
Juristic Frameworks for Risk Mitigation in Salam Contracts: An Analytical Study in the Context of the Agricultural Sector

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Abstract

This study examines the key risks associated with the execution of Salam contracts and proposes practical mitigation measures grounded in Islamic jurisprudence. Several risks may arise during implementation, including non-delivery of the Muslam Fih, delivery of goods below agreed specifications, delays in delivery, Challenges in the Sale of Muslam Fih in the Market, significant price volatility at the time of receipt (potentially causing loss to either party), prolonged locking of the buyer's capital, and the seller's inability to deliver due to natural disasters. These risks call for a detailed evaluation.

The paper adopts a qualitative research approach, drawing on both primary and secondary sources. It also reviews contemporary Islamic banking practices to identify operational risks in Salam contracts and offers juristic solutions for their effective management.

The study argues that, where advance financing is required, Salam-based financing should be promoted as a viable alternative to interest-based financing, particularly in the agricultural sector, where farmers face acute liquidity constraints. In the absence of access to formal financial services, farmers often resort to high-cost borrowing from informal lenders, which worsens their financial vulnerability.

It is expected that the effective implementation of flexible Salam models, in line with Islamic economic principles and values, can significantly contribute to agricultural development, enhance farmers' livelihoods, and promote broader economic stability.

Keywords: Salam, Risk Mitigation/Management, Agriculture Sector, Islamic Banking

1. Definition and Legitimacy of Salam

Bay' al-Salam refers to a contractual arrangement in which the purchase price is paid in advance, while the delivery of a commodity, defined by specified characteristics, is deferred to a specific future date.¹ The

permissibility of this contract is firmly established through both the Qur'an and the Sunnah.

Allah Almighty states:

"يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدِينٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ"²

“O you who believe, when you transact a debt payable at a specified time, put it in writing...”

This verse provides a general directive to document deferred financial obligations. Bay' al-Salam falls within the scope of such transactions, as the subject matter (muslam fiḥ) remains a liability upon the seller and is to be delivered at a later date. Hence, jurists derive from this verse the permissibility of Salam.

‘Abdullāh ibn ‘Abbās (may Allah be pleased with them) is reported to have said:

“I bear witness that Allah has permitted Salam,” after which he recited the aforementioned verse³

Similarly, it is reported from ‘Abdullāh ibn ‘Abbās (may Allah be pleased with them) that when the Prophet ﷺ arrived in Madinah, the people used to engage in Salam transactions involving fruits. The Prophet ﷺ said: “Whoever enters into a Salam contract must do so with a specified measure, a specified weight, and a specified delivery period”⁴

The essential element (rukṅ) of Salam is the exchange of offer and acceptance (ijāb wa qabūl). According to the Ḥanafī, Mālikī, and Ḥanbalī schools, the use of specific contractual terms such as “Salam,” “Salaf,” or “Bay'” is required to constitute a valid offer. In contrast, the AAOIFI Shari'ah Standards adopt a more flexible approach, allowing the contract to be concluded through any expression that conveys the meaning of advance payment in exchange for a deferred delivery of Mabi' (subject matter of a sale contract) defined by agreed specifications⁵. The perspective of the AAOIFI appears to be based on the understanding that the underlying intent of the jurists in employing the aforementioned terms is to emphasize that any form of expression which effectively conveys offer and acceptance between the parties in a Salam contract is deemed acceptable. The specific terms used in their textual formulations are merely illustrative examples. This interpretation is also closer to the actual spirit of the juristic discourse.

2. Conditions of Ra's al-Māl (Price/Capital)

The conditions governing the Ra's al-Māl in a Salam contract are as follows:

The genus of the Ra's al-Māl must be clearly known. Its type (category) and attributes (qualities) must also be precisely specified. If the Ra's al-Māl (price/capital) consists of items in which quantity plays a

determining role, such as those measured by weight, volume, count, or length, then its quantity must be explicitly defined. For example: 1,000 kilograms of sugar, 500 liters of canola oil, one thousand dozens of eggs, etc. The Ra's al-Māl must be paid in full at the time of the contract session . However, according to Imām Mālik, it is permissible to defer the payment of the Ra's al-Māl (price/capital) for up to three days.

The Ra's al-Māl (price/capital) must not constitute a debt. Hence, it is not permissible to designate an outstanding loan or any payable liability as the price/capital.

The price/capital must be free from any defect or forgery. Nevertheless, according to the Imam Abu Yousuf and Muhammad (Ṣāhibayn), this condition is not deemed essential. ⁶

3. Conditions of Muslam Fīh (the subject matter to be delivered in the future)

The conditions of Muslam Fīh (the subject matter to be delivered in the future) are as follows:

The genus of the Muslam Fīh must be known. Its type (category), attributes (qualities), and quantity must all be clearly specified.

