



**DAR UL HIKMAH**  
**Consultants on Faith-Based RF Banking and Finance**

---

**FATWA #100612**

**EDICT AND RESOLUTIONS ON THE SHARI'AA VERIFICATION OF THE LARIBA**  
**DOCUMENTS AND CONTRACTS INCLUDING DEED OF TRUST**

The objective of this document is to issue a Fatwa on the Shari'aa Compliance of the LARIBA Model which is based on the concept of "Declining Participation in Usufruct" (DPU) and the financing documentation used including the Deed of Trust.

The report below details the analysis and findings of the LARIBA residential financing Model, contracts and documents conducted by Darul Hikmah<sup>1</sup> in its capacity as an attentive research and juristic institution that specializes in Shari'aa validity of financial transactions.

At the outset, we – Darul Hikmah<sup>2</sup> - would like to state that we are delighted to declare our approval and satisfaction with the LARIBA's present Model compliance and jurisprudential financing practices. We did not identify any Shari'aa violations in any of the LARIBA Financing transactions reviewed.

**Introduction:**

It is evident from the documentation forwarded to us that LARIBA is against dealing with **Riba (usury<sup>3</sup> as revealed in the Qur'aan)** due to the following reasons:

---

<sup>1</sup> Darul Hikmah is a US-based Islamic Law (Shari'aa) consulting firm that was established to serve the financial jurisprudence needs of the Riba -Free finance and banking. The Chief Scholar is His Eminence Sheikh Dr. Mohamad Adam Elsheikh. Dr. El-Sheikh graduated with honors from the faculty of Shari'aa and Law, Omdurman Islamic University, Sudan, in 1969. He was appointed by the Department of Justice in Sudan to serve as a judge for the Shari'aa Courts in Sudan. In 1978, he was approved for scholarship and dispatched to the United States for higher education. He obtained a Master Degree in Comparative Jurisprudence (MCJ) from Howard University in Washington DC in 1980, his LLM (Master of Laws) from National Law Center at George Washington University in Washington DC in 1982, and his Ph.D. in Comparative Jurisprudence from Temple University, Philadelphia Pa. in 1986. He has been the Secretary General of the Fiqh Council of North America, and the head of the Judiciary Council of the Sharia Scholars Association (SSANA) since 1997.

<sup>2</sup> Ibid.

<sup>3</sup> See the Glorious Qur'an: Verses Prohibiting Riba in the Qur'aan

- Chapter II – Al-Baqarah (The Cow):  
2:276 Allah will deprive usury of all blessing, but will give increase for deeds of charity: For He loves not creatures ungrateful and wicked.

*cm*



1. Charging or giving **Riba** contradicts the very basic belief upon which LARIBA was founded. From inception, the founder and mentor of LARIBA, Dr. Yahia Abdul Rahman, is well known as being among the pioneers who raised the banner against Riba. He is credited for the popularization of Riba Free (RF) Banking and Finance as an alternative banking discipline in the USA.

2. Dealing in **Riba** is *Haram*, which means it is strictly prohibited in Islamic Law also known as Shari'aa. We shall use: **The Law**, throughout this text to describe Shari'aa. Riba has been strongly condemned and vigorously prohibited in the Qur'an<sup>4</sup>, and the teachings of all the Prophets, including Prophet Muhammad <sup>5</sup>(pbuh<sup>6</sup>.) It has been reported that the Prophet (pbuh) classified **Riba** among the worst seven sins. In "Volume 8, Book 82, Number 840: A Hadith Narrated by Abu Huraira<sup>7</sup>:

*The Prophet (pbuh) said, "Avoid the seven great destructive sins." They (the people!) asked, "O Allah's Apostle! What are they?" He said, "To join partners in worship with Allah/God; to practice sorcery; to kill the life which Allah/God has forbidden except for a just cause (according to due process of the Law); to participate in usurious activities (Riba), to misappropriate the property of an orphan; to give one's back to the enemy i.e. fleeing from the battle-field at the time of fighting and to accuse chaste women who are good believers<sup>8</sup>."*

---

2:278 O ye who believe! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers.

