resolution mechanism of an interest-free bank in Ethiopia. It provides researchers, legal professionals, and other interested entities with the opportunity to undertake an in-depth study on the issues and raise awareness among the various stakeholders as to how the problems identified in the dispute resolution interest-free bank in Ethiopia can promote the development of the Ethiopian legal system. In addition, other signs of the study include:

- Regulators can use the findings to help them make an informed decision and formulate regulations that can further enhance dispute resolution for an interest-free bank in Ethiopia.
- The findings were used as a benchmark for academic purposes to investigate and add to the literature on dispute resolution for Islamic banks in Ethiopia.
- The public, such as Islamic bank practitioners and stakeholders, as well as customers, can use this study to understand and protect their rights and obligations in disputes.
- To encourage other researchers to undertake further study on the topic.

³²Debebe Alemu, supra note 13,at

1.7 Research Methodology

From the statement of the problem above, the thesis examines the existing status of Ethiopian banking law in solving the dispute about interest-free banking and other countries' experiences. To assess the dispute settlement mechanism in the interest-free bank in Ethiopia, the study mainly applies comparative research methodologies. Furthermore, the researcher also uses non-doctrinal method in order to identify the procedure of dispute settlement regarding Islamic financial instruments through observation of the contract Murabaha contract and interview with stakeholders of the bank. The researcher follows the qualitative approach of the data collection tools from the primary source, which is the interest-free banking proclamation and directives from other countries' relevant legal and regulatory frameworks. Moreover, the researcher also uses books, articles, and research as secondary sources. The thesis uses data from both primary and secondary sources. The primary sources include basic documents such as Ethiopian Banking Business Proclamation No. 1159/2019, the Directive to license and authorize Interest-free Banking Business Number SBB/72/2019, Ethiopian Banking Business Proclamation No. 592/2008, the Ethiopian Business Interest Free Bank Directive, NO, SBB/51/2011, personal interview with commercial bank interest-free bank window Jimma district, Abyssinian bank legal officer and interest-free bank window personnel, and personal observation of the Murabaha contract of Abyssinian bank and commercial bank. Further, a comparative analysis was done with other countries, which included Malaysia, Indonesia, Singapore, and the United Kingdom.

Justification for methodology

The selected countries are Malaysia and Indonesia, Muslim-dominated countries in which Islamic finance disputes are solved through independent sharia courts with skilled sharia court judges. A small number of Muslims were aware of the countries, but good experience in Islamic finance disputes, particularly in the United Kingdom, which is now known as the hub of Islamic finance, paved the way for their growth. This study investigates and examines the legal framework for dispute resolution for the interest-free bank in Ethiopia to ascertain a comprehensive position on its advantages and disadvantages. Understanding the legal framework related to dispute resolution involving an interest-free bank in Ethiopia enables the researcher to assess and draw the proper conclusions for the study.

1.8 Scope of the Study

Among the three types of Islamic financial institutions in Ethiopia, interest-free banking, Islamic insurance, and Islamic microfinance institutions, the research tries to assess and analyze only the dispute settlement aspect of interest-free banking.

1.9 Limitation of the study

There is a problem with accessing relevant literature because, as an infant interest-free bank in Ethiopia, there is no legal research or journal directly related to interest-free bank dispute settlement in Ethiopia. Besides this internet-related obstacle, some of the equipment is inaccessible due to the problems with the online payment system.

1.10 Structure of the paper

The study will be organized into five chapters. The first chapter will try to cover the proposal. This proposal generally introduces the background of the study, the statement of the problem, the literature review, the objective of the study, the research questions, significance, and scope of the study, the limitations of the study, the methodology of the study, and the organization of the paper.

The second chapter will be an overview of Islamic finance dispute settlement. In particular, the definition of dispute in general, methods of dispute settlement, and characteristic features thereof (Chapter 3 deals with dispute settlement at an interest-free bank under the selected jurisdiction), In Chapter 4, we will compare interest-free banking dispute resolution in our countries with that in other jurisdictions. The final chapter will be the conclusion and recommendations.

1.11 Ethical consideration

The research took ethical considerations into account. The proper acknowledgement of the person's contributions to the study was made. Furthermore, proper citation and referencing were made for any information obtained from any sources. In addition to these the researcher supported when doing these researches by Jimma Islamic affairs religious leader.

CHAPTER TWO

2. CONCEPTUAL FRAMEWORK OF ISLAMIC BANKING AND DISPUTE RESOLUTIONS MECHANISMS FOR ISLAMIC BANKS

2.1 Introduction

In this chapter, the issue of the Islamic banking system's emergency was covered, along with the system's historical development and guiding principles. Additionally, the types and nature of Islamic banking principles are covered, as well as the nature and significance of Islamic financial products. The models of interest-free banking, as well as their characteristics and the significance of their goals, are also addressed in this chapter. The chapter's other main focus is on comparisons of the Islamic and conventional banking systems, and it also discusses the Islamic banking system's dispute resolution methods. Other topics covered in this chapter include dispute resolution mechanisms in Islamic banking and institutional regulators at international and national regulators of the Islamic financial system, specifically banking.

2.2 The emergence of Islamic Banking

The science of Islamic finance and banking, a branch of Islamic Economics, is systemic in the sense that it is a subordinate order within the larger Islamic order.³³ In other words, Islamic finance is the legal foundation for Islamic financial institutions, whereas Islamic economics offers a comprehensive theoretical basis for Islamic finance and banking. Accordingly, Islamic Economics is one of the Islamic disciplines that set broad standards and goals for Muslims' daily

³³Alyu Abate, *supra* note 31, 8(2016).

financial and commercial activity.³⁴ A system of banking or banking activity that is based on the fundamentals of Islamic law (Shariah) and is driven by Islamic economics is referred to as "Islamic banking."³⁵ Usury, or the collection and payment of interest, also known as *riba* in Islamic terminology, is expressly prohibited by Islamic law. Islamic law also forbids participation in ventures that are regarded as haram, or illegal (such as businesses that sell alcohol or pork, or businesses that produce media that are contrary to Islamic values).³⁶

The development of Islamic banking began in the early centuries of Islam, at the time of the founding of the Islamic Empire in AD 600.³⁷ Early elements of free markets and proto-capitalism were prevalent in the Caliphate during the Islamic Golden Age, where an early market economy and an early form of merchant capitalism, often referred to as "Islamic capitalism," were created between the 8th and 12th centuries.³⁸ The expansion of the circulation of a reliable, high-value currency (the *dinar*) and the merger of formerly independent monetary sectors led to the development of a robust monetary economy. Islamic financial instruments such as contracts, bills of exchange, long-distance international trade, the first forms of partnership (*mufawada*), such as limited partnerships (*mudaraba*), and the earliest forms of credit, debt, profit, loss, capital (*al-mal*), capital accumulation (*nama al-mal*), circulating capital, capital expenditure, revenue, checks, promissory notes, trusts, and startup companies were all created as a result of the boom in internal and external trades at the dawn of Islam.³⁹ The first Islamic bank to be created in Egypt was *MitGhamr*, a local savings bank, and the contemporary Islamic banking movement began modestly as a small community finance initiative.⁴⁰ Over time, the movement expanded to become a small, growing finance industry in the Middle East (1973). Based on sharia law, the bank operated to meet its clients' credit and savings needs. Many of the oil-producing nations in the Gulf have amassed substantial sums of money as a result of the current rise in energy prices

³⁴*Id.*

³⁵Faten Ben Bouheni, Chantal Ammi, and Aldo Levy, *Banking governance, performance and risk-taking: conventional banks vs Islamic banks*, John Wiley & Sons, 51(2016).

³⁶*Id.*

³⁷ Ahmad Alharbi, "Development of the Islamic Banking System," *Journal of Islamic Banking and Finance*, Vol. 3, No. 1, 12-25, 12(2015).

³⁸Faten Ben Bouheni, Chantal Ammi, and Aldo Levy, *supra* note 35, at 73.

³⁹*Id.* at 74.

⁴⁰*Id.*

as well as the demand for oil and gas. Some of the owners of this money have chosen to manage it through Islamic banks.

This has aided in the development and rapid growth of the riba-free banking sector. Early in the 1980s, Islamic banking made its way to Europe. A Declaration of Intent to Establish an Islamic Development Bank (IDB) was then published in December 1973 by the Conference of Finance Ministers of Muslim Countries, which was held once again in Jeddah. The IDB officially began operations in 1975. Through participation in equity capital and loan provision, the bank seeks to promote the economic and social advancement of its member nations and Muslim communities in conformity with Sharia principles.⁴¹

A financial institution that (a) upholds sharia principles in all of its operations by acting as a financial intermediary between investors and savers; (b) offers banking services within the parameters of legal contracts; and (c) achieves a balance between economic and social return is referred to as an Islamic bank.⁴² Islamic financial law specifically forbids usury (the collection and payment of interest), also known as riba in Islamic terminology.⁴³ By relying on profit-and-loss sharing (PLS) rather than lending and borrowing money at a fixed interest rate, Islamic banking seeks to further the application of Islamic principles and legislation in the commercial sector.⁴⁴ The holy Quran and Sunnah, which are the two main sources of Islamic law, provide support for this position. Furthermore, it has been suggested that prohibiting interest in the banking industry is both morally and economically justified. This indicates that there are economic and ethical reasons for the prohibition of interest, in addition to theological ones.⁴⁵

2.3 Principles of Islamic banking

Sharia, Islam's code of law based on the Quran's interpretation, as well as the Sunna's teachings, governs Islamic finance.⁴⁶ This framework offers instructions on how to make decisions in all facets of life based on the principles of the Sunna and the Holy Quran. One of the most significant dealings governed by Sharia is the allocation of money, ostensibly to ensure there is

⁴¹*Id.*at75.

⁴² Ahmad Alharbi, *supra* note 37,at 12.

⁴³*Id.*

⁴⁴ Abdul Karim Aldohni, the legal and regulatory aspects of Islamic banking: A comparative look at the United Kingdom and Malaysia, Routledge, 7(2012).

⁴⁵*Id.*

⁴⁶AlsadekH.Gait and Andrew C. Worthington, A primer on Islamic finance: Definitions, sources, principles and methods, 6 (2007).

an equitable division of wealth and income among Muslims in Islamic economies.⁴⁷ The following are some basic tenets of Islamic finance:

2.3.1 Ban of Ribs

Islam forbids interest, or 'ribà' in Arabic. According to this principle, income can never be obtained without risk, and income must always be the direct result of human activity.⁴⁸ Consequently, it is strictly forbidden to guarantee a positive, fixed, or planned return rate, regardless of the type of investment or its outcome. In particular, ribà occurs when there is a fixed ex-ante interest rate, whether positive or negative, tied to the time factor and the loan amount, regardless of the economic outcomes attained through the usage of the borrowed funds.⁴⁹ This idea suggests that Islamic finance must run without using interest, even though interest is a crucial component of traditional finance.⁵⁰ Islam suggests profit (defined economically as the rate of profit or the markup as a permissible replacement for earnings, i.e., the profit that arises from trade/investment transactions and so represents the actual measure of the actual growth attained by the capital via its usage. Profit and Loss Sharing, a key Islamic financial principle that requires the owner of the capital and the person who uses it to share both the fruits and associated risks of the investment made, is the main foundation for legal profits.⁵¹

2.3.2 The Ban on Ghàrar

Gharar, which is Arabic for "uncertainty," can also indicate "deceit," "doubt," "fraud," "risk," or "a possible threat that could cause loss or harm." The Koran explicitly prohibits profits based on uncertainty (ghàrar).⁵² The Gharar ban is primarily concerned with the characteristics and purpose of Islamic financial instrument contracts. For a contract to be valid it must not contain elements of uncertainty about the essential elements of the contract, such as uncertainty about the purpose

⁴⁷*Id*

⁴⁸Simona Franzoni and Asma Ait-Allali, "Principles of Islamic Finance and Principles of Corporate Social Responsibility: What Convergence?" Sustainability 10, no. 3,3 (2018).

⁴⁹*Id.*

⁵⁰TsionSisay, Challenges and opportunities of interest -free banking in Ethiopia, Addis Ababa, 8(2017).

⁵¹*Id.*

⁵²Latifa M. Algaound and Mervyn K. Lewis, "An Islamic Critique of Conventional Financing," Hand Book of Islamic Banking, 38, 39 (2007).

and nature of the contract and the price of the goods traded. As a result, Islamic Finance does not accept so-called allegation-based contracts, which have uncertain effects.⁵³

2.3.3 Loss and Profit Sharing (PLS)

Islamic banking has introduced Profit and Loss Sharing (PLS) as an alternative to interest as a capital incentive.⁵⁴ Thus, unlike the interest-based financial system, everybody who contributes to the fund would become an investor instead of a creditor. Islamic banking and finance have entered the scene to implement this Islamic economic theory.⁵⁵ Islamic economics primarily focuses on avoiding interest to achieve distributive justice. The owner of the capital (money) is not entitled to any interest; rather, the capital is rewarded in the form of profit while also bearing the risk of loss.⁵⁶

2.3.4 Prohibited transactions

Even though the funding method complies with Islamic finance principles, certain investments and businesses are expressly prohibited (haram) for anyone to engage in Islamic economics, including interest-free banks.⁵⁷ In other words, even when the financing technique complied with the above principles, it was still against Shari'ah if it engaged in the haram transaction. In the language of Islamic jurisprudence, this is what is referred to as haram li-gayrihi (prohibited for other reasons) as opposed to haram li-thatih (prohibited itself) according to Usul al-Fiqh. It is forbidden to finance or invest in any venture, including those involving alcohol, pork, gambling (Qimar), unearned income (Maysir), or interest-bearing endeavors. When Muslim society is struggling to provide for its fundamental needs, such as food, clothes, housing, and healthcare, some also view investments in the production and sale of luxury products as being prohibited.⁵⁸

2.3.5 Prohibition Maysir (speculating business)

Islamic banks forbid betting and speculative business.⁵⁹ You may also consider it a transaction in which one party might incur a total loss. Gambling is a form of uncertainty, although not all forms of uncertainty constitute gambling. It should be underlined that maysir is one of the

⁵³*Id.*

⁵⁴Alyu Abate, *supra* note 31, at 12.

⁵⁵*Id.*

⁵⁶*Id.* at 13.

⁵⁷*Id.*

⁵⁸*Id.*

⁵⁹Uddin and Md. Akther, *Principles of Islamic Finance: Prohibition of Riba, Gharar, and Maysir*, 11 (2015).

primary barriers impeding the existence of traditional insurance. A legitimate investment must be made in both products and services. An IFB could not finance the construction of a nightclub, and Islamic banking would not finance the trade in pork, dead animals, alcohol, pornography, or brothels (buildings or establishments where prostitutes conduct their business).⁶⁰

2.4 Islamic Financial instruments

A minimum of two funding options are provided by Islamic banks. ⁶¹The first is based on profit-and-loss sharing and consists of *mudarabah* and *musharakah*. In this case, the return is dependent on how the company performs over the long term, rather than being predetermined. In the second case, products and services are sold on credit, increasing the debt of the party making the transaction. It includes a variety of rituals such as *istisn*, *salam*, *ijrah*, and *murabaha*.⁶² The cost in these forms includes the return to the financier. These financial strategies are unique for two main reasons. First, debt associated with financing through markup is formed by the sale and purchase of actual goods and services, as opposed to arising from lending and borrowing money. Such debt cannot be sold for more than its face value, according to the most recent *fiqh* rulings. Second, adopting banking models based on profit-and-loss sharing has many advantages.⁶³ It has nearly equal economic effects to direct investment, which considerably accelerates economic growth.

2.4.1. Mudarabah (passive partnership)

A capital owner (*Rabb-al-MI*) and an investment manager (*Mudrib*) are the parties to this agreement. ⁶⁴The ratio that the two parties decide upon at the time of the contract is used to determine how the profit is divided between the two parties.⁶⁵ The capital owner bears the financial loss; the manager bears the loss as the opportunity cost of his labor, which did not result in any income for him. The investment manager does not guarantee either the capital provided to him or any profit production, other than in the event of a violation of the agreement or default. Although the capital provider may impose a few conditions on the manager that have been mutually agreed upon, he has no right to meddle with the manager's regular duties. When Islamic

⁶⁰*Id.*

⁶¹Mabid Ali Al Jarhi and MunawarIqbal, *Islamic banking: answers to some frequently asked questions*, 21 (2001).

⁶²*Id.*

⁶³*Id.*

⁶⁴AlyuAbate, *supra* note 31, at 14.

14(2016

⁶⁵*Id.*

banks use this method of financing, the bank acts as the *mudrib*, and the depositors act as the *rabb-al-mal* on the side. *Mudharabah* deposits might be general and go into a common pool, or they can be specific to a project or industry. The bank acts as the *rabb-al-mal*, and the businessman as the *mudharib* on the asset side (manager). The manager is frequently permitted to combine his own money with the *mudharabah* cash, though. Profits in this situation may be divided according to the percentages agreed upon by the two parties, but losses must be borne in proportion to the capital contributed by each party.

2.4.2. Musharakah (Active Partnership)

Equity participation contracts, or *musharaka* contracts, call for the financial support of two or more partners to carry out an investment.⁶⁶ Partners invest money in a project and split its risks and benefits.⁶⁷ Partners divide profits according to a predetermined ratio, but they split losses in precise proportion to the amount of capital deposited by each participant.⁶⁸ In *musharakah*, both the Islamic bank and the partner have the right to participate in the project investment management.⁶⁹ In theory, it is the borrower's responsibility to manage the project's that has been funded, but the bank also has the right to do so because both profit and loss would be shared.⁷⁰

2.4.3. Salam

Islam forbids the sale of anything that the merchant does not own.⁷¹ *Salam* (advanced purchase), though, is an exception. It is a sales agreement where the payment is agreed upon in advance and is paid in exchange for the delivery of the purchased products or services at later date. Not all commodities can be used in a *Salam* contract. It is often exclusively used with fungible goods.⁷²

2.4.4. Ijarah (Leasing)

Ijarah (leasing) is as a financial lease rather than an operating lease when it is used as a source of funding.⁷³ The usufruct produced over time by an asset, such as machinery, vehicles, ships, or trains, is the subject matter of a lease agreement.⁷⁴ This usufruct is provided to the lessee for a set

⁶⁶KedirDesiso, *supra* note 30,17.

⁶⁷Mabid Ali Al Jarhi and Munawar Iqbal. *supra* note 61, at 22.

⁶⁸*Id.*

⁶⁹KedirDesiso, *supra* note 30, at 17.

⁷⁰*Id.*

⁷¹ Muhammad Hanif, differences and similarities in Islamic and conventional banking.4 (2014).

⁷²*Id.*

⁷³Alyu Abate, *supra* note 31, at 14.

⁷⁴KedirDesiso, *supra* note 30, at 21.

fee. The asset remains under the lessor's ownership, together with all the rights and obligations that come with ownership. The contract, which is an Islamic bank's method of financing, looks like an order from a client asking the bank to buy a piece of equipment while also pledging to lease it from the bank afterward.⁷⁵

2.4.5 Murabahah (Sales Contract at a Profit Markup)

The term "murabahah" refers to a sales agreement between a bank and a client or buyer under which the bank purchases a specific good at the client's request and the latter agrees to purchase the goods on a cost-plus-profit basis.⁷⁶ As a result, the transaction consists of an order, a promise to buy, and two sales contracts.

