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Title of the paper
***SPECULATION OR MUDARABA AS METHOD
TO CREATE INVESTMENT IN ISLAMIC
BANKING SYSTEM: "JAIZ BANK OF NIGERIA
AS A CASE STUDY"***

By

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Introduction:

The methods and types of investments that run by Islamic Banks in particular the branches of Jaiz Bank are various in Nigeria. By this forgoing conference paper the researcher will attempt to explain the scope of Islamic Banks functions, investments, legal frame works and the juristic provisions.

Main outlines:

Chapter One: Concept of Islamic Banking, functions, methods of investment, policies and strategies.

Chapter Two: Provisions of Speculation or "Mudarabah" According to Islamic Jurisprudence.

Chapter Three: Legal Frame work of Mudaraba According to provisions of Islamic Law of Business and Transaction of Sudan, 1984.

Chapter Four: Implementation of Mudarabah or Speculation as method of investment in Jaiz Bank of Nigeria.

Chapter One

Concept of Islamic Banking, functions, methods of investment, policies and strategies.

1:0 Concept of Bank:

According to section (61) of decree No (25) of Banks and other Financial Institutions, 1991 defines bank: mean's the Central Bank of Nigeria, Banking Business means: the business of receiving deposition on current account, savings account or other similar drawn or paid in costumers position of finance or such business as the governor may, by order published in the Gazzette designates as banking business.

1:1 Functions of Islamic Banks:

The specialist in areas of Islamic economic, banking, law and Islamic Jurisprudence stating the following functions¹:

Current Deposits

The Current Accounts are opened in the names of Companies, firms and individuals by depositing cash, cheques or bills.

Saving Bank Deposits

Saving Bank accounts are opened generally in the personal names of individuals, but companies and commercial organizations will also be allowed to open these accounts.

Deposits with Authorization

This means that the depositor deposits any amount in the bank by opening an investment account in his name and authorize the bank to invest his money in any one of its projects either within the country or outside.

Deposits Without Authorization

It will also be known as Investment Account without Authorization. In this account the customer may choose any particular project for the investment of his deposited money. He may or may not fix the period of deposit.

Participation in the Establishment of Companies

¹ M.A Mamman, A.K.M. Fazlud Huqe wal R.Z: Functions of an Islamic Bank pp: 121-4

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The bank may participate in long or medium-term project whether commercial, industrial, agricultural, involving urbanization or service by sharing its capital.

Financing through Partnership

Under the partnership system, the profit and loss is used as an alternative to the loan and credit system as practiced by the commercial banks based on interest. The bank will participate with its clients in all commercial, industrial or agricultural operations or services.

Murabahah sale

Murabahah is a form of Islamic contract for selling. The clients will request the bank to purchase a certain commodity specified by them in their favour. The total cost of the commodity will be determined (in detail) including purchase price, duties, taxes and other expenses.

Qard al-Hasan (Loan in Good Faith)

In special cases the bank will allow such loans to deserving customers with the fixation of maximum time to adjust the said loans.

The Zakah Fund

Obligatory Zakah on the bank stipulated by the Islamic shariah will be paid bank's Zakah Fund. Zakah will be spent through the jurisprudential channels stated in the Holy Qur'an.

Other Banking Services

The Islamic Bank can also render the following services

- Letter of credit
- Acceptance and servicing of certificates and shares.
- Foreign Exchange transactions.
- Local and overseas guarantying.
- Renting safes for clients.
- Safe guarding personal belongings and security certificates, gold, precious stones, documents, etc.
- Investment trustee.
- Collecting claims and payment of periodical financial obligations on behalf of its clients.
- Representation of banks and similar institutions and correspondents operations.
- Accepting subscriptions in companies.

1:2 Types and methods of investment in Islamic Finance:

There are four known Sahih types of investment practiced in modern Islamic institutions as opposed to the usurious type. They are as follows²:

1. Mudarabah or Qirad, i.e. limited partnership.
2. Musharakah, i.e. partnership; Sharkah al-Amanah, i.e. free participation.
3. Murabahah sales (cost plus).
4. Sale by installments.

1:3 Policies and Strategies of Islamic Bank:

² Asidiq Addarir: Types and methods of investment in Islamic Finance p: 143.