2:275 Those who devour usury will not stand except as stand one whom the Evil one by his touch hath driven to madness. That is because they say: "Trade is like usury," but Allah hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah-God (to judge); but those who repeat (The offense) are companions of the Fire: They will abide therein (for ever).

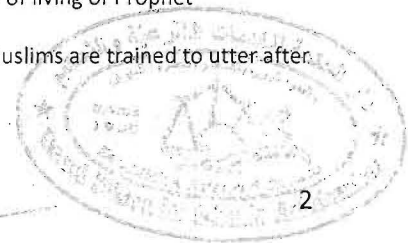
- **Chapter III - Alee Imraan – The Family of Mary & Jesus:**  
3:130 O ye who believe! Devour not usury, doubled and multiplied; but fear Allah-God that ye may (really) prosper.
- **Chapter IV - An-Nisaa (Women):**  
4:161 That they took usury, though they were forbidden; and that they devoured men's substance wrongfully; we have prepared for those among them who reject faith a grievous punishment.
- **Chapter XXX - Ar-Rum (The Romans)**  
30:39 that which you lay out for increase through the property of (other) people, will have no increase with Allah. But that which ye lay out for charity, seeking the Countenance of Allah, (will increase): it is these who will get a recompense multiplied.

<sup>5</sup> Hadith – documented statements by Prophet Muhammad and Sunnah – the tradition and way of living of Prophet Muhammad

<sup>6</sup> Pbih: Meaning - may God's peace and prayers be showered upon him. This is a term that all Muslims are trained to utter after the name of any of the Abrahamic Prophets.

<sup>7</sup> One of the most revered narrators and documenters of the Prophet Muhammad statements.

<sup>8</sup> "Volume 8, Book 82, Number 840: Mishkat al-Masabih. Please see: [www.islamonline.com](http://www.islamonline.com)



*Participation in Riba or usurious activities includes charging, taking, witnessing and/or facilitating Riba/Ribit as documented by the sayings of Prophet Muhammad (pbuh.)<sup>9</sup>*

3. The focus and commitment of LARIBA's Board, Management and staff on the application of Islamic Juristic rules in all of their transactions. They are also open and willing to learn more about, and to implement new findings from research and development concerning the Islamic jurisprudential and procedural rules in the field of Riba-Free and transactions Fiqh.
4. LARIBA's Board, Shareholders and Management continue to implement periodic audits, reviews and analyses of the LARIBA model and documentation with the objective of refining LARIBA's procedures and documentation in order to meet the highest standards as defined by the Law in the field of the Faith Based Transaction.

#### **ANALYSIS:**

Darul Hikmah has evaluated the LARIBA Model and the following points that appeared in the LARIBA residential financing contracts and documents:

1. The definition, as well as the legal and religious impact of the term "**Interest**" as it has been used in LARIBA's Residential DEED OF TRUST.
2. The definition and application of the term "**Late Payment Charges.**"

We shall review and discuss the Shari'aa position regarding usage of such terms and LARIBA's practices with substantiation for such usage of terms and the practices from the glorious Qur'an, Sunnah and contemporary juristic research opinions and conclusions.

The following are based on the evidences from the holy Quran, the Prophetic Tradition and juristic Rules on each of the preceding issues:

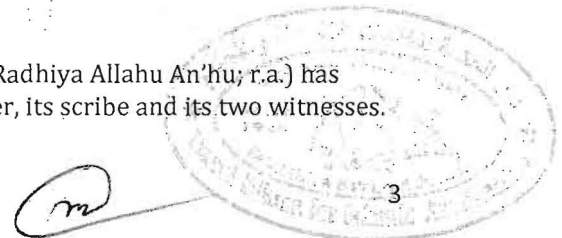
#### **1. USAGE OF THE TERM "INTEREST" IN LARIBA'S FINANCING DOCUMENTS?**

The term Interest is commonly used in financial transactions to refer to the profit earned by lenders on their loans. It is also understood that many of the faith-based communities in America and elsewhere in the world avoid financial transactions that use the term Interest to avoid indulging into interest-based transactions.

