

## APPLICATION OF MUDARABAH IN ISLAMIC BANKING: A CASE STUDY OF JAIZ BANK PLC, NIGERIA

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### Abstract

The conventional Banking system is well known to Nigeria and in conventional Banking practice; interest plays a prominent role in the financial intermediation process. Islamic banking has the same purpose as conventional Banking, that is to generate money for the Banking institution. But that is not the sole purpose either, because it accepts only monies and investment that are *Halal* or considered *Shari'ah* compliant. This work examines principles of *Mudārabah* as a viable means of investment, and assesses the level of Jā'iz Bank Plc's compliance with the principles of *Mudārabah*. To actualize this, the research work applied both empirical and doctrinal methodologies. The significance of this research work lies in explaining how the principle of *Mudārabah* is applied in Jā'iz Bank Plc in order to assess its compliance with the principles of *Shari'ah*. The work observed that there is lack of awareness about the *Mudārabah* product and service of the Jaiz Bank plc. Therefore, recommends that Jaiz Bank should provide adequate awareness and education.

Key words: mudarabah, Islamic, banking, profit, lost.

### INTRODUCTION

The growing need for a joint and fair economic system in Nigeria has resulted into the call for an Islamic banking, a *Shari'ah* compliant system of banking some decades ago. The conventional Banking system is well known to Nigeria and in conventional Banking practice; interest plays a prominent role in the financial intermediation process. Islamic Banking has the same purpose as conventional Banking that is to generate money for the Banking institution. But that is not the sole purpose either, because it accepts only monies and investment that are *Halal* or considered *Shari'ah* compliant and it doesn't accept deposits from alcoholic industries, proceeds from prostitution, sale of swine, etc. Adherence to Islamic law and ensuring fair play is also a main objective of Islamic Banking, because Islam forbids simply lending out money for interest on the basis of Islamic rules of transaction. The basic principle of Islamic Banking is based on risk sharing, while conventional Banking is interest based.

*Mudārabah* is a type of partnership which is accepted by Islamic law whereby two people the *Rabbul-māl* (Proprietor/Financier) and *Amīl* (Entrepreneur/Manager) come together to form the partnership. The *Rabb ul-māl* being the supplier of the capital and *Amīl* being the

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entrepreneur or manager of such capital is entitled to a profit on account of his labour, skills, entrepreneurship and other endeavour in the venture.

This work examines principles of *Muḍārabah* as a viable means of investment in Islamic banking, and assesses the level of Jā'iz Bank Plc's compliance with the principles of *Muḍārabah*. To actualize this, the research work applied interview method in addition to doctrinal one, where top staff of Jaiz Bank PLC were interviewed.

## **BRIEF HISTORICAL BACKGROUND OF JĀ'IZ BANK PLC**

Jā'iz Bank Plc was created out of the ashes of the former Jā'iz international Plc which was set up 2003/2004 as a special purpose vehicle (SPV) to establish the first full-fledged Non-interest Bank in Nigeria.<sup>3</sup>

Jā'iz international plc was incorporated on 1<sup>st</sup> April, 2003 as a public limited liability company. Jā'iz has identified an opportunity to establish Islamic Banking institution in Nigeria based on strong demand for non interest Banking among Nigerian Muslims and non-Muslims. Their main objective was to be an investment company to set up a non-interest institution such as Islamic bank, Takaful, pension fund administration.<sup>4</sup>

At the time Jā'iz was incorporated, the minimum required to set up a Bank was Two Billion Naira. The promoters of the Bank therefore, obtained the necessary regulatory requirements to the capital market to raise the sum of ₦2.5 billion Naira only. Through initial public offer (IPO) in 2003 the offer was oversubscribed (about 120%) because of the huge demand for interest free Banking. In March 2003, ₦2 billion of the amount realized plus other requirements such as the curriculum vitae (CV) of all the directors, management and feasibility study etc were submitted to the Central Bank of Nigeria (CBN) to secure a Banking license. Four months after that there was a change in the leadership of the apex Bank and they embarked on a major reform of the Banking sector which led to the increase in the minimum paid up capital of Banks to ₦25 billion<sup>5</sup>.