Having known the evil consequences in the social and economic spheres associated with the interest-based system, the objectives of replacing the existing system with Islamic banking system will be as follow³:

1. To allow monetary/ loan transactions based on Islamic Shariah i.e. without any predetermined excess over the original capital.
2. To awaken Islamic spirit and promote Islamic way of life as enjoined by the Qur'an and Sunnah.
3. To ensure effective participation of all the citizens in various economic activities by creating a scope for partnership.
4. To promote and design new methods of monetary or loan transactions with the ultimate aim of gradual transfer of sole proprietorship to partnership.
5. To promote investment not only in directly productive activities bearing high profitability but also in all those social activities, which bear little economic potentials, yet possess high social benefits.
6. To prevent income concentration in few hands at a time when great majority of the people are living on the verge of death.
7. To help generate funds through mobilizing zakah sadaqah etc. for financing social security schemes for those who, because of lack of physical, mental, economic and social opportunities, cannot participate in the production process.
8. To establish a society free from exploitation where Islamic institutions will ensure love, esteem, self-respect, friendship and cooperation by eliminating anxiety, envy, jealousy, hatred, cruelty, dominance and competition.

Chapter Two

Provisions of Speculation or "Mudarabah" According to Islamic Jurisprudence.

2:1 Definition of Mudarabah

The term mudarabah been derived from darb fi al-ard, which means journeying though the land seeking the bounty of Allah .As a result of his work and travel, the mudarib becomes entitled to part of the profits of the venture. According to the terminology used by the jurists of Medina, mudarabah is also called muqaradah or qirad. Al-Kasani say: "Likewise the term muqaradah, in the terminology of the jurists of Medina, is explicit in expressing this meaning. They are used to call ijarah by the name of bay (sale)"⁴.

It is also called mu'amalah by some insofar as it comprise sale (bay) transactions. Mu'amalah is a word that includes both sale and purchase. Al-Kasani says: "Mu'amalah is a term that includes both sale and purchase, and this is exactly the purpose of this contract.

While defining a mudarabah, those jurists who focused on the first meaning defined it as wealth cannot mingle with work.

Those who wanted to distinguish mudarabah from the other types, within this broad definition, added the words: "with wealth from one side and work from the other" Al-Quduri said: "Mudarabah it is a contract for participation in profits with

³ Atul Huqe p: Objectives and Functions of Islamic Banking in the context of a very poor Development Economy p: 167.

⁴ Al- kasani ,Bada' al-sana'I, vol.8, p. 3588 and Al-Kishawy: Ashalalmdarik, Vol (2) p: 349.
Ibid, vol.8, p. 35892 and wahbat Al-zuhaili: Al-fiqh al-islami wa Adilallah, Vol (5) p: 3924.

Those who wanted to distinguish mudarabah from the other types, within this broad definition, added the words: "with wealth from one side and work from the other" Al-Quduri said: "Mudarabah it is a contract for participation in profits with wealth from one partner and work by the other"⁵. The same definition is found in al-Hidayah: "Mudarabah is a contact for partnership with wealth from one side- and he means thereby participation in profits, for which the entitlement is through wealth from one side- and work from the other side- and there is no mudarabah without it"⁶.

He says again: "The participation of a body and wealth and this is mudarabah"⁷.

The Shafi'is define it as follows: "Qirad and mudarabah has as their legal subject- matter a contract comprising agency by the owner to another by giving him wealth so that he may trade with it and share its profits"⁸.

As for the Malikis, it is stated by al-Khirashi in his comments on the Mukhtasar by Sidi Khalil as follows: "The author has defined it as: 'qirad is agency for trading in delivered cash for a part of the profits if their extent is known"⁹.

2:2 Legal Justification of mudarabah

The evidences of mudaraba legality are as follows:

1. **The Book:** The verse used by al-Sarakhsi, as decided earlier, is: "And others who journey through the earth (yadribuna fi al-ard) seeking the bounty of Allah".

قوله تعالى: ﴿إِنَّ رَبَّكَ يَعْلَمُ أَنَّكَ تَقُومُ أَدْنَىٰ مِنْ ثُلُثِي إِلِيلٍ وَنِصْفَهُ وَثُلُثُهُ وَطَائِفَةٌ مِّنَ الَّذِينَ مَعَكَ وَاللَّهُ يُقَدِّرُ الْإِيلَ وَالنَّهَارَ عِلْمَ أَن لَّنْ نَّحْصُوهُ فَتَابَ عَلَيْكُمْ فَاقْرَءُوا مَا تَيَسَّرَ مِنَ الْقُرْآنِ إِنَّ عِلْمَ أَن سَيَكُونُ مِنْكُمْ مَّرْضَىٰ وَءَاخِرُونَ يَضْرِبُونَ فِي الْأَرْضِ يَبْتَغُونَ مِن فَضْلِ اللَّهِ وَءَاخِرُونَ يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ فَاقْرَءُوا مَا تَيَسَّرَ مِنْهُ وَأَقِيمُوا الصَّلَاةَ وَءَاتُوا الزَّكَاةَ وَقَرِّضُوا اللَّهَ قَرْضًا حَسَنًا وَمَا تُقَدِّمُوا لِأَنفُسِكُمْ مِن خَيْرٍ نَّحْدُوهُ عِندَ اللَّهِ هُوَ خَيْرٌ وَأَعْظَمَ أَجْرًا وَاسْتَغْفِرُوا اللَّهَ إِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ﴾¹⁰.

