

# INVESTIGATING LEGAL DIMENSIONS OF PARTNERSHIP CONTRACTS IN THE BANKING SYSTEM AND ITS ADJUSTMENT TO THE IRAN'S CIVIL CODE

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## ABSTRACT

The present research was carried out with the aim of studying different dimensions of banking partnership projects and how compatible with the Iran's civil code they seem, because the recent growth in these contracts would necessitate carrying out research to provide persons who set out to enter into such contracts with useful information. Findings showed that ineffective execution of partnership contracts in the Iran's banking system has led to several problems diverting it away from the Iran's civil code. Consequently, banks fail to cooperate with applicants to ease manufacturing, trading, and service affairs. A most important point is that banks adopt a number of measures aimed at preventing potential damages and place all responsibilities on the customer, while all partnership contracts emphasize on sharing both profit and loss, not simply contribution in profits. So, such contracts closely resemble a loan practicing usury, because there is no loss in partnership, and on other hand, banks compel customers to payback the principle and its interest.

**Keywords :** Banking commandite, banking partnership agreements, conditions and laws, rights and obligations, condition of liability

## Introduction

Nowadays, implementing major economic projects requires enormous financial resources, but most of people cannot afford it. Making partnership contracts with banks is considered as an effective way to achieve financial budget. Therefore, it seems necessary to acquaint persons with different legal dimensions of such contracts because of the recent growth in using them.

The main aim of this study was to introduce rights and obligations of parties to banking partnership projects, as well as problems facing the banking system to accomplish these contracts effectively. So, it presents different dimensions of these contracts to the public, especially those who are going to do so.

There is a world of difference between introduction of partnership contracts in Iran's civil code and how they are executing. Some cases in point are Usury-free banking system, administrative instructions related to each of

partnership contracts, as well as drawing up invariant contracts, like civil partnership, commandite, sharecropping, and Mosaghat. It is worth noting that, there was no necessity to stipulate forgoing rule if banking partnership contracts were similar to the civil code.

Literature review

Mohammad Talebi and Hasan Kiaei (2012) carried out a research entitled "beating up challenges with respect to partnership contracts in the Iran's banking system". The comparative research aimed to compare civil partnership and commandite contracts between the jurisprudence and banking system, as well as to study grounds for differences.

Mohammad Reza Hajian (1390) conducted a research entitled "challenges of executing partnership contracts in the Iran's banking system". It found some solutions to these problems and introduced how such contracts are carried out in other Islamic countries.

Mohammad Mahmoudi Golpaigani (2002) in a research entitled "jurisprudential principles of partnership system in a usury-free banking" suggests how disapproved usury is by making reference to reliable sources like the holy Quran. Moreover, it emphasized on the weak points of the banking system and jurisprudential principles associated with the partnership system.

Ali Asqar Hedayati et al. (1998) did a research entitled "internal banking system". This study analyzed the generality of credit system and partnership contracts through an economic, banking, and practical view with respect to allocation of resources. The article argues how banking resources are used where pertinent approaches have been predicted in the form of Islamic contracts.

## Materials and methods

The researcher made the use of such reliable sources as rules and regulations, procedures, and specialized books and articles. However, banking regulations were the most important and others were subsidiary to that ones.

Throughout this article, we would see some contradictions. For example, banks are not allowed to draw up a commandite contract with the private sector for import.

It can be considered as either a private arbitrator for banking commandite contracts or an obligation for banks.

### 1. Rules governing banking facilities

After the victory of Islamic Republic and approval of Iran's constitution, it seemed necessary to make some changes, according to Articles 4, 43, and 49, in the economic body, like adjusting banking operations to Islamic standards and removing usury, a

The Islamic Consultative Assembly required the government to pursue through investigation. Finally, the pertinent act was ratified and sent to the Islamic Consultative Assembly after being approved by ministers.