In view of the above development, the shareholders at the Annual General Meeting (A.G.M) of the bank held on 11<sup>th</sup> October, 2005, approved the resolution to increase the capital from (\$ 15 million to 185 million dollars). To reduce the market risk and manage the cost of offer, the board decided to go for private placement of ₦10.5 billion to selected group of individuals and institutional investors. Later they went for public offer to raise ₦13 billion during the second quarter of 2006. To this end, Jā'iz started discussion with existing shareholders and a number of prospective investors and has obtained significant commitment from them, upon successful completion of its various capital raising exercise. The bank then effected a change of name from Jā'iz international to Jā'iz Bank Plc after satisfying all the Central Bank of Nigeria (CBN) requirement. It is evident when Sanusi Lamido Sanusi became the Governor of Central Bank of Nigeria (CBN) he brought some reforms on banks capitalization. Thus, the national bank requires a minimum paid up share capital of ten billion Naira while the regional bank requires minimum paid up share capital of five billion Naira only<sup>6</sup>.

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<sup>3</sup> www.jaizzBank.org, p 1. visited on 8, Sept, 2014

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid

The Jā'iz Bank Plc was then issued with the banking license to operate a full-fledged non-interest banking system.<sup>7</sup>

Jā'iz Bank plc obtained its regional operating license to operate as a non-interest Islamic Bank from the CBN on 11 November, 2011 and commenced operation on 6 January, 2012 with three branches located in Abuja, Kano, and Kaduna.<sup>8</sup> The Regional license allowed the Bank to operate geographically in a one third of the country including FCT. Based on the recommendation from Islamic Development Bank (IDB), who is also a shareholder of the Bank, Jā'iz Bank Plc has also partnered with Islamic Bank Bangladesh (IBBL) for technical and management assistance.<sup>9</sup>

The Jaiz Bank license was upgraded to a National operation license in 2016. The upgrade has enabled it to operate in all 36 states of the Federation including the Federal Capital Territory, Abuja<sup>10</sup>

## DEFINITION OF MUDĀRABAH

*Mudārabah* is a term derived from the Arabic term *daaraba fi al ard* which connotes travelling or moving about in the land of Allah in search of lawful means, trade, work or livelihood.<sup>11</sup>

*Mudārabah* is sometime, referred to or termed as *qirad* which is derived from the word *qard*, meaning to cut or split, it is termed *qirad* by virtue of its nature whereby the owner of the capital cuts off some portion of his wealth whilst the manager (*Amīl*) cuts off some portion of the profit gained.<sup>12</sup>

Technically, *Mudārabah* is defined as a contract between two persons, whereby one person who is called the *Rabb-ul-mal* supplies capital to the other person called *Amīl* who is the investor or entrepreneur who invests the capital in trade for purposes of profit which will be shared between the parties in accordance with the ratio or percentage agreed upon (pre-agreed ratio).<sup>13</sup>

Accordingly, *Mudārabah* can be defined as payment of capital to a working partner for trading opportunities in an agreed manner.<sup>14</sup>

*Mudārabah* is an investment partnership. One or more partners as investors (*Rabb ul-māl*) provide 100% of the capital to an entrepreneur (the partner who provides entrepreneurship and management known as *Amīl* or *Mudarab*) to undertake a business activity. Profit will be shared between the parties in accordance with the ratio agreed upon at the time of entering into the

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Jaiz Bank, Annual Report and Accounts, 2016, p.4.

<sup>11</sup> Al Qaunawi, Q. Anisul fuqha'a (1<sup>st</sup> Daar al Wafa', 1406 AH) p. 247; Al Shubaili Y.B. *Al-Khadamat Al-Istithmāriyyah fi Al-Maṣārif* (1<sup>st</sup> Dar ibn al Jawzi 2005) vol. 1, p 144.

<sup>12</sup> Al Azhari, A.M. Al Zahir fi garibi alfazi Imam al Shafi'i (1<sup>st</sup> Daar al Basha'ir 1419 AH) p.247.

<sup>13</sup> Muslehuddin, M., Banking and Islamic Law, (New Delhi, India, International Islamic publisher, 2001), pp85 - 86/ Bambale Y.Y (1<sup>st</sup> Lagos Malthouse Press Limited, 2007) p. 178.