2. **The Sunnah:** The jurists rely on the contract of mudarabah concluded by the Prophet (peace be upon him) with Khadijah prior to his marriage as a

⁵ See the chapter on mudarabah in al-Quduri, Mukhtasar.

⁶ Al-Marghinani, al-Hidayah, vol. 3, p. 202.

⁷ Loc. cit

⁸ Al-Ramli, Nihayat al-Muhtaj, vol 5, p. 218.

⁹ Al-Khirashi, Mukhtasar Sidi Khalil, vol. 6, p. 203.

¹⁰ Qur'an 73: 20.

2. **The Sunnah:** The jurists rely on the contract of mudarabah concluded by the Prophet (peace be upon him) with Khadijah prior to his marriage as a result of which he traveled to Syria. Reported by Imam Bukhari, Muslim and Ibn Majah¹¹.

3. **Consensus (Ijma):** some of the hanafi jurists have reported the the ijma of the companions about mudarabah, although these are cases of ijma' sukuti¹².

4. **Analogy (Qiyas):** Al- kasani say: "As far as analogy is concerned, it is not permissible, because it is hiring for unknown wage, in fact for non-existence wages. The work too is unknown we have, however, given up this analogy in favour of the evidences in the book, the sunnah add ijma¹³. This maens they had recourse to istihsan. As for the shafi'is, they permit through analogy on the contract of musaqah for which there is a tradition¹⁴.

5. **Economic necessity:** Al-sarakhsi says: "(It permitted), because the people have the a need for this contract. The owner of wealth may not have the opportunity for a profitable investment, while the person who has such an opportunity may not have wealth, and profit is acquired through both, that is, wealth and the ability to transact. In permitting this contract, the goals of both are achieved¹⁵.

The rukn (element) of the contract of mudarabah

2:3 The Rukn (element) of the contract of Mudaraba:

Its single element (rukun) according to the hanafis, is offer and acceptance. As for the majority schools, the contract has several elements. This difference goes back to their different view on theory of contract. Thus, according to the Shafi'is, "the contract has six elements: the two parties to the contract, work, profit, wealth and the from (offer and acceptance)¹⁶.

2:4 The mudarib as amin:

The mudarib becomes a trustee(a min) for the capital entrusted him by way of mudarabah. This means that he should have taken possession of the capital with the permission of the owner and not as compensation in some kind of exchange (bay') nor as a security arrangement like mortgagage. Thus, if this capital is destroyed in his possession without there being any negligence on his part, there is no liability for him¹⁷.

2:5 The mudarib as wakil:

The mudarib is the agent of the rabb al-mal in whatever transactions he undertakes in the wealth of the mudarabah. Consequently, the huquq (performance of the contract) revert to him as he is the person who is undertaking the transactions,

¹¹ Al-Shawkani states that in the isnaad of this tradition there are two unknown persons. Al-Shawkahni, Nayl al-Awtar, vol. 5, p. 301.

¹² See the margin of Al-Nihayat, Fathu Alqdeer, Vol (7) p: 59.

¹³ Al-Kasani Badai Alsaniy, Vol (8) P: 3589.

¹⁴ Al-Ramli: Nihyat Al-muhtaj, Vol (5) p: 218.

¹⁵ Al-Sarakhsi: Mulsut, vol (22) p: 19 and Al-maidani: Ablubab, Vol (2) p: 60

¹⁶ See Al-maidani: Al-lubab, Vol (2) p: 60 and Al-zarkashy: Al-debaj Fi Tawdih al-mihaj, Vol (2), p: 587-9.