The standard of measurement or weight must not be rare or unknown. For example, it is not valid to determine the quantity based on an unknown reference, such as the weight of an unspecified stone.

The Muslam Fīh must not be a rare item. For instance, it is not permissible to state: "I will deliver the wheat of this particular field."

The price/capital and the Muslam Fīh must not share any of the effective causes of ribā. For example, wheat in exchange for wheat in a Salam contract is not permissible. The Muslam Fīh must be deferred, meaning that its delivery is to take place in the future. According to the Ḥanafī school, the Muslam Fīh must remain available in the market from the time of the contract until the time of delivery. In contrast, according to the Mālikī, Shāfi'ī, and Ḥanbalī schools, it is sufficient that the Muslam Fīh be available at the time of delivery, regardless of its availability at the time of the contract or thereafter. The Salam contract must be definitive and binding, and it must not include an option, such as khiyār al-sharṭ.

If the Muslam Fīh is of a type that requires transportation, then the place of delivery must be specified. This is the position of Imām Abū Ḥanīfah . According to the Mālikī school, specifying the place of delivery is preferable. The Shāfi'ī school holds that when transportation costs are involved, the specification of the place of delivery is required. According to the Ḥanbalī school, it is not a condition in principle; however, if the contract

is concluded in an unspecified or unfamiliar location, such as a forest, desert, or valley, then determining the place of delivery becomes necessary.

According to the Ḥanafī school, Salam is permissible only in those commodities that can be precisely determined through measurement, weight, length, or count, such as grains, fruits, textiles, and metals. It is not permissible in heterogeneous countable items or in items with varying measurements (e.g., differing lengths).

According to the Mālikī school, Salam is permissible in all types of commodities, provided that their genus, attributes, and quantity are clearly specified, and that the unit or standard of measurement is determined.

According to the Shāfi'ī school, Salam is valid in measurable items: homogeneous countable items may be transacted based on measurement or weight, whereas heterogeneous countable items may only be transacted based on weight.

According to the Ḥanbalī school, Salam is also permissible in measurable items. In the case of homogeneous countable goods, it is permissible based on number; however, regarding heterogeneous items, there are two opinions: one permitting it based on number, and the other restricting it to weight only.⁷

4. Risk Mitigation and Remedies for Non-Performance in Salam Contracts

Since the present study directly examines the potential risks involved in the execution of the Salam contract and their mitigation, it is appropriate, after discussing the legitimacy, essential elements, and conditions of Salam, to proceed to an analysis of the possible risks in its execution and the measures for their management.

4.1 Risk of Non-Delivery by the Farmer

One inherent risk in a Salam contract is that the party who has received the advance payment and is obligated to deliver the agricultural produce at a future date may fail to fulfill this obligation. Such failure may arise due to natural causes, such as earthquakes, floods, other calamities, or war. At times, it may also result from dishonesty, negligence, or deliberate delay, leading to non-delivery of the agreed goods or crops. To mitigate these risks, an Islamic bank or any institution providing advance financing based on Salam should adopt the following measures:

Proper Documentation of the Contract: The Salam contract should be formally documented in writing to prevent denial, forgetfulness, or disputes. A written agreement provides a strong legal basis for claiming one's rights in a court of law, if necessary.

Obtaining Security or Collateral: The institution should secure appropriate guarantees or collateral against the advance payment to ensure protection in case of default. Both of these measures are explicitly endorsed in the Qur'ān. As Allah Almighty states:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ⁸

“O you who believe, when you transact a debt payable at a specified time, put it in writing, and let a scribe write it between you with fairness. A scribe should not refuse to write as Allah has educated him. He, therefore, should write.”

وَإِنْ كُنْتُمْ عَلَىٰ سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهْنِمْ مَقْبُوضَةً⁹

“If you are on a journey, and find no scribe, then (you may have resort to holding something as) mortgage, taken into possession.”

Similarly, the permissibility of purchasing goods on deferred payment and securing the obligation through collateral (rahn) is well established from the Hadith. It is reported from 'Ā'ishah R.A that the Prophet ﷺ purchased food grains on credit from a Jew and pledged his armor as collateral.¹⁰

Pledged collateral (rahn) may consist of both movable and immovable assets. Financial institutions, particularly banks, ensure that the asset taken as collateral is of a nature that can be readily liquidated. Accordingly, items such as houses, shops, real estate properties, commercial goods, trade documents, bonds, and prize bonds may be accepted as collateral.

