

General Regulatory Framework in Rastin Profit and Loss Sharing Banking (Part II-Legal Groundwork)

Bijan Bidabad¹

Abstract

Purpose: This paper aims to explain the legal infrastructure of Rastin Profit and Loss Sharing (PLS) Banking. Rastin Banking is a full Islamic Banking System with all necessary parts for banking operations that can be installed in conventional and Islamic banks both. In this part of the paper, we are going to explain the milestones of Rastin PLS banking regulative groundwork.

Design: Rastin Banking complies with the nature of financial intermediary activity (partnership of depositor in the yields of the fund receiver via the bank). In order to fulfil this goal, particular formation, organisational structure, instruments and workflow are defined in a legal framework.

Findings: To handle Rastin Banking, the particular theoretical and operational regulatory frameworks and legal context of the contracts should be defined to fulfil the participation operations. In this paper, we will have a look at the necessary legal environment to setup Rastin Banking.

Research limitations: This system is novel, and requires more elaborations for further practical development and adjustment.

Practical implications: In this system, the investment return of the participation is distributed to the parties of financial partnership (depositor, entrepreneur and bank), and it is done by eliminating fixed interest rate, and it is based on the real economy profit (return) of the activity.

Social implications: Rastin Banking can lead to important positive effects on growth and economic welfare through money and capital markets. Interest rate as an essential factor in conventional banking is not usable in Islamic banking and other similar institutions that work based on partnership, such as mutual funds and saving and loan associations.

Originality/value: Approach of this system is entirely different from the conventional banking. In addition to removing usury in banking activities, Rastin Banking uses the best practical ethic finance to creating safe and public confidence environment for banking operations.

Article Type: Technical paper

Keywords: Rastin Banking, Profit and Loss Sharing (PLS), Partnership, Rastin Profit and Loss Sharing (PLS) Banking, Islamic Banking, *Musharakah*.

*** Continuation from Part I ***

Introduction

In addition to removing of *Riba* in banking operations, and through the considering Islamic banking principles, and providing safe and public confidence environment, Rastin Banking can lead to important positive effects on economic growth and welfare through money and capital markets. Rastin Banking is a new Islamic banking system, which has studied the theoretical and operational banking difficulties and offers legal and operational solutions on the basis of the latest scientific and operational achievements.

¹ (B.A., M.Sc., Ph.D., Post-Doc.) Professor of Economics and Chief Islamic Banking Advisor, Bank Melli Iran.
bijan@bidabad.com <http://www.bidabad.com>

Each subsystem, instrument, innovation and operational procedure of Rastin Banking has been designed to remove an especial difficulty and satisfy markets and peoples' needs. In the first part of this paper, we referred to the operational framework and related regulatory base set forth in Rastin Profit and Loss Sharing (PLS) Banking and its corresponding pillars. In this part, it is continued to extend some other regulatory preparations for this type of banking.

New legal contracts

In order to facilitate legal activities of Rastin Banking, some improvements have been carried out on auxiliary Islamic contracts to make them consistent with today business conditions. The new contracts are as followings:

- a) **Intermediation (*Muvasatah*):** It is a contract, which one of the parties provides the capital under the condition that the other party transacts with the third party by considering discretion and interest of the first party, and receives a wage. In this contract, the capital owner is named "*Mosit*", the agent is called Intermediate or "*Wasit*" and the third person is named Entrepreneur.
- b) **Swap (*Mubadalah*):** is a contract in which one person (*Mobadil*) (swapper) undertakes to give the ownership of a certain asset (*Badal*)/(swapped) to the other party (*Motabadil*)/(swappee/one who receives the swapped asset) for a defined period; and the other person also undertakes to give the ownership of the same amount (*Mobaddal*)(re-swapped) to the first person (*Mobadil*) for equal period.
- c) **Installing contract (*Mughasatah*):** is a contract, which a person provides the total or a portion of the capital for an economic activity and the other part will pay him back his share in the results of the activity by instalments. In this case, the capital provider is called "*Moghsit*" (Installer), the agent is called "*Ghasit*" (instalment payer), and the result is called *Moghsatah* (Installed). *Mughasatah* has three kinds: ordinary, rental and sharing. The share of *Moghsit* in rental *Mughasatah* includes price and value of the substance; and in sharing *Mughasatah* is the price of substance and value of return of *Mughasatah* activity.
- d) **Regular *Mughasatah*:** is a *Mughasatah* contract in which the moghsit (depositor) will provide a part or total amount of funds and by providing the remainder, ghasit (entrepreneur) will invest and pay back the borrowed amount to moghsit (depositor) in periodic instalments and finally becomes the owner of the project at the Amortization Date of the Share of Moghsit (depositor).
- e) **Rental *Mughasatah*:** is a *Mughasatah* contract in which moghsit (depositor) provides a part or total fund for project and ghasit (entrepreneur) will finance the remainder and invest the funds in the *moghsatah* (project) and pays rent to the *moghsit* (depositor). Then, the share of the depositor from the assessed (valuated) value of the constructed project is calculated according to the amount of his fund and the period of his participation and will be paid by instalment to the depositor in addition to rent payment. At the Amortisation Date of the Share of *Moghsit* (depositor), the ownership of the project will be transferred to entrepreneur. The amount of periodic rent might be different according to the signed contract.
- f) ***Musharakah Mughasatah*:** is a *Mughasatah* contract, in which depositor provides a part or total amount of resources needed for project financing and entrepreneur provides the remainder, then, the share of the depositor from the valuated (assessed) of constructed project and its yields (productivity) is calculated according to the amount of his share and the period of his participation and will be paid by instalment to depositor and finally becomes the owner of the project at the Amortization Date of the Share of *Moghsit* (depositor).
- g) **Amortisation Date of the Share of *Moghsit*:** This is the time when depositor has received all instalments (including principal, rent, or the yield of investment) from the *ghasit* (entrepreneur) and had no more share in the project that belongs to the entrepreneur thereafter. This calculating is in

connection with the duration of project after its end of construction period and the share of each party (regarding the tenure of their participations), the amount of share of depositors, the paid-in capital of entrepreneur, and the value added to the project (and dismantled value of the project at the end of its useful life – if applicable).

- h) **Planting (Mugharasah):** is a contract between the owner (s) of a land and the agent (s) who implant on the land and they share jointly (like *Muzaraah*) the results whether it is timber, fruit, leaf, flower, pick, straw, chaff, stem, nectar, bulb, root and etc.