<sup>14</sup> Nawawi, R.H, Islamic Law on Commercial transaction (Kuala – Lumpur, Malaysia, CT Publications Sdn Bhd, 1999), P 147.

contract. Financial loss is borne only by the financier and the entrepreneur loss lies in not getting any reward for his services.<sup>15</sup>

The contract of *Muḍārabah* could either be formal or informal, written or oral.<sup>16</sup> But the *Sharī'ah* requires that all contracts of financial transaction should be put into writing as provided by Quran.<sup>17</sup>

The Qur'an supports the motion that whenever you enter into an agreement to commit it into writing. All *Muḍārabah* agreement should be preferably in writing and attested to by witnesses in order to avoid misunderstanding.

*Muḍārabah* is classified into two types:

1. Restricted *Muḍārabah* (*Muḍārabah Muqayyadah*)
2. Unrestricted *Muḍārabah* (*Muḍārabah Mutlaqa*)

Restricted *Mudarabah* is a contract in which the *Rabb ul-mal* may specify condition restricting the *Mudarib* such as the determination of location, period for investment, type of project and commingling of fund.

Unrestricted *Muḍārabah* is a contract in which the *Rabb ul-mal* permits the *Mudarib* to manage the *Muḍārabah* capital without any specific restriction. Having no attached fixed period or duration and no condition attached as to how it should be conducted.<sup>18</sup>

## THE LEGAL BASIS OF MUḌĀRABAH

Legality of *mudarabah* is traceable in the Qur'an, Sunnah of the Prophet Muhammad (S.A.W) and *Ijma'a* consensus of the Muslim jurists.

The *Muḍārabah* contract was in existence even during the *Jahiliyyah* period that is before the advent of Islam, then Islam later sanctioned it.<sup>19</sup>

The basis of the validity of *Muḍārabah* is based on public interest. The provision of the Holy Qur'an:

*'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 (to judge); but those who*

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<sup>15</sup> Ibn Rushd M., *Bidayat al Mujtahid wa Nihayat al Muqtasid*, translated by Imran Ahsan Khan Nyazee (London: Garnet Publishing Limited, 2010), vol. 2, p.284; Central Bank of Nigeria, Understanding Monetary Policy Series, No. 17 of May 2012, P 21.

<sup>16</sup> Nyazee, I.A.K. *Islamic Law of Business Organization Partnership* (Malaysia, The Other Press Sdn Bhd, 2006), Pp 27 – 30.

<sup>17</sup> See: Quran 2 verse 282-283.

<sup>18</sup> AAOIFI, Sharia Standards, Standard No: 13 (5/1); Al Shubaili Y.B. Op Cit vol. 1, p 148.

<sup>19</sup> Ibn Rushd, M.A. Op Cit.

*repeat (the offence) are companions of the Fire: They will abide therein (for ever).*<sup>20</sup>

The effect of the verse is that Allah (SWT) has permitted trade and prohibits usury, as trade is made for profit. Therefore, since trade is for profit, legitimizing trade means legitimizing profits. It follows therefore that earning profit is legitimate, so also it is legitimate to earn a share out of it. Therefore, *Muḍārabah* being a contract which involves trading and the sharing of profit as the case may be is permissible under Islamic Law.

To this Allah the most High urges all the Muslims to explore his bounties in this world. Where He said that:

*.....And others travelling throughout the land seeking (something) of the bounty of Allah.*<sup>21</sup>

In addition, Allah encourages:

*.....then disperse in the land and seek of Allah's bounty, and remember Allah much, that ye may be successful.*<sup>22</sup>

The legality for the exercise of *Muḍārabah* in the Sunnah of the Prophet Muhammad (SAW) is attested to by the following:

- i. The Prophet (SAW) practiced *Muḍārabah* with Khadijah before the coming of Islam.<sup>23</sup>
- ii. After the coming of Islam, the Prophet Muhammad (SAW) acknowledged and sanctioned the practice of *Muḍārabah*.<sup>24</sup>

It has been reported by Ibn Abbas (R.A) that his father, Abbas Ibn Abdulmutallib used to give his money out on the basis of *Muḍārabah* but with condition to the effect that, the person given the capital will not cross any river nor enter any valley or buy any animal with soft belly, and if the entrepreneur were to do any of those actions, then he must guarantee the capital. When the Prophet (SAW) was questioned as to the validity of the contract containing such conditions, he approved of it as valid and legitimate.<sup>25</sup> The sanctioning by the Holy Prophet Muhammad (SAW) is the conclusive evidence of the legality of *Muḍārabah*.

