



**Raqaba LLC**  
**Shari'a Audit & Islamic Financial Advisory**  
Cary, NC 27513, USA

+1 (919) 917-6595  
[www.raqaba.co](http://www.raqaba.co)  
[info@raqaba.co](mailto:info@raqaba.co)

April 23, 2024

## **The Independent Shari'a Auditor's Report**

All praise is due to Allah alone, prayers and peace be upon the last Prophet, his Relatives, Companions & whoever follows them righteously to the Day of Judgment. To proceed;

**To Shareholders & Clients**  
**American Finance House, LARIBA**  
**15141 East Whittier Boulevard, Suite 400**  
**Whittier, CA 90603, USA.**

### **Shari'a Compliance Report**

1. On March 15, 2016, we as the Independent Shari'a Auditor issued a report with regard to LARIBA Residential Home Financing "Declining Participation in the Usufruct (DPU)." The report stated that the design of product's procedures and documentations is in compliance with Shari'a rules in accordance with Shari'a standards for Islamic financial Institutions that are issued by Shari'a Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the related decisions of Islamic academies and jurisprudence seminars.
2. For the purpose of this report, we have audited the contracts and transactions executed by LARIBA (The Company) during the year 2023 to express an opinion about the extent of the company's compliance with the rules of Shari'a as per the Shari'a Standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and decisions of doctrinal associations accepted by us as per procedures and documents agreed upon in the previous report.

### **Product's structure & procedures**

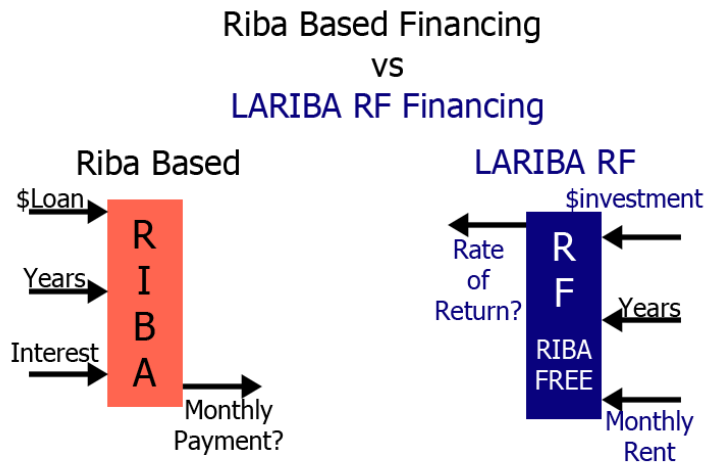
3. LARIBA Residential Property Financing Model "Declining Participation in the Usufruct (DPU)" is a financing model based on the financier purchase of the property jointly with the client before selling the financier's share with the exception of the usufruct for a specific period (Bai'u Al-Ain m'a Istithnaa Al-Manfa'a - البيع مع استثناء المنفعة). Thereafter,



the financier's share in the usufruct is renting out to the client throughout the financing period as described on the following steps:

- a) The client applies for residential property financing.
- b) LARIBA obtains the approval of an GSE (Fannie Mae or Freddie Mac) to participate in the transaction as an agent (a Wakeel) of the GSE.
- c) LARIBA presents the client a prequalification letter, which is a letter to prove that the client is capable and qualified to get the financing.
- d) LARIBA provides the client with an "RF Preliminary Term Sheet" to inform the client and describe the financing procedures. This preliminary term sheet has no legal or Shari'a effect.
- e) Both parties, LARIBA & the client, sign a proxy agreement (Wakala Agreement).
- f) The client (Wakeel & Partner) signs the "Purchasing Agreement" with the original owner as a principal and on behalf of LARIBA in its share.
- g) LARIBA evaluates the prudence of buying a house based on the rate of return on investment realized if the property were to be leased in the open market. LARIBA finance officer and the customer research the market rent of a similar property in the same neighborhood. the finance officer and the customer come up with three market estimates of the rent. LARIBA finance officer and customer agree on a fair rent to be the average of the six rent estimates.

LARIBA then applies its unique and patented computer algorithm to evaluate the economic rate of return on investment by using its proprietary computer model based on the LARIBA RF Finance model called "ISLAMABAD". In the computer model, LARIBA inputs the invested amount, the number of years of financings and the average rental value based on the live market. The unknown is the Rate of Return on investment. This is in contrast to what other banks do as shown below:



Please note that LARIBA does not start with an interest rate (interest is the rate of rental of money which is Riba) but relies on actual rental value of a similar property in the same neighborhood as described earlier:

- I. If the rate of return is similar or equal to that charged by the competition LARIBA issues a "Commitment Letter". If it is higher, then LARIBA



voluntarily reduces the agreed upon market rent such that the monthly payment is competitive with rates offered by other banks and finance institutions.