¹⁷ Ibn "Abidin, Hashiyah, vol. 5, p. 647 and Al-Kishawy: Ashalal-madarik, Vol (2) p: 350 and Syyid sabiq: Fiqh Al-Sunnah, Vol (4) p: 115 and wahbat: (Ibid) Vol (5) p: 3944.

and he is the person toward whom the mutalabah will be directed by the sellers for the payment and the buyers for the delivery of goods. He is the person who will be able to return the goods bought on the basis of defects. He will be the defendant or the plaintiff in all suits pertaining to the business of the partnership.

The hukm of the contract will revert to the rabb al-mal. This is the case when there is no profit in the mudarabah, however, when there is a profit and the mudarib makes a purchase after this, the hukm will revert to him as well in proportion to his share in the profits¹⁸.

2:6 The mudarib is a partner when profit emerges:

The mudarib becomes a partner of the rabb al-mal when profit emerges, because mudarabah is a partnership in profit, and an agent is not entitled to profit on the basis of his work after the emergence of profit, but he becomes a partner here due to the contract that is, the contract, of partnership. The wealth of the mudarabah, then, becomes a joint ownership between the mudarib and the rabb al-mal, and the share of the mudarib is now on the basis of his undivided share in the co-ownership¹⁹.

2:7 The vitiated mudarabah becomes a vitiated ijarah

The term vitiated ijarah is being used here as the wages in this arrangement are ambiguous, and the mudarib is entitled to reasonable wages for his work, while the profit is entirely for the rabb al-mal. The consideration of a vitiated mudarabah as a vitiated ijarah is agreed upon between the Shafi'if and Hanbalis, even when there is no profit.²⁰ As for the Malikis, some of them maintain that the mudarib is entitled to reasonable profit, while others have said that he is entitled to reasonable wages. The details are to found in Bidayat al-Mujtahid²¹.

2:8 The mudarib becomes a usurper if he violates the conditions of the contract:

If the mudarib violates the conditions stipulated for his work by the rabb al-mal, the mudarabah is annulled and the mudarib becomes liable for compensating whatever he was delivered by way of capital. In this case, if there was some profit, it belongs to the mudarib²².

2:9 The mudarib is annulled if a stipulation negating sharing of profits is made:

If the entire profit is stipulated for the mudarib, the mudarabah is annulled, and the capital in the hands of the mudarib is considered a qard²³.

2:10 Types of mudarabah:

Mudarabah is divided into several types. Some of these classifications have been adopted by modern scholars, while others are to be found in the traditional texts. For example, the first classification into simple and complex has been adopted

¹⁸ Al-kasani: Badi Alsanai, Vol (8) p: 360.

¹⁹ Ibn Abidun, Hasiyah, vol. 5, p. 650.

²⁰ Ibn Qudamah, al-mughni, vol. 5, p. 188 and Al-zarkashy: Al-debaj Fi Tawdih al-mihaj, Vol (2), p: 588 and wahbat: (Ibid) Vol (5) p: 3959.

²¹ Ibn Rushd, Bidayat al-Mujtahid, vol. 2, p. 242 and Al-ja'ali: Siraj Al-salik, Vol (2) p: 185 and wahbat Al-zuhaili: Al-fiqh al-islami wa Adilallah, Vol (5) p: 3941.

²² Nyazeen Imran (2006): Islamic Law of Business Organization pp: 243- 274

²³ Nyazeen (Ibid) p: 256

by 'Ali al-Khafif. Unfortunately it is a useless classification. The classifications are as follows:

1. **Simple and complex:** The simple mudarabah is mudarabah by itself, while the complex mudarabah arises in combination with 'inan.

a. Simple mudarabah may have two parties to the contract, an investor and a worker, or it may have more than one party on either side, that is, a number of investors and a number of workers, and the arrangements may vary.

b. Complex mudarabah in combination with the 'inan partnership may take several forms.

i. The investor may be a partnership.

ii. The worker may be a partnership.

iii. To add to 'Ali al-Khafif's classification, we may say that the mudarabah itself may give rise to an 'inan based on wealth after profits have emerged and to a sharikat al-wujuh based on a simple 'inan after istidanah has been granted.

2. **Restricted and unrestricted mudarabah:** This classification is based upon of restrictions placed on the work of the mudarib. Al-Kasani says: "Mudarabah is of two types: absolute and restricted. The absolute type is in which the capital is handed over without determination of the type of work that is to be done, nor the location, nor the time, nor the quality of work, or with whom he is to trade. The restricted type is one in which some or all of these things are determined"²⁴.