The Islamic bank and the supplier of the goods agreed on the initial contract.⁷⁷ After the bank has acquired the commodity, but at a postponed price that includes a markup, the second is finalized between the bank and the client who placed the order.

2.4.6 Diminishing Musharakah

Diminishing Musharakah is a declining partnership between IFIs and clients that is commonly used to finance real estate.⁷⁸ When a customer requests IFI for financing to purchase an asset, IFI participates in the ownership of the asset by contributing the required financing. In this financing arrangement, one of the partners, the client, promises to gradually purchase the equity portion of the other partner, the IFI, until the equity is fully transferred to him. The buying and selling of equity units must be independent of a partnership contract and must not be stipulated in a partnership contract.⁷⁹ Generally, IFI rents out its share to clients and earns rentals. Any profit accruing on the property is distributed among the co-owners according to an agreed-upon ratio; however, losses must be shared in proportion to equity.⁸⁰

⁷⁵*Id.*

⁷⁶Abdul-Rahman, Yahia, *The art of Islamic banking and finance: Tools and techniques for community-based banking*. Vol.504. John Wiley & Sons, 54 (2009).

⁷⁷Mabid Ali Al-Jarhi, and Munawar Iqbal, *supra* 61, at 23.

⁷⁸Muhammad Hanif *supra* notes 71, at 174.

⁷⁹*Id.*

⁸⁰*Id.*

2.4.7 Takaful (Islamic insurance)

Muslims can use takaful, a traditional form of Islamic insurance, as an alternative form of protection against the risk of financial loss from accidents.⁸¹ It depends on the idea that what is unknown about one specific individual may no longer be unknown about a sizable number of comparable individuals. Each person can benefit from the "law of large numbers" advantage through insurance, which pools the risks of numerous clients.⁸²

2.4.8 Qard Hasan Loans

This is a charitable loan provided to qualified clients by Islamic banks to combat poverty. Shariah requires the beneficiary to repay the Islamic Bank only the principal.⁸³ Regardless of whether the Qard's subject matter is cash or kind, an excess above the Qard is only permissible when it is not mentioned in. It implies that the borrower must offer more than is necessary while being completely happy and freely consenting to everything.⁸⁴

2.4.9 Sukuk (Investment Certificate or Bond)

They are investment certificates with characteristics that resemble both bonds and stocks that are issued to fund businesses or the creation of tangible assets.⁸⁵ Like bonds, a sukuk has a maturity date. Holders are also entitled to a final balloon payment at maturity in addition to a consistent stream of income throughout the Sukuk. Sukuk, on the other hand, are asset-based securities as opposed to asset-backed securities, and the underlying asset must be both Shariah-compliant in type and usage.⁸⁶ The market value of the underlying asset and the issuer's creditworthiness can both affect the price of a sukuk. Additionally, it eliminates any chance of developing a secondary financial market. Identification of an existing or clearly defined asset, service, or project that can be certified by a third party and for which ownership may be recognized in some way is necessary to be eligible for Sukuk.⁸⁷

⁸¹MeskeremBatiEdao, assessment of the post- implementation challenges of the interest- free banking project: the case of the commercial bank of Ethiopia, Addis Ababa University, 15(2018).

⁸²*Id.*

⁸³Faten Ben Bouheni, Chantal Ammi, and Aldo Levy, *supra* note 35, 65.

⁸⁴*Id.*

⁸⁵Mirakhor, Abbas, and IqbalZaidi, Profit-and-loss sharing contracts in Islamic finance, Handbook of Islamic banking 49, no. 1, 160 (2007).

⁸⁶*Id.*

⁸⁷*Id.*

2.4.10 Guarantee (Kafala)

Kafala translates to obligation or surety ship. When compensation is sought, the guaranteed person's liability becomes a joint liability of the guaranteed and guarantor, according to the law.⁸⁸ As a result, any person, piece of property, usurped object, or other thing that can be sought from the former can also be demanded from both parties under the guarantee.⁸⁹

2.4.11 Istisna (Project Financing)

Similar to Salam, an Istisna contract involves a transaction involving a good or service that has not yet been created.⁹⁰ First, the subject matter of Istisna must always be something made, although there is no such constraint for Salam. These are the main distinctions between Salam and istisna. Second, under a Salam contract, the price must be paid in advance; however, there is no such requirement in an Istisna contract. Third, a Salam contract cannot be terminated unilaterally, whereas an Istisna contract may be terminated before the start of production.⁹¹

2.4.12 Wadiah (safekeeping)

For its clients, the bank serves as the wadiah, or trustee, of the funds. Customers deposit money with banks, and banks acting as trustees are required to return the full amount upon request.⁹² Because the money consumers deposit with the bank is used at the bank's discretion, the hibah is occasionally given to customers as a token of appreciation. To repay the depositors, this Hibah (gift) primarily takes the form of interest, also known as the time value of money. It is known as hibah because rewards are not always guaranteed.⁹³

2.4.13 Wakalah (agency)

A contract or arrangement in which an agent assumes the role of a third party and is tasked with carrying out transactions on behalf of the first or major party. All Islamic banks provide services

⁸⁸Ray Jureidini, and Said Fares Hassan, The Islamic principle of Kafala as applied to migrant workers: Traditional continuity and reform. *Migration and Islamic ethics* 2, 92-109, 94 (2020).

⁸⁹*Id.*

⁹⁰ZeynebhfasaAstrom, Risk analysis for profit and loss sharing instruments, International University of Sarajevo, 9 (2012).

⁹¹*Id.*

⁹²Faten BenBouheni, Chantal Ammi, and Aldo Levy, *supra* note 35, 65.

⁹³*Id.*

that follow Shariah law. Non-Islamic banks also provide Islamic banking services, in addition to fully Islamic businesses.⁹⁴

2.4.14 Tawarruq

The tawarruq structure is used by Islamic banks to help their customers finance their monetary needs. In this arrangement, the bank either directly or indirectly purchases the asset before immediately selling it to the client on deferred payment terms.⁹⁵ The same asset is subsequently sold by the customer to a third party, who will receive it right away and pay for it. As a result, the consumer is given an immediate cash payment with an obligation to pay the bank later for the asset's marked-up price. The bank typically completes all the transactions required for tawarruq financing in contemporary Islamic banking. All Islamic banks provide services that follow Shariah law.⁹⁶

2.5 interest-free banking models

Islamic banking provides customers with products and services through three different establishment methods, including fully-fledged Islamic banking, Islamic windows, and Islamic subsidiary banks.⁹⁷

2.5.1 interest-free window service

It is the window opened inside the existing conventional banks that allows customers to do business using only sharia-compliant tools. An interest-free banking window is a business model where traditional banks use their existing branch network to offer interest-free banking goods and services.⁹⁸ In a nutshell, an interest-free banking window is a scenario in which some interest-free banking goods or services are offered via a traditional banking system. In other

⁹⁴*Id* at 69.

⁹⁵NasrunMohamad,andAsmak Ab Rahman, Tawarruq application in Islamic banking: a review of the literature, *International Journal of Islamic and Middle Eastern Finance and Management*, 486 (2014).

⁹⁶*Id*.

⁹⁷SuadiqMehammed Hailu and Nissar Ahmad Yattoo, Islamic finance in Ethiopia: Current status, prospects and challenges, *International Journal of Islamic Banking and Finance Research* 6, no. 1 1-18, 9. (2021):

⁹⁸Abdulkadir Wahab Aman "Interest-free window banking and finance in Ethiopia: Inception to expansion." *Journal of Economics Library* 6, no. 4, 324-337,326(2020)

words, it can be viewed as a banking system that, for some of its products, only adheres to the profit, loss, and risk-sharing premise of interest-free banking.⁹⁹

2.5.2 Subsidiary/branch Interest-free banking service

Islamic banking subsidiaries are conventional bank subsidiaries that offer Islamic banking goods and services, but the two are separated in terms of management and operation.¹⁰⁰ As its parent bank, the Islamic Subsidiary relies on the conventional bank's strength.¹⁰¹ Although the leveraged model is still in operation, the Islamic subsidiary can pick and choose which services or tasks it wants to "outsource" to the conventional bank (at a fee chargeback, of course). Because the purpose of a subsidiary is to be self-sufficient, all cost subsidies must be considered.¹⁰²

2.5.3 Full-fledged Interest-free banking service

Once a conventional bank has operated an interest-free window for some time and has gathered a sizeable customer base for its interest-free banking service activities, it may decide to establish an Interest-free subsidiary or even fully convert into a full-fledged interest-free bank.¹⁰³ The bank may gain from economies of scope and concentration of knowledge and skill by choosing one of these two options. More Shariah-compliant financial products will be available from the bank than just through the Islamic window. For example, it may be better equipped to fully engage in Islamic investment banking activities, such as underwriting Sukuk (bond) issuances or managing Shariah-compliant investment and hedge funds, or managing its treasury and money market operations.¹⁰⁴

2.6 Comparison between Islamic and conventional banking

Sharia law, the system of Islamic law, is the foundation of Islamic banking. Fundamentally, it is controlled by precepts found in the Holy Quran, Prophet Mohammed's (SAW) hadith, and so-

⁹⁹*Id.*

¹⁰⁰ Jemal Nasir, "Practices and Challenges of Interest Free Banking Windows of Commercial Banks in Ethiopia, 20 (2018).

¹⁰¹*Id.*

¹⁰²*Id.*

¹⁰³ Akmelhailu, *supra* note 1, at 9.

¹⁰⁴*Id.*

called *fiqh*, the teachings of Islamic scholars.¹⁰⁵ Unlike conventional banking, which is governed by secular financial institutions and rules created by humans to use depositors' money to finance loans to investors and other borrowers at higher interest rates by borrowing from them at a lower pre-fixed rate.¹⁰⁶ Islamic banking forbids making investments in businesses that are illegal, such as funding for alcoholic beverages, gambling, and other illegal investments.¹⁰⁷ But such a non-secular ideal won't trouble conventional banking. Anyone who wants to gamble or buy alcohol can borrow money from a traditional bank. Even while both Islamic and Western banking are financial entities, they are not the same.¹⁰⁸

A traditional bank lends money in exchange for a loan that will yield interest.¹⁰⁹ The bank does not perceive any risk of loss on this money because it is advanced based on a loan. An Islamic bank, on the other hand, first purchases, takes ownership, and assumes the risk of the item.¹¹⁰ The bank then sells it for a predetermined profit. Second, even though a traditional bank ensures its assets if a loss occurs and the amount of the claim is insufficient; the bank does not absorb the loss but instead seeks reimbursement from the lessee. In contrast, if a loss occurs and the *takaful* company's claim amount is insufficient, the Islamic bank must cover the loss on its own and cannot seek reimbursement from the client. Instead, it returns the client's security deposit.

The conventional bank does not consider itself the owner of the asset and is not willing to assume responsibility for the leased asset, but the Islamic banks' procedures demonstrate that they do regard themselves as be the owner and are responsible for ownership duties. An Islamic bank is a deposit-taking financial organization that engages in all presently recognized banking activities, except borrowing and lending with an interest component.¹¹¹ On the liability side, it mobilizes funds based on a *mudarābah* or *wakālah* (agent) contract. It can also accept demand deposits, which are treated as interest-free loans from the clients to the bank which are

¹⁰⁵Kakakhel, Shahid Jan, FaryalRaheem, and Muhammad Tariq, A study of performance comparison between conventional and Islamic banking in Pakistan." *Abasyn University Journal of Social Sciences* 6, no. 2 91-105,92 (2013):

¹⁰⁶*Id.*

¹⁰⁷ Naseer Al Rahahleh, M. Ishaq Bhatti, and FaridahNajunaMisman, Developments in risk management in Islamic finance: A review. *Journal of Risk and Financial Management* 12, no. 1, 37, 22(2020).

¹⁰⁸*Id.*

¹⁰⁹ Junaid Ahmad, and Muhammad Abdul Majid, Benchmarking of Financial Solutions Offered by Islamic Banks, 10 (2011).

¹¹⁰*Id* at 11.

¹¹¹MabidAli, Al-Jarhi and MunawarIqbal, *supra* note 61, at 31.

guaranteed. As per Shariah's principles, it advances money for assets on a premise of profit-and-loss sharing or debt creation.¹¹²

Conventional banks' financial assets serve as the basis for transactions. Depositors whose money is borrowed are guaranteed a fixed rate of interest and are regarded as a bank's liability. In the event of defaults, it may impose additional fees (penalty and compound interest), A conventional bank's relationship with its customers is one of creditor and debtor. All of the deposits made by a traditional bank must be guaranteed; the bank's investment and liquidity management actions are unknown to the depositors, and A certain amount of uncertainty is included in most transactions, and as long as the customers are legal entities, there are no limits on conducting business with them based on the type of business they conduct, and Zakat is not discussed (Islamic charity).¹¹³

In Islamic banks, real assets are the basis of transactions. In an agreement in which the Islamic bank and the owners of investment accounts share profits and losses and where investment accounts are recognized as quasi-equity rather than debt, Islamic banks are not allowed to impose any additional fees on late or defaulting payers. The assessed fine is donated to a charitable organization. An Islamic bank has the status of a partner, investor and, trader as well as buyer and seller, lessor and lessee, and lessor and lessee relative to its clients. Only deposits made on current accounts are guaranteed by Islamic banks. In contrast, investors with accounts based on Mudaraba must split losses fairly; holders of investment accounts with an Islamic bank are entitled to information about the bank's use of their funds, as well as the right to participate in the selection of the investments for some specific contracts. Being a Zakat (Islamic charity) collection center and disbursing Zakat has become one of the service-oriented responsibilities of Islamic banks in the current Islamic banking system.¹¹⁴

2.7. Dispute resolution in general

People used conflict resolution is a strategy that has been used throughout history since conflicts in human relationships are unavoidable.¹¹⁵The objective of dispute resolution is to solve the

¹¹²*Id.*

¹¹³ Junaid Ahmad, and Muhammad Abdul Majid, *supra* notes 109, at 10.

¹¹⁴*Id* at 11.

¹¹⁵Umar A.Oseni and Abu Umar Faruq Ahmad, "Towards a global hub: The legal framework for dispute resolution in Malaysia's Islamic finance industry, international Journal of Law and Management, 2(2016).

dispute between the parties who seek justice for suffering injury or loss and want to claim or refund any damage or loss that they obtained.¹¹⁶ Dispute resolution can be done through litigation and non-litigation channels, including Islamic finance.¹¹⁷

A) Dispute resolution through court (litigation):- As perpetrators of judicial power, court institutions have the primary duty to accept, examine, hear, and resolve cases filed. The judiciary is also a milestone of hope for justice seekers in all aspects of life who crave justice. Therefore, the court is still relevant and should be used as a place to seek truth and justice, including resolving disputes. But according to many people, the court system is ineffective and inefficient, thus the process is lengthy, ranging from appeals so judicial review.

B) Dispute resolution outside the court (non-litigation) is not the only way that can be taken to resolve disputes because, in addition to going through the court, other avenues can be taken to resolve popular disputes, such as alternative dispute resolution (ADR).¹¹⁸ Alternative Dispute Resolution is an institution for resolving disputes or disagreements through procedures agreed upon by the parties, namely resolving disputes outside the court through consultations, negotiations, mediations, conciliations, or expert judgments.¹¹⁹

ADR is an alternative to formal court litigation.¹²⁰ When disputes are channeled through the formal court system, the parties tend to be further apart after the judge is sent because the judgment of the court leads to a win-lose situation where one of the parties rejoices with pomp while the other party wallows in anguish. Effective alternatives were developed that meet the demands of numerous litigants and prevent the winner-take-all syndrome that litigation typically causes. The unexpectedly dramatic turn of events now demonstrates how ADR and litigation are complementary. Without sacrificing the parties' rights and obligations, alternative dispute resolution (ADR) makes the administration of the legal system easier and provides swift justice. ADR ultimately results in a win-win settlement where the parties settle their disagreement amicably and maintain their connection.¹²¹

¹¹⁶N.Khalidah Dahlan "Alternative dispute resolution for Islamic finance in Malaysia," In MATEC Web of Conferences, vol. 150, p. 05077. EDP Sciences, 1(2018).

¹¹⁷Eko Nur Cahyo and ResiHandayani. "The Role of Ombudsman Institution on Dispute Resolution of Islamic Finance Institution Based on MaslahahMursalah (Case Study of the Ombudsman Institution of Yogyakarta Special Region, 2018)." *Al-Muamalat Journal of Islamic Economic Law* 2, no.2,103 -122,106(2019).

¹¹⁸*Id.*at107.

¹¹⁹*Id.*

¹²⁰ Umar A. Oseni and Abu Umar FaruqAhmad, *supra* note 115, 2.

¹²¹*Id.*at3.

To this end, there has been some concern about the effectiveness of litigation in the Islamic banking sector in particular, considering the general preference for amicable dispute resolution or Islamic law's equivalent of what is currently known as alternative dispute resolution (ADR) in commercial disputes.¹²² It has been argued that as Islamic banking is governed by the core principles of Islamic commercial values, the settlement of related disputes should also be premised on core ethical values. It is trite that amicable dispute settlement is the default rule in Islamic commercial disputes. If two parties among the believers get into a fight, the Qur'an commands, and "Make peace between them."¹²³ The Prophet also encouraged peaceful settlement, as he is reported to have stated that "he, who makes peace between the people by inventing good information or saying good things, is not a liar".¹²⁴ These principles of amicable dispute resolution have been developed into standard processes for dispute management in classical Islamic law.¹²⁵

2.7.1 Methods or Processes of ADR in Islamic Law

The Shari'ah stipulates several ADR procedures or methodologies. The most well-known and advanced procedure in courtrooms is the rendering of judgment by an appointed judge (quKI h).¹²⁶ These may involve a variety of additional dispute resolution procedures, including mediation-expert determination, expert determination through the ombudsman, and expert determination through arbitration, negotiation, and counseling, among others. The main ADR procedures under Islamic law are:¹²⁷

I. Counseling (Nasihah);

II. Negotiation, mediation, conciliation, and compromise of action (Sulh);

iii. Arbitration (Tahkim)

iv. Qad (adjudication)

¹²² Abdul-Nasser HR, Hikmany and Umar A. Oseni, dispute resolution in the Islamic banking industry of Tanzania: learning from other jurisdictions, *International Journal of Islamic and Middle Eastern Finance and Management*, 26 (2016).

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Ahmad, Abu Umar Faruq, and Hakimah Yaacob. "The Institutional Framework for Alternative Dispute Resolution in Islamic Finance: Evidence from Malaysia." *Journal of Islamic Economics, Banking and Finance* 113, 1-34, 150 (2016).

¹²⁷ *Id.*

I, Nasihah (counseling) ;-Another successful alternative dispute resolution (ADR) strategy used in the Islamic finance sector outside of the courts is the Nasihah, which provides counsel between parties in disputes. This statement made by the Prophet to his companions exemplifies the Muslim community's practice of nasihah, or honest advice.¹²⁸ The guidelines for an acceptable nasihah should not be stated in a way that implies accusing any of the contending parties, and they should not call for immediate compliance from any of the contending parties or demand immediate results. Before doing a nasihah, the advisor should provide an example of how it should be done by being in the proper time, place, and manner. The counselor should set a personal example that can be followed before rendering a nasihah. Conciliation is the practice of adjusting viewpoints and resolving disagreements in a friendly and non-hostile environment before a trial begins with the intention of avoiding the litigation process.¹²⁹

ii) Sul (negotiation, mediation, reconciliation, compromise of action).