- iii. Also, the Prophet (S.A.W) said:  
*"I am the third of every two partners as long as none of them betrays the other, and once any one of them betrays the other I leave them".*<sup>26</sup>

On the Ijma' (consensus) Muslim jurists have unanimously agreed on the legality of *Muḍārabah* contract and its validity under *Shari'ah*.<sup>27</sup>

<sup>20</sup> Qur'an 2 verse 275.

<sup>21</sup> Qur'an 73 verse 20.

<sup>22</sup> Qur'an 62 verse 10.

<sup>23</sup> Mubarakpuri, S. When the Moon Split. Translated by Tabassum Siraji (Riyadh 1<sup>st</sup> Daarussalam, 1998) p.28.

<sup>24</sup> Al Shubaily, Y.A. Op Cit vol. 1 p.148.

<sup>25</sup> Al Baihaqi A. Al Sunan al Kubra (Daar al Ma'arifa 1413 AH) vol. 6 p.111). But the chain of the Hadith is weak, because Abu al Jarud one of the reporters thereof is weak. See: Ibn Hajar A.A. al Talkhis al Khabir (Daar Uhud) vol. 3 p.58.

<sup>26</sup> Al- Sajistani, S. A., Sunan Abi Dawud, (Lebanon, Dar Al-Kutub Al-ilmiyyah, 2008), Pp 62 – 63.

<sup>27</sup> Ibn Rushd, M.A. Op Cit.

Thus, from the aforementioned, we can clearly see that the basis of validity and legitimacy of *Muḍārabah* contract under the Islamic Law is derived from the Qur'anic injunctions, Sunnah of the Prophet (SAW) and *Ijma* (consensus of the Muslim jurists).

## WISDOM OF MUDARABAH

The wisdom in legitimizing this type of business venture is in order for other less privilege people to enjoy the benefits of wealth, and it is through this type of venture that wealth can be circulated among the people and Islam has condemned hoarding of wealth without putting it into any productive use.

In essence, one can get among the rich people who have very little skill of business and on the other hand, those people who have the knowledge and enterprising skills but lack the capital to invest. Therefore, in order to strike a balance between the two parties, both of them come together and agreed to benefit from the wealth at their disposal and the entrepreneur skills to be employed to obtain profit.<sup>28</sup>

## CONSTITUENTS OF MUḌĀRABAH

*Mudarabah* could not be valid from Sharia point of view without having some basic pillars. The following are the constituents of *Muḍārabah* transaction:

1. *Rabbul-māl* (owner of capital, investor, financier or proprietor). *Rabb ul-māl* is a party who entrusts his capital or money to another party with the hope that at the end of the business transactions will not only get back his principal sum, but also the pre-agreed share of the profit. He bears the loss alone.<sup>29</sup>
2. *Amīl* or *Mudarib* (working partner, entrepreneur Manager or agent) The *Mudarib* is regarded as a trustee because he takes the other partner's capital as a trust. He is a hired person as he works himself on the capital. He is a representative as he freely disposes of the capital. And he is a partner because he shares in the profit if any. The *Amīl* gets the pre-agreed share of the profit and in case of loss he loses the profit of his effort.<sup>30</sup>
3. The *sigħa* of *Muḍārabah* (formula) The formula in *Muḍārabah* may take the form of statements expressed or implied signifying an intention of entering in to a valid *Muḍārabah* contract. Particularly, the capital which is in possession of the *Rabb ul-māl* is offered to the *Amīl*, who in turn accepts the capital with all the conditions attached to it.<sup>31</sup>
4. The *Ra'as-al-mal* the subject matter (*Mudaradah* capital). There is unanimity among the jurists that it is a necessary requirement in a *Muḍārabah* for the *Amīl* (*Mudarib*) to take possession of the capital so as to avoid any irregularities.

The capital must be definite in the form of money; gold, silver, etc. The capital of *Muḍārabah* must consist of cash or money, that means, the standard money in circulation for instance the Naira, Dollar, Pound Sterling, Deutschemark, Euro, etc. Muslim jurists are unanimous on this

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<sup>28</sup> Al Zuhaili, W., *Financial Transactions in Islamic jurisprudence*. Translated by Mahmoud A El-Gamal, (Damascus, 2nd ed.,: Dar El Fikr, 2007), vol. 2, p.489.

<sup>29</sup> Bambale. Y. Y., *Opcit*, 180.