Third-Party Guarantee (Kafālah): Similarly, the bank may obtain a guarantee from a third party, which is permissible under Sharī'ah. A financially capable individual may undertake to guarantee that if the principal debtor fails to fulfill the payment obligation at the agreed time, he will discharge the liability on behalf of the debtor. Such a person is referred to as a kafīl (guarantor). The permissibility of kafālah is established by the following Qur'ānic verse:

قَالُوا نَفَقِدُ صَوْاعَ الْمَلِكِ وَلِمَنْ جَاءَ بِهِ حِمْلُ بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ¹¹ -

“They said, :We are missing the measuring-bowl of the king, and whoever brings it back shall deserve a camel-load, and I stand surety for it.” Since kafālah (guarantee) is permissible in transactions involving loans and deferred payments, it is likewise permissible in Bay' Salam, as it is also a contract in which performance is deferred.

Furthermore, according to Shariah Standard No. 05 issued by AAOIFI, it is fully permissible to obtain guarantees in commutative contracts ('uqūd al-mu'āwadhāt), whether in the form of collateral (rahn) or

personal guarantee (kafālah). It is also permissible to combine both forms, collateral and guarantee, within the same transaction.¹²

If the farmer fails to deliver the produce at the agreed time and is unable to supply the specified commodity, the following remedies may be pursued:

Settlement of Claims through Collateral Realization: The Islamic bank may require the farmer to procure the agreed commodity from the market and deliver it to the bank. If the farmer is unable to do so, the bank is entitled to liquidate the pledged collateral (rahn) and recover the amount it had advanced to the farmer under the Salam contract.

If the proceeds from the liquidation of the collateral exceed the principal amount, the Islamic bank shall recover only the amount due and return the surplus to the farmer, as collateral serves solely to secure the creditor's rightful claim and does not justify appropriation of any excess beyond it.

Conversely, if the proceeds from the sale of the collateral fall short of the amount advanced by the bank, the bank may claim the remaining balance from its client (i.e., the farmer).¹³ Through the settlement of claims by means of the aforementioned mechanisms, a sound framework emerges in which there remains no room for injustice toward either party. Such measures can likewise promote the realization of fairness within the agricultural sector.

5. Termination and Refund as a Remedy

One possible remedy is that the buyer may revoke the Salam contract and recover the amount paid.¹⁴

In such a case, the Islamic bank is entitled only to recover the exact amount it had paid under the Salam contract. It has no right to claim any amount in excess of the original payment.

6. Liquidity Management through Cash Reserves

Another important risk mitigation measure is that the buyer in a Salam contract should maintain adequate cash reserves to address such contingencies. It is quite possible that an Islamic bank, after entering into a Salam contract with a farmer, may subsequently enter into another Salam contract with a third party, commonly referred to as a parallel Salam. In such a scenario, if the farmer fails to deliver the produce, the Islamic bank (or the institution acting as buyer) can utilize its cash reserves to procure the required commodity from the market and fulfill its obligation to the second buyer.¹⁵

7. Takaful as a Risk Mitigation Mechanism

The non-delivery of the Muslam Fih may result from several factors, including natural calamities, a sharp decline in crop prices rendering

production costs unrecoverable, and financial constraints faced by the farmer. These factors may hinder the farmer's ability to produce the required crop within the stipulated period. Consequently, failure in production leads to an inability to deliver the agreed goods to the Islamic bank or buyer on time, thereby reinforcing the inherent risk in Salam contracts. A case study of one acre of potato cultivation is presented below to illustrate the extent of losses suffered by farmers due to the recent decline in prices.¹⁶

Cost, Revenue, and Net Loss of One Acre Potato Crop

Item	Details	Amount (PKR)
Seed		50,000
DAP Fertilizer (2 bags)	15000×2	30,000
Urea (3 bags)	4000×3	12,000
Potash (2 bags)	4000×2	8,000
Irrigation	9 times × 3,000	27,000
Land Rent	4 months	70,000
Labor (Bag Filling)	220 × 50	11,000
Total Cost	—	208,000
Total Production	—	220 bags
Price per Bag	—	400
Total Revenue	220 × 400	88,000
Net Loss	208,000 – 88,000	120,000

An appropriate solution to this issue is to insure the crops through an Islamic mechanism known as Takaful. Under this arrangement, the farmer's cultivated crops are protected through a Shari'ah-compliant risk-sharing system. If the farmer incurs a loss due to any reason, such as the destruction of crops caused by floods or other natural disasters, or a sharp price decline, financial assistance is provided through Takaful. This compensation enables

the farmer to fulfill his outstanding obligations toward the Islamic bank. Cooperative Takaful is permissible under Islamic law. In this regard, AAOIFI has issued a Shari'ah Standard that comprehensively addresses various aspects of Islamic insurance.¹⁷