3. **Permitted and makru mudarabah:** This classification can be glanced from the words of al-Sarakhsi. He says: "There is no harm if a Muslim accepts money from a Christian by way of mudarabah, because it is a type of trade and mu'amalah. It is therefore, an agency granted by the rabb al-mal for transactions in the wealth. Further, there is no harm if a Muslim undertakes sale and purchase for the Christian by virtue of the agency"²⁵.

2:11 The Conditions of Mudarabah:

The conditions of mudarabah are summarized under: parties to the contract, capital, sharing of profit and transactions or powers²⁶.

2:12 Parties to the contract

The rabb al-mal must have the legal capacity for becoming a principal in a contract of agency, while the mudarib must have the capacity for being an agent. Thus, a mudarabah concluded when the investor is suffering from temporary insanity or is a minor is not valid, however, the mudarabah of an authorized minor is valid. For the mudarib it is sufficient that he understand the terms of the contract²⁷.

2:13 The capital invested:

All such capital with which other partnership are valid is acceptable for the mudarabah. It is however, preferred that the capital be offered in absolute currencies

²⁴ Al-Kasani, Bada'i al-Sana'i, vol. 8, p. 3605-06. see also Majallah, ss 1406-1407; Ibn Rajab, Qawa'id, s123 and Al-ja'ali: Siraj Al-salik, Vol (2) p: 186 and Al-Kishawy: Ashalalmadarik, Vol (2) p: 351 and Syaid sabiq: Fiqh Al-Sunnah, Vol (4) p: 115.

²⁵ Al-Sarakhsi, al-Mabsut, vol. 22, p. 173.

²⁶ Nyazeen (Ibid) p: 258 and Syaid sabiq: Fiqh Al-Sunnah, Vol (4) p: 114-5 and wahbat: (Ibid) Vol (5) p: 3932.

²⁷ Ibn Qudamah, al-Mughni, vol. 5, p. 17.

and not in 'urud (tangible property) or debts. If the capital is to be derived from the partnership is valid²⁸.

2:14 The conditions of profit:

The profit must be expressed as a ratio or as a part of the total profit. The profit cannot be expressed as a percentage of the capital invested. Any condition that leads to uncertainty in this or does not correspond with this will render the contract unenforceable²⁹.

2:15 The authority of the mudarib or the conditions of tasarruf:

The power of the mudarib vary according to the contract of mudarabah concluded between the parties, that is, whether the mudarabah is absolute or restricted. Some of these powers are implied in each contract of an unrestricted mudarabah, while other must be specifically spelled out. It is also possible to give full power to the mudarib provided that this mentioned in the contract. Accordingly, the mudarib may exercise his powers in the following ways:-

Power implied in the contract of an unrestricted mudarabah

In an absolute mudarabah, the mudarib possesses the following powers implied in the contract³⁰.

1. He possesses the authority to buy and sell, because this is the means through which the mudarabah achieves its primary purpose of earning a profit. Trading is not possible without this authority. According to Abu Hanifah, this authority does not permit him to trade with his wife, children or his parent. His two disciples disagree and maintain that he has such authority by virtue of the contract
2. The mudarib possesses the authority to appoint agent for the trade. All that a mudarib can do himself may be delegated to another person by virtue of the contract of mudarabah as this is the commercial practice, "because mudarabah is more general than agency, and he can utilize the authority that is lesser in status (inherent in it)".³¹
3. He can hire services and may also let them out on hire.
4. The right to deposit the goods as well as bailment also belongs to the mudarib, because this too is the usual commercial practice.
5. The mudarib is authorized to travel with the wealth of mudarabah.
6. The mudarib has the right to give the goods of the mudarabah to another by way of bida'ah. In its literal meaning bida'ah is the giving of one's goods to another for trading when the person accepting them is not going to share the profits derived.
7. Assignment and endorsements. The mudarib has the right to assign claims and debts on the basis of hawalah as it is an essential part of trade³².
8. The mudarib has the right to pledge property in lieu of the debts of the mudarabah. He may also accept such pledge or mortgages for the debts owed to the mudarabah.

²⁸ Ibn Qudamah, al- mughni, vol. 5, p. 17; al- Ramli, Nihayat al-Muhtaj, vol. 5, p. 217 and Al-zarkashy: Al-debaj Fi Tawdih al-mihaj, Vol (2), p: 587.

²⁹ Ibid. p. 3601 and Al-maidani (Ibid) Vol (2) p: 61.

³⁰ See 1414 of the Majallat al-Ahkam for the details.