<sup>30</sup> *Ibid*.

<sup>31</sup> Al-Zuhayli, W., *opcit*, P.489.

view. The jurists' views differ with regards to the use of goods as capital and this is due to the uncertainty which may result due to fluctuation in value or prices, at any point in time.<sup>32</sup>

## MODE OF APPLYING MUDARABAH IN JAIZ BANK

Deposits placed at Banks in line with Sharia principles through an investment contract, based on profit sharing, are considered as *mudarabah* capital, therefore, the Islamic rulings regarding *mudarabah* are applicable to them.<sup>33</sup>

*Mudarabah* in Jaiz Bank is applied in form of saving account.<sup>34</sup> The Bank has designed a form which contains requirements and conditions of *mudarabah*. When a customer approaches the Bank to enter into a *mudarabah* agreement he shall fill the form and sign it as well as the Bank. Then the *mudarabah* contract has been executed.<sup>35</sup>

## CONSTITUENTS OF MUḌĀRABAH IN JĀ'IZ BANK

The following are the constituents of *MuḌārabah* in Jā'iz Bank:

1. Parties to the agreement, i.e the depositor (*Rabbul-māl*) and the Bank (*mudarib*)
2. *Sigha*, (Formula)
3. *Ra'as al-mal* (the subject matter i.e *MuḌārabah* capital).<sup>36</sup>

### I. Parties to the agreement:

#### (a) The Depositor (the *Rabbul-māl*):

He is an investor, financier, owner of capital who contributes funds in a *MuḌārabah* partnership. He entrusts his capital or money to the Bank (*mudrib*) with the hope that at end of the business transaction will not only get back his principle sum, but also pre-agreed share of the profit.<sup>37</sup>

#### (b) The *mudarib* (working partner, entrepreneur, manager or Agent):

Jaiz Bank is the *mudarib* who receives the capital from the *Rabbul maal*. And the amount deposited in Saving Account shall be collected in pool(s) of funds and be invested.<sup>38</sup>

### 2. The *sigha* (formula) of *MuḌārabah*:

In Jaiz Bank the formula (offer and acceptance). takes a written form. All the account opening terms and condition are attached to the application form which contain article 1 to 14.<sup>39</sup> Once the form is submitted, duly completed and signed, then account number will be issued after satisfying all the requirements of the Bank. It is deemed that the customer agreed with the terms and conditions, more especially when he deposits the

<sup>32</sup> Ibid. pp.493-496; Ibn Rushd Op Ct.

<sup>33</sup> Resolutions and Recommendations of OIC Fiqh Academy, Resolution No 86 (3195).

<sup>34</sup> This excludes current account, because is based on *Qard* (benevolent loan).

<sup>35</sup> Jaiz Bank, Article 3.1 Account Opening Terms and Conditions

<sup>36</sup> Interview with Monzer Khaf, Chairman Advisory Committee of Expats, Jaiz Bank, in Bauchi State, on 12 June, 2015.

<sup>37</sup> Jaiz Bank, Article 3 Account Opening Terms and Conditions.

<sup>38</sup> Jaiz Bank, Article 3 Account Opening Terms and Conditions.

<sup>39</sup> Jaiz Bank, Article 1 – 14 Account Opening Terms and Conditions

capital in his possession to the Bank on the condition that at the end of it, the profit will be shared as at when due according to the pre-agreed profit sharing ratio.<sup>40</sup>

### **3. *Ra'as al-mal* – the subject matter (*Mudārabah* capital):**

The subject matter of *Mudārabah* contract in Jā'iz Bank is money capital, which is the standard money in circulation. In other words the capital must be definite in form of money. It must be deposited to the Bank (*mudarib*) in order to take possession of the said amount agreed upon. The *Rabb ul-māl* will not interfere in the running of the investment. Also the Bank will be solely responsible for the management of the capital in an approved ethical pool of investment that is in line with *Sharī'ah*.<sup>41</sup>

Therefore, the constituents of *mudarabah* in Jā'iz Bank Plc is in line with the provided principles of Sharia and in conformity with the global practice laid down by recognized international bodies of Islamic financial institutions such as Organization of Islamic Countries (OIC) Fiqh Academy and Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI).<sup>42</sup>