8. Risk of Delivery of Substandard Goods

Islamic banks, as well as private institutions, also face the risk that the farmer may deliver the commodities under a Salam contract but not in accordance with the agreed specifications; instead, inferior-quality goods may be supplied. In such a case, if the buyer accepts these substandard goods, it is regarded as an act of good conduct in fulfillment on his part. Alternatively, the buyer and the seller may mutually agree to accept such goods. In this context, it is also permissible to reduce the price of the Muslim Fih accordingly.¹⁸

To avoid disputes arising from the delivery of substandard goods, a clause may be incorporated into the Salam contract stipulating that if the delivered goods do not meet the agreed specifications, the Islamic bank shall have the right to reject them.

However, this raises an important question: who will determine whether the goods conform to the required standards or fall below them? To prevent potential disputes and conflicts, both parties may mutually agree to appoint an independent and competent institution to adjudicate such matters between the Islamic bank and the farmer. This institution must possess adequate expertise in the relevant field.

Another possible remedy is that if the seller fails to deliver goods that meet the agreed quality standards, the Islamic bank may require the seller to procure goods of the specified quality from the market and deliver them in accordance with the contractual terms.¹⁹

The juristic basis for the aforementioned remedies rests upon the specific conditions of the Muslim Fih, as elaborated in the earlier part of this study. In view of these conditions, the farmer has not discharged the agreed contractual obligations, resulting in a violation of the buyer's rights, which is not permissible. If the farmer is not held accountable for the discharge of these obligations, the integrity and effective functioning of the Salam financing framework may be seriously compromised.

9. Delay in Delivery of Goods in Salam Contracts

An important risk in Salam contracts is the delay in delivery, where the farmer fails to supply the agreed goods at the stipulated time. Such delays may place significant and unexpected pressure on the Islamic bank.

According to the Islamic finance scholar Muhammad Ayub, one possible solution is to incorporate a penalty clause in the Salam contract to

discourage delays. Under this arrangement, if the farmer fails to deliver the produce on time, a penalty may be imposed. However, the amount collected as a penalty mustn't be retained by the Islamic bank for its own benefit; rather, it should be donated towards charitable purposes.²⁰ The objective of the penalty is confined to enforcing discipline upon the farmer and safeguarding the rights of the Islamic bank, rather than serving as a means of profit generation.

9.1 AAOIFI Perspective: Granting Relief in Financial Hardship

According to AAOIFI, if the seller is unable to deliver the Muslim Fih due to genuine financial hardship, the Islamic bank should grant him respite and allow additional time until he can fulfill his obligation.²¹ This also indicates that where the delay is not caused by the farmer's financial hardship, but rather arises from negligence on his part, the imposition of a penalty would be justified. However, AAOIFI's approach is in line with the Qur'ānic injunction regarding debtors in financial distress:

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ²²

“If there is one in misery, then (the creditor should allow) deferment till (his) ease.”

9.2 Prohibition of Price Adjustment due to Delay

Furthermore, it is not permissible for the buyer to reduce the price of the Muslim Fih or impose such a condition based on delayed delivery. This is because such an arrangement effectively amounts to an increase in the counter-value (Muslim Fih/mabī'), which is impermissible. In Salam, since the subject matter is deferred, any increment linked to delay resembles ribā and is therefore prohibited.²³

The two aforementioned measures (granting the farmer additional time to deliver the Muslim Fih in cases of financial hardship, and refraining from any price adjustment despite delayed delivery (undoubtedly provide meaningful support to the farmer. However, it is equally important to ensure that these concessions are not misused. If undue delays are continually justified under the pretext of such relaxations, they may ultimately undermine and destabilize the Salam financing system.

10. Risk Associated with the Sale of Commodities

When the Islamic bank receives the agricultural produce, an important question arises as to how it will dispose of the goods and recover its funds. One possible method is parallel Salam. Another approach is the use of wakālah (agency) after the execution of the Salam contract. A notable method is that employed by Muslim Aid Sri Lanka, as detailed below:

10.1 Operational Model: The Muslim Aid Sri Lanka Experience

Under this model, Muslim Aid provided advance financing to farmers, enabling them to purchase necessary inputs for agricultural production. Once the crops were cultivated and harvested, the farmers delivered the produce to the owner of a rice mill. It was agreed between Muslim Aid and the mill owner that the farmers would deliver their produce, on behalf of Muslim Aid, to the mill owner, who would then process and sell it under a muḍārabah arrangement.