Individual parties agree to resolve a disagreement between them without the aid of a third party using the sul procedure. The linguistic definition of "sul" is the resolution of a disagreement amicably, by negotiation, mediation, reconciliation, compromise of a course of action, etc. However, this is a contract from a legal standpoint, and it is via this contract that a dispute is resolved. The Qur'an and the Sunnah provide the Shari'ah evidence for sul. The first step that business people take in resolving a problem is through negotiation.¹³⁰ This is typically stated in the contract clause that specifies that if a dispute arises regarding the execution of the contract in the future, negotiation or deliberation will be used as the first step in the resolution process. To agree on specific issues that arise between the parties, there must be a process of negotiation or a speaker.¹³¹

In essence, mediation is negotiation incorporating third parties with knowledge of successful mediation techniques, who can offer support in conflict situations or coordinate their efforts so that, during the negotiation process, if there is no negotiation, there is still mediation.¹³² The parties can have more access to a suitable and equitable resolution through the proper, effective, and

¹²⁸ *Id.*

¹²⁹ *Id* at 151.

¹³⁰ *Id* at 107.

¹³¹ *Id* at 108.

¹³² Triana, Nita, and DeddyPurwinto, Justice in Many Rooms in Sharia Banking Dispute Resolution to Achieve Justice, *diponegoro Law Review* 3, no. 1, 43-63,49(2018).

peaceful process of mediation. In mediation, the third party who will assist in resolving the conflict must meet certain requirements, including being competent, impartial, confidential, free from conflicts of interest, and not accepting payment or gifts from either party.¹³³

iii) Tahkim (arbitration) Tahkim is one of most effective and Shar‘ah approved ADR in Islamic finance.¹³⁴ Tahkim is defined in Shar‘ah as two parties choosing a judge to resolve their dispute and their claim. Traditionally, the difference between arbitration and formal dispute resolution through the judiciary is that the parties themselves select the arbitrator and the parties themselves must voluntarily accept and obey the decision of the arbitrator. Arbitration is a process of examining a dispute conducted judicially by the parties to the dispute, and the solution will be based on the evidence submitted by the parties.¹³⁵

IV Qa(adjudication), the etymological meaning of the Arabic word ‘QA ‘is passing judgment.¹³⁶ From the Islamic legal point of view, QA is the process by which a judge resolves a dispute between two or more disputing parties by applying Allah and His Messenger's judgment. The proofs or evidence that supports the institution of qa support from the Qur'an and the Sunnah.¹³⁷

2.8 Institutions Regulating Islamic Banking

The Sharia governance structure, which regulates and supervises Islamic financial institutions to ensure Sharia law compliance in all of their operations, can be used to describe the regulatory framework for Islamic financial institutions. Three basic categories can be used to categorize the regulatory framework for Islamic financial institutions: fully Islamic, dual systems, and neutral or partial inclusion.¹³⁸ Fully Islamic states only recognize banking and financial institutions that adhere to Sharia law, while forbidding the establishment of traditional financial institutions. Those nations that adhere to a strict, entirely Islamic paradigm have no trouble regulating Islamic banking. They frequently accepted Islamic legal customs. As a result of the expansion of the

¹³³*Id*

¹³⁴EkoNur,Cahyo and ResiHandayani, *supra* note 117,109.

¹³⁵Triana, Nita, and DeddyPurwinto, *supra* note 128, at 49.

¹³⁶Ahmad, Abu Umar Faruq andHakimahYaacob,*Supra* note 126, at 154.

¹³⁷*Id*.

¹³⁸Syarif, Fazlurrahman, Regulatory framework for Islamic financial institutions: lesson learned between Malaysia and Indonesia, *Journal of halal product and research (JPHR)* 2, no. 2, 79 -85, 80 (2019).

Islamic legal system, it will be simple for them to use Sharia law to regulate economic operations, including Islamic banking. However, because there is a lack of diversity in financial activities in the nation, the door to conventional banking is closing, and its residents have little alternative.¹³⁹

In a dual system, the nation let both conventional and Islamic finance operate side by side. In a nation with a large non-Muslim population, this method is appropriate. The dual system aims to boost Islamic finance's market share. This concept is employed as a tool for accommodating national differences. Alongside those of the traditional financial system, separate Islamic law and banking regulations exist. In this approach, a national bank works with an Islamic banking regulatory organization known as the Sharia Supervisory Council or a name close to it. For instance, in Malaysia, the Sharia Supervisory Council has the final say when it comes to Islamic banking and its adherence to sharia law.¹⁴⁰

A neutral system upholds fairness and objectivity; it does not exclusively support Islamic finance. The third system is what some academics refer to as the "neutral system," in which a nation oversees both conventional and Islamic banks using the same laws, regulations, and institutions. Most of the non-Islamic states that have embraced Islamic banking are where it is practiced. Because it is simple and reduces many difficulties for regulatory professionals, this concept can be endorsed by regulatory bodies. However, this model will go against fundamental Islamic law or sharia principles, because Islamic law prohibits the regulation of Islamic banking by organizations or by rules designed for conventional banking.¹⁴¹

The first reason why the regulations and oversight policies of conventional banks cannot be used is that Islamic banking was founded on ideas that are fundamentally different from those of regular banks. The second reason is that Islamic banks operate very differently from normal banks. In a normal bank, money is used to transact business; but, in an Islamic bank, money has no place in commerce. As a result, the greatest option for a nation with a dual banking system is a dual system of banking regulation since it takes into account the interests of both the Muslim and non-Muslim people to address their political and economic concerns. Because it offers

¹³⁹*Id.*

¹⁴⁰KedirDesiso ,*supra* note 30, at 58.

¹⁴¹*Id.*

financial inclusion for Muslims and regulatory mechanisms that are compliant with sharia law, it also promotes economic development.¹⁴²

2.9 International Standard Setting Institutions for Islamic Banking

In areas where the Sharia does not provide clear guidance, the Islamic financial sector has been looking for some rules or references created by the institutions of the conventional banking system.¹⁴³ Before the formation of organizations like the Islamic Financial Service Board (IFSB) and the Auditing and Accounting Organization for Islamic Financial Institutions (AAOIFI), it was suggested that the regulation of Islamic banks should take advantage of referencing the standards and best practices created by the Basle committee on Banking Supervision (BCBS). But for the time being, the Islamic financial sector has developed to the point where some specialized organizations have been established to handle the identification and harmonization of Islamic banking principles on a global scale.¹⁴⁴ Without the establishment of these institutions, it would have been required to modify the Basle Committee's criteria so that they complied with Islamic banking's unique requirements and norms. This is because the committee only produced standards for the conventional banking system.¹⁴⁵ As a result, the process of applying Islamic finance principles through the assistance of these standard-setting organizations, such as IFSB and AAOIFI, has eliminated the need for adaptation.

In short, the aforementioned Islamic standard-setting financial institutions were established for the main reasons listed below.¹⁴⁶ First, there is a growing understanding that the best regulatory structure is one that works in harmony with market forces and gives various market disciplines the most leeway. Second, it is becoming more widely recognized that worldwide consistency in prudential regulations is required due to the globalization of financial activities. Third, it is now understood that a top-notch financial infrastructure is necessary for effective financial intermediation.¹⁴⁷ I refer to the network of customs, habits, and data that supports market activity as infrastructure. This covers the system of contract law and the enforcement of the law, the bankruptcy process, the accounting framework and auditing standards, corporate governance

¹⁴²*Id.* at 59.

¹⁴³Alyu Abate, *supra* note 31, at 18.

¹⁴⁴*Id.*

¹⁴⁵*Id.*

¹⁴⁶KedirDesiso, *supra* note 30, at 59.

¹⁴⁷*Id.*

procedures, and the requirements for transparency and data dissemination.¹⁴⁸ The final interdependence of prudential criteria has also been established. When a bank's assets and liabilities are valued using incorrect accounting practices, the minimum capital requirements for banks are of limited help.¹⁴⁹

A. Islamic Financial Service Board (IFSB)

The Islamic Financial Services Board (IFSB) is an international institution that aims to formulate the financial infrastructure of Islam and Islamic financial instrument standards.¹⁵⁰ IFSB was founded on November 3, 2002, with headquarters in Kuala Lumpur, Malaysia. The Islamic Financial Services Board (IFSB) is an institution that focuses its activities as an international standard-setting body in the field of Islamic finance and oversight arrangements, especially setting the standard of prudence and transparency for the international Islamic financial institutions, including banking, capital markets, and insurance.¹⁵¹ The Islamic Financial Services Board (IFSB) established the goal of actively carrying out the banking and finance dissemination and educational program that authorities obtained through workshops and seminars in various countries to obtain input from authorities and industry about best practices as well as possible refinements to the program and the Islamic Financial Services Board (IFSB) standards. The Islamic Financial Services Board (IFSB) includes the International Monetary Fund (IMF), the World Bank, the Bank for International Settlement (BIS), the Islamic Development Bank (IDB), and the Asian Development Bank (ADB). The Islamic Financial Services Board carried out the following activities: organized an annual meeting, a council meeting, and organized international seminars.¹⁵²

B. Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)

¹⁴⁸*Id.*

¹⁴⁹*Id.*

¹⁵⁰Kiki PungkiKumalasari, and AndiTriyawan. "The Islamic Business Ethics Review toward Earning Management on Islamic Financial Service Board (IFSB) 09 Version, Journal of Islamic Economics and Philanthropy (JIEP). E-ISSN 2655, 335X, 126 (2018).

¹⁵¹*Id.*

¹⁵²*Id.*

An organization called AAOIFI was founded as a non-profit to advance Islamic accounting and auditing ideas for Islamic financial institutions.¹⁵³ It is a non-profit corporation that was set up to establish a set of common standards for the accounting and auditing practices used by Islamic financial institutions, including IBs and windows. The organization has published several rules regarding accounting and auditing issues, as well as a code of ethics that follows Sharia.¹⁵⁴

AAOIFI also reviews the accounting and auditing standards of Islamic financial institutions in line with Sharia and the unique context in which they are operating to strengthen the trust of their clients.¹⁵⁵ The auditing and accounting rules of AAOIFI are followed while examining the financial accounts of Islamic financial institutions to provide shareholders, depositors, investors, and regulators with trustworthy information.¹⁵⁶ Like the IFSB, the AAOIFI participates in awareness-raising campaigns and disseminates the standards it has established through training, seminars, studies, and publications.¹⁵⁷

C. Islamic Development Banking group (IDBG)

The Islamic Banking Group is a comprehensive organization that was established in 1975 after the Conference of Finance Ministers of Muslim Countries, which took place in Jeddah in 1973 during DhulQadah, released a Declaration of Intent. The bank's mission is to support the Sharia-compliant economic and social advancement of its member nations and Muslim populations, both individually and collectively.¹⁵⁸ There are five of them.

They are the International Islamic Trade Finance Corporation (IITFC), founded in 2008; the Islamic Corporation for Development of the Private Sector (ICD), founded in 1999; the Islamic Research and Training Institute (IRTI), founded in 1981; the Islamic Development Bank (IB), founded in 1975; and the Islamic Insurance Corporation for Investment and Export Credit (ICIEC). The Islamic Development Banking Group has multiple functions, much like its

¹⁵³Ahmad Q Farah and Rasha M. Hattab, "The Application of Shari'ah Finance Rules in International Commercial Arbitration," *Utrecht Law Review* 16, no.1, 134 (2020).

¹⁵⁴*Id.*

¹⁵⁵Ercanbrack, Jonathan. "The standardization of Islamic financial law: lawmaking in modern financial markets." *The American Journal of Comparative Law* 67, no. 4, 825-860,830(2019)

¹⁵⁶AlyuAbate, *supra* note 31, at 19.

¹⁵⁷*Id.*

¹⁵⁸ Mohammad Ali shafia, Ali BonyadiNaeini, SaeedKhodamoradi, KomeilFattahi, and HosseinSabzian, "The Trade Complementarity of Islamic Development Bank Group Member Countries, the Current Trade Level and Development of the Counter Trade among Them," 1(2015)

organization. For instance, IDB's role is to advance all facets of human development, with a particular emphasis on the top priorities of eradicating poverty, enhancing health, fostering education, enhancing governance, and enhancing the well-being of the populace. However, as its name suggests, IRTI is the major source of information for Islamic banking institutions. Additionally, it serves as a seminar venue and an information management hub.¹⁵⁹

2.9 National Institutions for Regulation of Islamic Banking

Regulation is the act or process of governing by restriction or rule. Corporate governance is important for organizations like banks.¹⁶⁰ There are two types of regulatory organizations that oversee Islamic banking: internal and external. The external institution is a government agency created to oversee the banking sector. The central bank is often the external regulator. The board of directors and other managing personnel serve as the nation's internal regulatory body. The Islamic banking industry's internal and external regulator structures support its performance, stability, and resource-bridging capabilities.¹⁶¹

Any firm, whether conventional or Islamic, including financial services, should have as its primary goal increasing the value of stakeholders. The confidence of stakeholders in specific institutions and the sector will determine their stability, financial results, and capacity to transfer resources. The necessity to inform stakeholders that their financial activity is done in accordance with their religious beliefs is a distinctive confidence factor concerning Islamic financial services.¹⁶²

The system in Islamic banking is a little complicated. A central bank formed in an Islamic state, typically in those nations with a mono-Islamic banking system, will regulate. Literature reveals various regulatory structures and practices in non-Islamic states or those that adhere to a dual system of regulation. While some nations are merely governed by a central bank designed to supervise conventional banks, others have a subcommittee of the Sharia advisory council. In the latter system, Islamic banking is only regulated by the memorandum and articles of the

¹⁵⁹*Id*

¹⁶⁰KedirDesiso, *supra* note 30, at 64.

¹⁶¹*Id.*

¹⁶²*Id.*

association because the bank is not knowledgeable about sharia principles of banking. They lack a thorough response to transactions that might violate sharia standards.¹⁶³

CHAPTER THREE

3. THE REGULATION OF ISLAMIC BANKING DISPUTES FROM INTERNATIONAL PERSPECTIVES

3.1 Introduction

This chapter deals with the need and justification for regulation of the Islamic banking dispute resolution system. Besides, the international perspective of regulating Islamic banking dispute resolution is another main concern of the chapter. It also discussed as its main concern the experiences of other selected jurisdictions with dispute resolution in the Islamic banking system, including the manner of practicing in their legal and institutional frameworks. The experiences of Malaysia, Singapore, and the United Kingdom are discussed for dispute resolution in the Islamic banking system. Other vital issues of the chapter are discussed hereinafter in this chapter.

3.2. The need to regulate Islamic Banking Disputes

Business transactions will inevitably result in disputes because they are anticipated in classical Islamic commercial law, which has adequate means for resolving disputes.¹⁶⁴ A sound, stable, reliable, well-structured, and robust judicial system, as well as an efficient dispute resolution mechanism, are necessary for the nature of the modern banking business, to attract foreign direct investment, the rapid growth of the Islamic banking and finance industry, globalization, and investors and other market participants. These systems must be able to withstand the test of time and prevent volatility and risk.¹⁶⁵

But to promote economic growth in both traditional and Islamic markets, a robust rule of law is also necessary, including a dependable, predictable, equitable, and fair system of dispute resolution. The people who seek redress must recognize the authority and validity of such a system. Given that Islam is a nomothetic or law-centric religious system, in which all spheres of

¹⁶³ *Id.*

¹⁶⁴ Abdul-Nasser HR.Hikmanyand Umar A. Oseni, supra note 122.at 126.

¹⁶⁵ *Id.*

its followers are governed by Islamic legal principles, this legitimacy is particularly significant in the context of Islamic business transactions and conflicts.¹⁶⁶

Islamic financial institutions (IFIs) must have sound governance processes given the extraordinary rise in Islamic banking activity worldwide (IFIs).¹⁶⁷ This is primarily done to guarantee its long-term viability. More importantly, regulatory frameworks that can aid in preventing fraud, exploitation, and other unislamic behavior in banking practices must be created for Islamic banks to contribute as much as possible to the growth of Islamic nations. Strong governance standards will also increase public trust, which will foster confidence among stockholders, investors, and other parties working with these IFIs.¹⁶⁸

To advance without compromising Islam's essential principles, the Islamic banking and finance sector had to improve in terms of standards, frameworks, regulations, technology, resources, and guidelines. The banking industry regulated based on the legal framework of Islamic banking principle prevent from manipulation by negligent parties.¹⁶⁹

3.3. Islamic Banking dispute International perspective

If the dispute has an international component, international commercial arbitration may be used to settle it.¹⁷⁰ The New York Convention of 1958, the United Nations Commission on International Trade Law Arbitration Rules, and the United Nations Commission on International Trade Model Law on International Commercial Arbitration (the "UNCITRAL Model Law") are a few conventions, treaties, and rules that govern the field of international commercial arbitration. However, Muslim countries have also embraced globalization and founded several arbitration centers, such as the Euro-Arab Chambers of Commerce, the Asian International Arbitration Centre, the International Islamic Centre for Reconciliation and Arbitration, the Abu Dhabi Commercial Conciliation and Arbitration Center, the Cairo Regional Centre for International Commercial Arbitration, and numerous others.¹⁷¹ These arbitration centers are

¹⁶⁶*Id.*

¹⁶⁷MaliahSulaiman, NorakmaAbdMajid, and NorainiMohdAriffin, "Corporate governance of Islamic financial institutions in Malaysia," *Asian Journal of Business and Accounting* 8, no. 1, 65-94, 65(2015).

¹⁶⁸*Id.*

¹⁶⁹AtharyanshahPuneri, dispute resolutions mechanisms for Islamic banks in Indonesia, *International Journal of Islamic economics and Finance(IJIEF)*, 4(SI), 153-180. 153(2021); <https://doi.org/10.18196/ijief.v4i0.10084>.

¹⁷⁰MariaBhatti, Managing Shariah non-compliance risk via Islamic dispute resolution, *Journal of Risk and Financial Management* 13, no. 1: 2, 3(2019).

¹⁷¹*Id* at 4.

essential to Shariah-compliant dispute resolution because they quickly acknowledge that established Islamic business law rulings like the ban on riba and gharar are against Shariah instead of depending on (potentially arbitrary) Shariah-compliance requirements. For instance, in Islamic dispute resolution, riba cannot be included when determining the fine for late payment by an arbitrator or mediator. Similar to that, the dispute may not be subject to arbitration if it involves riba and/or gharar. Additionally, Shariah specialists may be called “expert witnesses” in Islamic dispute resolution to resolve issues involving Islamic finance. In this method, the mediator or arbitrator can use expert testimony from a Shariah expert and be a qualified and licensed conflict resolution practitioner. The challenge then becomes how to carry out Shariah-compliant dispute resolution in an efficient manner. The lack of recognition of Islamic law as a complete body of law with the potential to apply in a secular system was one of the main issues in the Beximco case. It is suggested that a thorough codified body of law be created in the field of Islamic dispute resolution in light of this case.¹⁷²

3.4. Dispute resolution in Islamic Banking: best experiences of other jurisdictions

It is crucial to look at some of the most important best practices for dispute resolution in the global Islamic finance sector before recommending a workable dispute resolution structure for the Islamic finance sector in Ethiopia. Malaysia, Indonesia, Singapore, and the UK are the countries chosen for this comparative study. These nations were not randomly or arbitrarily chosen. While Malaysia and Indonesia are examples of the most advanced Islamic banking operations and provide useful models for resolving disputes, the United Kingdom and Singapore are countries with small number of Muslim population but have advanced dispute resolution in Islamic finance. Each of these nations' Islamic banking sectors has undergone several adjustments. There have been numerous difficulties with Islamic banking dispute resolution in those jurisdictions, as will be seen in the next section, but some of these difficulties have been resolved through proactive measures or changes to the law.