Finally, the bill entitled "free-usury banking operations" was approved on 30 August, 1983. Then, pertinent instructions and procedures were codified and ratified by the board of ministers. Banks were also obliged to conform their

operations with the new rules since 1984. Under Art. 10 of the third section (4 January, 1984), it was stipulated that all banking facilities from then on would be done according to the new rule if there is no contradiction with the free-usury banking regulation.

Regarding facilities given to the customers before execution of this law, banks were also obliged to conform that facilities to the Islamic standards with customers' contest very soon, otherwise, they would remain in force until the termination of contract.

Moreover, under Art.9 of the foregoing procedure, the entire credit facility contracts would be interdependent to pertinent instructions.

### 2. How to apply for partnership contracts in the Iran's banking system

#### 1.2 common standards related to partnership banking contracts

All banking facilities follow a series of common standards which guarantee payback of the loan and its agreed interest for a certain period. It is worth noting that any ignorance about these standards would bring about problems in paying back financial sources.

##### 1.1.2 Reliability

As loan applicants are assumed trustworthy, banks are obliged to ascertain whether they are bound to payback instalments of the loan on time.

In this regard, banks considers such characteristics as good reputation, possibility of performance, moral laxity and cases like this.

##### 2.1.2 Technical competence

In this regard, banks investigate how long the applicant is able to continue the economic activity for which they have requested for banking facilities. So, professional qualifications, managerial power as well as technical capabilities of the applicant are evaluated. These criteria along with reliability prove capacity of the customer to receive banking facilities because technical competence suggests applicant's capability with respect to the proposed plan, rather than their efficiency in impertinent fields. Therefore, applicant's specialty is closely related to banking facilities.

2.1.3 Financial capacity and credit of an applicant  
Force majeure always threat banking resources. Banks must check financial capacity and credit of

applicants to secure banking facilities given to the customer through internal sources or even their good reputation. To put it simply, banks seek to find whether the applicant is going to only rely on banking facilities to payback loan or they possess other funds.

#### 2.1.4 Obtaining security

Security is thought of as a tool guaranteeing proper enforcement of contractual obligations and permanence of a contract, as well as decreasing risks caused by failure to payback banking facilities. Nowadays, security does not only mean to mortgage properties or negotiable instruments, but the contract itself, the plan or activity, obligatory documents, and properties for them banking facilities would pay are also considered as security. A bank would agree to pay facilities if applicants satisfy required criteria, otherwise, they won't do so.

#### 2.2 decisions pertinent to each partnership contract

According to the usury-free banking system, partnership projects as well as pertinent instructions, each forgoing contract possess a series of orders which are expressed below.

##### 2.2.1 Banking civil partnership project

It requires partners to put their cash contribution into the company's bank account, or illiquidity assets need to be delivered to the manager(s). Managers are not allowed to invest on projects or carry out transactions over company's capital. It is the civil partnership where both parties stand the chance to manage the company. However, as it will be mentioned in next chapters, banks offer company's responsibilities to applicants.

In such projects, banks only supply 80% of the starting capital because both parties have a duty to provide it. If bank facility is categorized as property with exclusive or limited usage, or it is not no longer economic to be reused, bank will give an applicant a loan.

Moreover, the currency and credit council determines the worth of cash properties. The laws are bound up to a civil partnership project because besides cash, contribution in kind is also allowed.

##### 2.2.2 Banking commandite projects (Mozarebe)

Banking commandite contract is the only partnership project where cost are divided among parties. Therefore, the Iran's central bank has

determined expenses, so the capital given to the applicant, otherwise known as deductive expenses, is used to cover purchase price, insurance and registration fee, transportation, inventory, custom duties and commercial profits, banking charges, packaging costs, right to support domestic industries, expenses received by the consumer and producer protection organization.