New legal institutions

In order to fulfil the necessary legislative needs of bank sharing activities, joint investment funds and facilitating social insurance activities some new legal institutions are defined by Rastin Banking as follows:²

- a) **Fund with variable capital:** is a kind of fund in which the capital of fund varies along time through entering or exiting new shareholders and by changing their capital shares, or duration of sharing in the fund. Funds with varying capital have been defined in the laws of many countries, but in the laws of Iran, a few mentions are available about these types of fund. These funds can facilitate the operations of mutual funds, credit unions and bank sharing activities.
- b) **Pension fund:** includes the funds for obligatory social security insurance with governmental personality and optional pension (saving thrift plans) with private or public legal personality. The pension fund, whether private or public, should operate under the high supervision of Social Security Board. In addition, to observing the regulations concerning Rastin Personal Security regulations, these funds are obliged to deposit their resources in Rastin PLS banks.

Concluding the contract

In order to allow individuals to participate in profitable economic projects, the Rastin Certificates of the projects will be offered to the depositors intending to participate in the implementation of the projects, equivalent to the received deposits, according to the regulations of the bylaw. In concluding the bank contracts with the depositor, the following items must be observed.

Depending on the type of the certificate and the chosen bank product, the bank will receive the depositors' funds and according to the agency contract, will provide them with the related Rastin Certificates in the form of *Joalah* contracts. Each Rastin Certificate lot specifies the share of its owner in the respective partnership. After purchasing the Rastin Certificate by the depositor, the relation between the master (*Jael*) and the agent (*Amel*), and through the a) Intermediation (*Muvasatah*) contract, the relation between the capital owner (*Mosit*) and Intermediate (*Wasit*) will be operationalised between the depositor and the bank. This relationship is valid and dominant until the definitive end of the project.

The buyers of *Musharakah* (Participation) Certificates share the investment gain/loss, resulting from the implementation of the project (the first product), or the related projects (the second product), or the financial performance of the branch (the third product), based on the nominal price and the participation duration (Term Share). The buyers of subscribed certificates will take shares in the entrepreneur's company, implementing the project (the first product), or the related projects (the second product), based on the nominal price and the participation duration (Term Share). The transformation of ownership, from *Pazireh* (Subscribed) Certificates into shares, will be performed after the project completion and the pilot run, and before the commercial exploitation. In Rastin PLS Banking Subsystems, the buyers of the other

² Bijan Bidabad, (2014) Joint Stock Company with Variable Capital (JSCVC), International Journal of Law and Management, Vol. 56, Iss: 4, pp.302 – 310.
<http://dx.doi.org/10.1108/IJLMA-09-2012-0031>

Rastin Certificates will share the project gain/loss, by considering the Term Shares and the other principles of Rastin Partnership Accounting, and in accordance with the provided rules and regulations and by observing the specific conditions, expressed in each of the Rastin Profit and Loss Sharing Subsystems.

The amount of gain or loss will be calculated after the definitive end of the project and the final settlement with the entrepreneur, at the end or in the pre-specified periods in each stage, and according to the provisions for the account settlements. In case any profit is gained, it will be paid to the Rastin Certificate holder, after deducting the bank's commission. In excess of the rights, no more interest shall accrue to the depositor. The fee for the banking services of the bank (as the agent) and its payment procedure are in accordance with the provisions of the regulations. In the contract with the buyer of the Rastin Certificate, it is necessary to insert the impossibility of contract revocation.

In order to provide the financial resources needed to create complete and develop economic projects with the aid of the funds resulted from selling the Rastin Certificates for the related projects, the bank will provide the entrepreneur with the depositor's resources, in the form of specific profit and loss sharing contracts. In this regard, observing the following items is necessary for concluding the profit and loss sharing contracts between the bank and the entrepreneur. The outcome of participation in profit and loss can be considered as an aspect of civic participation, in which the bank, on behalf of the depositor, will provide the entrepreneur with the financial resources of the depositor for a joint venture in a particular and profitable business. In this case, the entrepreneur is not allowed to transfer the capital of the contract to others or deal with a third party aside from the provisions of the contract. The financial outcome of participation shall be determined and shared between the parties based on the ratio of capital and its participation time. The "Time Shares" and the other Rastin Partnership Accounting principles will be based on the provisions of Rastin Partnership Accounting. The participation conditions will be specified by the bank. All the consequences of violating the provisions of this bylaw or the concluded contracts will be the responsibility of the entrepreneur. The bank is obliged to have full control and supervision of the application of the resources, during the implementation of the partnership project. Obviously, the bank's supervision will not negate the technical and legal responsibilities of the entrepreneur. Through a designated representative, called trustee, the bank will carry out its supervision. The bank's PLS office must introduce the trustee to the entrepreneur in writing, and the entrepreneur is obliged to continuously provide the trustee with all the project information, in accordance with the accepted standards in this bylaw and based on the prevalent supervisory practices, separately and apart from the other operations and activities. In order to protect the interests of the depositor and continuation of the entrepreneur's commitments concerning the provisions of the contract, the bank is obliged to eliminate the right of revoking the contract by the entrepreneur in all the contracts concluded between the parties, through a separate binding contract. In all the Rastin Participation Banking contracts, insertion of stewardship for the entrepreneur is mandatory. Assignment of a part of the project's execution operation to anyone other than the entrepreneur is subject to the insertion in the project proposal and the confirmation of the assessment unit and is possible in the implementation stage under the supervision of the trustee unit.

If the implementation of the project becomes impossible due to any reason such as stoppage, bankruptcy, breakup, death, obsolesce, insolvency, etc., or inactivity of the entrepreneur, the bank, directly or by using the other agents, can proceed with the implementation and completion of the project, or by using the obtained collaterals and guarantees, can settle the project and collect the legal and contractual receivables.

In the concluded contracts, insertion of unexpected and natural disasters (force majeure), insertion of the arbitration conditions, and insertion of the revocation conditions by the bank is mandatory.

If according to the discretion of the assessment unit, it has been necessarily stipulated that the entrepreneur must pay the bank from his/her resources, equal to the amount of damage/loss, this stipulation will be valid and dominant. Accordingly, the bank will transfer the owned resources to the depositor at the time of final settlement.