- II. If the rate of return is very low, indicating that it is imprudent to invest in this property, LARIBA declines financing and advises customer that the property is overpriced even though the appraised value may indicate otherwise. This process saved many of LARIBA's customers from participating in the US economic price bubble of 2008
- h) Both parties sign disclosure documents that meet Federal and Shari'a legal requirements.
  - i) Both parties sign "RF Final Term Sheet" in which LARIBA sell its share of the property to the client without the usufruct for the financing period. The excluded usufruct is rented throughout the financing period.
  - j) Property title is to be registered in the name of the client.
  - k) A mortgage lien is perfected in the name of LARIBA. The client signs a deed of trust which is a conventional document where some terminologies such as loan, interest, and late payment fees are shown in this document to protect both parties' interest as per legal requirements.
  - l) Property is to be handed over to the client.
  - m) When the period of financing ends, or the client pre-pays the entire principal amount, the exception of the usufruct (Haqul Manfaa) ends and the client becomes the sole owner of the usufruct, and the transaction would be closed.

### **Product's documents**

- 4. The Product's document contains two types of documents:
  - a) Shari'a documents.
  - b) Conventional documents, Disclosures and Deed of Trust or Mortgage which constitute evidence of "Lien". These documents confirm the liability initiated by the Shari'a compliant documents.

### **Product's Shari'a Foundation**

- 5. "Declining Participation in Usufruct" is a financing tool which is structured based on a well-known legislative case that is selling the title (Al-Raqabah) and keeping the usufruct (Al-Manfaa). This model differs from the well-known following models: Murabaha with a promise to buy, lease-purchase (rent-to-own), and diminishing Musharaka. The Shari'a rulings of these products are describe below:

*Al-Kafi fi Al-Fiqh - Ibn Qudamah al-Maqdissi – (Sale Chapter – exemption section):*

- 6. Ibn Qudamah Maqdisi mentioned in his book Al-Kafi, Hanbali book, the terms and conditions of this tool, he said:

The sale is legal for whoever sold an asset and excluded the usufruct for a definite period of time such as: a camel with a condition to ride to a specific destination, a



property with a condition to stay in for a month, and a slave with condition to stay serving him/her for a year. As it was narrated that Jabir bin 'Abdullah sold to the Prophet (ppuh) a camel with condition to ride it to Madina. (Al-Bukhari and Muslim). Because the exemption is explicit, it complies with Abu Hurairah's hadith. (Al-Kafi)

This is considered as an authorization of the case foundation in reference to Jabir's Hadith and the Abu Hurairah's, narrated by Al-Termithy, in which the Prophet (ppuh) forbade the exemptions unless it is defined such as it is for whoever sold an orchard and exempted a particular tree or sold a herd and exempted a specific sheep.

7. Ibn Qudamah discusses further the tool and says:

“If the purchaser offered to pay the seller in exchange of it (i.e. the usufruct), the seller is not obligated to accept because it is his/her right, as if he/she has rented it, and even if he intended to rent it out for that period. Ibn Aqeel said that: This case is acceptable in Hanbali's Qiyas because he/she owned the usufruct so he/she has the right to rent it out as a tenant”. (Al-Kafi)

These are the foundations of the LARIBA's utilization of the exempt usufruct. LARIBA is the owner of the usufruct as if LARIBA rented it and has the right to utilize the usufruct for LARIBA directly or indirectly by renting it out even to the client who purchased the title. LARIBA is not obligated to rent the usufruct to the client, but the relation can be conducted on the basis of a binding promise from either one of the two parties as the binding promise from one party is accepted by the International Islamic Fiqh Academy No.[40-41 (2/5,3/5)] and the paragraph (2/3/1) from the Shari'a standard No.8 (Murabaha). It is worth noting that renting the exempt usufruct to the clients is not forbidden in Shari'a and cannot be described as Einah because LARIBA has possessed the usufruct from a third party that is the first owner of the title and its usufruct. Thus, the LARIBA's profits come from renting the exempt usufruct and the rental value represents the return on investment.

8. With regard to the title damage consequence of losing the exempt usufruct, Ibn Qudamah says:

If the purchaser damaged the title, he/she must pay its value... because he/she damages another person's right of ownership. If the damages happened unintentionally without any carelessness, Ahmad's saying implies holding the purchaser responsible but he/she could not be so because the seller did not possess the usufruct from the purchaser, therefore; the purchaser should not compensate for the damage. Such as, if a sold fertilized palm tree was damaged or an orchard from which a tree was exempted. Thus, Ahmad's saying shall be interpreted to hold those who happened to careless”. (Al-Kafi)

This quote explains that the client shall not be held responsible to LARIBA for the usufruct in the exemption period in case there was no carelessness from his/her side (the purchaser). Ahmad's opinion would be more appropriate to consider when the damage happened intentionally or because of carelessness from the purchaser side (the owner of the title).