Legal cooperative societies take priority when banks enter into Mozarebe. But, banks shall not enter into Mozarebe with private sector. These two cases are not found in other partnership projects. It is a bank that supply cash capital, so it is required to make some arrangements, besides obtaining security, to protect its capital and compensate potential losses. Therefore, under the law, banks ask applicants reliable security.

##### 3.2.2 Sharecropping (Mozare'ah) and Mosaqat

Under regulations which are particularly pertinent to Mozare'ah and Mosaqat, banks are allowed to pay applicants in cash during the production period in order to help them progress partnership projects. Unlike civil partnership and Mozarebe, worker in agricultural contract as well as sharecropping farmer could receive an amount independent of banking facilities. Moreover, the terms of these two contracts prevent the agent (Amel) from transferring the subject of Mozare'eh or Mosaqat to the third person.

##### 3.2.1 Banking civil partnership contract

According to the civil partnership contracts, the applicant shall voluntarily take the responsibility of the company, while, under Art. 265 of the Iran's civil law, principle of non-gratuitousness must be respected. Moreover, if someone who is not debtor does something, he must be paid.

Obviously, it is highly likely to make an agreement on what is contrary to this principle. However, the applicant is forced to comply with this stipulation because of having poor financial resources. Furthermore, if the expenditure required for running the partnership project is more than the amount estimated by the bank, the applicant is obliged to pay difference personally, and both parties must reach a compromise that bank's contribution would not decrease.

However, under Art.575 of the civil law, partner's portion is closely related to their contribution, so it is illegal not to consider it. In this contract, the

applicant undertakes to fulfill execution operations so that bank's portion plus its interest are deposited into bank's account. Otherwise, the partner undertakes to voluntarily pay bank's portion as well as its interest or loss. Moreover, the applicant is required to buy the subject of partnership either there is no potential buyer for it or at the request of bank, then he must deposit bank's portion and its interest as well as all expenditures into the bank's account. Based on signed agreement, if the applicant fails to settlement all his debt in maturity date, he is required to pay a penal sum for retardation in payment plus payment of recognizance.

All of these terms prevent the banks from suffering loss. Consequently, the agreement made between the banks and applicants cannot be considered as partnership, because parties to a partnership contract partake in both benefits and losses, while based on these agreements, not only does not undertake to pay losses but also it demands the payment and its profit. So, the signed agreement is called granting loan with usury. Notwithstanding, all partnership agreements seek to find a possible profit. That is, partnership activities may bring profit to the partners or not.

### 2.3.2 Banking commandite

Like banking civil partnership, applicant shall undertake to pay extra expenses. While, under the Iran's civil law, the owner is required to supply capital for Mozarebe. It is likely the applicant fails to afford extra expenditures. Based on the signed agreement, the applicant undertakes to return the starting capital to the bank if the Mozarebe contract yields no profit. Furthermore, if the agent lose a sale, he agrees to purchase the entire of the subject of Mozarabe and deposits its value plus profit into the Bank's account. However, as mentioned earlier, by the term "partnership" is meant dividing profit and loss, so the bank is not allowed to impose all losses to the applicant.

Another objection to this agreement is that applicant's promise to pay penal sum plus its profit in the maturity date is absolute. As mentioned earlier, it is not certain to gain profit in partnership agreements. So, bank has legally no right to receive the starting capital and possible losses from the applicant who has been bound to the terms of agreement.

Moreover, as the money and credit council determines the maximum and minimum future profit for Mozarebe, bank's profit would be receive from the applicant on this basis. However, the real profit can be more or less than the prescribed one. Supervision is another problem existent in all partnership agreements, because it is highly unlikely to supervise some projects and, on other hand, it bears considerable cost.

### 3. Reviewing reasons behind the problems in the Iran's banking system

As specified prior, partnership agreements in the banking system and what has been stated in the civil law are poles apart. In this chapter, we set out to explain it. In this brief space dedicated to me, I can only present a short explanation.