The mill owner processed the produce under a muḍārabah arrangement. In this structure, the primary capital consisted of the agricultural produce obtained from the farmers through Salam, while the additional processing costs were provided in the form of qarḍ ḥasan. After processing, the final product was sold in the market. From the sale proceeds, the qarḍ ḥasan was first repaid, and the remaining profit was distributed between Muslim Aid and the mill owner according to a pre-agreed ratio.

Furthermore, Muslim Aid voluntarily reinvested its share of the profit back into the farmers, thereby enhancing their economic well-being and enabling them to sustain and improve their future agricultural activities.²⁴

If such measures continue to be implemented, they will benefit both the farmer and the financing institution. As a result, the agricultural sector will develop, and overall economic improvement will also be achieved.

11. Premature Recovery of Salam Funds and the Issue of Sale before Possession

In certain cases, a buyer provides financing to a farmer or company under a Salam contract and subsequently seeks to recover its investment at the earliest opportunity, preferably with a profit, before the contract matures. This may be driven by the need to unlock tied-up liquidity or to reinvest funds elsewhere.

For this purpose, it can be suggested that the Salam receivable (debt) may be settled before maturity. One proposed method is to sell the Muslim Fīh before taking possession.

11.1 Juristic Position on Sale before Possession

The majority of jurists do not consider this practice permissible. This is because the ownership of the Muslim Fīh has not yet been fully established in favour of the buyer, and there remains uncertainty as to whether delivery will be possible at the agreed time.

If the commodity is sold before possession, a fundamental question arises: how will the seller deliver the goods to the subsequent purchaser if they have

not yet been received? Such a transaction involves elements of gharar (uncertainty), ambiguity, and constitutes a form of bay' qabl al-qabḍ (sale before possession). Moreover, it results in earning profit without assuming liability or risk (ḍamān), which is impermissible under Sharī'ah. The Prophet ﷺ has explicitly prohibited such transactions.²⁵

Imām Ibn Qudāmah states:

“As for the sale of the Muslim Fīh before its possession, we are not aware of any difference of opinion regarding its impermissibility. The Prophet ﷺ prohibited the sale of food before it is taken into possession, and also forbade profiting from that which one has not assumed liability for. This is because it is an item of sale that has not yet come under the buyer's liability (ḍamān); therefore, its sale is invalid, just as the sale of food before possession is invalid.”²⁶

11.1.1 Ibn Qudāmah's Analysis of Pre-Possession Transactions in Muslim Fīh

Imām Ibn Qudāmah has presented a detailed discussion on this issue. He also examines various related transactions involving the Muslim Fīh before possession, including shirkah (partnership), tawliyah (transfer at cost) and ḥawālah (assignment). The summary of his analysis is as follows:

Ruling on Shirkah(partnership) and Tawliyah(transfer at cost) before Possession

Imām Ibn Qudāmah states that both shirkah and tawliyah in the Muslim Fīh are not permissible. This is because both of these arrangements are, in essence, forms of sale. When the original sale itself is not permissible before possession, its derivative forms are likewise impermissible. He further explains that this is the position held by the majority of scholars.

11.1.2 The Approach of Mālikī School and Its Legal Justification

Ibn Qudāmah continues this discussion by stating that: However, a narration is reported from Imām Mālik indicating that he considered shirkah and tawliyah in the Muslim Fīh to be permissible. This view is supported by a ḥadīth in which the Prophet ﷺ prohibited the sale of food items before possession, while permitting shirkah and tawliyah in such contexts.²⁷

Qāḍī 'Abd al-Wahhāb further elaborates on this issue, stating that in transactions involving the Muslim Fīh, such as iqālah (rescission), tawliyah (transfer at cost), and shirkah (partnership), no additional benefit accrues to either party or to any one of them individually. Rather, these arrangements facilitate ease and promote fairness; therefore, they should be considered permissible.²⁸

Imām Ibn Qudāmah, while examining this narration, which has been mentioned by malki jurist, asserts that it is not established²⁹.

Even if the narration is assumed to be authentic, it would imply a general permissibility of tawliyah and shirkah, not their permissibility in the Muslam Fīh before possession.

This is because engaging in tawliyah or shirkah in the Muslam Fīh before taking possession effectively amounts to bay‘ qabl al-qabḍ (sale before possession), which is impermissible.³⁰

12. Substitution of the Muslam Fīh

Imām Ibn Qudāmah states that the substitution of the Muslam Fīh in a Salam contract is not permissible. This ruling applies regardless of whether the originally agreed Muslam Fīh is available or unavailable, and irrespective of whether the substitute is equal in value, lesser, or greater. In all cases, such substitution is not allowed. This is also the position of Imām Abū Ḥanīfah and Imām al-Shāfi‘ī.

