

***Al Ijarah***

**الإجارة**

***Chart***

*Dr. Ahcene Lahsasna*

*INCEIF, Kuala Lumpur, Malaysia.*

*hasan@inceif.org*



## Introduction

*Ijara* or leasing is a form of contract allowed by Islam based on the textual evidences of *al-Qur'an* and *Sunnah*.

Not everyone has the means to purchase or own certain assets which he needs so as to utilise and benefit from them.

Therefore, Islam has permitted the contract of leasing in order to facilitate public needs and to provide facilities in life.

# Concept of Ijarah

literally  
*Ijara* means  
'to give something on rent'.

Technically  
*Ijarah* has two meaning

1. the lessor is called '*mu'jir*', مؤجر
2. the lessee is called '*musta'jir*' مستأجر
3. the rent payable is called '*ujrah*'. أجرة

It means 'to employ the services of a person on wages given to him as a consideration for his hired services.

*Ijara* in this sense means 'to transfer the usufruct of a particular property to another person in exchange for a rent claimed from him.

*ijara* here is relate to the usufruct of assets and properties and not to the services of human beings.

The employer in this case is called '*musta'jir*'  
مستأجر  
while the employee is called '*ajir*'. أجير

(doctor, lawyer, teacher or any person who can render some valuable services.

## Definition

The classical jurists have given several definitions of *ijara*.

### Comment

#### The Hanafis definition

A contract pertaining to usufruct with compensation.

#### The Shafi's definition

A contract over a desirable, known, permissible, and accessible usufruct, in exchange for a known compensation.

#### The Malikis and the Hanbalis definition

The transfer of ownership of a permitted usufruct for a known period in exchange for compensation.

These definitions indicate that *ijara* is a bilateral contract where the use of a corporeal object is exchanged for a price.

1

### Contracting Parties

lessor or the owner of the asset, and a lessee or the party who benefits from the use of the asset.

2

### Offer and Acceptance

3

### Subject Matter

the consideration (rent) and the benefits (*manfa'ah* منفعة) from the use of the assets.

The contracting parties in every contract must be eligible to perform the contract. both parties must be of sound mind and judgment. They must be of legal age, sane, and free from any legal restrictions.

This is applicable if both contracting parties are in the same place. If they are far from each other or the transaction is done through different modes, e.g. by e-mail, then a reasonable time frame can be given between the offer and acceptance time.

The expressions can be done either by word, action, in writing or by signs. In modern day transactions, it can be done by phone or by e-mail or other means that serve the purpose of indicating the will of the parties involved.

### Conditions of Expression

- 1: Clear and understandable
- 2: offer and acceptance must be in the same subject matter.
- 3: The unity of time and place (*majlis al-aqd*).

The subject matter of *ijara* includes two elements namely:

the benefit

the rent

## Subject Matter

The subject matter of *ijara* includes two elements namely the benefit and the rent.

### The benefit

(the use of the asset) shall be the use of the usufruct of a specified asset.  
For example, one person says to another:  
“I hereby lease you this house”.

The benefit must be something that has value and is possible to be utilised.



### The rent

the rent it is what the lessee is committed to paying as a consideration for the benefit enjoyed by him.

Everything that is suitable to be considered as price in a sale is suitable to be considered as a rent in the *ijara* contract.

- Therefore renting of a demolished house or a house that is not fit for occupation is disallowed as it does not serve the purpose of the contract.
- the fulfilment of the benefit should be of a permissible nature in accordance with the *Shariah* requirements.
- should be identified in such a way as to remove the lack of knowledge (*jahala*) which leads to dispute.

# Concept of ijarah

## **Use of Corporeal Property (*ijara* or *manfa'at al-'ayn*)**

Corporeal property includes immovable property (land) merchandise (machinery) and animals.

## **Personal Service (*ijara* or *manfa'at al-'amal*)**

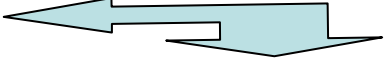
This type of *ijara* is the hiring of services or labour (hiring engineer) or a tailor to undertake a specific task.

## **Individual *ijara***

is the leasing of assets or services done by an individual.

## **collective *ijara***

occurs when a group of persons jointly hire a good or service



This type of *ijara* is the leasing of the above assets for a specific purpose with particular amount of rental for a specific duration of time.