3.4.1. Malaysia

Malaysia has held the top spot as a trailblazer in the international Islamic finance business since the Islamic Banking Act of 1983 and the subsequent ground-breaking reforms documented in the

¹⁷²*Id.*

sector.¹⁷³ Malaysia appears to have the greatest legal and regulatory structure for Islamic finance, which both emerging and developed economies throughout the world are copying. Today in Malaysia, the financial services industry is regulated by the Islamic Financial Services Act (2013) for the Islamic finance industry and the Financial Services Act 2013 for the conventional finance industry. So, this gives a classic model of the dual financial services industry.¹⁷⁴ It is not necessary to list all the legislative and regulatory changes made to the Malaysian Islamic finance sector; rather, it is sufficient to describe the framework of the dispute resolution choices available to players in the sector. These include the Financial Mediation Bureau, the Kuala Lumpur Court Mediation Centre, the Kuala Lumpur Regional Centre for Arbitration, and the specialist court, also known as the Muamalat Bench.¹⁷⁵

3.4.1.1. Specialized court for issues involving Islamic financing

Islamic banking cases in Malaysia, like in most other countries, fall under the jurisdiction of civil courts and are governed by the country's civil legislation.¹⁷⁶ For instance, in *Bank Islam Malaysia Bhd v. Adnan Omar & Ors*, the issue of jurisdiction was brought up by the litigants. The defendant filed a preliminary objection claiming that because Bank Islam Malaysia Bhd was an Islamic bank, the civil court lacked jurisdiction to hear the case. The defendant argued that it was the Shariah court that had the proper jurisdiction to hear the matter. The court dismissed the preliminary objection and stated that Islamic banking matters fall under the jurisdiction of civil courts. As part of reforms to further streamline the process of adjudication of Islamic finance matters in the court, a Muamalat Bench was established under the Commercial Division of the High Court. This specialized bench hears and determines matters involving Islamic finance and other Shariah-related commercial matters (see Islamic Financial Services Act No. 759 of 2013, ss. 10 and 11).¹⁷⁷ An appeal on an Islamic finance matter from the High Court goes to the Court of Appeal and finally to the Federal Court [Malaysia Constitution, Art. 121 (1B) and 130].

¹⁷³Kawamura Ai, "Comparison of Malaysia-Dubai approach to the Islamic dispute resolution system in Islamic finance," *Jurnal Hadhari Edisi Khas*, 57- 66, 61(2017).

¹⁷⁴Abdul-Nasser HR. Hikmany and Umar A. Oseni, *supra note* 122, at 135.

¹⁷⁵Oseni, Umar A, Dispute resolution in the Islamic finance industry in Nigeria, *European Journal of Law and Economics* 40, no. 3, 545-564, 552(2015).

¹⁷⁶Abdul-Nasser HR. Hikmany, and Umar A. Oseni, *Supra notes* 122, at 135.

¹⁷⁷Zubair, Aishat, An Analysis of Dispute Resolution Mechanisms in the Islamic Banking and Finance Industry in Malaysia, *Jurnal Hukum Novelty* 11, no. 2, 164-178, 170(2020).

Additionally, the Central Bank of Malaysia Act 2009 ordered the courts to report any queries that occur in litigation matters to the Sharia Advisory Council to support the judge sitting on the specialized bench and the involve complex Islamic legal matters that need deliberation by eminent jurists who are properly qualified in the field of Islamic jurisprudence.¹⁷⁸ As such, the legal experts of the Sharia Advisory Council can also get involved in litigation cases as between Islamic financial institutions.¹⁷⁹ Importantly, in terms of the procedural rules that have to be followed, the civil laws of the country are applicable.¹⁸⁰

3.4.1.2. Courts in Kuala Lumpur offer mediation

The Kuala Lumpur Court Mediation Centre (KLCMC) was founded in August 2011 to improve access to justice and promote out-of-court settlements of disputes supervised by judges.¹⁸¹ This appears to be a complementary approach. This type of mediation ordered by the court is facilitated by sitting judges. This could potentially be a novel approach to resolving legal conflicts involving Islamic financing.¹⁸² According to the court's accepted protocol, after a matter is filed with the High Court of Malaya, it is sent to the KLCMC for mediation, which functions as a multi-door courthouse program. If a settlement is reached, the court will adopt it as a consent decision; nevertheless, if the mediation session comes to a standstill, the parties will resume their regular court processes. The Muamalat Bench is in a good position to urge parties in disputes involving Islamic finance to pursue a negotiated settlement, even though this system has been established for every case that is brought before the High Court.¹⁸³

3.4.1.3. KLRCA: Islamic financial services arbitration guidelines

The Arbitration Rules for Islamic Financial Services, which were established by the Kuala Lumpur Regional Centre for Arbitration in 2007 and represent yet another trailblazing achievement in the introduction of a competent and robust legal and regulatory architecture for the Islamic finance industry (KLRCA).¹⁸⁴ The Kuala Lumpur Regional Centre for Arbitration's (Islamic Banking and Financial Services) Arbitration from 2007 has recently been updated with the new, sector-specific Islamic Arbitration Rules 2012, which are specifically designed for

¹⁷⁸*Id* at 171.

¹⁷⁹*Id.*

¹⁸⁰ *Id.*

¹⁸¹ Oseni Umar, *supra note* 175, at 551.

¹⁸²*Id.*

¹⁸³*Id.*

¹⁸⁴*Id* at 552.

Islamic business transactions. Although based on the UNCITRAL Arbitration Rules of 2010, these specialized rules for Islamic financial services are tailored to the unique requirements of the Islamic finance industry due to the complexity and difficulty of the disputes that arise within the sector, particularly when it comes to Shari'ah-related matters.¹⁸⁵

3.4.1.4. Bureau of Financial Mediation

The formation of the Financial Mediation Bureau is a novel procedure for small claims that the Central Bank of Malaysia launched in 2005 with a focus on consumer protection (FMB).¹⁸⁶ The Banking Mediation Bureau (BMB) and the Insurance Mediation Bureau (IMB), which were created in 1991 and 1996, respectively, and operated under different frameworks, were in place before this new setup, which now unites all banking and insurance issues under one roof. FMB is governed by a Memorandum of Understanding between financial services providers, which calls for them to abide by any judgments or awards made against them. Only claims, complaints, or disagreements involving specific financial losses are subject to its authority.¹⁸⁷ The Financial Mediation Board (FMB) combines two separate processes—mediation and ombudsman—that have been combined into a single procedure intended to amicably resolve disputes involving customers and their financial services provider without restricting the right of the customer to pursue other legal dispute resolution options, including arbitration and litigation, in situations where they are dissatisfied with the body's decision. So, only the financial service provider is subject to the FMB's award or decision. The customer or complainant is not in any way required to abide by it. Above all, FMB's services are free, practical, quick, and simple for the parties to use in referring to their issue for an amicable resolution. This makes it a viable alternative to courts and arbitration tribunals.¹⁸⁸

3.4.2. Indonesia

The process by which parties to a disagreement choose to resolve their differences is referred to as “dispute resolution.” Conflict resolution involving Islamic banks is governed by Chapter IX, Article 55, of the Islamic Banking Act No. 21 of 2008. It asserts that: 1. Disputes involving Shariah (Islamic) banking are resolved through a trial in the Religious Court. 2. If the parties

¹⁸⁵*Id.* at 553.

¹⁸⁶*Id.*

¹⁸⁷*Id.*

¹⁸⁸*Id.*

have already reached an agreement on an alternative dispute resolution procedure to that described in paragraph 1, those additional proceedings shall be the Akad¹⁸⁹As stated in Article 55, the two main methods for resolving Islamic banking disputes with Islamic banks in Indonesia are litigation and non-litigation¹⁹⁰

3.4.2.1. Dispute Resolution for Islamic Banks through Litigation

Dispute resolution by litigation is a process for settling a dispute through the court system. In Article 55 of the Islamic Banking Act No. 21 of 2008, the Religious Court was permitted to review and decide disputes regarding Islamic banks (1). By revising the Religious Court Act by Act No. 3 of 2006 in response, the government improved the Religious Court's capacity to consider cases concerning Islamic banks in 2006. The Act modifications were made twice in 2009 by Act No. 50 of 2009.¹⁹¹The issues relating to marriage, inheritance wills,hibah, waqf, zakat, infaq, shadaqah, and shariah economic disputes may be examined, decided upon, and settled by the Religious Court under Article 49 of the Religious Court Act No. 3 of 2006.

The aforementioned revision added three further skills in the areas of Zakat, Infaq, and Shariah economics compared to the prior Religious Court Act No. 7 of 1989. Islamic banking, Islamic microfinance, Islamic insurance, Islamic reinsurance, Islamic mutual funds, and Islamic bonds, or Sukuk, are all examples of shariah economics, as stated in the Religious Court Act. Islamic Business, Islamic Medium-Term Securities, Islamic Securities, Islamic Funding, Islamic Pawn, Islamic Pension Fund, and Islamic Commerce¹⁹²

Unquestionably, this provision has clarified and expanded the Religious Court's jurisdiction such that it now includes the resolution of disputes involving Islamic banking. The amendments provide the Religious Court with more authority and legal assurance to handle disputes concerning Islamic banking.¹⁹³

¹⁸⁹Winarsi, Sri, SRI HAJATI, MOHAMAD NUR KHOLIQ, and PRAWITRA THALIB, "Sharia banking dispute resolution in Indonesia after the verdict of the constitutional court no. 93/puu-x/2012," *Utopía y Praxis Latinoamericana* 26, no. 2, 408-416,409(2021).

¹⁹⁰*Id.*

¹⁹¹AtharyanshahPuneri, supra note 28, at 161.

¹⁹²*Id.* at 162

¹⁹³*Id.*

3.4.2.2. Alternative dispute resolution

According to the Act, National Sharia Arbitration Board (Basyarnas), mediation, mutual understanding, and commercial courts are among the alternate dispute resolution processes that Islamic banks may use, according to the Act.¹⁹⁴

A. Dispute Resolution for Islamic Banks through Arbitration

Under Section 55(2) of the Islamic Banking Act No. 21 of 2008, arbitration may be used to resolve disputes between Islamic banks. These disputes may be settled by the National Sharia Arbitration Board (BASYARNAS) or other arbitration bodies, provided they do not violate Sharia principles. All Islamic banking disputes can proceed to arbitration, as long as the contracting parties authorize its use in the dispute.¹⁹⁵ The main reason for establishing BASYARNAS is to resolve all disputes between Bank Muamalat, the first Islamic bank in Indonesia, and its customers. BASYARNAS was established on October 21, 1993, under the name of the “Indonesia Muamalat Arbitration Commission” (Badan Arbitrase Muamalat Indonesia-BAMUI). The company's name changed to BASYARNAS on December 24, 2003. This change was intended to accommodate other Islamic banks in addition to Bank Muamalat, due to the rapid growth of the industry. The renamed body is called the National Shariah Arbitration Board.¹⁹⁶

B. Dispute Resolutions for Islamic Banks through Mediation

Mediation is a method for resolving conflicts through an impartial third party. The impartial party is known as a mediator.¹⁹⁷ The Supreme Court Regulation No. 1 of 2008 governing mediation governs mediation in Indonesia. The law specifies that mediation may be used both during and outside of court proceedings.¹⁹⁸ The rule mandates that before any court proceedings begin, every judge must appoint mediation for all parties. According to the Supreme Court regulation, the prerequisites for being a mediator are as follows: 1) a judge cannot be both the mediator and the judge overseeing the case. 2) A mediator must be a lawyer or an advocate. 3)

¹⁹⁴Rahman Ambo Masse and Muhammad Rusli, "Islamic Banking Dispute Resolution in National Sharia Arbitration Board," In *IOP Conference Series: Earth and Environmental Science*, vol. 175, no. 1, p. 012169. IOP Publishing, 2018. (4).

¹⁹⁵AtharyanshahPuneri, supra note 28, at164.

¹⁹⁶*Id* at165.

¹⁹⁷*Id* at 168.

¹⁹⁸*Id* at 169.

Non-legal professionals must be knowledgeable in the subject matter of the disagreement. 4) It might be a combination of the aforementioned options.¹⁹⁹ As long as they can complete the training provided by the Supreme Court and earn a mediator credential, all of the aforementioned parties are eligible to serve as mediators. The duties of a mediator are as follows: 1) setting the date on which the mediation process will start; 2) advising the parties to participate actively in the mediation; 3) advising the parties to learn more about their disagreement and identify the best solutions; 4) assisting the parties in drafting a settlement agreement, and 5) providing a written report to the judge if the mediation process is unsuccessful.²⁰⁰

C. Mutual understanding

This procedure can take place if the parties to the disagreement agree to determine the appropriate course of action while they are present in the same venue to settle the conflict. There is no involvement of a third party in the issue when there is mutual understanding. Only the Islamic bank and the party in disagreement with the bank are present during the session.²⁰¹

D. Commercial court

The prospect of choosing a commercial court to resolve issues with Islamic banks is one of the aforementioned alternative dispute resolution choices that are regarded as problematic.²⁰² This goes against the first sentence of Article 55, which states that the Religious Court has jurisdiction over Islamic banks' legal disputes.²⁰³ To address this situation, Dadang Achmad (Director of CV. Benua Engineering Consultant) filed a petition with the Indonesian Constitutional Court on October 19, 2012, requesting that a judicial review be conducted. According to the Constitutional Court's legal analysis, any conflicts involving Islamic banks cannot be handled by a commercial court (Constitutional Court).²⁰⁴

¹⁹⁹*Id.*

²⁰⁰*Id.*

²⁰¹*Id.*

²⁰²*Id.*, at 160.

²⁰³*Id.*

²⁰⁴*Id.*

3.4.3. The United Kingdom

The United Kingdom has a dual banking system, which is comparable to what is available in Malaysia.²⁰⁵ Although the UK does not have specific legislation that governs Islamic finance businesses, it has nevertheless made the necessary amendments to the relevant laws, including the Financial Services (Land Transactions) Act 2005 (c.24) and the Finance Act 2003 (c.14), 2004 (c.12), 2005 (c.7), and 2007 (c.11), to make room for Islamic finance businesses. Islamic financial disputes are resolved in the same manner as other financial disputes in the nation, and the English court has the discretion to hear and decide cases involving Islamic financial disputes without consulting a Shari'ah advisory body.²⁰⁶ As Islamic finance topics are taken into consideration, specialized witnesses are relied upon in instances in which the courtroom docket deems it appropriate to search for similar clarifications. This is the manner in which Shariah students or Islamic finance specialists are engaged in Islamic finance adjudication within the UK. The English court docket invited such experts in the first actual Islamic finance case litigated in the English court docket.²⁰⁷

The first case is Investment Company of the Gulf (Bahamas) Limited v. Symphony Gems N.V. and Orus. In this case, the issue at hand is related to the question of the validity of the Murabaha Accords under Sharia law. In this case, the court ruled that the contract was valid under English law and dismissed the claim that Shariah had not complied with the contract.²⁰⁸ A second case is one such as Shamil Bank v. Beximco Pharmaceuticals Limited in Bahrain. In this case, both parties have entered into the Murabaja Agreement. The central issue raised in this case relates to the interpretation of applicable legal provisions. According to the principles of the beautiful Shariah, this agreement shall be regulated by and construed in conformity with the laws of England, according to the governing law provision in the Murabaha Agreement. Sharia law wasn't mentioned at all. He cannot include two separate legal systems in one treaty that is intended to replace English law as the governing law. Ultimately, the court dismissed the defendants' claim that the Murabaha Agreement did not comply with Shariah law and proceeded to rule on the matter solely based on English law.²⁰⁹ This is the trend of British courts when

²⁰⁵ Abdul-Nasser HR, Hikmany and Umar A. Oseni, *supra* note 122, 134

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 136

²⁰⁹ *Id.*

dealing with Islamic financial matters. To address this legal risk to Islamic financial institutions and their clients, some UK organizations with several ADR courts have incorporated Islamic finance into their purview (e.g., the Muslim Arbitration Commission and the Western Institute for Islamic Banking and Finance, UK).²¹⁰

3.4.4. Singapore

Singapore is known as a global financial hub with an advanced financial industry that forms a resilient economy for capital flows.²¹¹ Singapore is also known as one of the countries with an excellent international financial sector. These advantages have enabled the Islamic Banking and Finance (IBF) industry in Singapore to succeed despite being a secular and non-Muslim country facing several issues related to IBF practices. The expected development of Singapore's Islamic banks, which are said to be unable to achieve economies of scale, has been less favorable than that of traditional banks.²¹²

The country is showing some signs of progress and development in the implementation of the IBF. Financial institutions in Singapore have launched several Islamic financial products. In 2005, the Monetary Authority of Singapore announced that he had been upgraded to a full member of the Islamic Financial Services Board (IFSB) in December 2003 (IFSB, 2005). In addition, Singapore is also involved in some Islamic investment activities.²¹³

3.4.4.1. Islamic Banking and Financial Regulatory System in Singapore

The Singapore government has taken a fine-tuned approach to accommodating both Islamic and traditional banks within a common regulatory framework.²¹⁴ This approach relies on perfecting existing regulations rather than creating new, separate regulations. As such, there is only one legal framework governing Singapore's existing banking and financial system, whether Islamic or traditional. The sole regulator of Singapore's banking and financial system is the Monetary Authority of Singapore (MAS).²¹⁵ MAS is Singapore's central bank and oversees the development of the banking and financial industries. In the process of establishing Islamic

²¹⁰*Id.*

²¹¹Ginting, LedyMahara, NafisahRuhana, NurHaziyah Haji Abdul Halim, and Salsabilla Terra Finieli, "Legal and Regulatory Framework of Islamic Banking and Finance: A Study in Singapore," *International Journal of Management and Applied Research* 6, no. 4,234-244,235(2019).

²¹²*Id.*

²¹³*Id.*

²¹⁴*Id.*at236.

²¹⁵*Id.*

banking and finance in Singapore, several changes have been made to existing laws to enable Islamic banking and finance to function. In Singapore, there is no special sharia advisory board at the central bank level. Each Islamic financial institution conducting Islamic banking in Singapore is responsible for appointing an internal Shariah Advisory Board to ensure that its banking operations comply with Shariah principles. The lack of national Shariah organizations has been largely unaffected by the growth of Islamic banking in the country.²¹⁶

3.4.4.2. Singapore legal system

Singapore does not have a separate Islamic banking law.²¹⁷ The relevant laws governing Islamic banking in Singapore are the Banking Act and the Securities and Futures Act. Like traditional banks, Islamic banks in Singapore must meet the requirements set out in the Banking Act and are under the supervision of the Central Bank of Singapore. Islamic banks must also meet legal requirements such as minimum capital requirements, capital adequacy ratios, and paid-up capital.²¹⁸

As a secular country that practices IBF, Singapore has applicable legal and regulatory frameworks to enable her IBF application. The Singapore government is adapting existing banking regulations to accommodate Islamic banking.²¹⁹ These changes are necessary to provide Shariah compliant financial products. For example, banks in Singapore were not allowed to operate outside the financial sector, making it difficult for Islamic banks to offer financial products to purchase assets and resell them to customers. Amendments to the banking law have enabled Islamic banks to engage in non-financial transactions and offer Sharia-compliant products.²²⁰

3.4.4.3. Status of Islamic Banking and Finance in Singapore

The original law of the IBF industry in Singapore was the Banking Act 1970 (as amended in 2008), which is the basis for the operation of the banking industry. In addition, other Singapore Islamic financial industries, such as capital market services and financial advisory services, are regulated under the Securities and Futures Act (Chapter 289) and the Financial Advisors Act

²¹⁶*Id.*

²¹⁷*Id.*

²¹⁸ *Id.*

²¹⁹*Id.*

²²⁰*Id* at 237.