9. Ibn Qudamah states that the purchaser has the right to sell the title to others. He said: "If the purchaser sold the title, the deal is accepted, and the usufruct is exempted". This transaction is conditioned with the second purchaser's awareness of the exemption of the usufruct and conditioned with the acceptance of the bank, that has a lien over the property on which for the usufruct was exempted, as it is the practice of LARIBA Model.

Fatawa of Al-Baraka Seminar No. 6/2,6/4 and 9/4:

10. Fatwa of Al-Baraka Seminar No. (6/4) held on Algeria dated March 2-6, 1990 C.E concerning Home Financing product for Al-Baraka Bank London which states:

Registering the house's title in the partner's name, based on trust, from the inception of the contract is permissible under Shari'a. Registering the property's title in this manner does not contradict the agreed-upon partnership, especially since the partner's ability to sell the home is restricted until his full ownership of the property is established. In this regard, we took into consideration the fact that this registration of title is a form of documentation insured by the officially established lien on the property, according to the conditions agreed upon with the partner. (Al-Baraka).

Making the partner alone responsible for all costs like - registration, survey, and other costs associated with the jointly owned property from the inception of the contract, and absolving the bank from responsibility for such costs, is permissible if the partners agreed accordingly. This is particularly appropriate, since the partner will ultimately become the sole owner of the property at the end of the financing contract. (Al-Baraka).

11. According to the mentioned fatwa of Al-Baraka, the process is arranged as follows:
- a) "The bank and the client jointly purchase the home according to the agreed-upon proportions.
  - b) The bank sells its share in the physical property ownership (milk Al-Raqabah) to its partner, while retaining its share of ownership of the right to use it (haqul-manfa'h) until its partner pays the remaining portion of the price.
  - c) The bank collects an annual rent in proportion with the actually paid portion of the property's price".

12. The approved procedures of the LARIBA product comply with the process mentioned above in Albaraka's fatwa. According to the approved procedures of the product in LARIBA, the client signs a "Purchasing Agreement" as a Wakeel, then LARIBA sells its share of Milkul Raqabah (ownership of property title) to the client, and the property title is registered in the name of client. The client pays the applicable fees.

13. Fatwa Al-Baraka Seminar No. (6/2) held on Algeria dated 2-6 March 1990 C.E concerning using the term "interest" as an alternative to the term "profit" or "rate of return" which states:

Despite the fact that interest, as conventionally used in banking transactions, coincides precisely with the Riba that is forbidden in the Law (Shari'a) to pay or receive, and regardless of whether the underlying transaction is a consumption or



production loan, we have found that there is no objection to the use of the term (interest) in the cases related to those dealing with Al-Baraka Bank, London, aiming to benefit from the financial advantages given to interests in various cases of deposits and financing. (Al-Baraka).

In this regard, it is imperative to ensure that the term (interest) in the sense described above is used only in the forms required by entities other than the bank; e.g. tax declaration forms for depositors, or special forms used in various financing cases. However, if the intent is to change the nature of the transaction to make it an interest-bearing loan, then such transaction will be fundamentally impermissible. (Al-Baraka).

14. Fatwa of Al-Baraka Seminar No. (9/4) held on Jeddah dated February 15-17, 1994 C.E concerning establishment of pro forma ligatures or contracts, or formation of sister or branch special purpose entities to benefit from tax advantages given to Ribawi interest which states:

Islamic banks should be wary of writing pro forma Ribawi contracts or ligatures with pro forma Ribawi interest to benefit from tax or other advantages legally offered to Ribawi interest. (Al-Baraka)

There is nothing wrong if Islamic banks use language in their financial statements to explain the nature of permissible profit. For instance, the Bank may say that [such profit] is (the Islamic alternative for interest in the Ribawi system) or that (it is the return on investment) if such language will allow them to benefit from the tax advantages offered by Ribawi systems. However, the terminologies (Riba) or (interest) must never be used in any financial statement issued by the Islamic bank. (Al-Baraka)

15. The approved procedures of LARIBIA product comply with the terms and conditions of Albaraka's fatwas motioned above, the Shari'a procedures have included what is related to the partnership (Musharaka), agency (Wakala), buying, owning, sale, and leasing of the product. Also, the documents used in these procedures comply as well, inclusive of the commitment to pay late payment fees to a special charitable fund.
16. The use of terminologies such as - loan, interest, and late payment fees in a mortgage lien document which is required to be issued by LARIBA does not contradict the actual financing process as shown in the Shari'a compliant documentation. These terminologies refer to the value of Milkul Raqabah (financing principal), and the value of Haqul Manfaa (financing return), and the late payment fees as a commitment of donation to a third party.