We observe that the word "Interest" is being used in LARIBA's various documents and contracts. For example, the **Residential Deed of Trust** contains the word: "Interest", for example, we quote:

---

<sup>9</sup> Sahih Hadith says: "Jabir may God be please and accepting of his efforts (Radhiya Allahu An'hu; r.a.) has reported that the Messenger of Allah cursed the devourer of usury, its payer, its scribe and its two witnesses. He also said that they were equal (in sin)." (See ibid, Mishkat-ul-Masabih).



*"Loan" means the debt<sup>10</sup> evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest. "*

It is important to note that LARIBA's model and practices (as more explained later in this report) are not based on Interest which can be construed as Riba/Ribit. LARIBA uses the word Interest as a corollary to current main stream financing practices in to abide by the laws of the United States. This is permissible when applying the Shari'aa rules under irregular circumstances such as what is known among the Muslim Jurists as: *"The prevalence of bad practice due to irregular circumstances"* (نتيجة لما عمت به البلوى).

Based on this juristic understanding and by way of juristic analogy, the contemporary jurists issued an edict (Fatwa) in the case of Al- Baraka Bank, which can also be applied to any Islamic Bank operating in similar environments in the West, that validates using the word "Interest" as replacement to the word "Profit" in financial transactions such as deposits and loans when such practice can create result in a considerable or sizable financial benefits that will be realized in return for the Muslim customers. See the reference below the line.<sup>11</sup>

<sup>10</sup> Debt here means "Dayn in Arabic دين" not the Arabic word "Qardh قرض" or "Loan" because in Arabic and Islamic Law we only have ( al-Qardh al-Hassan قرض حسن ) which means to the effect (A Good and Interest Free Loan). See Q. 2: 245; Q.5:12; Q. 57:11, 18; Q. 64:17; ; Q.73:18.

سؤال : هل يمكن استعمال كلمة ( فائدة ) بدلا من كلمة ( ربح ) أو ( عائد ) دون قصد حقيقتها ، من أجل الحصول علي المزايا المالية التي تعطي من قبل الجهات المختصة في الغرب للفوائد في مجالات الإيداع والتمويل ؟

Question: Can we use the word (interest) instead of the word (profit) without really meaning that interest is involved, in order to take advantage of the many financial benefits offered in the West by the authorities?

#### الفتوى :

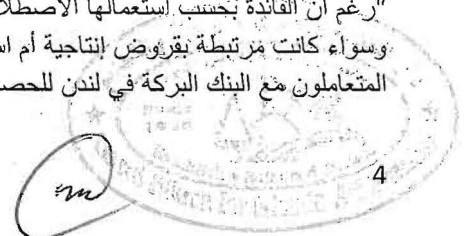
اطلعت اللجنة علي بعض المزايا القانونية التي يقدمها النظام الضريبي في بريطانيا للفوائد المدفوعة والمقبوضة بالنسبة للمتعاملين في البنوك

The fatwa committee reviewed the legal advantages offered by the tax code in the UK on paid interest for bank depositors.

وبناء علي ان النظر في المعاملات مبني علي أن العبرة في العقود للمقاصد والمعاني لا للألفاظ والمباني فقد اتفقت الآراء علي عدم المنع من استعمال كلمة ( الفائدة ) كبدل لكلمة ( الربح ) أو ( العائد ) وذلك علي أساس أنها لا يقصد بها هنا الربا المحرم شرعا ، وقد تم الاتفاق بعد المناقشة علي ما يلي:

Based on the fact that what counts in transactional dealing between people must be based on the real intent and meanings but not the words. The committee agreed that there is no objection to using the word "interest" instead of the word "profit" or "return" on the basis that it is intended not to mean the prohibited riba. Furthermore, the committee has agreed to and decided the following:

"رغم أن الفائدة بحسب استعمالها الاصطلاحي في مجال التعامل المصرفي هي عين الربا المحرم شرعا سواء كانت مدفوعة أم مقبوضة وسواء كانت مرتبطة بقروض إنتاجية أم استهلاكية إلا أنه ليس هناك ما يمنع من استعمال كلمة ( الفائدة ) في الحالات التي يطلبها المتعاملون مع البنك البركة في لندن للحصول علي المزايا المالية التي تعطي للفوائد في مختلف حالات الإيداع والتمويل



Dar Ul Hikma representatives have carefully read and analyzed LARIBA's Model and documents. In addition, Dar Ul Hikma scholars have had thorough discussions with the LARIBA Shari'aa supervisor and management. Based on that, Dar Ul Hikma is pleased to issue its fatwa regarding LARIBA documents and operations. Dar Ul Hikma concludes that the items and phrases that include the word "interest" are intended only to comply with applicable laws of the land. We at Dar Ul Hikma urge the readers of LARIBA's contracts to read the documents in full in conjunction with the model description, application and intent of the Shari'aa (maqasid al-Shari'aa) before making judgment based on certain words. As we learned from reading the Holy Qur'aan, we must read the revealed verses in full and not truncate it as shown in the example referenced below.<sup>12</sup>

As indicated earlier, the term interest in LARIBA's contracts does not refer to indulging in Riba/Ribit from the Islamic perspective. Our conclusion is based on the reasons as described below:

- a. LARIBA uses the investment approach to financing, not the renting of money approach. As described in the LARIBA Model<sup>13</sup> explanation, LARIBA does not provide "Loans" which are construed as a charitable loans or Qard Hassan. The financing model is based on the concept of "Declining Participation in Usufruct" (DPU) (also popularly known as: Declining Musharaka) (الإجارة المنتهية بالتمليك)<sup>14</sup>.
- b. According to "LARIBA" model the income described by the word "interest" represents LARIBA's share of the rental value of the property which LARIBA is entitled to receive for its investment in the financed property. This rental value **is not the interest rate** on the rent of

---

Despite the fact that "interest" as it is used in the field of banking and finance is the true prohibited riba based on the Shari'aa be it paid riba or charged riba and even it was associated with production-based loans or consumption loans, there is no objection to using the word "interest" in cases required by the law and requested by the customers of AL Baraka Bank in London in order to reap the financial benefits given to interest-based transactions in different cases of depositing funds and in financing.

ويراعي في ذلك كله أن يكون استعمال كلمة ( الفائدة ) بهذا المفهوم المشار إليه في حالات النماذج التي لا تكون صادرة عن البنك ، مثل نماذج التصريح الضريبي لمودعين أو شهادات منفصلة في حالات التمويل المختلفة 0 أما إذا كان المطلوب هو تغيير طبيعة المعاملة بحيث يصبح إقراضا أو اقتراضا بالفائدة فإن ذلك لا يجوز من الأساس

Attention should be paid such that the use of the word "interest" in the context described above in cases of documents issued by the bank like tax forms for depositors or separate disclosures in case of financing. However, if it becomes an issue of changing the transaction to become a lending operation with riba then it is prohibited.

<sup>12</sup> Without taking other documents into consideration the intended meaning will drastically distorted, it will be like the one who reads the Quranic verse number 4 of Chapter 107- "Woo to those who pray" (فويل للمصلين) without reading the next verse that follows in the same chapter which says : "who are neglectful of their prayers" (الذين هم عن صلاتهم ساهون)

<sup>13</sup> For the LARIBA Model: Please visit [www.LARIBA.com](http://www.LARIBA.com)

<sup>14</sup> The Term Ijara literary means Lease or Rent, this meaning is deeply rooted in Islamic Transactions, It is revealed in number of verses of the Qur'an, and in the Prophetic Sunnah and Islamic Jurisprudence. In his well-known book حاشية الدسوقي who said Ijara means transmitting of benefit of an-owned object to another person, for a fixed period of time, in exchange of an agreeable price as a compensation.