(Chapter 110).²²¹ There is a law, respectively. Therefore, both traditional and Islamic financial systems are subject to the same regulatory framework. Islamic banks are therefore treated the same as traditional banks.²²²

3.4.4.4. Monetary Authority of Singapore (MAS)

The Monetary Authority of Singapore (MAS) is Singapore's central bank, whose mission is to promote economic and non-inflationary growth by implementing monetary policy and monitoring the macroeconomy for new trends and other potential vulnerabilities.²²³ As the supreme body, MAS regulates and supervises both Islamic and traditional banks in Singapore by issuing its MAS Guidelines.²²⁴ Concerning Islamic banking, MAS issued Guidelines on the Application of Banking Regulations to Islamic Banks in 2010, guiding the regulation of Islamic banking in Singapore. This guideline covers only the application of banking regulation and not the application of other financial laws such as the Financial Advisers Act.²²⁵ MAS have also established capital requirements for Islamic banks that are largely consistent with traditional capital standards. Thus, all products on the market do not follow a similar structure.

MAS are also registered as a member of the International Islamic Financial Institutions. In 2005, MAS formally joined as a member of the IFSB and is currently involved in several international working groups and task forces dedicated to Islamic finance, including the Islamic Financial Markets Task Force, the Supervisory Review of Process Working Groups, and the Special Issues Capital Working Group on Adequacy.²²⁶

3.4.4.5. Islamic Banking and Finance Compliance Requirements in Singapore

In operating the IBF industry, market participants must comply with what is regulated by regulatory bodies to ensure that the industry operates according to Shariah. Concerning Shariah

²²¹*Id.*

²²²*Id.*

²²³Duriat, Fazrihan Bin Mohamed, "Islamic Banking in Singapore-Challenges Ahead from Commercial, Risk & Legal Perspectives,"(5)

²²⁴*Id.*

²²⁵ *Id.*

²²⁶*Id.*

Counseling, Singapore recognizes a system in which Shariah advisor positions are industry-level only and there is no apex body to oversee and standardize Shariah.²²⁷

3.4.4.6. MAS guidelines

To facilitate the growth of the IBF in Singapore, MAS has issued "Guidelines for the Application of Banking Regulations to Islamic Banks".²²⁸ In general, it guides banks on the regulations for operating Islamic banks in Singapore.²²⁹ It is a combination of several regulations issued by the MAS that focus on specific information related to Islamic banking practices.²³⁰ This policy comprehensively covers MAS's general approach to Islamic banking, including licensing. Apart from that, the policy also deliberately stipulates the regulatory treatment of Islamic banks in Singapore. Islamic banks in Singapore are treated the same as their traditional counterparts under the same regulatory framework, but this policy applies.²³¹

3.4.4.7. Sharia Advisory Board

The Islamic financial industry requires Sharia advisors to ensure that products and transactions in a particular industry are compliant with Islamic law.²³² Singapore also has a sharia Advisory Board, but unlike countries with legal provisions on Islamic finance, Singapore's Shariah Advisory Board is binding only on the Islamic financial institutions that appoint it.²³³ The Shariah Advisory Board works only at the internal level of Islamic financial institutions, not at the national level. They are responsible for ensuring that their products and transactions are Shariah compliant. Persons holding Sharia Advisory Board positions are appointed by the banks themselves and must fulfill their duties to ensure that products and transactions are in line with Islamic law and the guidelines of the MAS.²³⁴

²²⁷*Id.*

²²⁸Arfat Selvam, Legal and Regulatory Changes to Promote the Development of Islamic Banking and Finance in Singapore, Venardos, AM Current issues in Islamic banking and finance: resilience and stability in the present system, Singapore, Hackensack, NJ, World Scientific (2010): 17-45. (22).

²²⁹*Id.*

²³⁰Ginting, LedyMahara, NafisahRuhana,NurHaziyyah Haji Abdul Halim and Salsabilla Terra Finieli, *supra note* 211,237.

²³¹*Id at* 238.

²³²*Id.*

²³³*Id.*

²³⁴*Id.*

3.4.4.8. International Standards for Islamic Banking and Finance

To further strengthen IBF oversight and governance in Singapore, MAS made her a full member of the Islamic Financial Services Board (IFSB) in April 2005.²³⁵ The IFSB is an international standard-setting body that supports its members with appropriate standards to ensure the integrity of the Islamic financial services industry as a whole. As a member of the IFSB, financial institutions offering Islamic banking products and services must comply with all standards issued by the IFSB. Through this membership, additional regulation and oversight will apply in parallel with existing His MAS Islamic Banking Policy described above. This will further improve the governance and oversight of the IBF in Singapore.²³⁶

3.4.4.9. Legal Framework for Islamic Banking Disputes in Singapore

With rapid growth of IBF, it is undeniable that conflicts regarding contracts, procedures, laws, ethics, and morals related to Islamic banking have arisen.²³⁷ Therefore, accurate and committed dispute resolution mechanisms are particular importance in establishing justice between disputing parties. Dispute resolution is important in that the usual dispute resolution mechanisms and methods are built into the legal system. This can be achieved through various processes such as arbitration, mediation, negotiation, joint law, and litigation.²³⁸

From an Islamic point of view, conflicts should be dealt with most subtly and humbly, based on religious values, traditional rituals of reconciliation, and principles of coexistence. Dispute resolutions can therefore refer to various proceedings, either through judicial proceedings or out-of-court settlements.²³⁹

Apart from litigation, disputes in the IBF are subject to multiple alternative dispute resolution (ADR) mechanisms such as mediation (such), arbitration (tahkim), and other innovative hybrid ADR mechanisms such as med-arb and arb-med. However, this has been resolved in practice. However, it should be emphasized that ADR should not be used to convert prohibited haram acts into permissible halal acts and vice versa. As for the IBF disputes, the first litigation was brought to court. Additionally, other ADR procedures are available that may represent alternative

²³⁵*Id* at 238.

²³⁶*Id.*

²³⁷*Id.*

²³⁸*Id.*

²³⁹*Id* at 239.

options, such as arbitration and mediation. In practice, contracting parties will include specific clauses obliging both parties to seek arbitration or mediation in disputes arising out of the contract entered into. Such practices reduce procedural challenges of all kinds when disputes are brought to court.²⁴⁰

1. Court system

Sharia courts are unique and exclusive jurisdictions in Singapore because they provide legal solutions only to Muslims' matters such as divorce and other related matters under the Administration of Islamic Law (AMLA).²⁴¹ Disputes related to Islamic asset management, such as inheritance (faraidh), Islamic donations (waqf), Islamic banking, and financial cases, are subject to the jurisdiction of civil courts.²⁴² Most court references rely on common law decisions such as *Islamic Investment Company of the Gulf (Bahamas) Ltd v. Symphony Gems NV & Ors* and *Shamil Bank of Bahrain EC v. Beximco Pharmaceuticals Ltd*. The establishment of the Singapore International Commercial Court (SICC) in January 2015 has provided some prospects for resolving IBF disputes.²⁴³

2. Arbitration

Arbitration is specifically used to ensure fair treatment and justice for disputing parties.²⁴⁴ By definition, arbitration can be described as an alternative form of dispute resolution that does not require going to court. The introduction of arbitration to resolve disputes is also gaining significant momentum in Singapore. Regarding judicial intervention, the Arbitration Act provides that parties may appeal to the courts on all relevant legal matters and issues arising in the course of the arbitration.²⁴⁵ There are no residual permissions for Singapore courts, and they are committed to intervening in arbitrations in Singapore as little as possible. An important aspect of Singapore arbitration to consider is the choice of arbitration law. This aspect of arbitration gave the parties the freedom to choose the law applicable to their dispute based on

²⁴⁰ *Id.*

²⁴¹ NorsuriaJani and Rusni Hassan, "Dispute Resolution in Singapore: Challenges and Opportunities for Islamic Finance," *Journal of Islamic Economics, Banking and Finance* 11, no. 4, 11-30, 14(2015).

²⁴² *Id.*

²⁴³ *Id.* at 15.

²⁴⁴ Ginting, LedyMahara, NafisahRuhana, NurHaziyah Haji Abdul Halim, and Salsabilla Terra Finieli, *supra note* 211, at 239.

²⁴⁵ *Id.* at 240.

mutual consent. It refers to the UNCITRAL Arbitration Rules, as amended to address Islamic financial disputes. Islamic banking and finance are treated as civil matters, so there is no way to resolve disputes before Islamic mediators, which exist only in the Sharia court system.²⁴⁶

3. Mediation

In addition to issues involving criminal matters, child custody, and inheritance, mediation as an alternative dispute resolution method can also be used to settle business-related disagreements.²⁴⁷

By Islamic law, private mediation sessions are common, and these informal mechanisms facilitate settlement. Singapore courts will enforce mediated settlement agreements as contracts.

²⁴⁸The Mediation Act was approved by the Singaporean Parliament on January 10, 2017. Along with making fundamental reforms, the Mediation Act established a process for turning a privately mediated agreement into an easily enforceable court order. However, dispute resolution programs provided by the Ministry of Manpower's Tripartite Alliance for Dispute Management, Small Claims Tribunals, and Community Mediation Centers are not bound by the Mediation Act.²⁴⁹

²⁴⁶*Id.*

²⁴⁷*Id.*

²⁴⁸*Id.*

²⁴⁹*Id.*

CHAPTER FOUR

4. DISPUTE SETTLEMENT ON INTEREST-FREE BANKING UNDER ETHIOPIAN BANKING REGULATION

4.1. Introduction

This chapter deals how Interest-free banking dispute settled under Ethiopia legal framework was discussed with comparative analyzing with selected jurisdiction.

4.2. The Regulatory Frameworks of Interest-Free Banking in Ethiopia: General Overview

Many countries have adopted Islamic banking for a variety of political, social, and economic reasons. Countries, including the UK, have established Islamic banking legally in an effort to improve and fortify their financial systems.²⁵⁰ In other words, the industry's beneficial economic and financial function supports their policy option. Others have recognized Islamic banking in order to satisfy the desires of their Muslim communities for a banking system that adheres to Sharia law, including Tanzania, Kenya, and South Africa. Ethiopia's decision to implement interest-free banking was driven by the country's sizable Muslim minority, which has been requesting such services for a number of years.²⁵¹ The NBE Directive's preamble, which states that the government's policy rationale is the industry's high degree of public demand, explicitly states the government's policy motivation for approving the country's traditional banks to provide the services.²⁵²

The NBE Directive's preamble, which states that the government's policy rationale is the industry's high degree of public demand, explicitly states the government's policy motivation for approving the country's traditional banks to provide the services. Having such a strong banking and commercial relationship with Muslim nations is one of the country's international economic policies. Therefore, establishing strong economic relations with Islamic countries is another justification for the adoption of interest-free banking.²⁵³ Therefore, including these sectors in the country's financial system has a significant potential for drawing international investors who need an Islamic financial infrastructure for their investments. In response to the high demand for

²⁵⁰ Alyu Abate, *supra* note 31, at 26(2016).

²⁵¹ *Id.*

²⁵² Ethiopian Business Interest- free bank directive, No, SBB / 51/ 2011.

²⁵³ Ethiopian Business Interest- free bank directive, No, SBB / 51/ 2011.

Islamic banking products and services, the NBE reorganized the "Licensing and Supervision of Banking Business" proclamation and released a new proclamation in 2008.²⁵⁴ This proclamation opened the door for the establishment of interest-free banking windows under conventional banks. "The National Bank may issue a directive to oversee banking firms relating to non-interest-bearing deposit mobilization and fund use," according to Article 22(2) of the proclamation.²⁵⁵

This signifies Ethiopia's approval of the creation of interest-free banks. Interest-free banking windows opened after the NBE released "Directives to Authorize the Business of Interest-Free Banking No.SBB/51/2011." These directives ask for additional requirements on the authorization of the interest window as per Proclamation No. 592/2008.²⁵⁶ According to this Directive's article 2(2), an "interest-free banking business" is "a banking business in which mobilizing or advancing funds is undertaken in a manner consistent with Islamic finance principles and a mode of operation that avoids receiving or paying interest."²⁵⁷ And Article 2(3), an "interest-free banking window" is a division within a traditional bank that only provides interest-free banking services.²⁵⁸ Only conventional banks are permitted to provide interest-free banking services through a separate window, according to Article 2 (3).²⁵⁹ All avenues for creating fully fledged Islamic banking in Ethiopia have been blocked by Directive No.SBB/51/2011. These directives allow conventional banks to begin providing interest-free banking services through a different window. This program is known as the Interest Free Banking Window (IFB window).²⁶⁰

Muslims routinely ask the government for approval to provide full-fledged interest-free banking. The NBE issue is Banking Business Proclamation (as Amended) No. 1159/2019, which permits the formation of a full-fledged interest-free bank.²⁶¹ In addition, Article 59(1) of this Proclamation states that the National Bank may issue a directive to establish new requirements.²⁶² This does not affect the specifications outlined in the proclamation's terms.

²⁵⁴ Ethiopian Banking Business Proclamation, No, 592/2008.

²⁵⁵ *Id.* at Article 22(2).

²⁵⁶ Ethiopian Business Interest- free bank directive, No, SBB / 51/ 2011.

²⁵⁷ *Id.* Article 2(2).

²⁵⁸ *Id.* Article .2(3).

²⁵⁹ *Id.* article.2(3).

²⁶⁰ Ethiopian Business Interest- free bank directive, No, SBB / 51/ 2011.

²⁶¹ Ethiopian Banking Business Proclamation, No, 1159/2019.

²⁶² *Id.* article,59(1).

Interest-Free Bank is a company with a National Bank license that only engages in interest-free banking activities. According to directive No.SBB/72/2019, there are now more requirements for granting licenses and approving fully completed interest-free banking. An organization for resolving disputes that may deal with any concerns resulting from Islamic banking activities is not mentioned in either this directive or Proclamation No. 1159/2011. Furthermore, there is no clause preventing the resolution of Islamic banking-related issues in conformity with the nation's statutory banking legislation. A critical examination of Ethiopian law demonstrates how civil law is used in civil courts in matters involving financial transactions, particularly IFB.

4.3 Dispute Resolution for conventional banks in Ethiopia

It is crucial to get a basic understanding of Ethiopian law before analyzing the current legal framework for banking industry dispute resolution, with a focus on Islamic banking matters. The federal government in Ethiopia has the power to establish rules for the financial sector and to resolve disagreements that arise within. The federal government "shall formulate and carry out national financial, monetary, and foreign investment policies and programs."²⁶³ Federal Courts must have jurisdiction over disputes related to business companies registered or created under the authority of federal government agencies, according to Article 5(k) of the Ethiopian Federal Courts Proclamation No. 1234/2021.²⁶⁴ The federal court may only apply federal substantive and procedural laws, as is also mentioned in Articles 6 and 7 of the same proclamation.²⁶⁵ It follows that banking and trade fall within the jurisdiction of federal law and federal courts. Because of these cases arising from conventional banking transactions are being entertained by the ordinary federal courts and the relevant courts of regional state.

4.4 A Comparative Overview of Ethiopia and Other Selected Jurisdictions

Following is a comparison of the main elements of dispute resolution in the Islamic banking industry in the four jurisdictions with the Ethiopian legal system at the time.

²⁶³Ethiopian constitution, Article, 51 (4).

²⁶⁴ Ethiopian Court proclamation No.1234/2021, article 5(k).

²⁶⁵*Id.* article 6 &7.

4.4.1 The Laws of Ethiopia and Governing the Islamic Banking System

Islamic personal matters for Muslim parties, such as marriage, divorce, waqf, etc., are dealt with by the Sharia Court established under Article 34(5) of the Ethiopian Federal Constitution. Islamic financial matters are not included in this list because they are typically viewed and handled as general banking and financial matters.²⁶⁶ As a result, disputes involving Islamic banking may be heard and resolved by the civil court. However, Ethiopian dispute settlements that do not follow fundamental Islamic financial regulations have a detrimental effect on the growth of Islamic banking, similar to what has happened in the UK. This is due to the fact that having a complex regulatory structure deters foreign financial actors, especially those looking to establish Islamic banks. As a result, it is clear from the aforementioned clauses that the constitutional funding for the construction of an Ethiopian sharia court does not include the authority to decide financial disputes. Based on this, the author made the case that Ethiopia should adopt the best model from Indonesia's experience, which expanded the reach of the sharia court to include financial matters. Therefore, it is hoped that the current provisions in the constitution relating to the jurisdiction of the Shariah Court will be effectively amended. The former erode their global position in the Islamic banking market because they are at a disadvantage in comparison to nations that are willing to develop an efficient regulatory framework within which Islamic banks can operate. This might result in a loss of local capital and a decline in the attraction of foreign money.

The Federal Courts shall have jurisdiction over proceedings related to business companies registered or created under the authority of federal government agencies, according to Article 5(k) of the Federal Courts Proclamation No. 1234/2021.²⁶⁷ The federal court may only apply federal substantive and procedural laws, as is also mentioned in Articles 6 and 7 of the same proclamation.²⁶⁸ It follows that banking and trade fall within the jurisdiction of federal law and federal courts. The decree expressly grants the federal court the discretionary authority to hear and decide disputes involving Islamic banking without bringing up Sharia law. In addition, the FDRE Constitution's Article 79(3) states that judges must act entirely independently and only under the authority of the law.²⁶⁹ In accordance with these constitutional provisions, judges must

²⁶⁶ Ethiopian constitution article 34(5).

²⁶⁷ Ethiopian Court proclamation No.1234/2021, article 5(k).

²⁶⁸ *Id.* article 6 and 7.

²⁶⁹ Ethiopian constitution article 79(3).

only administer justice in accordance with federal substantive and procedural law when resolving financial disputes, particularly those involving Islamic banking. In Ethiopia, where there have been no legislative reforms like those in Malaysia and Indonesia, Islamic banking matters are subject to civil law and civil court jurisdiction, as is the case in the UK and Singapore. The religious, social, and economic underpinnings for the development of Islamic banking in Ethiopia are in conflict with the adjudication of Islamic banking disputes in civil courts under solely civil laws. Therefore, it is crucial to establish a special bench, like Malaysia's; within the civil court system that applies both Islamic and civil law. This may call for the following question to be raised: how can judges of civil law courts decide, in the case of Islamic law, the foundation of Islamic banking and finance practices and operations if they lack the ability to do so? For instance, this issue can be overcome by choosing judges who are knowledgeable about both civil law and the peculiarities of Islamic business law. The issue can be addressed in the near term by giving the judges sitting on such benches in-depth legal training in Islamic financial law. This would make it possible for such judges to use the expertise and experience they gained while serving in the civil courts to handle challenging business disputes involving Islam. The issue can be addressed in the near term by giving the judges sitting on such benches in-depth legal training in Islamic financial law. This would make it possible for such judges to use the expertise and experience they gained while serving in the civil courts to handle challenging business disputes involving Islam. In addition, a law that requires the courts to refer any questions that come up in litigation cases and that involve complex Islamic legal matters that need deliberation by eminent jurists who are appropriately qualified in the field of Islamic jurisprudence was introduced in order to support the judges sitting on the dedicated bench. The Malaysian judicial system has acted in this manner.