In proportion to the Time Share and according to the provisions of Rastin Partnership Accounting, and by considering the circumstances and requirements of the PLS Base System and Subsystems of Rastin PLS Banking, insertion of the sharing method of profit/loss and the management operation of the partnership is mandatory.

The entrepreneur must be deprived of the right of revoking the contract, or demanding for the division of the joint property during the contract period. Insertion of the conditions for eliminating the participation and managing the final settlement is mandatory. The bank is obliged to ensure the accuracy of the address, declared by the entrepreneur, through obtaining the supporting documents. In the mortgage contracts with the entrepreneur, to guarantee the properties mortgaged to the bank, insertion of the exact specifications of the original (transferable/non-transferable) mortgage is mandatory. The bank is obliged to conclude the contract with the entrepreneur in such a way that s/he would be obliged to grant the bank the authority of withdrawal from all his/her bank accounts, for fulfilling the obligations arising from the contract.

In concluding the bank contract with the assessor, the following items must be observed. The assessor is obliged to fulfil the tasks, stipulated in the rules and regulations about the supervision of the assessment unit. Based on the concluded contract with the bank, besides controlling the minimum and common standards, necessary for the codification of the reports of the economic, technical, and financial feasibility, the assessor is obliged to review the project proposal and comment on the feasibility of the project. The duties and powers of the assessor, the wages related to the services, and the payment arrangements, will be determined through a contract with him/her and in compliance with the regulations. The assessor is obliged to plan for the provision of the resources, required for the executive stages of the project.

In concluding the bank contract with the trustee, the following items must be observed. The trustee is obliged to fulfil the tasks, stipulated in regulations about the supervision of the trustee unit. The duties and powers of the trustee, the wages related to the services, and the payment arrangements, will be determined through a contract with him/her and in compliance with the rules.

In concluding the contracts, the following conditions must be observed. Insertion of the precise information of the contracting parties: for natural persons, based on their birth certificates and national ID cards; and for legal entities, based on the articles of association, memorandum of association, establishment notice, and official gazette (including the latest changes in the fundamentals of the company, and the identification code). All of the correspondences and (in of case needed) the notices must be mailed to the address, mentioned in the contract. Insertion of the duration of the contract, in such a way that the starting and the ending dates of the contract would be fully clear. Insertion of the contract subject, so that it would be clear and specific for the contracting parties. All pages of the contract must be signed by the contracting parties. In cases, where one party is a legal person, the signature of the authorised individuals with the seal of the company is essential.

All the contracts of the bank with the entrepreneur, depositor, mortgagor, guarantor, trustee, assessor, broker, marketer, and in general all the parties involved in Rastin Profit and Loss Sharing Banking contracts, which are either the obligor or the obligee, must be set and concluded in accordance with the provided regulations.

For the projects, requiring periodic or instalment payments during the project implementation, the bank can sign the concluded contracts with the entrepreneur in notary offices and in return, the related office is obliged to issue instalment bills for each of the instalments.

Providing the cash resources needed for the project will take place at the request of the entrepreneur and after performing the necessary studies by the assessment unit. Obviously, supplying and paying the resources at the next times will be possible after the confirmation of the conducted costs by the trustee unit. Providing the cash resources needed for the project, as pre-payments, is permissible and will be

performed based on the type of the project and the activities, and at the discretion of the bank and confirmation of the trustee unit. The payment of financial resources to the entrepreneur can be phase-based or as a single payment, based on the suggestion of the assessment unit, and the discretion and confirmation of the trustee unit.

Guarantees, collaterals, and paid-in capital

To ensure the return of the principal of the capital resources of the participation along with the expected profit, providing valid and sufficient guarantees and collaterals by the entrepreneur is required. Collaterals are movable/immovable properties, mortgaged by the entrepreneur or by the third party to the bank, to ensure the entrepreneur's obligations to the bank.

The bank can receive its intended guarantees or collaterals, as a Guarantee Certificate, from the entrepreneur by the provisions of Mortgage Securitization System, (MSS). Those movable properties can be mortgaged that are not perishable and are consumable, applied, or used for a predictable period until the collection of the bank's claims. The mortgage of movable properties must be performed and registered officially and under any circumstances to protect the rights of the depositor.

Immovable properties for mortgaging have clear conditions. Any immovable property for collateral purposes must have been officially registered, and both the land and the building must be fully-owned, easy-to-sell, and unclaimed. In addition, it should become fully clear for the bank (through an inquiry from the municipality and the other competent authorities) that whether the property is located on the course of roads, public places, and road-widening or urban greening projects. For any immovable property, with an endowed land, mortgaging the building is only possible if the owner possesses the building ownership deed. Added to that, the leasing time, adjusted by the endowment custodian, must be longer than the project completion time and also, the full settlement of the bank's claims. In addition, the owner must receive the necessary permissions from the related authorities for building mortgage. Any mortgage transaction will be possible only if the property is fully-owned, easy-to-sell, and unclaimed, and notary offices will adjust the mortgage document by validating the possession of the owner.

The type of the collaterals and guarantees, taken for a good performance of the project and performing the relevant commitments, will be as follows. Green group: Mortgaging the project location (including the land, buildings, facilities, equipment, and machinery) and in the case of insufficiency, obtaining the other valid and acceptable guarantees or collaterals. Yellow group: Mortgaging the project location (including the land, buildings, facilities, equipment, and machinery) and in the case of insufficiency, obtaining the other valid and acceptable collaterals. Red group: No participation.

The value of the guarantees and collaterals must be greater than the predicted value of the project at the end of all project operations, or the sum of the highest predictable debts of the entrepreneur (that may arise during the project implementation), plus the bank's fees and commissions. The marge of collaterals and guarantees will be determined according to the bank's viewpoint and in compliance with the rules. Since the partnership of parties also includes the participation in losses, at the time of the realisation of losses, the bank is not allowed to collect all the funds paid to the entrepreneur from his/her collaterals and guarantees, without considering the losses.