³¹ Al-Kasani, Bada 'i al-Sana'i, vol. 8, p. 3607. This means that mudarabah is a higher level contract as compared to agency. In fact, agency is part of it, therefore, he has the authority to employ this lower level contract that is included within it.

³² Majallat al-Ahkam al-'Adliyah, s11414.

2:16 Power that may be granted through express stipulations:

The mudarib does not have the authority to do the following, unless these acts are expressly permitted.

1. He does not have the authority to sell or purchase on credit beyond the limits imposed by the capital. In other words, he does not have wilayat al-istidanaḥ.

2. He does not have the right to make gifts and donations, unless he takes specific permission from the rabb al-mal.

3. Likewise, he cannot give a loan to another or assign claims to another where they are not offset by other claims, because each is a kind of charitable donation. He can do so, however, if instructed by the investor. Al-kasani says: "if the investor has authorized him to operate according to his considered opinion, it pertains to sale and purchase ... and donation is not a permitted act in mudarabah nor is istidanaḥ"³³

2:17 Power that do not require express permission, but may be included in a general provision:

The mudarib may be granted a broad authority to act according to his considered opinion in all matters, however, the authorities mentioned in the previous section are not covered by this. This statement by the investor allows the mudarib to undertake those acts that may not be implied by the unrestricted contract. Al-kasani says:

"The category of acts that the mudarib may undertake if he is authorized to act according to his considered opinion, even when these have not been stipulated are: mudarabah, sharikah and khalt. Thus, he has the right to employ the assets of the mudarabah for another mudarabah with someone else or to enter into a partnership with someone else by way of sharikat al-inan. He also has the right to mingle the wealth of the mudarabah with his own wealth when the rabb al-mal tells him to act on his considered opinion. He does not have the right to do any of the above things if he has not made this statement".³⁴

2:18 The Restricted Mudarabah:

The restricted mudarabah is one in which some limitations have been placed upon the acts of the mudarib. It is obvious that these restrictions will have to be made by stipulating them in the contract. In all the other details, the hukm of the restricted Mudarabah is the same as the absolute mudarabah.

2:19 Termination of the mudarabah:

Mudarabah, like any other partnership, is a terminable (ghayr lazim) contract. It is terminated by all acts that terminate wakalah (agency). Thus, it is terminated by:

1. Rescission and proscriptions pertaining to transaction.
2. The termination of the period, if it was for a limited period.
3. Extinction of the capital of mudarabah after its possession and before commencement of transactions.
4. Insanity of either party.
5. Death of the mudarib or rabb al-mal.

³³ Ibid. P. 3617.

³⁴ Loc. Cit.

6. The order of the court, if one of the parties join the dar al-harb. In this case, it would be categorized as an enemy partnership³⁵.

Chapter Three

Legal Frame work of Mudaraba According to provisions of Islamic Law of Business and Transaction of Sudan, 1984

According to provisions of Sudanise Islamic Law of Business and Transaction Act, 1984 provides the provisions of mudarabah pursuant to section (266-276) to be stated as follows:

* Section (266) Defention of mudaraba: It is the contract where contractual parties establish agreement to handle the wealth by the owner to second contractual party to run the business on behalf of him and to distribute the profit based on the agreement.

* Section (276) on conditions of mudarabah validity: It is stipulated for validity of contract of mudarabah the availability of the following conditions:-

- a. Legal capacity of the both contractual party.
- b. The capital of mudarabah should be well known.
- c. The owner of the capital should handle the capital to the second contractual party or mudarib.

* Section (268) in respect of the rights of mudarib: As soon as the collection of the capital of mudaraba by mudarib he authorizes to:-

1. Manage the business with proxy of rabalmal.
2. The mudarib will be trusted to manage the capital and he also be participant in distribution of the profit.

* Section (269) on types of mudarabah: Mudaraba could takes any types of the following methods:

1. It might be absolute or restricted to be done within specific time or places or to choose specific type of works or based on any other stated conditions.
2. Whenever the mudarabah is absolute the mudarib would be authorized to proceed the business based on the rational and the prevail costoms.
3. If the owner of the capital initiated any restricted condition the mudarib will be bond to that condition and he will afford the toritious liability to grantee any damage affected the capital or to refund any loss and he also will be entitled to collect the generated profit in this case.

* Section (270) on obligations of mudarib: The mudarib will be bond to the following obligations:

1. He should not mingle the capital of mudarabah with his personal wealth and he should not handle the capital of mudarabah to an other mudarib for proceeding mudarabah unless due to the authority of the owner of the capital or rab almal.
2. The mudarib is obligated not to donate the capital or not to borrow it to an other mudarib unless he authorizes by raba almal or the owner of the capital.