### **NATURE OF MUDĀRABAH IN JĀ'IZ BANK PLC**

The nature of *Mudārabah* that is applicable in Jā'iz Bank is *Mudārabah Al-Mutlaqah* that is unrestricted partnership.<sup>43</sup> *Mudārabah Al-Mutlaqah* means a form of partnership between two parties where capital owner provides the fund and grant full authority to the Bank (other party) in the choice of investment and types and location, while the profit is shared on the basis of mutually approved scheme.<sup>44</sup>

### **CONDITIONS OF MUDĀRABAH IN JĀ'IZ BANK PLC**

The conditions of *Mudārabah* in Jā'iz Bank Plc are as follows:

- i. Capacity of Contracting Parties (*Rabbul-māl/mudarib*)
- ii. Capital
- iii. Sharing of profit and
- iv. Contract
  - i. Contracting Parties: The contracting parties in *Mudārabah* consist of *Rabbul-māl* (customer) and *Mudarib* (Bank). *Rabbul-māl/mudarib* shall have legal capacity to execute contract including capacity to perform agency (*wakala*) contract either as a principal or as an agent.<sup>45</sup> The contracting parties in *Mudārabah* i.e *Rabbul-māl* and *Mudarib* may be a natural person or a legal person.
  - ii. Capital: The Jā'iz Bank Plc, look at capital as an asset provided by the *Rabbul-māl* (customer) to *mudarib* (Bank) for the sole purpose of *Mudārabah* venture. The *Mudārabah* capital shall be provided by *Rabbul-māl* (customer) and managed by the *mudarib* (Bank) *Mudārabah* capital shall be identifiable, readily available and accessible for the Bank (*Mudarib*) to commence the business activities. The Bank

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<sup>40</sup> Interview with Baba Ali Mohammed, Branch Manager, Jaiz Bank Plc, Maiduguri Branch (Borno State), 17 June, 2015

<sup>41</sup> Ibid

<sup>42</sup> See: Resolutions and Recommendations of OIC Fiqh Academy, Resolutions No: 86 (3/9); AAOIFI, Sharia Standards, Standard No: 13.

<sup>43</sup> Jaiz Bank, Article 3.1 Account Opening Terms and Conditions.

<sup>44</sup> Jaiz Bank, Article 1. 16 Account Opening Terms and Conditions.

<sup>45</sup> Interview with, Professor Muhammad Lawan Bashar, Member Advisory Committee of Experts (ACE), Jaiz Bank Plc polycorn Hotel, Sa'adu Zungur road old GRA, Bauchi 14<sup>th</sup> June, 2015



(*Mudarib*) shall not guarantee the *Muḍārabah* capital except in the case of its misconduct, negligence or breach of specified terms. All the remaining capital shall be returned to the *Rabbul-māl*, if any upon dissolution or termination of *Muḍārabah* contract.<sup>46</sup>

- iii. Sharing of Profit: In Jā'iz Bank, profit sharing is the primary motive of the *Muḍārabah* contract and therefore it is a fundamental component of the contract. Profit is the value created over and above the *Muḍārabah* capital which is determined based on profit determination method acceptable by the Jā'iz Bank Plc<sup>47</sup>.

The Bank shall not guarantee any profit the customer (*Rabbul-māl*) and the Bank (*mudarib*) shall share profit based on a ratio mutually agreed between them. Profit sharing ratio shall be determined at the inception of the contract.<sup>48</sup> Nonetheless, profit sharing ratio may be revised during the tenure of the *Muḍārabah* subject to mutual agreement.<sup>49</sup> In Jā'iz Bank *Muḍārabah* contract does not stipulate a predetermined fixed amount of profit to one contracting party which deprives the profit share of the other contracting party. The profit in the form of certain percentage shall not be linked to the *Muḍārabah* capital amount.

- iv. Contract: In Jā'iz Bank, *Muḍārabah* contract or transaction firstly, all must be between the customer (*Rabbul-māl*) and the Bank (*Mudarib*) who manage the investment. The Bank sole purpose of *Muḍārabah* contract is profit sharing, which is essential, according to the pre-agreed ratio. The share of each partner in the profit should be determined and expressed in the term and conditions of the contract. The capital should be known and determined at the time of the contract. The fund (capital) must be surrendered to the *mudarib* (Bank) and the Bank will use its expertise to place it in a pool and invest the fund in a viable ethical investment outlet that is *Sharī'ah* compliant.<sup>50</sup> The Bank must deal with the capital with absolute freedom and independence for the achievement of desired goal that is profit. The *Muḍārabah* transaction will stand terminated when the period specified in the contract expires. It can also be terminated any time by either of the two parties giving notice.<sup>51</sup>

## RIGHTS UNDER MUḌĀRABAH IN JĀ'IZ BANK PLC

Rights here refers to what the parties are entitled to and the freedom accorded to them under *Muḍārabah* transaction. These rights are divided in to two, the right of the *Rabbul-māl* (customer) and the right of the *Mudarib* (Bank).