Since the classification of entrepreneurs in terms of their risk level is an effective tool for a better allocation of resources and can increase the efficiency and decrease the financial risks of the project, the assessment unit is obliged to ensure the capabilities of the project entrepreneurs, and utilize the standard and reasonable measures to manage the risks of participation in investments to prevent the wastage of financial resources. In this regard, the assessment unit must classify the project entrepreneurs itself, or use the services of competent professional institutions, outside the bank, to classify the applicants. The entrepreneurs are generally classified into three main groups of green, yellow, and red, according to the characteristics of the intended project and the entrepreneur's records. By classification of the

entrepreneurs, the characteristics of the executive group of the project, regarding the risk level and the probability of failure of returning the capital resources and not completing the project, will be determined. The entrepreneurs in the green group are those with a low level of risk, and the probability of their failure in returning the capital resources (including capital resources principal and profits) and not completing the project is weak. Therefore, the bank is allowed to participate (in profit and loss) with this group of entrepreneurs. The entrepreneurs in the yellow group are those with an intermediate level of risk, and the possibility of their failure in returning the capital resources (including capital resources principal and profits) and not completing the project is intermediate. In this case, to ensure the participation, the bank can take more collateral in excess of the norm, to participate (in profit and loss) with this group of entrepreneurs. The entrepreneurs in the red group are those with a high level of risk, and the probability of their failure in returning the capital resources (including capital resources principal and profits) and not completing the project is high. Therefore, the bank is disallowed to participate (in profit and loss) with this group of entrepreneurs.

According to the contribution (paid-in capital) of the project entrepreneur, the entrepreneurs can be classified as follows: Green group: The total cash and non-cash contribution (paid-in capital) of this group must be, at least, 20% of the total investment cost of the project. Yellow group: The total cash and non-cash contribution (paid-in capital) of this group must be, at least, 30% of the total investment cost of the project in such a way that the cash contribution would not be less than 15%. Red group: No participation.

The entrepreneur's paid-in capital should be already in his/her possession and must enable him/her to participate in the project. The paid-in capital can be typically divided into two categories of cash and non-cash. For the "cash paid-in capital" the cash money in the current currency of the country, or in any other foreign currency that would be convertible into the domestic currency. Non-cash paid-in capital: includes the following categories of movable and immovable properties and technical knowledge, managerial and professional expertise towards the project implementation (after verification by the bank), and proposing the subject of participation (after confirmation by the bank and declaring the possibility of its implementation), provided that it does not exceed maximum 2% of the total value of the project.

The audit and calculation unit should evaluate the entrepreneur's non-cash paid-in capital (in the forms of movable/immovable properties) by an official expert from the Department of Justice and according to the relevant regulations at the cost of the entrepreneur. For the implementation of small projects, where the implementation time is shorter than two years, the opinion of the experts at the audit and calculation unit is also acceptable. The cited unit is obliged to verify the authenticity of any letter of credit presented by the entrepreneur (in domestic or foreign currencies), such as the import/export, at-sight/non-at-sight, and internal/external documents. In letters of credit, the buyer and the seller must not be the unit persons or unit beneficiaries.

Before accepting any mortgage, the assessment unit is obliged to ensure that the collateral is not already pledged or claimed. This can be done by referring to the competent authorities or Collateral Registration System (CRS). Any purchase of the Rastin Certificates by the entrepreneur in the Rastin PLS Banking Base System or Subsystems will not be considered as the entrepreneur's paid-in capital and will not create any obligation for the bank.

In the projects, where the entrepreneur is required to make periodic or instalment payments during the project implementation, the bank is obliged to take the necessary measures to obtain the other required guarantees, such as cheques, promissory notes, or bills of exchange, separately for periodic or instalment payments. These guarantees are in excess to the guarantees, mentioned before.

Inspection, product standards and delivery

Inspection of the raw, intermediate, or consumable products (supplied by the buyer) or the final products (produced by the entrepreneur (producer)), in terms of several issues (such as quality, quantity,

packaging, specific standards, etc.), shall be performed by an inspection companies approved by the central bank and according to the contract, at the discretion of the bank's PLS office.

The inspection costs of the raw materials and the final product shall be, respectively paid by the buyer and the entrepreneur (the producer). The reports of the inspection certificates, whether accepting or rejecting the case, shall be issued on the inspection company's letterhead and sealed and signed by the authorised signatories of the company. Selection of the inspection company shall be made with the mutual agreement of the buyer and the entrepreneur at the time of concluding the contract. The buyer and the entrepreneur are obliged to accept all the responsibilities related to the inspection reports/certificates, issued by the inspection company. After selling/transferring the Future Certificate, the buyer and the entrepreneur will not be allowed to request to change the inspection company individually. The inspection company can announce its dissuasion from the inspection operation, with the approval of the bank's PLS office and the contracting parties, as per its request and by accepting all the contractual obligations and the related costs.

In the issued inspection certificates, it is mandatory to describe the product and verify its compliance with the proforma, approved by the bank's PLS office. The inspection certificates, issued for the goods related to the buyer (the raw materials) and the entrepreneur (the final product), can be issued by two different licensed companies. If the inspection company presents reasonable explanations to the bank's PLS office, showing that it is unable to issue the related inspection report/certificate, with the joint suggestion of the entrepreneur and the buyer, the bank's PLS office will specify another inspection company according to the rules. In case no offer is presented, or no consensus is reached between the entrepreneur and the buyer within ten days from the notification date of the dismissal of the inspection company, the bank's PLS office will directly proceed to select the inspection company. If the inspection company commits a full offence or a minor offence about its assigned duties or violates the provisions of the contract, the bank's PLS office will have the authority to dismiss the inspection company without any formality directly.

The product standard means to observe the general standards, approved by the Institute of Standards and Industrial Research. At the time of concluding the contract, the buyer (for providing the raw materials) and the entrepreneur (for delivering the final product) will request the Institute of Standards and Industrial Research of Iran (ISIRI) about the related standards, under the supervision of the trustee unit, and will undertake to observe the related standard for the products. The products traded, or the raw materials supplied for production, must have the ISIRI logo. In addition, an inspection company, approved by the bank's PLS office, must verify that the product standards expressed by the ISIRI have been completely observed. The entrepreneur (producer) shall provide the bank's PLS office with the important information, including the required product and its type, value, quantity, price, and general specifications (e.g., the necessary standards). For this purpose, at the discretion of the bank's PLS office, the entrepreneur will correspond with the Institute of Standards and Industrial Research.