## The ijarah can be effected as follows:

- The contract of ijara can be effected at a future date on the condition that the rent will be payable only after the leased asset is delivered to the lessee.
- In some lease agreements, the lease commences on the very day on which the price is paid by the lessor, irrespective of whether the lessee has effected payment to the supplier and taken delivery of the asset or not.
- This might lead to the assumption that the lessee's liability for the rent starts before the lessee takes delivery of the asset.
- If such an instance occurs, this is not allowed by the *Shariah*, because it amounts to charging rent on the financing given to the customer which tantamounts to *riba*.
- The correct way, according to the *Shariah*, is that the rent be charged after the lessee has taken delivery of the asset, and not from the day the price has been paid.
- If the supplier has delayed the delivery after receiving the full price, the lessee should not be liable for the rent of the period of delay.



## Revocation the contract of ijarah

ijara shall be intact as long as all the terms of agreement are honored by both parties.

if the lessee contravenes any terms of the agreement, the lessor has a right to terminate the lease contract unilaterally.

if there is no contravention on the part of the lessee, the lease cannot be terminated without mutual consent.

some have stated that in the case of termination of lease, even at the option of the lessor, the rent of the remaining lease period shall be paid by the lessee.

This condition is obviously against *Shariah* and the principles of equity and justice. The logical consequence of the termination of lease is that the asset should be taken back by the lessor.

The lessee should be asked to pay the rent as due up to the date of the termination.

If the termination has been effected due to the misuse or negligence on the part of the lessee, he can also be asked to compensate the lessor for the loss caused by such misuse or negligence.

But he cannot be compelled to pay the rent for the remaining period.

# Mechanism of operating ijarah

## Steps of operating lease

The first step would require the bank to purchase the equipment.

After purchasing the equipment, the bank looks for a lessee and leases out the equipment in exchange for compensation and the lessee pays the agreed rental on the specified period.

When the contract period comes to an end, the lessee either returns the equipment to the bank or renews the lease contract for another agreed period of time.

If the bank recovers the asset at the end of the lease period, it will look for a new lessee to let the equipment and this process will continue until the bank chooses to scrap or dispose of the assets.

## Introduction

Islamic financial institutions at present usually use two modes of *ijara* which are  
1: operating lease  
2: *ijara muntahia bi al-tamlik*.

### Operating Lease

- According to this mode of leasing, the Islamic bank maintains a number of various assets to respond to the needs of different customers.
- These assets usually have a high degree of marketability.
- The bank leases out these assets.

### Areas of Application

- The operating lease transactions are suitable for high cost expensive assets, that demand large amounts of money in order to possess and a long duration for its production. For example, aircrafts and ships.
- The bank benefits from this mode by retaining the assets in its possession and at the same time receives returns from leasing.

# Mechanism of ijarah financing

## Introduction

*ijara muntahia bittamlik* can be categorised into major and secondary types

*Ijara Muntahia Bittamlik* through gift  
(Transfer of legal title for no consideration).

*Ijara Muntahia Bittamlik* through transfer of legal title  
(Sale at the end of lease period for a token consideration).

*Ijara Muntahia Bittamlik* through transfer of legal title  
(Sale at the end of lease period for an amount specified in the lease).

*Ijara Muntahia Bittamlik* through transfer of legal title  
(Sale) prior to end of lease term for a price equivalent to remaining *Ijara* installments.

*Ijara Muntahia Bittamlik* through gradual transfer of legal title of leased asset.

## ***Ijara Muntahia Bittamlik* through Gift (Transfer of Legal Title for No Consideration)**

It is a form of lease whereby the legal title is transferred to the lessee for no consideration by entering into a gift contract in fulfilment of a prior promise upon the settlement of the last lease installment or by means of issuing a gift deed made conditional upon the settlement of all *ijara* installments.

The legal title is then automatically transferred without the need to enter into a new contract and without any extra payment other than the amounts paid by the lessee in the settlement of *ijara* installments.

In Islamic jurisprudence, jurists have two different opinions on whether or not to make the gift conditional.

- 1: The first opinion is that it is not valid to make the gift conditional and this is the opinion of Hanafis, Shafi'is, Hanbalis, Zaidis and Imamiyah.
- 2: The second opinion which is held by Al-Harithi, a Hanbali scholar, as well as the opinion of some Hanafis is that, it is permissible to make the gift conditional upon something suitable or acceptable.

it is also considered permissible for the lessor to promise to give the lessee the leased asset as a gift at the end of the period specified in the *ijara* contract after the settlement of all agreed upon lease installments for the period of the contract.

In this case, the promise is considered to be binding, according to the opinion of the Malikis and those who agree with them. A gift contract must then be effected.

**Thank you**

**شكرا جزىلا**