4.4.2 Ethiopian Banking Business Laws and Regulating Islamic Banking Dispute

The proclamation No. 1159/2019 under Article 59 permitted the operation of fully interest-free banking. However, the proclamation No. 1159/2019 makes no reference to the process or authority in place for resolving disputes relating to interest-free banking activities.²⁷⁰The

²⁷⁰ Ethiopian Banking Business Proclamation, No 1159/2019, Article 59.

directives No.SBB/51/2011²⁷¹ and No. 72/2019 allowed interest-free banking at the window and full-fledged, respectively.²⁷² The directives, however, do not include a mechanism for dispute resolution that would address possible problems resulting from interest-free financial transactions. Furthermore, there is no clause that forbids disputes involving Islamic banking transactions from being resolved using the nation's pertinent banking regulations. However, a close examination of Ethiopian law reveals that civil law is used in civil courts in matters involving financial transactions, including IFB. However, the author is of the opinion that using just civil law to settle conflicts resulting from Islamic banking practices is not the best course of action. The author therefore made the case that the Ethiopian business proclamation and directive adopt the best practices of Malaysian and Indonesian financial acts explained in Chapter 3, which expressly expresses that settlement of an Islamic banking dispute is conducted by a court in a religious court and, in the case that the parties have already agreed, the settlement of the dispute shall be according to the parties' consent. In addition to using courts to resolve disputes involving Islamic banking, these nations' financial acts also have ADR provisions. However, the Ethiopian business declaration and direction are ambiguous about how the interest-free banking disagreement was resolved. As a result, for Islamic banking to succeed in any state that wishes to enter this market, regulatory certainty is essential. This is so because the banking sector as a whole welcomes the security that comes with establishing clear regulations.

To encourage fair, responsible, and transparent financial transactions and to influence professional behavior to protect financial consumers, the FCP/01/2020 preamble mandates a requirement to provide transparent and unbiased financial consumer protection legislation, oversight, complaint processing, and dispute settlement systems.²⁷³ Article 4(5(2)) informs financial consumers and security providers of any available external dispute resolution mechanisms, including those provided by the national bank and courts of law.²⁷⁴ The complaint handling mechanism under Article 4(5) requires that financial services providers provide the financial consumer or security provider with easy access to a transparent, effective, prompt, and free internal complaints process.²⁷⁵ Additionally, it mandates that suppliers of financial services

²⁷¹ Ethiopian Business Interest-free bank directive, No, SBB / 51/ 2011.

²⁷² Ethiopian Business Directive, No, SSB /51/2011 & SBB/72/2019.

²⁷³ Ethiopian Financial Consumer Protection Directive No.FCP/ 01/2020.

²⁷⁴ *Id.* article 4(5)(2).

²⁷⁵ *Id.* article 4(5).

establish and implement policies and processes for a fair, open, transparent, cost-free, and effective processing of internal complaints. Furthermore, in accordance with this law's Article 5(5(2)), financial services providers are required to set up an internal complaint handling unit at their headquarters, to which financial consumers and security providers may refer complaints.²⁷⁶ The location of the complaint handling office, its full address, a contact person, and other pertinent information must be made known to the financial consumer in a clear and understandable manner at the time of contract signing. According to Article 5 (5(2(5))), they should adequately staff their internal complaints handling procedure and train the necessary personnel. The manner of resolving complaints from customers of Islamic banks may be included in this training for pertinent personnel.²⁷⁷ However, Islamic banking and dispute training are not explicitly included in the directive's text. In addition, complaints must be filed and unsolved problems must be reported to the National Bank as required by Article 5(5(4)).²⁷⁸ A financial consumer may file a complaint with the National Bank under Article 5 (5 (4(1))) if he or she is dissatisfied with the decisions of the relevant financial service provider²⁷⁹ or (b) has not received a response from the relevant financial service provider in accordance with subparagraphs 5 (3(2(c))²⁸⁰ and 5 (3(4)) above.²⁸¹

When a case is received in accordance with the aforementioned sub-articles 5.5.4.1 and 5.5.4.2, the National Bank is required to conduct an investigation within 10 working days. However, if a different National Bank directive has specified a lower number of days for the investigation of complaints in relation to a particular type of financial products and services, those prescriptions shall apply to the investigation of complaints in relation to those financial products and services. The Islamic financial products must be appropriately regulated in order to safeguard both contractual parties, as the goods and services offered by Islamic banks are not briefly covered by Regulation 72/2019. To effectively examine and make decisions, the national bank lacks staff with the necessary knowledge and expertise in Islamic banking. Only those with an understanding of the products and services offered by Islamic banks can independently resolve

²⁷⁶ *Id.* article 5(5) (2).

²⁷⁷ *Id.* article 5(5) (2) (5).

²⁷⁸ *Id.* article 5(5)(4).

²⁷⁹ *Id.* article 5(5) (4) (

²⁸⁰ *Id.* article 5(5) (3) (2(c)).

²⁸¹ Ethiopian Financial Consumer Protection Directive No.FCP /01/2020, article 5(5) (3(4)).

an issue with an Islamic bank. However, the directive's phrasing and the definition of professional competence in Section 6.3 do not allow for the inclusion of individuals with expertise in Islamic banking in the internal complaint handling body. A dissatisfied customer was instructed by the directive to file a claim with the national bank, but neither the national bank nor its representatives established a central Sharia board or included a representative who understood its tenets.

4.4.3 The Jurisdiction of the Sharia Court

The Sharia Court Proclamation No. 188/1999 lists the questions within the jurisdiction of the Sharia Court under Article 4(1): any questions pertaining to marriage, divorce, maintenance, guardianship of minors, family relationships, Wakf, gifts (Hiba), succession of wills, provided that the endower or donor is a Muslim or the deceased was a Muslim at the time of his death, and payment of costs incurred in any suit relating to the aforementioned matters.²⁸²

Islamic financial disputes are not subject to Islamic law, as is evident from the sharia court proclamations above, which are comparable to Article 34(5) of the Federal Democratic Republic of Ethiopia's Constitution.²⁸³ Thus, Ethiopia adopts the Indonesian model of dispute resolution by expanding the authority of Sharia courts to decide issues originating from Islamic banking transactions in order to establish a suitable venue for the adjudication of Islamic banking disputes.

Procedure for dispute settlement in Islamic banking products and services in Ethiopia

In Ethiopia, the power to formulate and executes the country's financial policies and strategies is entrusted to the federal government as per article 51(4) of the FDRE constitution.²⁸⁴ Furthermore, the federal court proclamation No. 1234/2021 gives the jurisdiction of the civil cases involving the business organizations established by federal government.²⁸⁵ Thus, the cases involving banks fall under the jurisdiction of the federal law and federal courts. In this case, the banking business

²⁸² Ethiopian sharia court proclamation no, 188 /1999, article 4

²⁸³ Ethiopian constitution article 34(5).

²⁸⁴ Federal democratic republic of Ethiopian constitution, Article 51(4).

²⁸⁵ Federal court proclamation No.1234/2021, Article 5(1) k).

proclamation with its amendment and NBE directives is applicable. In case securities, the property mortgage or pledge with bank proclamation No. 97/1998, movable property security right proclamation No. 1147/2019, and Civil Code (Amendment) Proclamation No.639/2009 are applicable laws in the disputes involving banks. Regarding procedure, it is the civil procedure code of 1965 applicable in the disputes involving banks.

Both the substantive and procedural laws mentioned are applicable in the case of conventional banks. In order to identify the applicable laws in case of dispute arising in Islamic banking, the researcher interview with the legal officers in the conventional Banks with higher profit in Islamic banking product and service according to NBE reports in 2021/2022. Accordingly, the respondents from each bank told the researcher that there are no cases involving Islamic banking product and services arised yet in all the banks the researcher conducted interview.²⁸⁶The researcher observed the Mudaraba contract and security contract for the Islamic banking product and service to witness the contractual clause in case of dispute settlement. As per this contractual clause in the agreement between interest-free banking and clients, the contract leads to the civil code, civil procedure code, and banking business proclamation in general in case of Murabaha contract.²⁸⁷In the same fashion, the security contract in case of interest-free banking product and services refer to the same laws that are applicable in case of conventional banking service which is the property mortgage or pledge with bank proclamation No. 97/1998, movable property security right proclamation No. 1147/2019, and Civil Code (Amendment) Proclamation No.639/2009 according the researcher's observation.²⁸⁸

²⁸⁶ Interview conducted with the commercial bank of Ethiopian interest-free service Jimma district at his office in Jimma (03/01/2023), Interview conducted with Abyssinian bank legal officer and interest-free service personnel in office in Jimma main office, (04/01/2023), and Interview conducted with the interest-free banking window service personnel of cooperative bank of Oromia at his office, (04/01/2023).

²⁸⁷ Observation of the Murabaha contract in Abyssinian bank and commercial bank of Ethiopia by the researcher on 04/01/2023.

²⁸⁸ Id. observation of security contract.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusion

This study has focused on the dispute settlement of interest-free banking in the particular setting of the Ethiopian Islamic banking industry and the comparative analysis of the regulation of Islamic banking disputes in selected jurisdictions. This was done to compare the world framework with the Ethiopian legal framework to assess the adequacy of the Ethiopian legal framework for resolving disputes involving Islamic banking, and implementing best practices from our countries will help in developing the Islamic finance industry in Ethiopia. The research, after analyzing the existing legal framework in Ethiopia, such as the constitution, Sharia court proclamation, interest-free banking proclamation, interest-free banking directive, and financial consumer protection directive, finds the following legal gaps:

- ❖ There is a gap in Business Proclamation No. 1159/2019, which permitted the operation of fully fledged interest-free banks. The proclamation allowed interest-free banking to operate without clearly explaining the process and the organ in charge of resolving interest-free banking disputes. In addition to the proclamation, Directive No. SBB/51/2011 and Directive No. 72/2019 do not include a mechanism for dispute settlement involving interest-free banking or a provision that forbids disputes involving interest-free banking from being resolved using conventional banking regulations.
- ❖ The research finds that there is particular forum for the resolution of dispute that may arise from in the day to day transactions of interest free banking.
- ❖ The research finds that there is a gap in Directive FCP 1/2020, which says training relevant staff may include how to handle complaints from Islamic banking consumers. However, the directive's wording does not explicitly mention Islamic banking training or dispute resolution.
- ❖ Other gaps are found under Directive FCP 1/2020, Article 5.5.4, which says that the financial consumer may submit a claim to national banks if they are not satisfied with the decision of financial services providers. However, the national bank neither

establishes a central sharia board nor includes a person knowledgeable in sharia principles.

- ❖ Other legal gaps Research found that under Directive No. FCP 1/2020, in Article 5.5.4.3, the National Bank's investigation of the types of products and services was in accordance with the national bank directive. However, the products and services that are given by Islamic banks are not briefly provided under the directive 72/2019.
- ❖ The research finds that dispute settlement Islamic banking needs knowledge of the rules governing Islamic commercial transactions such as *fiqhmuāmalāt*, *fiqh*, and *usūl al-fiqh*.
- ❖ Finally, in relation to the best practices, the research showed that there are some best practices that Ethiopia can adopt so as to provide solutions to the problems identified. Thus, what should be done in relation to those problems identified by what other jurisdictions have been doing is provided as a recommendation of the research for our countries to solve the problems of dispute resolution in interest-free banking.

5.2 Recommendations

Islamic banking has already been accepted in Ethiopia, which is advantageous for many of the reasons outlined in the previous chapters. However, there are still interest-free banking disputes settled under civil law and civil court which are against Islamic law or Islamic financial principles. The legal framework in Ethiopia is insufficient for settlement of interest-free banking dispute and needs. The researcher suggests the following actions based on the study's results and its conclusions.

1. The business proclamation and directive establishing Interest-free banking in Ethiopia should be revised to accommodate a dispute resolution mechanism for interest-free banking based on Islamic finance principles.
2. The Ethiopian banking directive No.72/2019 should be revised in order to briefly provide the type of products and services given by interest-free banks which are important for national bank to investigate a complaint based on the type of product and services.
3. Ethiopian consumer protection directive FCP 1/2020 should be amended to accommodate person knowledgeable as internal complaint handling to answer a claim to national bank from financial consumer.
4. For the authorities and staff on the interest-free banking the banks which give interest-free bank always organized, regular training sessions, seminars, conferences, and instruction on Islamic banking norms and practices must be organized.
5. The NBE must establish a Sharia Board to support the authorities' regulatory and oversight functions regarding the nation's interest-free banking industry.
6. Ethiopia will also establish Islamic educational institutions that might help with the creation of skilled personnel for Islamic economics and banking.
7. The author recommended that Ethiopia may adopt best practices from Malaysia have sophisticated Islamic banking systems. The establishment of a separate bench within the Ethiopian civil courts' judicial system that applies both Islamic and civil law is the best example Ethiopia may learn from Malaysia's legal system. Furthermore, it is crucial to create a body that functions similarly to Malaysia's Sharia Advisory Council, which guides complex Islamic financial disputes, to support the judges who sit on this bench. Therefore, adopting best practices from these jurisdictions will help in the growth of the

Islamic financial sector in Ethiopia. After all, an effective legal system and dispute resolution process in Ethiopia are important elements that would aid in luring foreign investors, particularly from oil-rich nations, to invest in the country's emerging Islamic finance sector.

Annexes

Annexes: 1

የኢትዮጵያ ንግድ ባንክ ከወለድ ነጻ የባንክ አገልግሎት የሙራባላ ውል

ይህ ውል ዛሬ ህዳር 28 ቀን 2015 ዓ.ም በአቶ ጆማል ናስር አባራጎ ነዋሪነታቸው በጂማ ዞን ጎማ ወረዳ ፣ አጋሮ ከተማ፣ ጎንጂ ኢ.ል.ቡ ቀበሌ ፣ የስልክ ቁጥር 09111097030፣ ፊ.ቃ.ድ ቁጥር 62207-01-00004524/14 Tin No 0020283487 ሆኖ (ከዚህ ቀጥሎ "ደንበኛ/ው" እየተባለ በሚጠራው

እና

በኢትዮጵያ ንግድ ባንክ ከወለድ ነጻ የባንክ አገልግሎት (ከዚህ ቀጥሎ "ባንክ" እየተባለ በሚጠራው መካከል ቀጥሎ በተዘረዘሩት ይዘቶች እና ሁኔታዎች መሠረት ይህ ስምምነት አድርጓል፡፡

አንቀጽ 1

የውሉ ዓላማ፣ ይዘቶችና ሁኔታዎች

ይህ ውል የሙራባላ ፋይናንስ አገልግሎትን መሰረት በማድረግ ደንበኛው ለባንኩ ባቀረበለት ጥያቄ መሰረት ቡና ገዝቶ ለኢ.ሲ.ኤ.ክስ ገበያ አቀርቦት መግዣ የሚሆን ብር 4,500,000 (አራት ሚሊዮን አምስት መቶ ሺህ ብር ብቻ) የሙራባላ የፋይናንስ ፋሲሊቲ ለደንበኛው የፈቀደ ሲሆን ደንበኛውም በዚህም ሽያጭ ላይ በየአመቱ በ flat rate 7% እየታሰበ አጠቃላይ የአንድ አመት የትርፍ መጠን የ 7% በ flat rate ሲሆን ይህንን ትርፍን ጨምሮ ለባንኩ ስለሚከፍልበት ፣ ደንበኛው ለባንኩ በሚያቀርበው ጥያቄ መሰረት ባንኩ በየጊዜው ወይም በአንድ ጊዜ ከእቃ አቅራቢ/ዎች/ዕቃ ወይም ንብረቶቹን እየገዛ በትርፍ ለደንበኛው ስለሚሸጥበት፣ ግዢውና ሽያጩ ሰለሚፈጸምበት እንዲሁም የሽያጩ ፋይናንስ ገንዘብ ስለሚሰበሰብበት ፣ እንዳስፈላጊነቱ ባንኩ ለደንበኛው በሚሰጠው ውክልና መሰረት የባንኩ ወኪል በመሆን ከአቅራቢዎች ዕቃ በባንኩ ስም ገዝቶ ስለሚረከብበት፣ መረከቡን ለባንኩ ስለሚያሳወቅበት እና ትርፉን ጨምሮ ከባንኩ ስለሚገዛበትና ደንበኛው ከባንኩ ጋር በሚስማሙበት የክፍያ ሰንጠረዥ መሰረት በማድረግ የሰድስት ወሩ የግዥውን ዋጋ ትርፍ ጨምሮ እየከፈለ ዕቃው/ንብረቱን የተገዛበት ክፍያን በአንድ አመት አጠናቆ ለባንኩ ለመክፈል ከባንኩ ጋር የተስማሙበት ዉል ነው፡፡

አንቀጽ 2

ትርጓሜ

የቃሉ ወይም የሃረጉ አገባብ ሌላ ትርጉም የሚያሰጠው ካልሆነ በስተቀር በዚህ ስምምነት፡

- 2.1 **የሙራባላ ፋይናንስ ግዥ** "ተወካይ" ወይም "ወኪል" ማለት ለሙራባላ ፋይናንስ አገልግሎት ሲባል በባንኩ የሚወከል ሶስተኛ ወገን ወይም ደንበኛ ነው፡፡
- 2.2 "የወጪ ዋጋ/cost price/ ማለት ለንብረቱ ወይም እቃው/ ለቡና ግዥ በባንኩ ስም የሚወጡ ማናቸውንም ወጪዎች እና ከንብረቱ ወይም ከእቃ ግዥ አቅርቦት ጋር ተጓዳኝ ወይም ተዛማጅ የሆኑትን ቀረጦችን፣ ግብሮችን የኢንሹራንስ ክፍያዎች እና የአገልግሎት ክፍያዎችን በሙሉ ናቸው፡፡