Observing the following points for consumable raw materials is mandatory. The category of raw materials includes all kinds of raw materials, as well as semi-manufactured, manufactured, intermediate, and packaging materials, used in the production of a specific product. The volume of raw materials must be considered proportional to the production volume, required for a production period. The time required for producing the product by the entrepreneur must not exceed the time needed for a production period. If the buyer is obliged to deliver the raw materials, the date of receipt of the raw materials by the entrepreneur will be accounted as the beginning of the project; otherwise, the date of signing the contract will be considered instead. The supplier of raw materials must be responsible for any corruption, flaw, and defect in the quality or quantity of the product, before its delivery. The responsibility of observing the standards, set by the assessment unit, are to the supplier of raw materials. In this regard, at the request of the bank's PLS office or the entrepreneur, presentation of the inspection certificate for the related product, in compliance with the respective standards and requirements, is essential. If the entrepreneur accepts the delivery of raw materials by more than one natural or legal person, besides accepting the associated responsibilities in his/her request, s/he must also inform the assessment unit about the details of delivering the raw materials in one or several stages. If the buyer is the supplier of raw materials, the place of

delivering the raw materials will be the warehouse. Therefore, a week before the delivery deadline, the entrepreneur shall introduce the carrier company or its representative for delivering the goods to the bank's PLS office and send a copy to the buyer. Any inspection of the goods, whether in the warehouse of the buyer or the entrepreneur, shall be carried out concurrent with the certain delivery of the goods, and a copy of the issued inspection certificate must be sent to the bank's PLS office. If the buyer is the responsible for supplying the raw materials, the required documents for signing the contract as the original copy of the list of raw materials, to be recorded in the records, the original copy of the inspection certificate of raw materials, the original copy of the definitive certificate of raw materials, the transport receipt issued by the carrier company, confirming the transportation of the raw materials of the contract, all the approved evidence and documentation, in relation to the after-sales warranties and substitute of the raw materials, shall be presented to the entrepreneur at the time of delivering the raw materials, in accordance with the provisions of the primary and secondary contracts between parties. The seller must declare the receipt of the relevant documents and inform the bank's PLS office, within three working (banking) days from the date of delivery. If necessary, at the discretion of the bank's PLS office, this period can be moderately extended. If needed, the necessary licenses such as the health certificate or the other permissions of the related authorities must be presented.

The buyer is obliged to inform the bank's PLS office before the delivery, about the departure date of raw materials and goods from the warehouse and after the delivery, about delivery to the entrepreneur workshop/warehouse in accordance with the contract. Three working (banking) days after the delivery of the raw materials/goods, the entrepreneur, in the case of having any objection to the received raw materials/goods, can declare his/her objection to both the bank's PLS office and the buyer, along with the supporting documents. In such a case, the bank's PLS office shall announce the entrepreneur's objection to the buyer, the inspection company of the raw materials/goods, and/or the other competent authorities. The buyer is obliged to study the objection and notify the result to the bank's PLS office according to the associated documents. The specified deadline can be moderately extended at the time of concluding the contract according to the agreement between the buyer and the entrepreneur, based on the type of goods, and at the discretion of the bank's PLS office. In case there is any defect in the raw materials delivered, the starting date of the construction period and the issuance date of the related certificate will be set from the date of removing the defects, in accordance with the agreement between parties and with the discretion and confirmation of the bank's PLS office. If after the expiration of the set out deadline, any objection is presented to the bank's PLS office by the entrepreneur, it will not be heard, and the entrepreneur will be still in charge of all the subsequent responsibilities. Obviously, the entrepreneur cannot postpone the final delivery of finished products, because of such an objection.

Specific points must be necessarily observed for produced goods. If the goods presented are subject to a mandatory standard, the entrepreneur shall provide the bank's PLS office and the buyer with a copy of the inspection certificate and the product quality certificate, issued by the Institute of Standards and Industrial Research. Regarding the goods that are not subject to a mandatory standard, presenting the quality certificate by the Institute of Standards and Industrial Research or by the inspection companies/institutes approved by the bank's PLS office is essential. In order to authenticate the buying and selling conditions of the Future Certificate in Rastin Certificate Market, verification of the respective goods is only possible if the products are defined according to the standard specifications. The goods shall not be subject to supply and demand restrictions, such as legal pricing restrictions and legal monopolies. For the goods that must observe specific rules or obtain legal licenses (such as health certificate, etc.), it is mandatory to present the approval of the competent authorities.

On the due date for the delivery of the goods and in the delivery place (i.e., the entrepreneur's warehouse), the goods must be inspected, sampled, and tested by the authorities stipulated previously. The transportation license shall be issued as soon as the related certificate is issued and received by the bank's PLS office, and when the all presented documents are controlled. The buyer shall introduce the carrier company/companies to the entrepreneur one week before the due time and present a copy of the

letter or the related changes to the bank's PLS office.

Since in this type of contract, the bank is not the owner of the goods and merely plays the role of a supervisor, the documents presented to the bank's PLS office are only for information and coordination purposes and for delivering/repositioning the goods or ending the contractual relationship. The required documents in this regard are as the original copy of the list of goods, to be recorded in the records; the original copy of the inspection certificate of goods, issued in origin; the transport receipt, issued by the carrier company, confirming the transportation of the goods of the contract; all the approved evidence and documentation, in relation to the after-sales warranties and substitute of the final product, shall be delivered to the buyer at the time of delivering the product, in accordance with the provisions of the primary and secondary *Joalah* contracts between parties. The entrepreneur must declare the receipt of the relevant documents and inform the bank's PLS office, within three working (banking) days from the date of delivery. If needed, the necessary licenses (such as the health certificate) or the other permissions from the related authorities must be presented. All necessary licenses, related to the goods of the Future Certificate, shall be delivered to the buyer by the bank's PLS office at the time of delivering the final product. Explicitly, the transferee will be the last owner of the Future Certificate for the goods of the respective certificate. The licenses and documents, taken from the entrepreneur by the bank's PLS office at the time of concluding the contract, shall be delivered to the buyer at the end of the contract. Since after the end of the transactions, the final buyer will be the last owner of the Future Certificate (pertaining to Joalah Financial Sharing (JFS) for the respective goods), in order to obtain the goods after the announcement of the ending time of the transaction of the mentioned Future Certificate in Rastin Certificate Market, s/he must visit the bank's PLS office to obtain all the necessary licenses and documents, and will be accordingly introduced to the entrepreneur's company for taking the goods. After the end of the transactions, the Future Certificate will be taken out of the transactions, and the related data will be kept in the database of the bank.