- i. The right of customer (*Rabb ul-māl*): In Jā'iz Bank, the customer under *Muḍārabah* contract has the right to ask the Bank as to how they utilize the capital of the *Muḍārabah*. Being the customer of *Muḍārabah* contract also has a right to share in the profit realized under the contract.<sup>52</sup> He may if so wish by giving notice to the Bank or *Mudarib* to terminate *Muḍārabah* transaction<sup>53</sup>.
- ii. The right of the Bank (*Mudarib*): The Bank here uses its managerial skills and experience to invest the fund with a view to having profit in return on the *Muḍārabah*

<sup>46</sup> Ibid.

<sup>47</sup> Jaiz Bank, Article 4 of Account Opening Terms and Conditions

<sup>48</sup> Jaiz Bank, Article 4.1(d) of Account Opening Terms and Conditions

<sup>49</sup> - Ibid.

<sup>50</sup> - Ibid.

<sup>51</sup> - Ibid

<sup>52</sup> Jaiz Bank, Article 4.1 of Account Opening Terms and Conditions

<sup>53</sup> Ibid.

contract. The Bank has the right to share in the profit together with the customer according to the pre-agreed ratio.<sup>54</sup> The Bank shall have right to independently manage *Mudārabah* contract without any interference from the financier. It is within the power of the Bank to enter into transaction within the legal limit (*Shari'ah* compliant) as long as it is a profit yielding venture.<sup>55</sup>

## DUTIES UNDER MUDĀRABAH IN JĀ'IZ BANK PLC

- i. Duties of the Customer (*Rabb ul-māl*): The customer in Jā'iz Bank is under a duty in *Mudārabah* contract to supply the capital to be invested by the Bank. He is under obligation to surrender the entire capital to the Bank for the purpose of *Mudārabah* contract. The financier should not interfere with the activities of the Bank in investing the capital except in circumstance of mismanagement or guidance. The parties are duty bound to share the profit according to the pre-agreed sharing ratio. So it is the duty of the financier to bear the loss if any, if it is not cause due to non-compliance with the terms of the contract by the Bank.<sup>56</sup>
- ii. Duties of the Bank (*Mudarib*): The Banks duty is fiduciary; in addition to that, the Bank must be honest and sincere in carrying out its transaction. The Bank must act in good faith and within the scope of the *Mudārabah* contract terms and conditions. It is the duty of the Bank to render account at the end of each term agreed upon or at the termination of the *Mudārabah* in relation to the capital and the profit realized in the contract.<sup>57</sup>

## LIABILITIES UNDER MUDĀRABAH IN JĀ'IZ BANK

Under *Mudārabah* contract liabilities are not shared between the parties, it is only the customer who is always liable not the Bank who is considered a trustee to manage the property. The Bank losses will be the effort exerted without gaining any profit. The only scenario whereby the Bank became liable is a situation whereby it willfully or carelessly misappropriates the capital, and then the Bank would be responsible to what has been lost.<sup>58</sup>

Loss and liability is always attached to the capital invested belonging to the financier and that it will not be proper to share losses or liabilities on the same basis as profit is shared between the parties. Profit being a joint business effort, loss is not a product of any investment and business effort, but it is non increase on the capital, as such it is only logical for it to be shouldered by the owner of the capital.<sup>59</sup>

## TERMINATION OF MUDĀRABAH UNDER JĀ'IZ BANK

The *Mudārabah* contract in Jā'iz Bank Plc, unlike any other partnership may be terminated in the following circumstances:

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<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Jaiz Bank, Article 10.1 of Account Opening Terms and Conditions.

<sup>57</sup> Jaiz Bank, Article 10 of Account Opening Terms and Conditions.

<sup>58</sup> Ibid.