However, Ibn Abī Mūsā narrates from Imām Aḥmad that if a person enters into a Salam contract stipulating wheat to be delivered in the future in exchange for advance payment, and at the time of delivery, wheat is not available, then it is permissible for the buyer to accept barley as a substitute. This concession, however, is understood to be based on the consideration that wheat and barley belong to the same genus. Nevertheless, the preferred and dominant position remains contrary to this view³¹.

12.1 The Mālikī School’s Position and Its Evidentiary Foundations

According to Imām Mālik (may Allah have mercy on him), if the Muslam Fīh does not consist of food items and the time of delivery has arrived, then it is permissible to substitute the Muslam Fīh. Ibn al-Mundhir reports that it is established from Ibn ‘Abbās (may Allah be pleased with him) that he said: if a person enters into a Salam contract, he should either take delivery of the exact Muslam Fīh agreed upon, or accept something of a lesser quality, but he should not derive profit twice from the same transaction.³² The rationale behind this principle is as follows: the buyer already earns a profit at the initial stage of the Salam transaction, since commodities purchased through advance payment are typically acquired at a lower price. If the buyer subsequently substitutes the Muslam Fīh and, in exchange, receives a commodity of superior quality from the seller, this would amount to earning a second profit. Such a practice is therefore prohibited.

Ibn Qudāmah’s Argument Based on Ḥadīth:

Imām Ibn Qudāmah (may Allah have mercy on him) states that the basis of their position is the statement of the Prophet ﷺ:

من أسلف في شيء فلا يصرفه إلى غيره

“Whoever enters into a Salam contract for something should not substitute it with another.”

However, if the seller delivers a better or inferior quality of the same genus, this is permissible. This is because such a transaction does not constitute a new sale; rather, it is regarded as the fulfillment of an already established liability.

If the seller provides a superior quality, it is considered an act of benevolence (iḥsān) on his part. Conversely, if the buyer agrees to accept an inferior quality, this is regarded as an act of concession and goodwill on his part.

Thus, in such cases, no new contract of sale is formed; rather, it remains the discharge of the original obligation arising from the initial Salam contract.

Evaluation of the Evidential Basis: In summary, Ibn Qudāmah’s argument rests primarily on the aforementioned ḥadīth, which, in this context, is given preference.

However, a number of scholars have classified this ḥadīth as weak (ḍa‘īf). It is also reported in Sunan Ibn Mājah with a similar meaning, although with slight variation in wording, as follows:

حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، حَدَّثَنَا شُجَاعُ بْنُ الْوَلِيدِ، حَدَّثَنَا زِيَادُ بْنُ حَيْثَمَةَ، عَنْ سَعْدِ بْنِ

عَطِيَّةَ عَنْ أَبِي سَعِيدٍ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - : "إِذَا أَسْلَفْتَ فِي شَيْءٍ، فَلَا تَصْرِفْهُ إِلَى غَيْرِهِ

The annotator of Sunan Ibn Mājah, Shu‘ayb al-Arna‘ūt, has classified this ḥadīth as weak (ḍa‘īf), stating that its chain of transmission (isnād) is weak due to the presence of a narrator, ‘Aṭīyah ibn Sa’d al-Kūfi. This narration has also been deemed weak by several prominent scholars of ḥadīth, including Abū Ḥātim, al-Bayhaqī, ‘Abd al-Ḥaqq al-Ishbīlī, and Ibn al-Qaṭṭān, as cited by Ibn al-Mulaqqin in al-Badr al-Munīr (Vol. 6, p. 563)³³.

12.2 Substitution of the Muslam Fīh After Maturity: The AAOIFI Approach

1. Permissibility of Substitution After the Due Date

AAOIFI permits the substitution of the Muslam Fīh after the due date of delivery has arrived. This substitution may occur either:

1. with another item from the same genus (jins) as the original Muslam Fīh, or with an item from a different genus altogether.

2. Condition of Ribā-Free Exchange

A fundamental condition for such substitution is that the replacement item must be eligible to serve as Muslam Fīh against the original capital (ra's al-māl) of the Salam contract. In other words, the substitution must not result in any form of ribā-based exchange.

3. Condition Regarding Price Equivalence

It is further stipulated that the value of the substituted Muslam Fīh must not exceed the value of the originally agreed Muslam Fīh. The rationale behind this condition is to prevent the buyer from obtaining a double benefit.

4. Absence of Prior Stipulation in the Contract

Another essential condition is that the substitution of the Muslam Fīh must not have been stipulated in the original contract. Rather, it should occur independently after the contract has been concluded³⁴.