The buyer, along with the entrepreneur, has three working (banking) days to investigate the goods in the warehouse of the entrepreneur and then, proceed to deliver and transport the goods. If the buyer, before the delivery of the goods at the origin warehouse (i.e., the entrepreneur's warehouse), has any objection to the deliverable goods, s/he can present his/her objection within the pre-determined deadline to the bank's PLS office. In this case, the bank's PLS office shall inform the inspection or control of the company/authority or the other competent authorities, about the objection of the buyer. In such a case, the entrepreneur will be mainly responsible for following up the matter and will be obliged to study the objection and inform the result in accordance with the supporting documentation to the bank's PLS office. After investigating the objection and if it was reasonable, the bank's PLS office would report the matter to the entrepreneur to fix the defects. Otherwise, if it was unreasonable, all the handling and inspection costs will be on the buyer (i.e., the objector).

The entrepreneur and the buyer are both required to declare the departure date of the goods from the entrepreneur's warehouse and confirm the delivery to the buyer, and inform the bank's PLS office accordingly. After the resolution of the complaint, or the expiration of the deadline for the buyer's objection, the case will be considered closed at the bank and in the case of any further request by the entrepreneur, the bank's PLS office will proceed to release the relevant collaterals.

Bank receivables

For the preliminary assessment of the proposals, presented to the bank's assessment unit, the bank will initially receive 0.5/1,000 of the requested resources from the applicant as the commission. This commission, in the case of rejection of the proposed proposal, will be non-refundable. In the case of approval of the project for profit and loss participation, this commission will be accounted as the acceptable expenses of the project. If the preliminary approval is reached, the project proposal will enter the detailed assessment stage, and in the case of final approval of the proposal, another 0.5/1,000 (of the

financing resources approved by the bank) will be obtained from the applicant. In case the project is approved for the profit and loss participation, this commission will be accounted as the acceptable investment costs.

For the bank to cover all the expenses, related to capital management services (including monitoring, financial engineering, and audit costs) and the other services in the partnership period, a fee will be obtained from the entrepreneur in every stage of the project. This fee, which is proportional to the allocated resources and by the following items, will be considered as the acceptable expenses of the project:

1. Domestic trade: regardless of the duration of the period, the fee is always 2% of the total allocated resources.
2. Foreign trade (export and import): regardless of the duration of the period, always 2.5% of the total allocated resources.
3. The foreign trade, with more than one entry or exit of goods (i.e., transit or swap): regardless of the duration of the period, always 3% of the total allocated resources.
4. Finitude³ and infinitude⁴ projects: depending on the duration of the project, for the projects up to one, two, three, and more than three years, 3%, 4%, 4.5%, and 5% of the total allocated resources, respectively.
5. Projects for financing the working capital: regardless of the duration of the period, 3% of the total allocated resources.
6. Financing projects that periodically require the supervision of the bank: until carrying out the executive stages of the project, the same as the above tariffs for finitude and endless projects; after the implementation stage, 2% of the total allocated resources for each year.
7. Financing projects that must be evaluated: 0.5% (a half percent) is added to the above tariffs.
8. Periodic financing projects: 0.5% (a half percent) is added to the above tariffs for each year.
9. Rent Financial Sharing (RFS) projects: from the beginning to the end of the financing period, 2.5% of the total allocated resources for each year.

In case of realization of a certain profit, equivalent to three percent of the total allocated resources (including the entrepreneur's paid-in capital and the depositor's deposit) will be obtained from the profit of participation in the project, as the income of the bank (under the title of the commission for providing capital management services), according to the Term Shares of the depositors and the entrepreneur. To encourage the assessor and the trustee for a good performance of the tasks assigned, after receiving the incomes, one percent of the evaluation income and one percent of supervision income shall be paid to the assessor and the trustee, respectively.

The process for the approval of Rastin Profit and Loss Sharing projects, regarding the scope of authorities, will be the same as the processes dominant in the credit department of the bank and is in compliance with the central bank circulars. The bank, by providing online services under the title of Rastin Certificate Market, besides offering the ground for buying, selling, and transferring Rastin Certificates, will also receive a fee equal to 0.5/1,000 of the traded value of the certificates, equally half from the buyer and half from the seller.

³ **Finitude projects:** are those projects that at the end of construction period and start of utilization period are not productive in depositor's and bank's insights and are to be consumed. On the other words, finitude projects are not productive (of value added) for depositors, though in some subsystems of profit and loss sharing banking after this point (in utilization period) will receive their instalments of principle or rent of the project, but will not participate in return of the project.

⁴ **Infinitude projects:** are those projects that at the end of construction period and start of utilization period are productive and at the start of utilization period are productive from the entrepreneur's and depositor's points of view; and depositor is benefitted from the outcome of the project during the project economic life.

Resolution of Disputes and Arbitration

Resolution of all the disputes between the bank, the depositor, the entrepreneur, and the other persons (with the relationships on the basis of Rastin PLS Banking) will be made by referring the matter to arbitration, in accordance with the provisions of Rastin Banking Act and its bylaw and the Procedure Act of the General and Revolutionary Courts in civil matters.

The arbitration conditions between the parties of Rastin PLS Banking have specific characterizations. The contracting parties can determine and introduce their arbitrator(s), before or after the conflict. They can also transfer the task of choosing the arbitrator(s) to the court or a third party. In any case that an arbitrator is determined, the subject and the duration of the arbitration, as well as the characteristics of the parties and the arbitrator(s) must be specified in a way to prevent any kind of misunderstanding. If the determination of the arbitrator is done after the dispute, the subject of the dispute, sent for arbitration, shall be clearly and specifically explained to him/her. The number of arbitrators should be odd and at least three. The arbitrator, who confirms the oddness, will be unanimously chosen and the majority vote of the arbitrators will be the validity criteria in this regard. The following persons cannot be chosen as arbitrator, even by mutual consent (persons, who lack legal qualification; persons, who have been deprived of arbitration according to the final verdict of a court or as its consequence; judges and administrative staff working in courts). In cases where the parties in the transaction/contract have been obliged to introduce their arbitrator(s), but have not yet specified them, and at the time of the dispute, they do not want to/cannot introduce their specific arbitrator, or fail to agree on a third arbitrator with mutual consent, and the appointment of the arbitrator has not been assigned to a third party or a court, one party can determine his/her arbitrator, introduce him/her to the other party through an official statement, and request to determine the arbitrator or to agree on determining a third arbitrator. In this case, the other party will be obliged to introduce his/her arbitrator or agree on determining a third arbitrator, within ten days from the date of notification of the declaration. If no action is made until the expiration of this period, the beneficiary can refer the case to the court for the appointment of an arbitrator. In cases where the arbitrator of one party dies/resigns, and that party does not want to appoint the successor or if the selection of the arbitrator has been transferred to a third party and it refuses to appoint the arbitrator, or the appointment is impossible for him/her, by introducing its desired arbitrator, each party can request the other party via a statement, to express its opinion on the arbitrator within ten days from the date of notification of the declaration, or can request the other party to specify its chosen successor for the arbitrator deceased/resigned, or the arbitrator whose selection by the third party has become impossible. Ultimately, if no action is made by the deadline, in the case of need, the beneficiary can refer to the court for the appointment of an arbitrator. In any case, where the arbitrators are selected by one or both parties, the selector is obliged to obtain the acceptance of the arbitrators. The beginning date of the arbitration will be the day that arbitrators have already accepted the arbitration and the parties have informed them about the subject of the dispute, the arbitration conditions, and the specifications of the parties and arbitrators.