- 2.3 “የውሉዋጋ” ማለት ንብረቱ/እቃው/ ለቡና /የተገዛበት የወጪ ዋጋ እና ደንበኛው በየአመቱ ለባንኩ እንዲከፍል በባንኩ የሚወሰነው (የሚሰላው) የትርፍ መጠን አንድ ላይ ተደምረውበት ለባንኩ ደንበኛው የሚከፍለው የገንዘብ መጠን ነው።
- 2.4 “ንብረት/እቃ” ማለት ደንበኛው በሚያቀርበው የግዥ መጠየቂያ ሰነድ/ሰነድ ቁ.1.1/ ተለይቶ የሚገለጽ ንብረት/ እቃ ነው።
- 2.5 “የዕዳ ግዴታ” ማለት ደንበኛው በዚህ ውል መሰረት እንዲከፍል የሚጠበቅበት የገንዘብ መጠንና ማናቸውም ሃላፊነት በአግባቡ ባለመወጣቱ ምክንያት የሚኖርበት ማንኛውም እዳ ነው።
- 2.6 “ትርፍ” ማለት በወጪ ዋጋ ላይ በየአመቱ በ flat rate የሚሰላ የትርፍ መጠን ነው።
- 2.7 “ዋና ሰነዶች” ማለት ይህ ስምምነት፣ “የግዥ መጠየቂያ ሰነድ/ሰነድ ቁ.1.1” ፣ የሚገዛው ንብረት/ ሰነድ ቁ.1.2፣ የግዴታ መግቢያ ሰነድ /ሰነድ ቁ.1.3፣ የባንኩ የግዥ ማዘዣ ሰነድ /ሰነድ ቁ.1.4፣ የውክልና ሰነድ/ሰነድ ቁ.2፣ የገንዘብ መቀበያ ሰነድ/ሰነድ ቁ.3፣ የተገዙ ንብረቶች ማረጋገጫ ሰነድ/ሰነድ ቁ.4.1 / የግዥ ፍላጎት ማሳወቂያ ሰነድ/ሰነድ ቁ.4.2 / እና የባንኩ የስምምነት መግለጫ ሰነድ /ሰነድ ቁ.4.3 /፣ የሽያጭ ዋጋ የክፍያ መጠንና ወቅት መዘርዘር ሠንጠረዥ/ሰነድ ቁ.5/ እንዲሁም የገንዘብ ዋጋ ያላቸው ሌሎች ማናቸውም ሕጋዊ ሰነዶች እና ከሰነዶቹ የሚመነጭ ግዴታ ነው።
- 2.8 “መመሪያዎች” ማለት ማንኛውም በባንኩ እንዲሁም በኢትዮጵያ ብሔራዊ ባንክ በየጊዜው የሚወጡ መመሪያዎች ናቸው።
- 2.9 “የግዥ መጠየቂያ ሰነድ/ሰነድ ቁ.1.1” ማለት ደንበኛው በሙራባላ የፋይናንስ አገልግሎት በባንኩ እንዲገዛለት የሚፈልገውን ንብረት/እቃ/ለቡና ግዥ የሚጠይቅበት የጽሑፍ ሰነድ ነው።
- 2.10 “የሚገዛ ዕቃ/ንብረት ዝርዝር መግለጫ ሰነድ/ሰነድ ቁ.1.2” ማለት በሰነድ ቁጥር 1.1 ደንበኛው በባንኩ እንዲገዛለት የጠየቀውን ንብረት ዝርዝር የሚያሳይ ሰነድ ነው።
- 2.11 “የግዴታ መግቢያ ውል/Undertaking/ሰነድ ቁ.1.3” ማለት ከላይ በተጠቀሱ ሰነዶች አማካይነት የቀረበውን የደንበኛ የግዢ ጥያቄ ባንኩ ተቀብሎ ከፈጸመ በኋላ ደንበኛው ንብረቱን/እቃው/ቡና ባይገዛና ባይረከብ ወይም ግዴታውን ባይወጣ በባንኩ ላይ ለሚደርሰው ማንኛውም ኪሳራ ደንበኛው ተጠያቂነቱን የሚገልጽበት ሰነድ ነው።
- 2.12 “የባንኩ የግዥ ማዘዣ ሰነድ/ሰነድ ቁ.1.4” ማለት በሙራባላ ቁጥር 1.1 እና 1.2 ሰነዶች በቀረበው ንብረት/እቃ/ለኤልክትሮኒክስ ዝርዝር መሰረት እና በሙራባላ ሰነድ ቁጥር 2 በተሰጠ ውክልና እንደ ባንኩ ሆኖ ግዢ እንዲፈጽም ለደንበኛው ትዕዛዝ የሚሠጥበት ሰነድ ነው።
- 2.13 “ውክልና ሰነድ/ሰነድ ቁ.2” ማለት ደንበኛው በባንኩ ስም ቡና/ እቃ/ንብረት እንዲገዛ ፣ እንዲረከብ ፣ ክፍያ እንዲፈጽምና የግዢ ሠነዶችን እንዲረከብ እንዲሁም ከግዢ ጋር በተያያዘ ሌሎች ተግባራትን እንዲፈጽም በባንኩ በኩል የተሰጠ ውክልናን የሚያሳይ ሰነድ ነው።
- 2.14 “የገንዘብ መቀበያ ሰነድ/ሰነድ ቁ.3” ማለት ደንበኛው እንደ አስፈላጊነቱ የባንኩ ወኪል በመሆን ለሻጩ ለቡና/ ንብርቱ/እቃ ወይም መግዣ የሚውለውን ገንዘብ ከባንኩ መቀበሉን በመግለጽ ማረጋገጫ የሚሰጥበት /የሚገልጽበት/ ሰነድ ነው።

- 2.15 “የተገዙ ንብረት/እቃ ማረጋገጫ ሰነድ /ሰነድ ቁ.4.1” ማለት ደንበኛው የሚፈልገውን ዕቃ በባንኩ ስም ስለመግዛቱና ስለመረከቡ በተጨማሪም የተረጋገጠ የክፍያ ማዘዣውን (CPO) ለአቅራቢው ማስረከቡን ለባንኩ የሚገልጽበት ሰነድ ነው።
- 2.16 “የግዥ ፍላጎት ማሳወቂያ ሰነድ/ሰነድ ቁ.4.2” ማለት በሙራባሃ ቁጥር 1.1 እና 1.2 ሰነዶች የተጠየቁትንና በሙራባሃ ሰነድ ቁጥር 4.1 መገዛታቸው የተረጋገጡ ንብረቱ/እቃ/ ከባንኩ ለመግዛት ደንበኛው ጥያቄ የሚያቀርብበት ሰነድ ሲሆን ሰነዱም ደንበኛው የሚያቀርበውን የግዢ ዋጋ ፣ የዕዳ መክፈያ ጊዜና ወቅታዊ የክፍያ መጠንን ያሳያል።
- 2.17 “የባንኩ የስምምነት መግለጫ ሰነድ/ሰነድ ቁ.4.3” ማለት ባንኩ በሙራባሃ ሰነድ ቁጥር 4.2 አማካኝነት ከደንበኛው የቀረበውን የግዢ ጥያቄ መቀበሉን የሚያረጋግጥበትና የሽያጭ የውሉ ዋጋ ፣ የዕዳ መክፈያ ጊዜና ወቅታዊውን የክፍያ መጠን ለደንበኛው የሚገልጽበት ሰነድ ነው።
- 2.18 “የሽያጭ ዋጋ የክፍያ መጠንና ወቅት መዘርዘር ሰንጠረዥ/ሰነድ ቁ.5” ማለት ከላይ በሙራባሃ ሰነድ ቁጥር 4.3 የተገለጸውን ዕዳ መክፈያ ጊዜና የክፍያ መጠን የሚያሳይ ሰንጠረዥ ነው።
- 2.19 “አቅራቢ” ማለት **ቡና/ንብረቱ/እቃው** እና ተያያዥነት ያላቸው እቃዎች ባለቤትነት ለባንኩ የሚያስተላልፈው አካል ነው ።
- 2.20 “የንብረት ይዞታ ባለቤትነት” ማለት ባንኩ ከአቅራቢው የሚረከበው ንብረቱን/ዕቃው/የባለቤትነት መብት ወይም ሌላ ተዛማጅ ጥቅም ነው።
- 2.21 “ዋጋ የሚሰላበት ቀን” ማለት ባንኩ በግዥ መጠየቂያ ሰነድ/ሰነድ ቁ.1.1/ላይ በተገለጸው መሰረት የወጪ ዋጋውን ክፍያ የሚለቅበት ወይም የሚፈጸምበት ቀን ማለት ነው።

አንቀጽ 3

የንብረቱ ሽያጭ እና ግዥ

3.1. በባንኩ ለአንድ አመት ጊዜ ብቻ የሚቆይ የአጭር ጊዜ የሙራባህ ፋይናንስ አገልግሎት ደንበኛው ባቀረበው የፋይናንስ ጥያቄ መሰረት ለቡና ግዥ በብር 4,500,000 (አራት ሚልዮን አምስት መቶ ሺህ ብር ብቻ) የገዛ እና ለደንበኛው እነዚህም የቡና ይም ንብረት/እቃ/ ከባንኩ ሲገዛ በወጪ ዋጋ ላይ በአመት 7% ትርፍ በflat rate በማሰላት/በማሰብ/ አጠቃላይ ትርፍ መጠን ማለትም ብር 315,000 (ሦስት መቶ አስራ አምስት ሺህ ብር) ጨምሮ በአጠቃላይ ለብር 4,815,000 (አራት ሚልዮን ስምንት መቶ አስራ አምስት ሺህ ብር ብቻ) ባንኩ ለደንበኛው ቡና /ንብረቱን/እቃው/የሸጠ ሲሆን ደንበኛውም እነዚህም የቡና ምርት በብር 4,815,000 (አራት ሚልዮን ስምንት መቶ አስራ አምስት ሺህ ብር ብቻ) ከባንኩ በአንድ ጊዜ እና ደንበኛውም የሚፈለግበትን ክፍያ በየስድስት ወሩ እየከፈለ በአንድ አመት ጊዜ ወስጥ ያለበትን ጠቅላላ እዳ ትርፍን ጨምሮ ለመክፈል ተስማምቷል።

3.2. ባንኩ ለቡና ምርት ከዚህ ጋር ተያያዥነት ያላቸው እቃዎች ግዥ እና ተዛማጅ ክፍያዎችን እንዲፈጽም የሚያሳውቅ የግዥ ሰነድ ከደንበኛው ሲቀርብለት ንብረቱ/እቃው/የቡናውን ምርት

በራሱ (ባንክ)ወይም በወኪሉ አማካኝነት በባንኩ ስም በመግዛት የሽያጭ ክፍያውን ለእቃ አቅራቢው/ሻጭ/ በመክፈል ንብረቱን በራሱ(ባንኩ) ወይም በወኪሉ ወይም በደንበኛው አማካኝነት ይረከባል።

3.3.ባንኩ በራሱም ሆነ በወኪሉ በኩል የገዛውን ንብረት/ እቃው/ለቡና ምርት ከዚህ ጋር ተያያዥነት ያላቸው እቃዎች ከአቅራቢው/ሻጭ/ ከተረከበ በኋላ ለደንበኛው ሽጦ እስከ ሚያስረክብበት ጊዜ ድረስ ንብረቱ በባንኩ ባለቤትነት ሥር ይሆናል።

3.4.ባንኩ የንብረቱ/ጥእቃው/ን ለቡና ግዥ ከአቅራቢዎች ከፈፀመ በኋላ ደንበኛው ከባንኩ በዚህ ውል በተቀመጠው የውሉ ዋጋ ለመግዛት ተስማምቷል።

3.5.ደንበኛው ንብረቱ/እቃው/ን ከባንኩ ሲገዛ ባንኩና ደንበኛው በሚለዋወጧቸው የግዥ ፍላጎት ማሳወቂያ (offer form)/ሰነድ ቁ.4.2/ እና የባንኩ መስማሚያ ሰነድ/acceptance form/ /ሰነድ ቁ.4.3 / አማካኝነት የሚፈጸም ይሆናል።

አንቀጽ 4

የአገልግሎት ክፍያዎችና ወጪዎች

ደንበኛው ማናቸውንም ከዚህ ውል ጋር በተያያዘ ማለትም ለድርድር፣ ለዋና ዋና ሰነዶች ዝግጅት እና አፈፃፀም ሆነ ለማሻሻያ፣ የጊዜ ማራዘሚያ እንዲሁም ባንኩ የወሰነበትን ሀላፊነት ለማንሳትም ለተያያዥ ስምምነቶች መሰረት በማድረግ የሚወጡ ወጪዎችን ጨምሮ የመክፈል ግዴታ አለበት።

አንቀጽ 5

የዕዳ ክፍያ አፈፃፀም ሁኔታ

5.1. ደንበኛው-በባንኩ-የሚፈለግበትን ገንዘብ በዚህ የሙራባላ የፋይናንስ ውል ከላይ በአንቀጽ 3 የተመለከተው ሲሆን ይህንን ገንዘብ በዚህ ሰነድና በሽያጭ ዋጋ የክፍያ መጠንና በጊዜ መዘርዘር ሰንጠረዥ/ሰነድ ቁ.5/ ላይ በተጠቀሰው የጊዜ ገደብ ከደንበኛው የሚፈለገው የገንዘብ መጠንበኢትዮጵያ ንግድ ባንክ ከሚገኘው የደንበኛው ሂሳብ እየተቀነሰ ክፍያውን ለመፈጸም ወይም በማናቸውም የክፍያ ዓይነት ዘዴዎች እየተጠቀመ ክፍያውን ለመክፈል ባንኩና ደንበኛው ተስማምተዋል። ስለሆነም ከንብረቱ/እቃው/ ለቡና ምርት እና ከዚህ ጋር ተያያዥነት ያላቸው እቃዎች/ሽያጭ/ጋር በተያያዘ የሚኖረውን ዕዳ ሽያጭ ከተፈፀመበት ቀን ጀምሮ ባንኩ ባስቀመጠው የገንዘብ መጠን በየሰዓት ወፍ ትርፉን ጨምሮ እየከፈለበአንድ አመት ማለትም እስከ ህዳር27ቀን 2016ዓ.ም የጊዜ ገደብ ውስጥ ለመጨረስ ደንበኛው ከባንኩ ጋር ተስማምቷል።

5.2.ከላይ በአንቀጽ 1 እና አንቀጽ 3.1 በተገለጹት የእቃ ሽያጭ ጋር ተያያይዞ የሚመጣው ወይም የሚፈጠረው ማንኛውም የዕዳ ግዴታ ደንበኛው የመመለሱ ወይም የመክፈሉ ተግባር እንደተጠበቀ ሆኖ ደንበኛው ባንኩ ገዝቶ እንዲሸጥለት የጠየቀውን እቃ/ንብረት/ ከባንኩ ላይ ባይገዛ ባንኩ ላይ ለሚደርስ ኪሳራ የደንበኛው ኃላፊነት ይወስዳል። በዚህም ምክንያት ባንኩ ላይ ለሚደርስ ጉዳትባንኩን ለመካስ እና የደረሰው ኪሳራ የታጣ ጥቅም ወይም ትርፍን ጨምሮ ለመካስ ግዴታ ገብቷል።

5.3 ባንኩ ለደንበኛው ባስቀመጠው የጊዜ ገደብ ወይም በዚህ የውል ስምምነት መሰረት ደንበኛው ዕዳውን ካልከፈለ ባንኩ ተጨማሪ 90 ቀናትን ለደንበኛው ሊሰጠው ይችላል፤ ሆኖም በእነዚህ ቀናት ውስጥ ባንኩ ዕዳውን ለማስተዳደር የሚያወጣውን ማናቸውም ወጪዎችን ደንበኛውን የማስከፈል መብቱ የተጠበቀ ነው።

አንቀጽ 6

የወቅታዊ ዕዳ ክፍያ መቋረጥ የሚያስከትለው ቅጣት

6.1 በአንቀጽ 15 የተመለከተው ስምምነት እንደተጠበቀ ሆኖ ደንበኛው መክፈል ያለበትን የዕዳ ክፍያ በአንቀጽ 5 መሰረት በወቅቱ ባይከፍል ወይም በውሉ ዋጋ ላይ ጭማሪ ሳይኖር የክፍያ ጊዜው ቢራዘም ባልተከፈለው ጠቅላላ ዕዳ ላይ በዓመት 5%/አምስት በመቶ/ ቅጣት ለመክፈል ደንበኛው ተስማምቷል።

6.2 በንዑስ አንቀጽ 6.1 የተጠቀሰውን የቅጣት ገንዘብ ባንኩ ለመረጠው የበጎ አድራጊነት ድርጅት እንዲሰጥ ደንበኛው ተስማምቷል።

አንቀጽ 7

ዋስትና እና የመድን ሽፋን

7.1 ደንበኛው የዚህን ውል ግዴታዎች አፈፀፀም ለማረጋገጥ ተቀባይነት ያለው የዋስትና ንብረት ያቀርባል፤

7.2 ደንበኛው ላቀረበው የዋስትና የመያዣ ንብረቶች ሙሉ ግምታቸውን የሚሸፍን የመድን ዋስትና ወይም ሽፋን ይገባል፤ በየወቅቱም የመድን ሽፋኑ ከማለፉ 30 ቀናት በፊት ያድሳል።

7.3 ከላይ በንዑስ አንቀጽ 7.2 የተቀመጠው ድንጋጌ እንደተጠበቀ ሆኖ ደንበኛው ያለበትን ግዴታ ሳይወጣ ቢቀር ባንኩ ግዴታ ባይኖርበትም በራሱ ተነሳሽነት የዋስትና ንብረቶቹን ሙሉ ግምት የሚሸፍን የመድን ሽፋን በመግዛትና የሽፋኑ ጊዜ ከማለቁ በፊት በየጊዜው በውሉ መሰረት በማደስ ወጪውን በደንበኛው ዕዳ ላይ በመደመር ደንበኛውን ያስከፍላል።

አንቀጽ 8

የደንበኛው ግዴታዎች

8.1 ደንበኛው በዚህ ውል መሰረት ላለው አፈጻጸም ግዴታውን ለመወጣት ተስማምቷል።

8.2 ደንበኛው ከንብረቱ ግዥ ጋር ተያያዥ ያላቸዉ የውል፣ የስምምነትና ተጨማሪ ሰነዶችን በሙሉ ለባንኩ ለማቅረብ ግዴታ ገብቷል።

8.3 ደንበኛው ባቀረበው ሰነድ/ዎች ላይ ግድፈት ሲከሰት ይህንኑ ለባንኩ በጽሑፍ የማሳወቅ ግዴታ አለበት። ይህን ግዴታ ባለመወጣቱ ምክንያት ደንበኛው ላደረሰው ጉዳት/damage/ ካሳ የመክፈል ግዴታ አለበት።

8.4 ደንበኛው ከባንኩ የጽሁፍ ስምምነት ሳይሆን በማንኛውም ዋና ሰነድም ላይም ሆነ በዚህ ውል መሰረት ግዴታውን/ሃላፊነቱን እንዳይወጣ የሚያደርግ ድርጊት/ፈቃድ ለማንኛውም አካል መስጠት አይችልም።

8.5 ደንበኛው በዋና ሰነዱ እና/ወይም በዚህ ውል መሰረት ግዴታውን መወጣቱን እና በአጠቃላይ የንግድ ስራውን እንቅስቃሴ በተመለከተ በባንኩ ሲጠይቅ ለባንኩ የማሳየት ግዴታ አለበት።

8.6 ደንበኛው ትዕዛዝ መሠረት ባንኩ ግዢውን ከፈፀመ በኋላ ደንበኛው የተገዛውን ንብረት በወቅቱ ባለመረከቡ ምክንያት በባንኩ ላይ ለሚደርሰው ማንኛውም ጉዳት ካሳ ለመክፈል ግዴታ አለበት።

8.7 ከላይ በንዑስ አንቀጽ 8.6 የተጠቀሰው ድንጋጌ እንደተጠበቀ ሆኖ ደንበኛው በውሉ መሠረት የግዢ ግዴታውን ለመወጣት ባይችል ለዚህ ጉዳይ ከተያዘው የዋስትና ንብረት ወይም ተቀማጭ ገንዘብ /security deposit/ ወይም በአንቀጽ 11 ላይ በተጠቀሰው መሰረት በመቀነስ ባንኩ ገንዘቡን እንዲያቻችል ደንበኛው በዚህ ውል ተስማምቷል።