* Section (271) on distribution of the profits and affording the loss: The following rules should be practiced or implemented:

³⁵ See Alubab, Vol (2) p: 63 and Syyid sabiq: Fiqh Al-Sunnah, Vol (4) p: 116.

1. The mudarib and rabalmal should distribute the profit based on the initial agreement of mudarabah in this regard otherwise they should divide the profit equally.

2. If the mudarib mingle his personal capital with the capital of mudaraba, in this case the profit will be distributed based on the percentage of the two capitals.

3. Rabalmal will be the only who afford any loss as result of mudarabah.

4. The clearance of any damage should be paid out the profit other wise it should be paid out of the capital of mudarabah and not to obligate mudarib to grantee any damage.

* Section (272) the Termination of Mudarabah: Contract of mudarabah will be terminated in the following cases:-

1. by nullification of contract of mudarabah.

2. by dismissed of mudarib.

3. by the expiring period of mudarabah.

* Section (273) on Termination of Mudarabah by any Contractual Parties: If any of the two contracted parties willingly terminates mudarabah he would be obligated to pay expected damage to the second contractual party.

* Section (274) the death or in sanity of any one of the two contractual parties: The contract of mudarabah will be absolves or terminates if nay of rabalmal of the mudarib dies or becomes insane.

* Section (275) on the death of mudararib without specifying the amount of the capital that connecting to mudarabah: If the mudarib dies in this case the right of rabalmal will exist and remain on the wealth of mudarib and should be treated as debt the seccusor must clear it before distribution of the wealth among the hires.

Chapter Four
Implementation of Mudarabah or Speculation As method of investment in Jaiz Bank of Nigeria

4.0 Jaiz Bank of Nigeria Historical Background and Functions

4.1 Historical Background of Jaiz Bank

The institution was found in 2003, as Jaiz International Plc. On 11th November, 2011, jaiz International received a licence from the central Bank of Nigeria;³⁶ the national banking regulator, to operate as a regional bank. On 6 January 2012, the institution commenced business as jaiz bank plc. In offices and branches in Abuja, Kaduna and Kano.

4:2 Ownership:

The shares of stock of jaiz Bank plc. Are privately held although the detailed shareholding remains largely unknown, the five shareholder groups are depicted in the table below³⁷:

Rank	Name of owner
1	Islamic development
2	Foreign private investors
3	Nigerian institutional investors
4	Foreign private investors
5	Nigerian private investors

4:3 Branch Network:

As of July 2013, jaiz Bank plc. Maintains networked branches at the following location:

1. Head Office- 73 Raph shodeinde Street, central Business district, Abuja.
2. Abuja Branch Two – Nigerian Federal National Assembly, Abuja.
3. Abuja Branch Three – Wuse District Abuja.
4. Kano Branch One – 55 A Tafawa Baewa Road off Murtala mohammed Way, kano.
5. Kaduna Branch – 11A Ali Akilu Road, kaduna.
6. Gombe Branch – 8A New Market Road, Commercial Area Gombe.
7. Maiduguri Branch – 18, ShehuLaminu Way, opposite State Specialist Hospital, maiduguri.
8. Kano Branch Two – 13 Bello Road Kano.
9. katsina Branch – 109, IBB Way, KofarKaura katsina.

Jiaz Bank was created out of the ashes of the former jaiz International plc. Which was set up in 2003/2004 as a special purpose vehicle (SPV) to establish Nigeria's first full-pledged non-interest Bank.

It is an unquoted public company owned by over 3000 shareholders spread over the six geographical zones of Nigeria. .

Non-Interest Banking is a profit growing global phenomenon practiced in nearly 70 countries all over the world including, united states of America, United Kingdom, Canada United Arab Emirate etc – global banks like HSBC, Citibank,

³⁶ Jaiz Bank annual Report, 2012.

³⁷ Jaiz Bank annual Report, 2012.

Barclays Bank etc are also offering it. It is an alternative financial service offering which is open to all irrespective of race or religion.

It is based on ethical principles of fairness, transparency and objectivity. Non-interest banking offers almost all the services offered by conventional banks except that they do not give or receive interest, nor finance anything that is harmful to society like alcohol, tobacco, gambling etc. It also seeks to avoid uncertainty, deception and more.