After determining the arbitrators, the parties will have no right to dismiss them, unless by mutual consent. The parties must submit their complete evidence and documentation to arbitrators. The arbitrators can request them to provide the necessary explanations and can also choose an expert, if, in the decision-making, the opinion of an expert is required. In the proceedings and verdicts, the arbitrators must not comply with the provisions of the Procedure Act, but in the regulations related to arbitration, they must comply with the mentioned act. The verdict of the arbitrators shall be reasonable and rational and shall not be in violation of the rightful laws. In addition, the verdict of the arbitrators will be definite and unobjectionable.

The arbitration will become invalid in the cases with the written consent of the dispute parties and with the death or insanity of one of the parties to the dispute. The arbitration verdict will become invalid and inapplicable in the cases if the verdict issued is contrary to the rightful laws; if the arbitrators have issued a verdict, irrelevant to the subject of arbitration; if the arbitrators have issued a verdict outside the scope of their authority; in this case, only the part, outside the scope of the arbitrator's authority, will be

cancelled; if the arbitration verdict has been issued after the expiration of the arbitration period; if the arbitration verdict is contrary to what has been previously registered in the real estate offices, or between the dispute parties in notary offices, and has legal validity; if the verdict has been issued by some arbitrators, not allowed to issue the verdict; if the contract for the reference to arbitration is invalid.

The selected arbitrators are obliged to express their opinion within at most 15 days from the delivery date of the request, unless in cases where it is needed to refer to an official expert of the Department of Justice or a consensual expert. In such cases, the period of expressing the opinion will be extended for maximum one month, after the date of written acceptance of the arbitration. The selected arbitrators are obliged to send their verdict in writing through the conventional administrative procedures to the bank's PLS office and receive a receipt. The obligor shall execute its provisions, within at most 15 days from the date of notification of the verdict. If the provisions of the arbitrator's verdict are not executed by the obligor, the beneficiary can ask the court to enforce it. If the arbitrator demands a wage, the payment of wages will be on both parties in proportion to their term partnership shares. The decisions of the arbitrator(s) are only valid and applicable to the dispute parties and shall not be applied to the other persons. In the cases, unanticipated in this bylaw, for which there is no agreement, the actions will be based on the Procedure Act of the General and Revolutionary Courts in civil matters.

In order to confirm the occurrence of a natural and unexpected disaster (force majeure), some main conditions must hold true. The incident must have been both unavoidable and inevitable (existence of the both characteristics are to be considered together), unpredictable, out of control and must have made the implementation of the contract impossible.

Natural and unexpected disasters can be only referred to in the specific time and place conditions. Referring to natural and unexpected disasters in terms of time, only during the contract period, or during the time agreed/determined by the obligee, the obligor can refer to natural and unexpected events and become free of the related commitments. By the expiration of the contract duration, or the time agreed/determined by the obligee, the reference will be no longer possible. Referring to natural and unexpected events in terms of place, natural and unexpected events must have occurred on the site of performing the obligation and referring to natural and unexpected events in the locations outside the aforementioned site is not acceptable, unless the circumstances in the place have extended the subject of natural and unexpected disasters to it.

Acknowledgements

The author is grateful to Mrs. Mahshid Sherafati who assisted the author for primary translation of the partial parts of this paper to English.

*** To be continued ***

References

Bidabad, Bijan, Mahmoud Allahyarifard, (2010) IT Based Usury Free Financial Innovations. Proceeding of ECDC 2010, 5th International Conference on e-Commerce in Developing Countries: with focus on e-Banking & e-Insurance. 15-16 September.

<http://www.bidabad.com/doc/non-usury-finance-it-en.pdf>

Bidabad, Bijan, Abul Hassan, Ben Ali Mohamed Sami, Mahmoud Allahyarifard, (2011) Interest-Free Bonds and Central Banking Monetary Instruments. International Journal of Economics and Finance. Vol. 3, no. 3, Aug, pp.234-241.

<http://www.ccsenet.org/journal/index.php/ijef/article/download/11665/8300>

Bidabad, Bijan, Abul Hassan, Ben Ali Mohamed Sami, Mahmoud Allahyarifard (2011) Interest-

Free Bonds Financial Innovation, A Monetary Instrument for Economy at Crisis. *Journal of Economic Cooperation and Development (JECED)*. 32, 1, 55-70.

http://www.sesric.org/jecd/jecd_articles/ART10102201-2.pdf

Bidabad, Bijan; Azarang Amirostovar, Saeed Abdollahi, Mahmoud Allahyarifard, Eskandar Pordel, Maryam Heidari, Alireza Shafiei, Mohammad Ali Pourbehrouz. (2012) Draft of Rastin Banking Bill, Bank Melli Iran.

<http://www.bidabad.com/doc/rastin-banking-bill.pdf>

Bidabad, Bijan, Azarang Amirostovar, Saeed Abdollahi, Mahmoud Allahyarifard, Eskandar Pordel, Maryam Heidari, Alireza Shafiei, Mohammad Ali Pourbehrouz. (2012) Draft of Rastin Banking Executive Regulation, Bank Melli Iran.