አንቀጽ 9

የባንኩ ግዴታ

9.1 ባንኩ በዚህ ውልና ከዚህ የሙራባላ ፋይናንስ አገልግሎት ጋር በተገናኘ በባንኩ በወጣው ከወለድ ነጻ የፋይናንስ አገልግሎት መመሪያ (Interst Free Finacing Procedure) መሰረት አስፈላጊው ሰነዶች ተሟልተው በቀረበለት ጊዜ የወጪ ዋጋውን የመክፈል ግዴታ አለበት።

9.2 ከላይ በንዑስ አንቀጽ 9.1 የተገለጸው ቢኖርም የወጪ ዋጋ ክፍያ በባንኩ ብቸኛ ፈቃድ የሚወሰን ይሆናል።

9.3 ባንኩ ንብረቱ ለመግዘት ያወጣውን ወጭ እና አጠቃላይ በግብይቱ ላይ የደረሰበትን ወጭ እንዲሁም የትርፉን መጠን ለደንበኛው በግልፅ የማሳወቅ ግዴታ አለበት።

አንቀጽ 10

ውክልና

10.1 ባንኩ እንደ አስፈላጊነቱ ለደንበኛው ንብረቱን በባንኩ ስም ገዝቶ እንዲረከብለት ውክልና ሊሰጠው ይችላል።

10.2 ከላይ በንዑስ አንቀጽ 10.1 የተጠቀሰው የውክልና ሰነድ የዚህ ውል አካል ሆኖ በባንኩና በደንበኛው መካከል የሚደረግ አስገዳጅና ሕጋዊ ውጤት ያለው ውል ነው።

10.3 ደንበኛው እንደ ባንኩ ወኪል በመሆን እቃዎቹን እንዲገዛ ሲወከል ከዚህ ተግባሩ ምንም አይነት ክፍያ ከባንኩ እንደማይጠይቅ ተስማምቷል።

10.4 ደንበኛው እቃዎቹ እንደ ባንኩ ተወካይ በመሆን በሚገዛበት ጊዜ የገንዘብ ክፍያ ደረሰኝ እና ከእቃው ጋር የሚሰጡ ማንኛውም ሰነዶች ከሻጭ ላይ የመቀበል ግዴታ አለበት። ደንበኛውም ይህንን ባለመፈፀሙ ለሚደርጉ ጉዳት ደንበኛው ሙሉ ኃላፊነት ይወስዳል።

አንቀጽ 11

የዕዳ ማቻቻል

ባንኩ የዕዳ ማቻቻል ሙብት እንዲኖረው ደንበኛው ፈቅዶ ተሰማምተዋል፡ ስለሆነም ደንበኛው በማናቸውም ጊዜ ቢሆን በዚህ ውል አማካኝነት የሚኖርበትን ዕዳ ሳይከፍል ቢቀር ደንበኛው በባንኩ ዘንድ ያስቀመጠውን ገንዘብ ወይም ለደንበኛው እንዲከፈል ከታዘዙ ቼኮች ወይም ለደንበኛው በማንኛውም በባንክ በኩል እንዲከፈል ከተባለ ገንዘብ ወይም በህ□ በተሰ□□□ ስል□ንያለምንምቅድመ ሁኔታ ደንበኛው ለባንኩ ያስያዘው የዋስትና መያዣ ንብረቶች ሽጦለዕዳው መክፈያ ወይም ማቻቻያ እንዲሆን ያደርጋል ደንበኛውም በዚህ ተሰማምቷል፡፡

አንቀጽ 12

ሚስጢራዊነት

ባንኩ ስለ ደንበኛው የዕዳ፣ የንግድ እንቅስቃሴ ወይም የገንዘብ ሁኔታዎች ሊኖረው የሚችለውን እውቀት በሚስጢር የመያዝ እና ለሦስተኛ ወገኖች ያለመግለጽ ግዴታ አለበት ሆኖም ግን፡-
ሀ. ደንበኛው ወይም ህጋዊ ወኪሉ በጽሑፍ ፈቃድ ሲሰጥ
ለ. ባንኩ በፍርድ ቤት ሲታዘዝ
ሐ. በህግ ስልጣን የተሰጠቸው አካላት ሲጠይቁ
መ. የባንኩ ሙብት ለማሰጠቅ ምስጢሩ ማወጣት አስፈላጊ ሆኖ ሲገኝ እና መረጃው ወይም ማስረጃው በሌሎች ባንክ ተፈልጎ ከሆነ መረጃውን ከሰጠ እንደ ሚስጥር እይቆጠርም፡፡

አንቀጽ 13

የሂሳብ መግለጫ

ደንበኛው በታማኝ የሂሳብ አዋቂ ባለሞያ አዲት የተመረመረ የእዳ እና ሀብት ሚዛን መግለጫ፣ የወጭና ገቢ ማነጻጸሪያ እና የገንዘብ ፍሰት መግለጫን ያካተተ ዝርዝር የሂሳብ መግለጫ እያንዳንዱ የሂሳብ ዓመቱ መዝጊያ ጀምሮ እስከ ውሉ ዘመን ማብቂያ ድረስ በየስድስትወራት ጊዜ ወይም በባንኩ እንደተጠየቀ በማንኛውም ጊዜ ሙያዊ የሂሳብ መግለጫዎችን የማቅረብ ግዴታ አለበት፡፡

አንቀጽ 14

ውሉ የሚቋረጥበት ምክንያት

- 14.1 ደንበኛው በዚህ የሙራባላ ፋይናንስ አገልግሎት ውል መሰረት የሚፈለግበትን ክፍያ በሙሉ ሲከፍል፣
- 14.2 ደንበኛው በውሉ መሰረት የሚጠበቅበትን ግዴታውን ሳይወጣሲቀር ወይም የሚጠበቅበትን እዳ ሳይከፍል ሲቀር ፣
- 14.3 ደንበኛው
በዚህ ውል አማካኝነት ከባንኩ የገዛውንን ብረት በሙሉ ወይም በከፊል ለሌላ አገልግሎት ማለትም በዚህ ውል **አንቀጽ 1** እና **3** ላይ ከተጠቀሰው የሙራባላ ፋይናንስ አገልግሎት ዓላማውጪ ማዋሉን ወይም ለማዋል ማቀዱን ባንኩ እንዳወቀ ወዲያውኑ የሙራባላ ፋይናንስ አገልግሎት ውሉ ይቋረጣል፡፡

አንቀጽ 15

የውሉ መቋረጥ ስለሚያስከትለው ውጤት

- 15.1 ውሉ በማናቸውም ምክንያት ከተቋረጠ በዚህ ውል መሰረት ያልተከፈለ የውል ዋጋ ፣ ቅጣትና ሌሎች ከውሉ ጋር ተያያዥነት ያላቸው ወጪዎች ወዲያውኑ በደንበኛው የሚከፈሉ ይሆናል፤
- 15.2 ደንበኛው በውሉ መሰረት ዕዳውን ካልከፈለ ባንኩ በአዋጅ ቁጥር 97/90 ከነማሻሻያው ወይም በህግ በተሰጠው ስልጣን መሰረት በዋስትናነት የያዘውን ንብረት ሽጦ ከሽያጩ ገንዘብ ከደንበኛው ላይ ለሚፈለገው ዕዳ መክፈያነት እንዲውል ያደርጋል፡፡
- 15.3 በዚህ አንቀጽ ንዑስ አንቀጽ 15.2 ላይ የተጠቀሰው እንደተጠበቀ ሆኖ ባንኩ በደንበኛው ላይ ዕዳውን እንዲከፍለው በመደበኛ ፍርድ ቤት ክስ የመመስረት መብቱ የተጠበቀ ነው፡፡

አንቀጽ 16

የውል አካል ስለሚሆኑ ሰነዶች

የሚከተሉት ሰነዶች የዚህ ዋና የሙራባላ ፋይናንስ አገልግሎት ውል የማይነጣጠል አካል ናቸው፡-

- 16.1 የባንኩ ከወለድ ነጻ የፋይናንስ አገልግሎት መመሪያ፤
- 16.2 የሙራባላ ፋይናንስ አገልግሎት ሰነዶች፤ “ዋና ሰነዶች” ማለት የዚህ የውል ስምምነት፤ “የግዥ መጠየቂያ ሰነድ/ሰነድ ቁ.1.1/” ፣ የሚገዛው ንብረት/ዕቃ ዝርዝር መግለጫ ሰነድ /ሰነድ ቁ.1.2/፣ የግዴታ መግቢያ ሰነድ /ሰነድ ቁ.1.3/፣ የባንኩ የግዥ ማዘዥያ ሰነድ ቁ.1.4/፣ የውክልና ሰነድ/ሰነድ ቁ.2/፣ የገንዘብ መቀበያ ሰነድ/ሰነድ ቁ.3/፣ የተገዙ ዕቃዎች ማረጋገጫ ሰነድ/ሰነድ ቁ.4.1 / የግዥ ፍላጎት ማሳወቂያ ሰነድ /ሰነድ ቁ.4.2 / ፣ የሽያጭ ስምምነት ውል እና የባንኩ የስምምነት መግለጫ ሰነድ /ሰነድ ቁ.4.3 /፣ የሽያጭ ዋጋ የክፍያ መጠንና ጊዜ መዘርዘር ሰነድ/ሰነድ ቁ.5/ ንብረት ማሰረከቢያ ሰነድ እንዲሁም የገንዘብ ዋጋ ያላቸው ሌሎች ማናቸውም ሕጋዊ ሰነዶች፤

አንቀጽ 17

ተፈጻሚነት ስለሚኖራቸው ዉሎች እና ህጎች

- 17.1 በዋናው የሙራባላ ፋይናንስ አገልግሎት ውልና በማንኛውም የዚህ የውሉ አካል በሆኑት ሰነዶች መካከል ቅራኔ ወይም ልዩነት ቢፈጠር ይህውል ቅድሚያ ተፈጻሚነት ይኖረዋል፡፡
- 17.2 ከወለድ ነጻ የፋይናንስ አገልግሎትን በአጠቃላይ እንዲሁም የሙራባላ ፋይናንስ አገልግሎትን በተለይ የሚመለከት የህግ ቅራኔ ወይም ልዩነት ቢፈጠር አግባብነት ያለቸው የኢትዮጵያ የፍትሐብሔር ህግ አንቀጾች እና ስለ ባንክ የተመለከቱ አዋጆች በዚህ ውል ላይ ተፈጻሚነት ይኖረቸዋል፡፡

አንቀጽ 18

ውሉ ስለሚሻሻልበት ሁኔታ

በዚህ ውል ላይ የተደነገጉትን ድንጋጌዎች በማናቸውም ጊዜና ምክንያት ባንኩ የውሉን መንፈስ ወይም አላማ በማይቀይር ሁኔታ/መልክ/ ባንኩ በተናጠል ይህንን ውል ማሻሻል ይችላል። ይህም ማሻሻያ ተፈፃሚ የሚሆነው ባንኩ ማሻሻያውን በሚመለከት ለደንበኛው በፅሁፍ ያሳወቀ/የገለፀ ሲሆን ነው።

አንቀጽ 19

የስምምነት ማረጋገጫ

እኛ ፊርማችን ከዚህ በታች የተመለከተው በዚህ ውል የሙራባህ ፋይናንስ አገልግሎት ሰጪ “ባንክ” እና የሙራባህ ፋይናንስ ተጠቃሚ “ደንበኛ” የሆንን የዚህን ውል ይዘቶችና ሁኔታዎችን አንብቦንና ተረድተን እንደ ውሉም ለመፈፀም ተስማምተናል። እንደውሉ ሳንፈጽም ብንቀር በውጤቶቹም ለመገደድ
በዚህውል መግቢያ ላይ በተጠቀሰው ቀንና ግምት ስም ስክሮች ፊት ፊርመናል።

ነጃር ጀበልአቶ ጀማል ናስር አባራጎ
ባንኩ የደንበኛው ስምና ፊርማ

ምስክሮች

<u>ስም</u>	<u>አድራሻ</u>	<u>ፊርማ</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

የባንኩ የሕግ ባለሙያ የውሉን ሕጋዊ ፎርማሊቲ የተሟላ መሆኑን አረጋግጧል (ለኛ)፡፡

የባንኩ የሕግ ባለሙያ

Annexes: 2

የኢትዲያን ግድባንክ

□መ□□ □-ል

ተ.ቁ.	የባለንብረቱ ስም	የባለቤትነት መለያ ክርታ ቁጥር	የቦታው አገልግሎት እና	የንብረቱ መግለጫ			የዋጋው ግምት	
				ክልል	ወረዳ	ከተማ	ብር	ሣን
1	ጀማል ናስር	B/I/L/0058/2010	በ1.6 ሄክታር ላይ ላይ ያረፈ የቡና ማጠቢያ/ማበጠሪያ/እንዲሁም ሌሎች	አሮሚያ	ጎማ	ጎንጂ ኢ.ልቡ	4,910,774	54

አንቀጽ 2

በዋስትና የተሰጠው የብድር መጠን

2.1 ይህ የመያዣ ወል በባንኩ እና በዋስትና ሰጪ መካከል ህዳር 28 ቀን

2015 ዓ.ም በተፈረመው የሙራ ባህፋይ ናንስ የቡና የግዢ ሽያጭ ብር 4,500,000

(አራት ሚሊዮን አምስት መቶ ሺህ ብር ብቻ) እና በዚህ ገንዘብ ላይ በየአመቱ በ flat rate 7%

የሚታሰብ የትርፍ መጠን ማለት ምብር

315,000 (ሦስት መቶ አስራ አምስት ሺህ ብር) ብድር ሙራ ብር 4,815,000

(አራት ሚሊዮን ስምንት መቶ አስራ አምስት ሺህ ብር ብቻ) የናገንዘብ

ትርፍ እና ሌሎች ወጪ ንብረቱ መያዣ እንዲሆን ተስማምቷል።

2.2.

ከፍሲል በቁጥር

2.1.

የተጠቀሰው የትርፍ መጠን የቅጣት መጠን ባንኩ ከዋስትና ሰጪው ጋር የተለየ ስም መነት ማድረግ ሳይፈልገው በባንኩ ና በደንበኛው መካከል በተደረገው የሙራ ባህፋይ ናንስ ውል ስም ስት በተጠቀሰው መሰረት ደንበኛው ግዴታውን ሳይወጣ ቀርባንኩ በዋስትና የያዘው ንብረት መሸጥ እንዲችል ንብረት አስያገፍ/ዎች ተስማምቷል።

አንቀጽ 3

በዋስትና የተያዙ ንብረቶችን ስለ መጠበቅ

3.1 ዋስትና ሰጪዎች በዋስትና የሰጡትን ንብረቶች በጥሩ ሁኔታ በማደስ እና በመንከባከብ የመጠበቅ ዲታ አለባቸው።

3.2 ባንኩ በዋስትና የተሰጡትንንብረቶች በመጠበቅ እና በመንከባከብ ያወጣቸውን ዋስትና ሰጪዎች ይከፍሉ፡፡

:

3.3 ባንኩ የዋስትና ሰጪውን ስምምነት ሳያስፈልገው በዋስትና የተሰጡትንንብረቶች ደንነት አስተማማኝ ካልመሰለውንንብረቶቹን ለመሸጥ መብት አለው፡፡

3.4 ዋስትና ሰጪው በዋስትና የተሰጡትንንብረቶች ለማደስ ለገበቻ ድምያየባንኩን ፈቃድ ማግኘት ይኖርበታል፡፡

3.5 ዋስትና ሰጪዎች በኢትዮጵያ የመያዣው ልመሰረት ማንኛውንም ዋስትናው ቀሪ የሚሆንበትን ተግባር ከፈፀሙ ይህ የዋስትናው ልቀሪ ይሆናል፡፡

አንቀጽ 4
የዋስትና ሰጪው ግዴታ

4.1 ዋስትና ሰጪ ለብድሩ በመያዣነት ለሰጣቸውንንብረቶች የባለቤትነት ወይም የባለንብረትነት ማረጋገጫዎች ወይም ሰነዶች ወይም የንግድ ሰነዶች ባንኩ በሚጠይቅበት ጊዜ ለባንኩ የመስጠት ግዴታ አለባቸው፡፡

4.2 መያዣ ሰጪዎች በዋስትና የተሰጡትንንብረቶች ከአዳኝ እና እገዳ ወይም ከፍርድ ቤት አግድን ላይ መሆኑን ያረጋግጣሉ፡፡

4.3 በዋስትና የተሰጠውንንብረት ላይ መብት አለኝ የሚል ላሰሰተኛ ወገን ካለ ለአዳኝ ወይም ለሌላ ሰነድ ላይ ለሚገኝ ዋስትና ሰጪዎች የአንድነት እና የነጠላ ዋስትና ፈርመዋል፡፡

ባንኩ በዋስትና የተሰጡትንንብረቶች በማንኛውም ጊዜ ለመመልከት እና ለመቆጣጠር ይችላል፡፡

4.5 ባንኩ ተበዳሪው በዋስትና ለተያዙትንንብረቶች የመድን ዋስትና እንዲገዛ እና የመድን ዋስትና ክፍያዎችን የ30 ቀናት ጊዜ ሳያልፍ ለማደስ ግዴታ ገብቷል፡፡

4.6 ዋስትና ሰጪዎቹ የመድን ሽፋኑን ጊዜው ጊዜውን ጠብቀው ካላደሱ ባንኩ በእራሱ ተነሳሽነት በማደስ ወጪውን ተበዳሪዎቹ እዳ ላይ ሊደምድ ይችላል፡፡

አንቀጽ 5
በዋስትና የተሰጡትንንብረቶች ስለመሸጥ

ደንበኛው በሽያጭ ፋይናንስ

/የሙራባሓፋይናንስ

/ውል መሠረት ከላይ የተጠቀሰውን ገንዘብ ካልከፈለ ባንኩ አስቀድሞ ማስጠንቀቂያ ለንብረት አስያገፍ በመስጠት የመያዣን ብረቶችን በህግ/አዋጅ በተሰጠው ስልጣን መሰረት በመሸጥ ገንዘቡን የማስመለስ መብት አለው፡፡

አንቀጽ 6
የስምምነት ማረጋገጫ

እኛ ፈርማችን ከዚህ በታች የተመላተው ዋስትና ሰጪዎች እና ባንኩ የዚህን ውል ይዘቶች ሁኔታዎችን አንብቦ እና ተረድተን እንደው ለመፈፀም ተስማምተናል፡፡ እንደው ለሳንፈፅ ምብንቀር በውጤቶቹ ለመገደድ ግዴታ ገብተናል፡፡

ስምምነታችንን ለማረጋገጥ ከላይ በተገለፀው ቀን እና ዓመት ህረት ምስክሮች በተገኙበት ይህንን የዋስትና ውል ፈርመናል፡፡

ባንኩ ዋስትና ሰጪ
ነጻ ርጅ በል አቶ ጀማል ናስር አባራጎ

የምስክሮች ስም አድራሻ ፈርማ

- 1/-----
- 2/-----
- 3/-----

እኛ ምምስክሮች ከላይ በተገለፀው ሁኔታ ተዋዋይ ወገኖች ሲዋዋሉ አይተናል ሰምተናል ስንል በፈርማችን እናረጋግጣለን፡፡

የባንኩ የሕግ ባለሙያ በዚህ ውል ውስጥ የተመላኩት ፎርማ ሊቲዎች በሙሉ የተሟሉ መሆኑን አረጋግጧል፡፡

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