5. Juristic Basis of AAOIFI's Concession

The permissibility granted by AAOIFI is based on a principle of juristic facilitation, which may be grounded upon the following considerations:

- The statement of 'Abd Allāh bin 'Abbās (may Allah be pleased with them), as mentioned earlier, which indicates the permissibility of such substitution.
- The general legal maxim that the الأصل في المعاملات الإباحة (the default ruling in transactions is permissibility).
- The absence of any authentic ḥadīth explicitly prohibiting the substitution of the Muslam Fīh.
- In cases of necessity or exigency, substitution of the Muslam Fīh is preferable to either rescinding the contract or granting a fresh extension to the seller.

13. Risk Mitigation in Salam Contracts: The Sudanese Islamic Banking Technique

In salam contracts, in addition to other inherent risks, there is also the risk of future fluctuations in commodity prices. Consequently, one of the contracting parties may face unforeseen and potential losses.

13.1 Scenario of Price Decline

If, at the time of delivery, the market price of the commodity decreases significantly, this situation becomes advantageous for the seller, i.e., the farmer, but disadvantageous for the buyer, i.e., the Islamic bank. This is because the Islamic bank has already paid a relatively higher price in advance at the time of concluding the Salam contract. For instance, if the Islamic bank has paid ten lakh rupees in advance for one hundred maunds of

wheat, and at the time of delivery, the market price of wheat has dropped considerably, the acquisition of wheat results in a financial loss for the bank.

13.2 Scenario of Price Increase

Conversely, another situation may arise. If the Islamic bank pays ten lakh rupees in advance for one hundred maunds of wheat at a time when prices are relatively stable, but by the time of delivery the market price of wheat rises significantly, the transaction becomes disadvantageous for the farmer. This is because the farmer is obligated to supply the wheat at the previously agreed lower price, instead of benefiting from the higher prevailing market rate.

13.3 Adoption of Practical Risk Mitigation Techniques

In view of these risks, the Islamic Bank of Sudan has adopted certain practical mechanisms to mitigate potential losses. These techniques are outlined below.

5. The Sudanese Islamic Banking Technique

According to this approach, in conditions of severe inflation and significant price volatility, if the difference between the prevailing market price and the price stipulated in the Salam contract exceeds one-third, the Muslim Fih is determined on the basis of value rather than quantity.

Accordingly, under the principle of the Equation of Benevolence (معادلة الإحسان), the quantity of the Muslim Fih is reduced in order to prevent an excessive burden from falling upon any one party. For this purpose, a specific formula is adopted through which the quantity of the Muslim Fih is adjusted³⁵.

2. Structure of the Formula

The equation is structured as follows:

$$\text{Adjusted Quantity} = \frac{(P + \frac{1}{3}P) \times Q}{P_m}$$

Where:

P= Salam price

Q= Agreed quantity

P_m= Market price at the time of delivery

3. Practical Illustration

For example, an Islamic bank fixes the Salam price of wheat at 1000 rupees per maund, with an agreed quantity of 100 maunds. However, at the time of delivery, the market price rises to 1800 rupees per maund.

Applying the above equation:

$$(1000 + 333) \times 100 \div 1800$$

The result is that the bank receives approximately 74 maunds of wheat instead of the full 100 maunds.

This adjustment is made in order to protect the farmer from severe financial harm, as he is exposed to significant market risk while the commodity is fetching a substantially higher price in the market at the time of delivery.

In this arrangement, the Islamic bank effectively exercises benevolence (*iḥsān*) by giving up a portion of its contractual entitlement (i.e., accepting 74 maunds instead of 100), thereby preventing disproportionate loss to the farmer. Conversely, if the situation were reversed, the farmer would bear the burden of the loss.

13.4 Juristic Analysis

From one perspective, this arrangement may be characterized as an act of benevolence (*iḥsān*). On the other hand, however, it appears to conflict with the explicit Prophetic ḥadīth which stipulates that, in a contract of Salam, both the quantity and the delivery period of the subject matter must be precisely specified.

In the present case, the need to alter the quantity seemingly constitutes a deviation from the requirements of the ḥadīth. Nevertheless, it is also a well-established principle that the purpose behind such conditions in Salam is to prevent disputes between the contracting parties. If both parties, by mutual consent, agree from the outset to such a condition, the likelihood of dispute may effectively be mitigated.

Moreover, in practical settings, although the parties initially fix the quantity of the *Muslam Fih*, unforeseen market fluctuations, particularly a significant rise in prices, often lead them to act with mutual benevolence, voluntarily giving up portions of their respective entitlements.

Taking all these considerations into account, the researcher is inclined toward the view that such a condition should not be explicitly incorporated within the Salam contract itself. Rather, a separate undertaking (*wa'd*) may be made after the conclusion of the contract, whereby the parties agree that, in the event of an unforeseen rise in prices, they will adopt this adjustment.