Please review Shari'aa Standards for Islamic Financial Institutions (AAOIFI), Published in 1429 AH / 2008) Standard No. 9 section 1 – Section 7 in general and Section 8/1 – 8/8 in particular. Pp. 141 to 149.

money as used by interest-based institutions but in fact we can certify that "LARIBA" uses the word interest - only as a word - and it is meant to be as a representation to the actual rental value of a similar property in the same neighborhood which is researched and obtained by both the customer and finance. This is called Return ON Capital- RonC - in the LARIBA model.

- c. The use of the term "Interest" has been approved in similar cases when it is required for compliance purposes and when it provides mutual benefits to the parties, such as for tax treatment but on the condition that it is done for expediency and that the actual process does not involve the prohibited Riba as explained above, and in foot note herein below the line 15.

We wish to clearly state that that the LARIBA's management strongly believes that it is NOT permissible from the Islamic Shari'aa Law perspective, for the finance entity (Lender) to charge Interest reflecting the rate of the cost of renting money on a financing transaction (Loan.) It is however, permitted to realize a return on an investment to participate with the customer in the return of the transaction as it has been clearly explained in Shari'aa Standards for Islamic Financial Institutions<sup>16</sup>.

Based on our careful analysis of LARIBA'S model and financing documents and our detailed discussions with the LARIBA team, we are convinced that the Term "Loan" used in the financing documents does not refer to a "Qard Hassan" transaction; hence LARIBA is entitled to a return on its investment in the clients' property. Also, the word "**Interest Charges does NOT refer to Riba earnings**" (Renting of Money.) These terms are used to satisfy the requirements of the Consumer Lending regulations of the Land as imposed by the United States Federal and State Legal Systems. It is also important to record here that a group of highly respected global Shari'aa scholars that included Dr. Youssef Al Qaradawy, Sheikh Al Dhareer, Dr. Samy Hamoud and others authored a fatwa for Al Baraka that allows the use of the word **interest** as long as it is not in fact the actual renting of money<sup>17</sup>

US financial regulations, notably Regulation "Z" or "*Truth-In-Lending Act*" (also known as "TILA") require the translation of any income or profit - direct or indirect- by the financier in any financing transaction in terms of an implied "**interest**" rate to prevent the abuse of financially unsophisticated consumers by the participating financial institutions. These regulations allow customers to make fair and equitable comparisons between financing offers from different entities.<sup>18</sup>

---

<sup>15</sup> Fatwa of Al Baraka available in English at <http://www.lariba.com/fatwas/index.htm> and the original text in Arabic is available

at: <http://www.lariba.com.eg/karadawy.htm>

<sup>16</sup> . See AAOIFI 1429- 2008 Standard No. 9 section 3/1- 3/5 pp 141-142.

<sup>17</sup> Fatwa of Al Baraka available in English at <http://www.lariba.com/fatwas/index.htm> and the original text in Arabic is available, See Foot Note No. 9 above on page 5 in this documents. Or Just logon at: <http://www.lariba.com.eg/karadawy.htm>

<sup>18</sup> . Regulation Z is issued by the Board of Governors of the Federal Reserve System to implement the federal Truth in Lending Act. The Regulation Z (originally listed as 12 CFR Part 226) has been republished effective December 30, 2011, as one of the regulations transferred to the Consumer Financial Protection Bureau under the Dodd-Frank Act. in title I of the Consumer Credit

**Furthermore**, Financial Institutions (“Lenders”) and Clients (borrowers) are bound to comply with numerous Federal and State laws and regulations based on long operating experience to protect both the financier (Lender) and the clients (Borrower.)