Currently about 50% of Nigeria's total population of 155 million are craving for seven Not-interesting Banking Services.

In a nutshell, Non-interest Banking is a profit and loss sharing arrangement where the mode of financing is mostly on mark-up, leasing and partnership basis.

4:4 Jaiz Bank Licence:

Jaiz Bank plc. Obtained a regional operating licence to operate as a non-interest bank from the central bank on the 6th of January, 2012 with Branches located in Abuja, FCT, Kaduna and Kano. The regional licence allows the bank to operate geographically in a third of the country.

4:5 Initial Public Offer:

In the time, Jaiz bank was incorporated, the minimum capital required to set up a bank was 2.0 Billion (US\$14.29 Million). The promoters therefore obtained the necessary regulatory approvals and went to the capital market to raise the sum of the huge demands for interest free banking in Nigeria and the people behind it.

In March 2004, part of the money 2.0 Billion (US 14.8 Million) plus other requirements such as (VS of Directors, Management and feasibility Study etc. were submitted to the Central Bank of Nigeria to secure a banking licence.

Four months after that, there was a change in the leadership of the Central Bank of Nigeria. The new leadership embarked on a major reform of the banking sector. A major part of the reform program was the increase in the minimum paid up capital of universal bank to 2.5 Billion (US\$185).

As a result of the above development, the shareholders at the annual general meeting of the company held on 11th October 2005 approved the resolution to increase the capital from US\$15 Million to US\$ 18 Million. They also approved for the directors to go back to the capital market to raise the differences.

4.6 Types of Investment in Jaiz Bank:

Jaiz Bank Plc. Offers commercial and personal banking services. The bank provides current account, depository banking, online and mobile banking, credit card, and business and personal loan and financing service.

Jaiz Bank is an organization incorporated in 2003 with the aim of delivering non-interest banking to the Nigerian people with universal banking now accepted in Nigeria. Jaiz have pioneered one Nigeria's fastest growing non-interest banks with the aim of providing world-class secure e-banking³⁸.

CONCLUSION

Findings: By the ending of this paper I would like to suggest the following findings.

- (1) Implementation of Mudaraba is applicable by our contemporary banks.
- (2) There are various methods of investment according to Islamic jurisprudence such as Musharaka Ijarah, Salam, Istisma Murabaha and other.

RECOMMENDATION

The following points are recommended:

- (1) The government of Nigeria either the state or the federal should codify the Islamic method of investment.
- (2) Islamic economic should be included in the curriculum and syllabus of higher institution.
- (3) Bankers in Islamic banks should the principles and provisions of Islamic jurisprudence.

APPENDIX 1

To show investment in ijara and mudara³⁹

		N'000
ASSETS	Note	2012
Cash balances	11	382,479
Balances with banks and Central Bank	11	2,484,436
Due from banks financial institutions	12	7,395,492
Mudaraba receivables	13	1,101,377
Investments in Musharaka		103,280
Qard Hassan		279,061
Investments in Ijarah assets		473,018
Fixed assets	3	359,539
Leasehold improvement	4	264,898
Intangible assets	5	217,552
Other assets	14	715,750
Deferred tax	18	337,933
TOTAL ASSETS		14,114,813
LIABILITIES, EQUITY OF INVESTMENT ACCOUNT HOLDERS AND OWNERS' EQUITY		
Liabilities		
Customer's deposits	15	2,492,553
Other liabilities	16	723,859
Total liabilities		3,216,413
Equity of Investment Account holders		
Financial institutions' investment accounts		
Customers' investment accounts		796,535
Total Equity of Investment Account holders		796,535
Owners' Equity		
Share capital	20	11,747,297
Share premium	20	632,289
Retained Earnings	20	(2,299,252)
Risk regulatory reserve	20	19,567
Profit Equalization Reserve	20	1,964
Total Owners' Equity		10,101,865
LIABILITIES, EQUITY OF INVESTMENT ACCOUNT HOLDERS AND OWNERS' EQUITY		14,114,813
COMMITMENTS AND CONTINGMENT LIABILITIES		414,756

Chairman

Dr. U.A Mutallab, CON

FRC/ 2013/ICAN/000000043911

21 MARCH 2013

The attached notes 1 to 29 form part of these financial statements

MD/CEO

Hassan Usman

FRC/ 2013/ICAN/00000003984

CFO

Ahmed A. Hassan

FRC/ 2013/ICAN/00000004528

³⁹ To show implement of mudaraba.

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- * Quran 73: 20 (Surat Muzamil).