<sup>59</sup> Interview with, Dr. Ahmad Bello Dogarawa, member Advisory committee of experts (ACE), Jaiz Bank Plc, wiki Hotel and tours limited, Yakubun Bauchi street, old GRA (Bauchi State), 13<sup>th</sup> June, 2015.

- i. Death of an account holder: In case of demise of an account holder, no withdrawals shall be allowed except on production of letter of administration or probate from court of competent jurisdiction, the said letter or letters having been duly confirmed by the Bank.<sup>60</sup>
- ii. Unilateral termination by either the Bank or the customer in the absence of prohibitive circumstances e.g misconduct, negligence or breach of specified terms of contract by the other.<sup>61</sup>
- iii. Close of an account: the Bank may at its sole and absolute discretion close any account, which is not being operated in a manner satisfactorily to it or for other reason what so ever, with or without any prior notice to you. The Bank also deserves the right to terminate at its sole discretion any other types of relationship cards, etc at any time without assigning any reason.<sup>62</sup>
- iv. *Muḍārabah* is terminated by the loss of qualification of either party to enter into *Muḍārabah* transaction such as dissolution, insanity or loss of legal capacity.<sup>63</sup>
- v. The *Muḍārabah* will stand terminated when period specified in the contract expires. e.g if *Muḍārabah* is concluded for a fixed period, it comes to an end at the expiration of that period.<sup>64</sup>
- vi. *Muḍārabah* is terminated when the capital is destroyed or lost in the hands of the Bank such as force majeure.<sup>65</sup>

## CONCLUSION:

Jā'iz Bank plc obtained its regional operating license to operate as a non-interest Islamic Bank from the CBN on 11 November, 2011, commenced operation on 6 January, 2012, and was upgraded to a National operation license in 2016.

The legality of *Muḍārabah* is traceable in the Qur'an, Sunnah of the Prophet and *Ijma'* (the consensus of the Muslim jurists).

Jaiz Bank as other Islamic Banks operates on the basis of non-interest banking. *Mudarabah* is one of the products of Islamic Banks, where one party provides the capital "*Rabb ul-māl*" while the business is been managed by the other party "*Amīl/Mudarib*." Profit is shared in accordance with the pre-agreed sharing ratio and loss if any will be borne by the provider of capital, unless if there is prove of negligence or violation of the terms of the agreement is borne by the mudarib Bank/manager. *Mudarabah* in Jaiz Bank is applied in form of saving account.

The application of *mudarabah* in Jā'iz Bank Plc is generally, in line with the provided principles of Sharia and also in conformity with the global practice laid down by recognized international bodies of Islamic financial institutions such as Organization of Islamic Countries (OIC) Fiqh Academy and Accounting and Auditing Organization of Islamic Financial institutions (AAOIFI) etc.

<sup>60</sup> Article 14.3 and 14.2.1 Account Opening Terms and Conditions

<sup>61</sup> Interview with Dr. Ahmad Bello Dogarawa, Opcit.

<sup>62</sup> Jaiz Bank, Article 7.1 Account Opening Terms and Conditions.

<sup>63</sup> Interview with Monzer Kahf Op cit.

<sup>64</sup> Ibid.

<sup>65</sup> Interview with Baba Ali Mohammed, Op cit.

## **OBSERVATIONS:**

In the course of the research work the following observations were made:

1. there is lack of awareness about the *Muḍārabah* product and service of the Jaiz Bank plc.
2. absence of *Shariah* compatible instruments at the moment, limits chances of the Bank in investing the *Mudaraba* fund effectively
3. Jaiz Bank does not use *Muḍārabah* al-Muqayyadah (restricted *Muḍārabah*) as part of its product.

## **RECOMMENDATIONS:**

In view of the outcome of this research and in line with the observations, the following recommendations were made;

1. Jaiz Bank should provide adequate awareness and education as well as promote its products and services in particular *Muḍārabah* product to the general public through mass media broadcast, advertisement through distribution of pamphlet, etc.
2. The Central Bank of Nigeria (CBN) and other financial sectors (public and private) should create effective non interest banking liquidity management, that enables Jaiz to invest *Mudarabah* capital efficiently.
3. There is need for the Advisory Committee of Experts (ACE) to consider *Muḍārabah* al-Muqayyadah (restricted *Muḍārabah*) as one of its products in Jaiz Bank, to provide customers with more options.