The usage of such terms by LARIBA are permissible based on the general understanding of the quoted Qur’aanic verses below in Arabic 19, the Prophetic Tradition and authentic Hadith (*sayings of Prophet Muhammad*) and the consistency between the Qur’aanic verses and the said Hadith. The Hadith quoted below from Abdullah ibn Abass elaborates such point. He narrates that the Prophet Mohammad (pbuh) said to the effect: Verily, Allah pardons my followers’ wrong actions that they commit only if that wrong action is done: by an honest mistake, due to forgetfulness, and/or due to the fact that they were forced to do. And this Hadith is rated as reasonably authenticated Hadith (Hassan)20.

---

Protection Act, as amended (15 U.S.C. 1601 et seq.) This regulation also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 (Pub. L. 100-86, 101 Stat. 552). The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about the terms and cost of financing transactions. The regulation defines “Finance Charge” as the cost of consumer credit as a dollar amount. It also defines *Periodic Rate* as a rate of Finance Charge (interest) that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year. The regulation also includes substantive protections to consumers including the right to cancel certain credit transactions that involve a lien on a consumer’s principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer’s dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32.

19. - فمن اضطر غير باغ ولا عاد فلا إثم عليه (البقرة آية 173).

2:173 But if one is forced by necessity, without willful disobedience, nor transgressing due limits,- then is he guiltless. For Allah is Oft-forgiving Most Merciful.

- فمن اضطر في مخمصة غير متجانف لإثم فإن الله غفور رحيم (سورة المائدة آية رقم 3).

5:3 But if any is forced by hunger, with no inclination to transgression, Allah is indeed Oft-forgiving, Most Merciful.

\_\_ وقد فصل لكم ما حرم عليكم إلا ما اضطررتم إليه (سورة الأنعام آية رقم 119)

6:119 Why should ye not eat of (meats) on which Allah's name hath been pronounced, when He hath explained to you in detail what is forbidden to you - except under compulsion of necessity

\_\_ فمن اضطر غير باغ ولا عاد فإن ربك غفور رحيم (سورة الأنعام آية رقم 145).

6:153 But (even so), if a person is forced by necessity, without willful disobedience, nor transgressing due limits,- thy Lord is Oft-forgiving, Most Merciful.

\_\_ فمن اضطر غير باغ ولا عاد فإن الله غفور رحيم . (سورة النحل آية رقم 115).

16:115 But if one is forced by necessity, without willful disobedience, nor transgressing due limits,- then Allah is Oft-Forgiving, Most Merciful

\_\_ لا يكلف الله نفسا إلا وسعها ، ربنا لا تؤاخذنا إن نسينا أو اخطأنا ، ربنا لا تحمل علينا إصرا كما حملته على الذين من قبلنا، ربنا ولا تحملنا ما لا طاقة لنا به واعف عنا واغفر لنا وارحمنا ... (سورة البقرة آية رقم 286).

2:286 On no soul doth Allah Place a burden greater than it can bear. It gets every good that it earns, and it suffers every ill that it earns. (Pray:) "Our Lord! Condemn us not if we forget or fall into error; our Lord! Lay not on us a burden Like that which Thou didst lay on those before us; Our Lord! Lay not on us a burden greater than we have strength to bear. Blot out our sins, and grant us forgiveness. Have mercy on us. Thou art our Protector; Help us against those who stand against faith."

20 . الحديث عن ابن عباس رضي الله عنهما أن رسول الله صلى الله عليه وسلم قال :

( إن الله تجاوز عن أمتي الخطأ والنسيان وما استكرهوا عليه ) حديث حسن رواه ابن ماجه والبيهقي وغيرهما .

See page 10 of this document

m

## **2. USAGE OF THE TERM "THE LATE PAYMENT FEE" AND ITS SHARI'AA APPROPRIATENESS**

The issue of the "Late Payment Charges" is our second main points listed above. It needs the board attention to be evaluated in term of its permissibility from the Shari'aa Law perspective and its practical application by the LARIBA as a Faith Based Institution.