#### 3.1 real risk of partnership projects

Investment projects are always face to potential risks from different aspects because of such factors as structural complexities as well as economic sanctions. Technical aspect is a case in point. Technical complexities of partnership projects demand that banks employ experts, however, in reality, they lack such competent staff which it translates into higher risk.

Moreover, profitability of partnership investments is another risk facing banks which brings about some problems. Partnership agreements are essentially at high risk and their profit is subject to considerable fluctuation. Generally, aforementioned risks threat bank sources, and for this reason, if banks want to effectively execute agreements it discourage investors who reluctant to take the risk of depositing their capital into banks. Moreover, when a bank offer some credit facility in the form of partnership agreement, it is forced to finance plans which it will seriously disrupts monetary policy of the central bank.

The amount of profit from transaction agreements given to depositors is thought of as a striking index to direct investment. However, when banks provide applicants with credit facilities in the form of partnership agreements, the profit is no longer serves as an effective criteria to direct and select a better investment because it is not constant and transaction agreements tend to have more profit.

#### 3.2 The scarcity of a proper ground for executing partnership agreements in the Iran's banking system



Iran's usurious banking system has caused the executive system as well as accounting system of banks to act in compliance with the usurious structure, so that bank staff suffer lack of training in order to properly run partnership agreements. Therefore, it is not reasonable to expect such a system to effectively execute partnership agreements, and the demand for a new banking structure is felt.

### 3.3 lack of supervision

In the banking system, adequate supervision is regarded as a most important factor to effectively enter into a partnership agreement. However, it always suffers several problems, namely the lack of effective cooperation from applicants on claiming real profit, high cost of control, possible collusion between a supervisor and an applicant, ambiguity in supervision indexes, as well as disinclination of the supervisor to reveal information of the partnership agreement. Absence of a proper control discourages the applicant to spend credit facilities in other matters rather than the subject of partnership, and they only feel bound to pay a certain interest.

### 3.4 distrust between parties to the agreement

Having a variable profit, the demand for a mutual trust between parties to the partnership agreement is strongly felt. However, the Iran's banking system lacks such a trust, because banks are always attempt to impose potential losses on the applicants through setting down requirements.

### 3.5 Anonymity of Islamic banking

As the Islamic banking is practically and theoretically unknown, executive managers of banks assumed if they adhere to the Islamic principle to execute partnership contracts in the banking system, financial resources of banks will decrease and they fail to pay depositors appointed interest. Therefore, it was agreed to make nominal partnership agreements.

## 4. Rights and obligations of parties to the partnership agreements in Iran's banking system

### 4.1 rights and obligations of banks

Under pertinent rules and regulations such as usury-free banking system and its regulations as well instruction of partnership agreements, banks possess some rights and regulations among which some are common in all partnership contracts and

others are specific to certain contracts. The following chapters deal with them.

#### 4.1.1 Rights of banks

According to banking rules, banks are allowed to sign partnership agreements with applicants to ease and extend manufacturing, trading, and service activities. Moreover, they are permitted to ask applicants to provide a good performance bond. Insurance is another option of banks.

Regarding civil partnership agreements as well as banking commandite, banks can insure either loans granted to applicants or their securities in favor of the bank; moreover, regarding Mozare'eh and Mosaqat, banks are permitted to insure their portion immediately after harvest. Banks allocate credit facilities to applicants gradually or at once. They are also allowed to take the responsibility of the company, but, as mentioned earlier, bank only acts as a supervisory body. Another option of a bank is to pay the agents of Mozare'eh and Mosaqat in cash, as well as supplying water, seed, fertilizer, poison, machinery and instruments.

#### 4.2.1 Obligations of banks

For all partnership agreements, banks implicitly undertake to offer applicants credit facilities. Moreover, they are required to inspect the subject of agreement and make sure the starting capital and its interest would be paid back before entering into any contract. On other hand, banks are responsible for the supervision of the agreements in order to guarantee good performance of it. It is also important to clearly stipulate how long the loan must be settled.

