

81967 - Investing Orphans' Wealth in Murabahah Transactions

the question

We have a company whose job is to invest orphans' wealth; the one who is in charge of this company is the supreme judge in the Islamic Courts. The company's main focus is looking after orphans' wealth and investing it by using it in projects and loans. The way this company works is by doing the following: the person who wants to buy something (an apartment, a car, furniture, land) chooses it, then he goes to this company which will instruct one of its employees to go and examine this thing, then it purchases it and sells it to the person who wants to buy it by instalments, with a set profit margin of 5%. Are there any reservations about Riba being present in this kind of transaction?

Summary of answer

Murabahah transactions in which an item is sold to the one who asked for it to be purchased, if a person buys a product after it has come into the possession of the one who was instructed to buy it, and after it was acquired in the manner stipulated in Shari`ah, are permissible transactions, so long as the one who was instructed to buy it is liable for any damage before selling it and handing it over to the one who instructed him to buy it, and provided that the product may be returned if there is a hidden fault and the like, which dictates that it should be returned after being handed over, and provided that the conditions of sale are met and impediments to sale are absent.

Detailed answer

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Taking care of orphans and investing their wealth is a righteous deed

[Taking care of orphans](#) and investing their wealth in ways that will make it grow and benefit them is a righteous and beneficial deed. We ask Allah to reward those who do this. It comes under the heading of sponsoring orphans, concerning which the Prophet (blessings and peace of Allah be upon him) said: “I and the one who sponsors an orphan will be in Paradise like this” – and he gestured with his forefinger and middle finger, holding them apart slightly. (Narrated by Al-Bukhari, 5304 and Muslim, 2983)

An-Nawawi (may Allah have mercy on him) said in Sharh Muslim: “[The one who sponsors an orphan](#)” is the one who takes care of his affairs, spending on his maintenance, clothing him, disciplining him, educating him, and so on. This virtue is attained by the one who sponsors him from his own wealth or from the orphan’s wealth on the basis of Shar`i guardianship.”

Concerning doing business with an orphan’s wealth, it was narrated from `Umar (may Allah be pleased with him): “[Seek to do business with orphans’ wealth](#) , lest it be consumed by Zakah.” (Narrated by Ad-Daraqutni and Al-Bayhaqi, who said: This is an authentic Isnad (chain of narrators), and it has corroborating reports from `Umar (may Allah be pleased with him). It was also narrated in a report attributed to the Prophet (blessings and peace of Allah be upon him). However, Al-Albani (may Allah have mercy on him) classed it as inauthentic in reports which were directly attributed to the Prophet (blessings and peace of Allah be upon him) and those attributed to the Companion. See: Irwa’ Al-Ghalil, 3/258)

Ruling on Murabahah transaction to the One Who Issued Instructions to Buy

The scenario asked about here is what the scholars call “[Murabahah transaction](#) in which an item is sold to the one who asked for it to be purchased”.

In brief, it means that a person may want to buy some item, so he goes to a person or company or bank, and tells them about the item he wants and its characteristics, and he

promises to buy it from them after the company or bank buys it, with a set profit margin that they agree upon. This transaction is not valid unless two conditions are met:

- That the company owns this item before selling it. So it buys the apartment or car for itself in a genuine purchase before selling it to the one who wants to buy it and asked for it.
- The company should take possession of the item before selling it to the customer. The concept of taking possession of something differs from one thing to another. Taking possession of a car, for example, is done by moving it from one place to another. Taking possession of a house involves vacating it, receiving the keys, and so on.

If the transaction fails to meet these two conditions, or one of them, then it is a prohibited transaction, the reason being that if the bank or company does not buy the item in question for itself in a genuine purchase transaction, and merely paid a cheque on behalf of the customer, then this is a Riba-based loan, because in reality it loaned the price of the item to the customer (100,000 for example), on the basis that it would get back 107,000.

If it buys the item, but then sells it before taking possession of it, that is also a violation, because the Prophet (blessings and peace of Allah be upon him) said to Hakim ibn Hizam (may Allah be pleased with him): “When you have bought something, do not sell it until you have taken possession of it.” (Narrated by Ahmad, 15399 and An-Nasa’i, 4613; classed as authentic by Al-Albani in Sahih Al-Jami`, no. 342)

Ad-Daraqutni and Abu Dawud (3499) narrated from Zayd ibn Thabit (may Allah be pleased with him) that the Prophet (blessings and peace of Allah be upon him) forbade selling goods where they were bought, before the merchants moved them to their places. (Classed as authentic by Ibn Hiban and Al-Hakim; classed as authentic by Al-Albani in Sahih Abu Dawud)

It is narrated from Ibn `Abbas (may Allah be pleased with him) that the Prophet (blessings and peace of Allah be upon him) said: “Whoever buys some foodstuff, let him not sell it until he has received it in full.” (Narrated by Al-Bukhari, 2132 and Muslim, 1525, who

added: Ibn `Abbas said: I think that all things are like this, i.e., there is no difference between foodstuffs and other things in that regard)

Taking possession varies from one thing to another, as stated above. Shaykh Ibn `Uthaymin (may Allah have mercy on him) said: "With regard to things that can be moved, such as clothes, animals, cars and so on, taking possession is done by means of moving it, because this is what is customary." (Ash-Sharh Al-Mumti`, 8/381)

It says in Fatawa Al-Lajnah Ad-Da`imah, 13/153: "If a person asks someone else to buy a specific car for him, or a car that meets certain specifications that he gives, and he promises to buy it from him, and the other person buys it and acquires it, it is permissible for the one who asked for the car to buy it from him after that, whether it is for cash or for instalments to be paid at a later date, for a known profit. This does not come under the heading of selling what one does not possess, because the one who was asked to buy this item only sold it to the one who asked for it after he had bought it and took possession of it. But he has no right to sell it to his friend, for example, before he has bought it or after buying it but before taking possession of it, because the Prophet (blessings and peace of Allah be upon him) forbade selling goods where they were bought, before the merchants moved them to their places."

The Islamic Fiqh Council issued a statement indicating that [Murabahah transactions](#) of this nature are permissible. It says:

"[Murabahah transactions](#) in which an item is sold to the one who asked for it to be purchased, if a person buys a product after it has come into the possession of the one who was instructed to buy it, and after it was acquired in the manner stipulated in Shari`ah, are permissible transactions, so long as the one who was instructed to buy it is liable for any damage before selling it and handing it over to the one who instructed him to buy it, and provided that the product may be returned if there is a hidden fault and the like, which dictates that it should be returned after being handed over, and provided that the conditions of sale are met and impediments to sale are absent." (Majallat Al-Majma`, 5/2/753, 965)

Based on that, if the company you asked about buys the item in a genuine transaction, not only on paper, removes it from its place and then sells it, then it is a valid transaction and this transaction is permissible.

And Allah knows best.