It is known that US consumer compliance laws<sup>21</sup> the financial institution to charge a fee for those who are not making their monthly payments in time. This fee is called: "Late Payment Penalty", the financial institution must fully and clearly disclose the terms of charging these fees. These regulations were put in place to ensure that the finance providers do not take advantage of the consumers. These fees are charged by the providers in order to cover the cost involved in extra work necessary. These extra efforts may include the following:

1. Hiring additional employees to keep track of late payers, this increases overhead.
2. Readjusting the system manually in order to accommodate the late payers; this is another added expense.
3. Incurring additional expenses on Compliance Audits to check the fair treatment of the late payers.

The US Government requires late payment fees to be reasonable; usually a maximum of 2% to 6%, depending on the State involved<sup>22</sup>.

Islamic Shari'aa Law does not allow charging a late payment fee if the delay in payment is justified and the regulation governing these payments is not abused.

Upon questioning and discussing<sup>23</sup> with LARIBA **Shari'aa Supervisor and Mangaement**, we found that LARIBA and Bank of Whittier charge late payment fees in certain cases whereby late payment was not justified; otherwise they usually forgive and abstain from charging such fees.

It is important to stress that the Shari'aa Law does allow imposing a late payment fee ONLY as a punitive measure known as (الشرط الجزائي) against repeating delinquent offenders who take advantage of the system provided that the delinquent payment in question was not originated from debt contract (دين dayn.)<sup>24</sup>

<sup>21</sup> Please see footnote 18 above

<sup>22</sup> Please see Government Regulations and Guidelines on Consumer Protection and Late Payment Fees:  
<http://www.fdic.gov/regulations/laws/rules/6500-3205.html>

<sup>23</sup> This is based on communication of our representatives with LARIBA executives and staff.

<sup>24</sup> وفي فتوى ندوة البركة عبارة تبين أن بعض القائلين بعقوبة المدين بتعويض الدائن عن فقهه من جراء مما طلة المدين، استدلووا لقولهم بالمصالح المرسله وهذا نصها: (وهناك من يرى أن يكون الإلزام بهذا المال على سبيل الغرامة الجزائية استنادا لمبدأ المصالح المرسله على أن تصرف الحصيله في وجه البر المشروعه". راجع ما ورد في فتاوى وردود الشيخ الدكتور عبد الله المذيع حفظه الله. وخاصة في فتاوه المكتوبه في شبكة (إسلام ويب نت) بتاريخ 2010/6/10م عن معاقبة المدين المماطل عن أداء ما عليه من الدين وما ورد في رده على فتوى ندوة البركة بخصوص تطبيق الشرط الجزائي على من عليه دين وعجز عن الوفاء به.



It is our belief that Late Fees, if charged, can ONLY be used for charitable donations to a legitimate, properly registered and US approved charities<sup>25</sup>.

In support of the permissibility of imposing a punitive measure against the solvent debtor, the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) quoted the Prophetic A hadith that condemns solvent debtor default where he (pbuh) says:

- a. Default in payment by debtor who is able to settle the debt is *haram* i.e. prohibited<sup>26</sup>.
- b. Default in payment on the part of a solvent debtor is: *Zulm* i.e. unjust<sup>27</sup>.

And he also said: Delay in payment by a solvent debtor would be a legal ground for his being publicly dishonored and penalized<sup>28</sup>.

In accordance to AAOIFI's analysis, it is permissible to prescribe in contracts involving indebtedness (such as Murabaha or Cost plus transactions) an obligation on the debtor, in the case of default in payment, to donate an amount or a percentage of the payment due on condition that this be donated to charitable courses under the supervision of the Bank's Shari'aa supervisory board<sup>29</sup>.