Banks are being bound to make it clear to companies' managers that they are not permitted to enter into agreements and undertake financial obligations exceeding company's capital. If the subject of agreement is goods, banks are obliged to clearly determine how much purchase price under the standards of money and credit council is. Moreover, if the bank realizes the goods have either exclusive or limited consumption or find it uneconomic to reuse, they are required to ask the applicant extra security.

As mentioned earlier, regarding commandite, established cooperatives are banks' first priority, and they are not permitted to enter into an agreement with the private sector. Another obligation of banks under this type of agreement

is to receive applicants' effective security by a contract of compromise to secure the capital of the bank. Furthermore, banks are bound to stipulate in the text of a commandite agreement that this agreement, by mutual consent, is considered as an enforceable document and follows the executive procedure of official documents.

With regard to banking Mosaqat and Mozare'eh, banks pledge to note such items as specifications of the land or trees, terms of reference, obligations and liabilities of both parties, joint ownership portion of each party from the crop, cultivation method, duration of contract, as well as supplying water, fertilizer, poison, etc.

Another duty of banks with respect to these agreements is to stipulate the applicant is not allowed to assign the subject of contract to the third person through another Mosaqat or Mozare'eh agreement. A mozare'eh contract implicitly declares the land needs to be transferred to the applicant and the bank must undertake all expenditures, namely costs related to tax, municipal charges, and estate registration. However, it is not obligatory and the one contrary to the law is also legal.

#### 4.2 rights and obligations of applicants

##### 2.4.1 Rights of applicants

Under Art.541 of the civil law, applicants can hire laborers, even if stewardship of him determined, because stewardship does not mean the farmer himself needs to do cultivation. With regard to uniformity of decisions, the article can be applied for other partnership agreements.

Because there is no requirement wherein stipulated executive activities need to be fulfilled by the applicant himself. Therefore, the applicant is permitted to hire a laborer to run activities with respect to all banking partnership contracts, such as civil partnership, Mozare'eh, Mosaqat, and Mozarebe.

According to the guideline of a civil partnership, both parties to the contract can take the responsibility of the company, as a result, it provides the applicant with a right to run the company. However, the applicant directs the company because Iran's banks lack enough staff and specialty.

##### 4.2.2 Obligations of applicants

Like banks, applicants are also bound to make their contribution to the company because it is necessary to mix two or more ownership rights to realize a partnership with the aim of achieving uniformity. The contribution is important enough that some researchers refer to it as "the element of partnership agreement". Applicant, regarding all banking partnership contract, implicitly undertake not to excessive use or failure of due care of the subject of contract. If a bank finds it necessary to request a reliable, effective security, the applicant is obliged to provide it which it serves as a tool to guarantee bank capital as well as proper enforcement of the contract.

Regarding the civil partnership and Mozarebe, if the bank intends to insure credit facilities or securities, the applicant needs to insure them in favor of the bank. To pay expenditures surplus of the total costs in a civil partnership and expenditures surplus of ordinary costs in a Mozarebe agreement are also considered as other obligations of applicants. Moreover, if the subject of a civil partnership is goods, the applicant is required to sell them at the price determined by the money and credit council. Regarding Mozare'h and Mosaqat agreements, and under Arts 541 and 545 of the civil law, applicants undertake not to transfer the subject of agreement to another party. Under Art 554 of the civil law: the active partner in commandite is not permitted to enter into a transaction for the same capital or transfer it to the third party without permission of the owner.

#### 5. The judicial status of the applicants of credit facilities in the form of partnership agreements towards banks' capital

As there is no order in banks' regulation with respect to this matter, the civil law shall be considered. Under Arts. 556 and 584 of this law, the applicants of partnership as well as mozarebe agreement are regarded as the trustee of the bank, in addition, under Art. 631 of the same law, it is also true for the applicants of Mozare'eh and mosaqat agreements. Therefore, being considered as a trustee, all the applicant of partnership agreements need to observe demanding as a trust.