<http://www.bidabad.com/doc/rastin-banking-regulation.pdf>

Bidabad, Bijan (2013) Rastin Certificate Market (RCM), Complementary System of Rastin Banking.

<http://www.bidabad.com/doc/rastin-bank-rcm-en.pdf>

Bidabad, Bijan, Mahmoud Allahyarifard, (2013) Interbank Withdrawal Protocol (IWP), Complementary System of Rastin Banking.

<http://www.bidabad.com/doc/iwp-paper-en.pdf>

Bidabad, Bijan (2013) Rastin Profit and Loss Sharing (PLS) Base System. *Journal of Islamic Economics, Banking and Finance*, pp. 32-57, Vol. 9 No. 4, Oct - Dec.

http://ibtra.com/pdf/journal/v9_n4_article2.pdf

Bidabad, Bijan. (2014). *New Operational Islamic Banking System, Volume One, Theoretical Foundations*, LAP Lambert Academic Publishing, OmniScriptum GmbH & Co. KG, ISBN: 978-3-659-54463-7.

Bidabad, Bijan. (2014). *New Operational Islamic Banking System, Volume Two, Applicational Issues*, LAP Lambert Academic Publishing, OmniScriptum GmbH & Co. KG, ISBN: 978-3-659-55210-6.

Bidabad, Bijan, Instalment Financial Sharing (IFS), (2014) *Journal of Islamic Economics, Banking and Finance*.

<http://www.bidabad.com/doc/ifs-paper-en.pdf>

Bidabad, Bijan, Rent Financial Sharing (RFS), (2014) *Journal of Islamic Economics, Banking and Finance*.

<http://www.bidabad.com/doc/rfs-paper-en.pdf>

http://ibtra.com/pdf/journal/v10_n2_article2.pdf

Bijan Bidabad, (2014) Joint Stock Company with Variable Capital (JSCVC), *International Journal of Law and Management*, Vol. 56, Iss: 4, pp.302 – 310.

<http://dx.doi.org/10.1108/IJLMA-09-2012-0031>

Bidabad, Bijan, Bail Financial Sharing (BFS), (2014) *Journal of Islamic Economics, Banking and Finance*.

<http://www.bidabad.com/doc/bfs-paper-en.pdf>

Bidabad, Bijan, (2014) Rastin Crowd Funding.

<http://www.bidabad.com/doc/rcf-paper-en.pdf>

Bidabad, Bijan, Mudarebah Financial Sharing (MFS), (2014) *Journal of Islamic Economics, Banking and Finance, JIEBF*, Volume - 10, Number - 1, January - April, pp. 56-68.

<http://www.bidabad.com/doc/mfs-paper-en.pdf>

http://ibtra.com/pdf/journal/v10_n1_article3.pdf

Bijan Bidabad, Rastin Group Funding (RGF), (2014) Bank Melli Iran, Tehran.

<http://www.bidabad.com/doc/rgf-paper-en.pdf>

Bidabad, Bijan, Rastin Personal Security (RPS), (2015). Journal of Islamic Economics, Banking and Finance, JIEBF, Volume - 11, Number - 2, April - June, pp. 47-61.

http://ibtra.com/pdf/journal/v11_n2_article3.pdf

<http://www.bidabad.com/doc/rps-paper-en.pdf>

Bidabad, Bijan, Rastin Social Takaful (RST), (2015) Journal of Islamic Economics, Banking and Finance, JIEBF, Volume - 11, Number - 1, January - March, pp.: 13-23.

http://ibtra.com/pdf/journal/v11_n1_article1.pdf

<http://www.bidabad.com/doc/rst-paper-en.pdf>

Bijan Bidabad, (2015) Rastin Swap Deposit. Tehran.

<http://www.bidabad.com/doc/rsd-paper-en.pdf>

Bijan Bidabad, (2015) Rastin Swap Card. Tehran.

<http://www.bidabad.com/doc/rsc-paper-en.pdf>

Bijan Bidabad, (2015) Serial Commitments Clearance (SCC) in Rastin Banking. International Journal of Law and Management, Vol. 57, Iss: 6, pp. 600-609.

<http://dx.doi.org/10.1108/IJLMA-02-2015-0007>

Bijan Bidabad, Mahshid Sherafati, (2016) Operational Ethical Banking in Rastin Banking (Professional Ethic, Audit, Inspection, Control, Monitoring and Preservation). International Journal of Law and Management, Vol:58, Iss:4, pp. 416-443.

<http://dx.doi.org/10.1108/IJLMA-07-2015-0037>

Bijan Bidabad, Joalah Financial Sharing (JFS) (2016) Journal of Islamic Economics, Banking and Finance, Volume-12, No. 1, January-March, pp. 33-48.

<http://www.bidabad.com/doc/jfs-paper-en.pdf>

http://ibtra.com/pdf/journal/v12_n1_article2.pdf

Bijan Bidabad, Mahmoud Allahyarifard, Mahshid Sherafati, (2016) Rastin Partnership Accounting.

<http://www.bidabad.com/doc/rastin-mosharekat-accounting-en.pdf>

Bijan Bidabad, Azarang Amirostovar, Mahshid Sherafati, (2017) Financial Transparency, Corporate Governance and Information Disclosure of the Entrepreneur's Corporation in Rastin Banking. International Journal of Law and Management, Vol:59, Iss:5.

Bijan Bidabad, Saeed Abdollahi, Mahshid Sherafati, (2017) Enforcement of the Purports of Binding Banking Documents in Rastin Banking – Part I. International Journal of Law and Management, Vol:59, Iss:1.

Bijan Bidabad, Saeed Abdollahi, Mahshid Sherafati, (2017) Enforcement of the Purports of Binding Banking Documents in Rastin Banking – Part II. International Journal of Law and Management, Vol:59, Iss:2.

Bijan Bidabad, (2017) Mortgage Securitization System (MSS), A Complementary System of Rastin Banking. International Journal of Law and Management, Vol. 59 Iss: 6.

<http://www.bidabad.com/doc/mss-paper-en.pdf>

Bidabad, Bijan, (2017) Money Laundering Detection System (MLD), Complementary System of Rastin Banking, Journal of Money Laundering Control.

Bijan Bidabad, Mahshid Sherafati, (2018) Sustainable Financing and Anti-Squandering Measures in Rastin Banking. International Journal of Law and Management (IJLMA), Vol: 60, Iss: 1.