#### **Guidelines for the Application and Utilization of the Collected Penalties as Charitable Donations:**

The Faith-Based Jurists opinion on the issue of imposing a punitive measure against defaulting debtor varies. LARIBA is in favor of the public opinion of the Jurists pertaining to the prohibition of imposing punitive fees against the insolvent debtors based on the

---

In the Fatwa of Al Baraka Seminar there is a sentence that shows that some of those who allow penalizing the chronic late payers, they used the concept of extended benefits which says: "and there are those who see that the compulsory payment of this money in the form of a payment penalty that can be used for charitable causes". Please review the answers of HE Shaikh Abdullah Al Manee on: [www.IslamWeb.net](http://www.IslamWeb.net)

<sup>25</sup> وفيما يلي إحدى فتاوى ندوة بنك البركة .. ونص السؤال هو : هل يجوز اشتراط غرامة تأخير علي المماطلين القادرين علي السداد ؟

Here is another fatwa from Al Baraka Seminars: The Question: Is it permissible to put a condition that would charge a late payment fee or penalty against those who chronically do not pay on time as agreed while it is known that they can afford the payment?

الفتوى : يجوز اشتراط غرامة تأخير الدفع المتفق عليه، كرادع للمماطلين القادرين علي السداد علي أن تنفق حصيلة هذه الغرامات علي وجوه الخير . LINK

The Fatwa Ruling: It is permissible to include a condition in the contract about a late payment penalty / fee to be agreed to as repudiation to those chronic late payers who are capable of paying on time with the condition that these late payment fees are used in charitable causes

<sup>26</sup> . Narrated by Imam Al-Bukhari Vol. 2/999, published by Dar Al-Qalam, Damascus, 1401 H, 1981 AD.

<sup>27</sup> Narrated by Imam Muslim: Vol. 2/288, published by al-maktabah al-Masriyyah together with the commentary by Al-Nawawy, Cairo , 1349H /1930AD

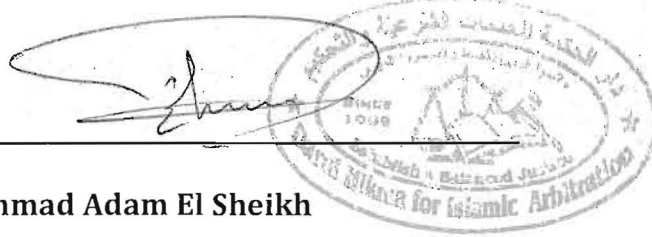
<sup>28</sup> . This hadith was narrated by Imam Ahmed ibn Hanbal , Vol. 4/388 - 399. And it also narrated by all tradition narrators except al-Termidhy, al-Baihaqy, al-Hakim. Ibn Hibban has rectified its reliability.

<sup>29</sup> . See Accounting and Auditing Organizations for Islamic Financing Institutions (AAOIFI), Standard No. 3..Section 2/1/h page 33 - 41. No Publishing Co. name dated 1429h- 2008.

Qur'anic Injunction which reads: ...<sup>30</sup> وإن كان ذو عسرة فنظرة إلى ميسرة وأن تصدقوا خير لكم إن كنتم تعلمون.<sup>31</sup> If the debtor is in a difficulty, grant him time till it is easy for him to repay. But if ye remit it by way of charity, that is best for you if ye only knew.

Nonetheless LARIBA does respect and faithfully implement the other jurist opinions, particularly the opinion adapted by Shaikh Mustafa al-Zarqa and the Al Baraka Seminar's resolution.

**Fatwa Signed by:** \_\_\_\_\_

A handwritten signature in black ink is written over a circular stamp. The stamp features a central emblem with a crescent and star, surrounded by Arabic text. Below the emblem, the English text reads "Arab League for Islamic Arbitration".

**Sheikh Dr. Mohammad Adam El Sheikh**

**Chief Shari'aa Scholar**

---

<sup>30</sup> See the holy Qur'an: chapter 2:280.

<sup>31</sup> 280 القرآن الكريم سورة البقرة آية رقم 280.

2:280 (Y. Ali) If the debtor is in a difficulty, grant him time Till it is easy for him to repay. But if ye remit it by way of charity, that is best for you if ye only knew.