Under this principle, if the subject of agreement is lost or found defective, the applicant has no legal liability for any damage and taking an oath will suffice to show his innocence. However,

regarding excessive use or failure of due care, the bank holds him responsible even if he is not found offender.

#### 6. Conditions of liability for receiving credit facilities in the form of partnership agreements

In this chapter, we set out to study whether conditions of liability are true for applicants. Regarding civil partnership, Mosaqat, and Mozarebe agreements, Art 642 of the civil law stipulate the legitimacy of liability for the applicants of credit facilities.

This article serves for the lending contract. However, not having special features, this order can be extended to all other lending contracts, unless an exception is made by the legislator. Notwithstanding, Mozarebe agreements seem completely different. Some believe that the condition of liability for the active partner in commandite is inconsistent with the existence of the contract because all effects of the contracts influence the principal not the representative. So, such a condition makes the contract void.

Proving the foregoing theory, Art 558 of the civil law suggests a solution to change it. It is necessary to stipulate in an irrevocable contract that if the owner suffered any damage, the active partner in commandite is obliged to pass property to the same extent to the owner, so that it is consistent with the theory above as well as the first part of the aforementioned article.

Inasmuch as Mozarebe is an authorized contract (Art 550 of the civil law), it is forcible to stipulate the foregoing condition in a peace contract under Art 558. On other hand, stating the clause in a mozarebe agreement changes it to a lending contract, because the owner shall undertake loses in Mozarebe, rather than the active partner.

#### Conclusion

Partnership agreements are one of the most common contracts in the world, so that whenever people fail to afford their economic plan, this type of contracts is considered as a major alternative. Therefore, it is necessary to provide applicants with information with respect to this contract. The present research set out to study different aspects of partnership agreements. Rules of making contracts for receiving credit facilities as well as common and specific standards, namely

reliability, technical competence, financial capability, and security for the loan are essential to enter into this form of agreements.

But each of these contracts has specific rules. As mentioned earlier, there are some objections to execute partnership contracts in the Iran's banking system, among which banks impose all potential losses on the applicant. A variety of reasons behind these objections were provided, and the most important one was the high risk of partnership contracts.

Generally speaking, the administration of these contracts is regarded as vital necessity of each society, but, as stated previously, banks fail to execute them properly. Now, the question is what are possible solutions to this problem?

According to the author, the governments need to improve the banking system compatible with the complexities of partnership activities, train personnel to familiarize them with the structure of these type of contracts, as well as employ qualified, and reliable staff. In this study, studying matters such as security and authority of the applicants, we came to conclusion that they are considered trustees towards credit facilities.

One advantage of this study is its generality with respect to the subject of matter which could be very constructive for those how intend to receive credit facilities. There is a growing body of literature on the partnership contracts. For example, two research entitled banking operations was carried out by Ali Asqar Hedayati et al.

Take, for example, a research entitled obstacles on the road of the proper execution of partnership contracts that was conducted by Mohammad Reza Hajian. Or, jurisprudential bases with respect to the partnership structure in a usury-free banking is a case in point. Although these studies are of great value, they would not be useful for people how must enter into a partnership agreement with banks to complete their economic plan and they need to understand different aspects of such agreements, as well as banks and applicants' rights and obligations. On other hand, applicants find it difficult to study several books, because there is no resource wherein this type of agreement is reviewed through.

## Rules and regulations

- The procedure related to chapter three of the usury-free banking operations
- The executive instruction of Mozare'eh
- The executive instruction of Mosaqat
- The executive instruction of civil partnership
- The executive instruction of Mozarebe
- Official documents of a Mozare'eh contract
- Official documents of a civil partnership contract
- Constitution of the Islamic republic of Iran
- Budgetary law (1981)
- The law of usury-free banking operations
- Civil code

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