Shari'a standard No. 3 (Default in payment by a debtor):

17. Paragraph (2/1/8) on Shari'a standard No.3 "Default in payment by a debtor" mentioned that:

It's permitted to prescribe in contracts involving indebtedness... 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'a supervisory board. (Shari'a Standard No. 3).





The approved procedures of the LARIBA product comply with the contents of the Shari'a standards mentioned above since the procedures and documents evidence the donation of late payment fees to a special charitable fund.

International Islamic Fiqh Academy resolution No. 64 (7/2):

18. International Islamic Fiqh Academy resolution no. 64 (7/2) concerning early settlement mentioned that:

To reduce a deferred debt with the aim of accelerating its repayment, whether at the request of the creditor or of the debtor (pay less but ahead of time), is permissible in Shari'a and does not fall within the province of Riba (which is forbidden) as long as it is not based on an advance agreement and as long as the relationship between the creditor and the debtor are bilateral. If there is a third party among them, the reduction is not permissible as it will then be subject to the ruling on discount of commercial papers. (Resolution No. 64).

Shari'a standard No. 8 (Murabaha)

19. Paragraph (5/9) of Shari'a standard No.8 (Murabaha) concerning early settlement mentioned that: "It is permissible for the institution to give up part of the selling price if the customer pays early, provided this was not part of the contractual agreement".
20. In case the client who owns Al-Raqaba (the title) pays the remaining value of Al-Raqaba (financing principal) early, then the usufruct owner has two choices. First, to give a discount to the client by calculating value of the excluded usufruct for the remaining period after recalculating as if it was paid in advance; meaning that a discount to be given to the client. Second, the seller "usufruct owner" forgoes the usufruct at any time when the client settles all the remaining financing amount. The second choice is the one that is applied in LARIBA's model as mentioned previously in product's procedures and documentations.

### **Federal Institutions**

21. LARIBA has established an acceptable way from the Shari'a point of view, to deal with the federal institutions such as "Freddie Mac" and "Fannie Mae". Such federal institutions participating in financing transactions of Islamic finance companies these investors, either through paying the full amount of funding or though participating with LARIBA in funding. In all cases, the follow-up of debt service and debt collection will be done by LARIBA who has executed the contract with the client according to Shari'a procedures and documentation described in this report. The relationship with "Freddie Mac" and "Fannie Mae" does not constitute sale of debt.



### **Shari'a References**

22. Al-Kafi fi Al-Fiqh, Ibn Qudamah al-Maqdissi – Sale Chapter, Exemption Section.
23. Decisions of Islamic Jurisprudence academies in relation.
24. Shari'a Standards for Islamic Financial Institutions (SSIFIs) issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAIOFI).
25. Al-Baraka Shari'a opinions (Fatwa)

### **Responsibility of the Management on Shari'a Compliance,**

26. The compliance-responsibility for implement the contracts and the transactions according to the provisions of Islamic Shari'a accepted by us shall reside with the company management. The management is also responsible for the required Internal Shari'a Control to assure the execution of the contracts and the transactions according to the Islamic Shari'a and financing model accepted by us as described above.

### **Responsibility of the Shari'a Auditor,**

27. Our responsibility is limited to expressing an independent opinion about the company's compliance with the rules and principles of Shari'a based on our audit. We have conducted our audit in accordance with standards and criteria issued by AAOIFI and in accordance with the international standards of assurance operations issued by the International Auditing and Assurance Standards Board, both of which require us to abide by professional codes of ethics, and plan and implement the required auditing procedures to obtain all information, interpretations, representations and assurances that we deem necessary, to provide us with adequate evidences, to give a reasonable assurance that the company is in compliance with the accepted rules of Islamic Shari'a.
28. Audit performance includes procedures to obtain audit proofs with regard to the extent of compliance with Shari'a rules and principles. We believe that the audits carried out by us provide an appropriate basis to give our opinion.

### **Opinion,**

29. In our opinion, all contracts & transactions executed by LARIBA during the financial period ending 12/31/2023 were executed in compliance with the Shari'a rules and principles accepted by us.

***May Allah's peace, mercy and blessings be upon you.***

**Abdulbari Mashal, Ph.D.**  
**Managing Partner**  
**Raqaba LLC**