This approach ensures that the conditions stipulated in the ḥadīth are duly observed and that the Salam contract, as concluded under those conditions, remains intact and valid. At the same time, the undertaking retains an independent legal status, distinct from the contract itself. It is also expected, as a matter of ethical and religious commitment, that they will honor such a promise. However, this opinion is still subject to further analysis and requires more rigorous scholarly assessment.

14. Receiving the *Muslam Fih* in Installments in Salam Contracts

One effective mechanism for mitigating default risk in a Salam contract is to structure the delivery of the *Muslam Fih* in installments rather

than as a single lump-sum delivery. Under this arrangement, the seller is able to supply the goods progressively, while the buyer benefits from enhanced protection of his investment and a reduced risk of non-delivery.

AAOIFI has permitted the receipt of the Muslam Fīh on an installment basis. This allowance facilitates the practical implementation of Salam contracts in contemporary financial contexts while maintaining Sharī'ah compliance.

In light of the ḥadīth, the delivery period of the Muslam Fīh must be known and specified. Accordingly, when delivery is structured in installments, this requirement can be fulfilled by assigning specific dates to each installment. For example, the first installment may be scheduled for delivery on a specified date. The second installment may be fixed for another specified date. Similarly, subsequent installments can be determined in the same manner, ensuring clarity and certainty in the contract.

Findings and Recommendations

- During the execution of a Salam contract, several risks may arise that require timely management. One of the most significant risks is the non-delivery of the Muslam Fīh. To address this, proper and complete documentation of the Salam contract is essential. In addition, obtaining collateral (rahn) and guarantees is an effective way to protect the buyer's rights, and all these measures are supported by the Qur'ān and Sunnah. Therefore, in light of this, it is appropriate for Islamic financial institutions to make strong documentation, collateral, and guarantees a regular part of their policies.
- If the delivered Muslam Fīh does not meet the agreed quality, the buyer has the right to accept or reject it. The price may also be reduced with the mutual consent of both parties to complete the contract. Therefore, in light of this, it would be better to clearly define quality standards in the contract and agree on possible alternatives in advance.
- Disputes may arise over whether the delivered goods meet the agreed standards. Such disputes can be resolved by appointing a third party as an arbitrator. Therefore, in light of this, it is appropriate to include a clause for an independent and qualified arbitrator in every Salam contract.
- If the delay in delivery is due to the seller's financial difficulty, the seller should be given time, as guided in the Qur'ān. However, no price adjustment is allowed on this basis. Therefore, in light of this, it is appropriate for institutions to allow extra time in such cases but avoid any change in price.
- If the buyer faces difficulty in selling the Muslam Fīh after receiving it, parallel Salam can be used as an effective solution. Similarly, the model used by Muslim Aid Sri Lanka is also helpful. Therefore, in light of this, it would be better for Islamic banks to adopt parallel Salam structures and learn from practical models.

- If the seller fails to deliver the Muslam Fīh, the Salam contract may be terminated. Moreover, takāful can play an important role in supporting the seller, especially in the case of agricultural commodities. Therefore, in light of this, it would be appropriate to promote takāful schemes for agricultural Salam in order to provide financial protection to all parties.
- The subject matter of Salam cannot be sold before taking possession. It is also not permissible to enter into partnership (shirkah), cost-based transfer (tawliyah), or assignment (ḥawālah) in it before possession. However, the Mālikī school allows shirkah and tawliyah in some cases.
- According to AAOIFI Sharī'ah standards, once the contract becomes binding and the delivery date arrives, the Muslam Fīh may be substituted with mutual consent, provided that the new item is not of higher value, is Sharī'ah-compliant, and does not involve ribā. Therefore, in light of this, it is appropriate to follow AAOIFI standards as guidance in such cases.
- The Sudanese Islamic Bank has introduced a model to reduce uncertainty and possible losses, which can help protect all parties from unexpected risks. However, this model needs further juristic analysis. Therefore, in light of this, it would be better to conduct further scholarly research before applying it in practice.
- To reduce the risk of non-delivery, the Muslam Fīh may be received in installments, provided that the dates of each installment are clearly defined. Therefore, in light of this, it is appropriate to include staggered delivery arrangements in Salam contracts.

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see our article entitled: Jurisprudential Concept of Bai' Salam (Forward Salae), Its Possible Contemporary Applications and Their Role in Agricultural Development-

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29In fact, scholars have noted that only the first part of the narration is authentically reported from Imam Bukhari and Muslim, whereas the latter part is not established; rather, it is attributed to Sa‘īd ibn al-Musayyib²⁹ (see: al-Ma‘ūnah by Qāḍī ‘Abd al-Wahhāb, footnote no. 4).

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